

Advisory Opinion 1990-4

The Committee has received an inquiry concerning whether a lawyer has a duty to advise his or her client concerning the hourly rates to be charged for services rendered by non-lawyer employees of the lawyer. The Committee's answer is "Yes". The inquirer also asks whether it might be appropriate to include such services within the time billed by the lawyer without disclosing that the services were rendered by a non-lawyer. The Committee's answer is "No".

Rule 16-105B (SCRA) requires, where the lawyer has not regularly represented the client and established an understanding concerning fees by their course of dealing that the basis or rate of the fee shall be communicated to the client, preferably in writing. Similarly, Rule 16-104B (SCRA) requires that the client be informed as to matters regarding the representation and Rule 16-102A (SCRA) requires that the client be consulted concerning the means by which the objectives of the representation are pursued. The Committee is of the opinion that these rules require that the client be informed of the rates and charges for the services performed or to be performed by the lawyer and the law firm. The disclosure to the client should state the rate for each attorney and paraprofessional or other non-lawyer who will or may work on the client's matter. If the firm charges for other services, those fees and pass-through costs should also be disclosed.

If requested by the client, the lawyer should also inform the client concerning the qualifications or expertise of the persons who may work on the matter. However, the lawyer remains responsible for the professional quality of the work performed and must assume the responsibility for the supervision and training of all non-lawyer personnel. See Rule 16-503 (SCRA).

The Committee has not addressed those situations in which the negotiated fee arrangements are not based upon hourly rates. However, the Committee notes that Rule 16-105A (SCRA) states unequivocally that "[a] lawyer's fee shall be reasonable" and that the lawyer's disclosure and supervisory obligations are not abrogated by the fee arrangement selected.

It is the Committee's opinion that with proper disclosure it is appropriate for a law firm to bill a client for the professional services of non-lawyers such as law clerks, paralegals, legal assistants or others who perform services for the client under the lawyer's supervision. Such services should be separately itemized in the billing to the client and are normally billed at rates lower than the rates for services of a lawyer. The Committee further believes that it would be a fraudulent misrepresentation to the client that legal services had been rendered by a lawyer if the billing for secretarial, law clerk, paralegal or other non-lawyer services were represented as attorney time.