FLAT FEE DISBURSEMENT BILLINGS

Rule 2.08 of the lawyers' *Rules of Professional Conduct* (*Rules*) and rule 5.01 of the *Paralegal Rules of Conduct* (*Paralegal Rules*) deals with fees and disbursements. The Practice Management Helpline receives many inquiries from lawyers and paralegals about how to deal with the issue of flat rate disbursement billings. Flat fee billings are services for which a subscriber is allowed unlimited access to the service for a flat rate fee per month (e.g. QuickLaw or telephone long distance service). These questions relate to what charge to pass on to a client:

- should the lawyer or paralegal charge the effective rate (what it would have cost the client without the benefit of the flat fee arrangement, e.g. time and charges), or

- should the lawyer or paralegal charge the flat fee proportionate rate (the client's proportionate share of the use of the service for that month based on a proportion of the flat fee); and

- if there is very little usage of a product (e.g. QuickLaw) in a particular month, the "proportionate" rate charged to the client could potentially be higher than what the "effective" rate (time and charges) would have been; and

- if lawyers or paralegals use the "effective" rate even where they have a flat fee service they can find themselves in the position of making a hidden profit one month (precluded by Rule 2.08 of the *Rules* and Rule 5.01 of the *Paralegal Rules*) and running a deficit the following month.

It appears there is no singularly consistent policy used by lawyers or paralegals when passing flat rate charges through to clients. For research charges, the variance ranges from charging the effective rate, to charging the proportionate rate to absorbing computer time costs as part of the firm overhead. Many law firms have a cost recovery system in place to track long distance, photocopying and fax charges. The charges are based on rates assigned to a particular file. Discounted charges for long distance telephone services are commonly passed along to clients. Some firms add an administrative charge (one half cent per minute) to the telephone rates to cover their administrative costs in tracking the charge. Many solo or small firms do not have these computerized costs recovery systems and must rely on manual calculation in order to recover these expenses.

Most firms allow clients to negotiate the cost of photocopies. The Law Society no longer sets any prescribed charges for such disbursements. On files where the lawyer or paralegal is able to bill an hourly rate and make a reasonable profit, there is increased ability to negotiate a reduced [or waived] charge for research, photocopies, long distance, postage and faxes. With transactions and files that are marginally profitable (e.g. residential real estate), it becomes increasingly necessary to track and pass all these costs on to the client.

The Investigations department has generally taken the position that lawyers should not profit from disbursement charges to clients. Paralegals should also be guided by this position. In the spring of 1999, the Professional Regulation Committee was asked to provide direction about flat rate disbursement billings to clients.

DECISION

The Professional Regulation Committee took the position that:

- lawyers should **not profit** from disbursement charges made to clients;
- lawyers must continue to openly disclose and discuss with clients all items which will be charged as disbursements and how those amounts will be calculated;
- if an administrative charge forms part of the amount charged as a disbursement, disclosure of such charge(s) should be made to the clients in advance; and
- once disclosure is made, the clients are able to make an informed decision as to whether or not they will accept such an arrangement.

Legal information and support designed for you

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