

LEGAL ETHICS OPINION 1648

ATTORNEY'S FEES; BILLING CLIENT  
FOR VALUE OF WORK PRODUCT  
EXCEEDING EARNED FEE PER  
AGREEMENT WITH CLIENT.

You have presented a hypothetical situation in which a law firm classifies each client for whom work is done in categories for the attorney who originated or brought the client's case in to the firm, and for the attorney who is responsible for doing the work. You wish to know whether it is proper to bill additional amounts to the client for "administrative fees", "processing fees" or "value billing" (a fixed "percentage add on from 20% to 200% at the originating attorney's hourly rate) when the originating attorney does not actually work on the case. You also state the client has been told he will be billed on a "time basis" which depends only on the hourly billing rate of the attorney(s) who perform the work.

In addition, you wish to know the ethical propriety of the law firm billing the client on an hourly basis where the bill charges the client for more time than was actually spent by the attorney working the case. You state that the law firm charges a fee which represents the "value" of the work product which exceeds the fee earned on an hourly basis. In all instances, the client is unaware of these billing practices and is led to believe that the bills received from the law firm are based solely on time actually spent or services performed on the matter.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:1-102(A)(3) (engaging in conduct which constitutes a crime or deliberate wrongful act reflecting adversely on fitness to practice law) and (4) (conduct involving fraud, misrepresentation, deceit or dishonesty reflecting adversely on fitness to practice law), DR:2-105(A) (fees must be reasonable and adequately explained), and DR:9-102(B)(3) (a lawyer must render appropriate accounting to client).

All of the billing practices which you have described are improper and violate the cited disciplinary rules. Any bill for costs or fees that are not attorney fees, but which nonetheless classifies them as such, is a clear misrepresentation in violation of DR:1-102(A)(4). In LE Op. 1220 and LE Op. 1509 the committee opined that masking search and recordation fees in a title insurance premium is deceptive and violative of DR:1-102(A)(4), DR:2-105(A), and DR:9-102(B)(3). For the same reasons, the committee concludes that a billing statement that hides attorney fees under the guise of another name, that are in addition to the agreed upon hourly fees is a deceptive practice which violates DR:1-102(A)(4). See LE Op. 1220 (making attorney's fee under different name or category is a deceptive practice). If the additional fees were not explained to the client then the billing practices which you have described violate DR:2-105(A). The Committee has also stated in LE Op. 1606 that any fee that is not earned is an unreasonable fee. If the fees are classified as attorney fees when they are not such, this practice violates DR:9-102(B)(3).

Committee Opinion  
November 28, 1995

The "service fee" described in your inquiry, like an administrative fee, would be proper only if charged in non-litigation cases, the method of calculating the fee is explained to the client and the client consents. LE Op. 710. Your inquiry mentions no such explanation and, in fact, it indicates the service fee is not for any substantial work. This is a fraudulent claim.

In summary, any lawyer's bill which charges fees or costs for work not actually performed is fraudulent, unreasonable, not adequately explained to the client and breaches the lawyer's duty to properly account to the client.