



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.5. See also ISBA Ethics Advisory Opinion 91-6. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 85-09
January 17, 1986**

Topic: Computerized Legal Research

Digest: An attorney may charge clients for computerized legal research expenses under a formula reflecting the attorney's actual cost.

Ref.: Rules 1-102, 2-106
Rao v. Noferi, 269 N.Y.S.2d 534, (N.Y.App. 1966)
Kentucky Bar Association v. Graves 556 S.W.2d 890 (Ky., 1977)

QUESTION

We have been asked our view as to the appropriate manner in which an attorney may charge clients for computerized legal research performed in connection with such services as Lexis^R or Westlaw^R.

OPINION

So far as can be determined, the manner in which charges may be made to a client for computerized legal research (CLR) has not been addressed by any professional ethics opinion or disciplinary rule in Illinois or elsewhere. General guidance is available from Rule 2-106(a), which

prohibits charging or collecting illegal or excessive fees, and Rule 2-106(b), which enumerates several factors for determining the reasonableness of a fee in relation to the services performed.

Companies which provide CLR services to law firms typically lease computer terminals and submit monthly invoices for rental fees, search, access and time charges, supplies, etc. The pricing policies of CLR services generally include a variety of one time charges, monthly charges and search charges which vary from month to month. The law firm typically incorporates these charges into the legal services bill which is ultimately submitted to clients by allocating these costs in proportion to CLR services devoted to each client's account.

A typical method employed by firms has been to treat CLR costs as an itemized expense to the client. It has been accepted that, while an attorney should not invoice for the necessary expenses of a properly equipped office a client may be expected to bear reasonable additional expenditures as required by diligent representation. Rao v. Noferi, 269 N.Y.S.2d 534 (N.Y.App. 1966); cf., Kentucky Bar Association v. Graves, 556 S.W.2d 890 (Ky., 1977). The former category should include, for example, local telephone calls and secretarial assistance while the latter might include long distance telephone, photocopying, travel and court costs. CLR would appear to fall in the latter category as an expense which can be itemized and billed separate and apart from ordinary overhead. It should be noted, however, that if CLR is to be billed as an "expense" in a situation involving a contingent fee contract, the client must be fully informed in advance whether CLR expenses are to be deducted before or after the contingent fee is calculated. Rule 2-106(c)(2).

In order to rationalize bookkeeping, firms often bill CLR expenses to clients according to a mathematical formula. An approximation is considered necessary because the monthly CLR invoice received by the law firm does not allocate associated expenses such as unit rentals, space and supplies on a per client basis. In addition, the monthly bill does not reflect support staff time and the cost to the firm for financing those clients who are not billed by the firm until a later date. Common formulae include variations on multiplying the monthly time/search attributable to each client by a numerical factor or charging each client a flat rate for minutes on line.

The Committee is of the opinion that an attorney may use a formula for estimating and charging a client for CLR as an expense if the formula reasonably reflects the firm's actual cost. Actual cost to the firm constitutes those expenses directly attributable to providing CLR to its clients as opposed to those expenses which are a necessary part or adjunct of a properly equipped lawyer's office.

An alternative approach to charging for CLR is to simply incorporate it as absorbed overhead within the standard fee structure. A firm might choose to treat CLR expenses as ordinary overhead and factor this expense into its standard fees across the board. This practice would not violate Illinois disciplinary rules as long as the ultimate fee is reasonable under Rule 2-106(a) and consistent with the factors enumerated in Rule 2-106(b).

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