

You advise that two employees of a law firm, an attorney and a bookkeeper, wish to form a business offering billing services to other law firms and businesses. The billing service would have access to billing information including the amount of time each attorney performed each service for each client, costs and expenses, and clients' names and addresses. The service would tabulate the time and cost.

You pose three questions relative to the above which collectively ask if this business arrangement is ethically prohibited. The Committee opines that this business arrangement in the abstract is not *per se* unethical. However, the Committee cautions that under certain circumstances this arrangement could place the attorney in the position of violating DR:5-101(A) or DR:1-102(A)(1).

Disciplinary Rule 5-101(A) states: “A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.” If the provision of the attorney's billing services to a competing law firm affects the exercise of his professional judgment for a client when the competing law firm represents the adverse party, then the attorney would be in violation of DR:5-101(A).

Disciplinary Rule 1-102(A)(1) states that “a lawyer shall not violate a Disciplinary Rule or *knowingly aid another to do so*” (emphasis added). Thus, the attorney must avoid complicity in any violation that may occur by the law firm which uses his billing services. The preservation of the confidences and secrets of a client is mandated by DR:4-101. However, EC:4-3 states: “Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, handling, printing, or other legitimate purposes provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.”

Thus, in accordance with EC:4-3, the law firm which uses the attorney's billing services may only provide “limited” information necessary for the service, must select the outside service with due care and must warn the outside service that the information must be kept confidential. Failure to follow these requirements may place the law firm utilizing the service in violation of DR:4-101 and place the attorney who performs the service in violation of DR:1-102(A)(1). Details regarding the *type* of service rendered could exceed the limitation contemplated by EC:4-3. Furthermore, if the use of a “lay” billing service, under certain circumstances, would better protect the interests of the law firm's client, then it may violate the “due care” requirement to select the attorney's billing service.

In summary, while the billing service contemplated is not *per se* unethical, care must be taken so that neither the attorney performing the service nor the law firm utilizing the service violates the foregoing ethical consideration and disciplinary rules.

Committee Opinion  
December 21, 1987