

Billing for computerized legal research fees

by Correy Stephenson

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A recent lawsuit brought by a former client against an international law firm has attorneys wondering what is the best way to bill clients for computerized legal research fees?

Earlier this year, Patricia Meyer of Patricia Meyer and Associates in San Diego filed a [putative class action](#) on behalf of J. Virgil Waggoner against the New York-based firm Chadbourne & Parke.

The plaintiff argues that the firm violated California's ethics laws as well as the state's unfair business practices statute by overcharging him for computerized legal research.

Specifically, the complaint alleges that the firm illegally billed him at an hourly rate for the cost of electronic legal research – such as Westlaw or LexisNexis – while the firm pays a flat monthly fee for the service.

"Our allegation is that the firm is not passing along the discounted savings that they should have been to the client," Meyer said.

The client was billed just over \$20,000 for "information retrieval/computerized legal research," but he should have been billed a fraction of that, Meyer said.

Meyer said that she has already been contacted by other potential plaintiffs who want to pursue similar claims.

"It appears the issue is pretty widespread so we have been looking at the possibility of other lawsuits," she said.

The firm has not yet filed a response to the suit, but Thomas Hall, a Chadbourne & Parke partner, responded in a statement.

"We adamantly deny this claim of Mr. Waggoner, with whom we ended our relationship over four years ago. It is telling that Mr. Waggoner – a Texan who had retained our New York, not California, office – filed suit in California only after his New York malpractice lawsuit against Chadbourne was dismissed and only after we sued him in New York for unpaid fees," Hall said.

The ethics

Billing clients for costs used to be simpler. Itemizing long distance phone calls, for example, was time-consuming but straightforward.

But in an age of increasing technological advances, how do lawyers pass on the costs of cell phones, for example, when they get a certain number of minutes per month in a plan and then get charged if they go over?

Or in this case, how should firms bill a client for the cost of legal research performed online?

"A lawyer or a law firm can recover its costs for computer-assisted research from a client," said Jim McCauley, who is ethics counsel for the Virginia State Bar. "The question is: can they add on to the charges in order to make a profit?"

The answer, according to the American Bar Association's [Formal Ethics Opinion 93-379](#), "Bill for Professional Fees, Disbursements and Other Expenses," is yes – as long as the client has agreed to it.

However, since it is highly unlikely that a client would agree to allow a lawyer to profit from such charges, the typical charge to a client for computerized legal research will contain two components, McCauley said.

First, it will include the cost of the attorney or paralegal's time spent performing the research. And second, in the case of firms that contract with service providers for a flat rate, it will include a pro rata portion of that rate based on the time spent working on the client's matter.

For example, if a firm used Westlaw for 100 hours in a given month and spent 10 of those hours working on the specific client's matter, then the firm should only bill the client for 10 percent of the flat fee it paid for the service, McCauley said.

"Since the law firm pays a fixed fee every month, they cannot assess the entire fixed fee to the specific client," he said. "Lawyers are not allowed to make a profit off of ordinary expenses or those paid to a third party unless the retainer agreement explicitly allows for it, and the apportionment concept is an extension of that."

The retainer agreement in the recent suit did not disclose that costs would be billed at a higher rate than the actual cost, Meyer said. Nor did the \$20,000 the client was billed include the cost for the time an associate spent doing the research, she claimed.

Best practices

The best practice for attorneys is to build computerized legal research costs into their overhead costs and not break them out separately in the bill, said Larry Bodine, a business development advisor at Chicago-based Larry Bodine Marketing and author of the site www.LawMarketing.com.

"Clients hate seeing charges for copying or postage," said Bodine. "If you break out every charge, it makes you look like you are trying to milk every nickel and dime possible out of the client."

Instead, build the cost of the research into your hourly time or into that of the paralegal performing the research, but be sure to explain it to the client, he noted.

Bodine also suggested that in the current economy, it might be worth simply not charging the client for the cost of research.

"Eat the cost," he said. "Charge for your time doing it, but don't charge the client for the cost of the [electronic research] service. Just be sure to say ... on the invoice [that you didn't charge them] and let them know that's something you do for valued clients."

*Questions or comments can be directed to the writer at:
correy.stephenson@lawyersusaonline.com*

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