

**KENTUCKY BAR ASSOCIATION**  
**Ethics Opinion KBA E-303**  
Issued: May 1985

***This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.***

**Question:** What is the proper method of billing the time devoted to a legal matter by a paralegal, or a non-admitted law clerk?

**Answer:** See discussion.

**References:** KBA v. Graves, 556 S.W.2d 890 (Ky. 1977); ABA I.O. 13333 (1975); L.A. County OP. 391 (1981); DRs 2-106 (A), 2-107(A)

**OPINION**

The Code of Professional Responsibility (1969) does not contain any directly controlling provision concerning the inquiry.

In Kentucky Bar Association v. Graves, 556 S.W.2d 890 (Ky. 1977), it was held that it was improper for a lawyer who had agreed to represent a workmen's compensation claimant for a fee fixed by the Board and prosecute other claims on a contingent fee basis, to require the client to establish an escrow account against which the lawyer would make charges for "secretarial" and "law clerk expenses."

In that case, the Kentucky Bar Association took the position that such charges constituted a "disguised fee". In affirming the attorneys censure, the court observed, *inter alia*:

...billing to the escrow account expenses of law clerks, secretarial assistance ... especially in the absence of a specific agreement with respect to those particular items is improper. ... It is difficult for this court to comprehend an attorney with a full-time practice to expect his clients to meet his overhead expenses. ... It is doubtful if any member of the public who needed a lawyer would employ one who was to charge a standard fee for his legal services and then charge the costs of his secretaries and law clerks as expenses of litigation. *Id.* at 892.

ABA Informal Opinion 1333 (1975) addressed the billing of services for law clerks:

We conclude that it is proper to include the charges in question as a portion of firm overhead. On the other hand, if the charges are separately stated (a practice which the ABA Committee approved), care should be taken to insure that the client is acquainted with the legal limitations upon the personnel involved.

Also on point is Los Angeles County Opinion 391 (1981), which holds:

A lawyer may bill a client for the professional services of a law clerk or legal assistant (paralegal), provided that such services are separately itemized in a billing.

In light of the above authorities we conclude that an attorney who has agreed to represent a client for a statutory or a lump sum or contingent fee should not pass on additional charges for law clerk or paralegal services, in the absence of an agreement. If agreed otherwise, or in instances in which the lawyer charges an hourly rate, charges for law clerk or paralegal services may be separately stated. Of course, a lawyer may absorb such charges as overhead, which is not billed to the client.

In no event should the services of a law clerk or paralegal be billed as attorney time, since this would amount to a representation that such services were rendered by an attorney. D 2-106(A) and 2-107(A).

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***Note to Reader***

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.*