



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.5. 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. 91-6
October 25, 1991**

Topic: Reasonable Fees; Secretarial Overtime Expenses

Digest: Under certain circumstances, invoicing client for secretary's overtime work is professionally proper.

Ref.: Illinois Rules of Professional Conduct, Rule 1.5
ISBA Advisory Opinions 85-9, 86-1

FACTS

An attorney requests an opinion on the propriety, under the Illinois Rules of Professional Conduct, of charging a client for secretarial overtime required in order to perform specific tasks on behalf of the client. The charge would be indicated separately on the bill as an expense; it would not be included in the fees for the legal service provided.

QUESTION

Is the proposed secretarial overtime expense proper under the Illinois Rules of Professional Conduct?

OPINION

Rule 1.5 states, "(a) A lawyer's fee shall be reasonable."

The Rule further states that the factors to be considered in determining reasonableness include, inter alia, the time and labor required, the fee customarily charged in the locality, the time limitations imposed by the client or the circumstances, whether the fee is fixed or contingent and other factors which do not appear to be relevant to this inquiry.

The Rule also requires that when the attorney has not regularly represented the client, the basis or rate of the fee shall be communicated to the client before or within a reasonable time after representation has commenced.

The Committee has addressed similar questions in previous opinions, which provide some guidance in responding to this inquiry. In Opinion 85-9, an attorney was permitted to charge clients the attorney's computerized legal research expenses under a formula reflecting the attorney's actual cost. However, that opinion also stated as follows:

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. (Citing cases) The former category should include, for example, local telephone calls and secretarial assistance....

Opinion No. 86-1 found that it is professionally improper to charge an hourly rate for a salaried paralegal as an expense in addition to a percentage of the recovery on a contingent fee contract. The Opinion also drew a distinction between charging clients an hourly rate for a paralegal's work as a component of the total fee and the paralegal charge as an "expense" in connection with a contingent fee contract. That Opinion includes the following statement:

Put another way, we see no difference in charging as an expense an hourly rate for a secretary, a law clerk or a lawyer associate.

This Opinion was based upon the unfamiliarity of the general public of what constitutes "out-of-pocket" expenses and expressed the view that the paralegal's charges came too close to the dishonesty, deceit and misrepresentation prohibited by former Rule 1-102(a)(4).

Notwithstanding the foregoing Opinions, the Committee finds that, under certain limited circumstances, it is professionally proper and consistent with those Opinions for an attorney to invoice a client for a secretary's actual overtime compensation incurred while performing work exclusively for a specific client. Rule 1.5 mandates that the basis or rate of the fee be communicated before or within a reasonable time after representation has commenced. In circumstances where an hourly rate is established consistent with the factors enumerated in Rule 1.5, and secretarial overtime becomes necessary to perform specific tasks to diligently represent the client which overtime work is not the result of the attorney's procrastination, neglect, or design, and the client is informed and consents to the payment of secretarial overtime as a special expense, invoicing a client for secretarial overtime as an expense item separate from the attorney fee charges is not professionally improper.

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