# ETHICAL DILEMMA:
# Charging Legal Fees for Nonlegal Work

**If a client asks a lawyer for help doing nonlegal tasks, what rate can the lawyer charge? The answer depends on whether the lawyer's professional skill and knowledge added value to the work.**

BY SARAH E. PETERSON

## Question

I am advocacy counsel for a client in a guardianship proceeding. My client wants to clean out his current apartment and move to a new one. He believes this move might increase his chances of getting the guardianship dismissed, and I agree with him. Even though he could afford to do so, my client doesn't want to hire a company to help him – he is generally distrustful of people he doesn't know.

I'd like to help but can't afford to work for free. Can I charge him for helping him move? How much can I charge?

## Answer

Yes, you can charge your client for helping him move. You cannot, however, charge him at the same rate you charge him for legal services.

SCR 20:1.5(a) states that a lawyer shall not, "make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." The rules list eight factors to be considered in determining whether a fee is reasonable:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent.

While all eight factors are relevant when determining whether a fee is reasonable, an analysis under SCR 20:1.5(a)(1) is particularly helpful when determining whether you are allowed to charge your legal-services rate for nonlegal services provided to your client.

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## Example Cases

A 2000 Colorado disciplinary case states the issue succinctly:

"Green's affidavit setting forth his time entries for work performed on the appeal contains unreasonable charges. There are charges reflecting time Green spent on tasks that could have been done by a nonlawyer at a significantly lower rate than $165 per hour. For example, there are multiple entries reflecting the faxing of documents to the client and opposing counsel, entries for calls made to the court of appeals clerk's office, and the delivery of documents to opposing counsel. Colo. RPC 1.5(a)(1) indicates that one factor in determining the reasonableness of a fee is 'the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.' *Under this principle, charging an attorney's hourly rate for clerical services that are generally performed by a non-lawyer, and thus for which an attorney's professional skill and knowledge add no value to the service, is unreasonable as a matter of law.*"[1]

In an Iowa case, a lawyer who was representing a man in a conservatorship appointed the lawyer's wife as conservator.[2] His lawyer rate was $80 per hour. The wife's conservator rate was $15 per hour. The court found the lawyer sought legal fees for actions that would customarily be performed by the conservator and billed at the conservator's hourly rate. For example, the lawyer charged his legal-services rate for attending the client's birthday party, conferences regarding clothing and toiletry needs, a trip to a funeral home to "view and discuss prices of caskets, vaults, etc.," depositing checks, and writing personal letters on the client's behalf.[3] Again, the services provided were divided into two categories: those services to which the lawyer's professional skill and knowledge added value and those for which it did not.

Similarly, charging a paralegal's rate for clerical work has been found to be unreasonable.[4]

## Wisconsin Cases

Lawyers in Wisconsin have been disciplined for similar misconduct. In 2014, a lawyer who was personal representative and counsel for an estate was privately reprimanded for billing his legal rate for work relating to the repair and sale of the decedent's home. The reprimand noted that under Wisconsin law, the lawyer was prohibited from charging his legal-services rate for nonlegal work performed on behalf of the estate.[5]

In 1999, the law license of a Wisconsin lawyer was suspended for two years and the lawyer was ordered to pay $84,000 in restitution in part because of the excessive and unreasonable fees she charged a client with diminished capacity.[6] The lawyer represented a man for less than six months. During that time, the lawyer paid herself $112,000 from client funds under her control. Those funds represented nearly one-third of the client's assets, excluding his home.

The lawyer charged her legal-services

rate of $125 per hour for case management and personal services. The referee who heard the case found that the market rates for those services were $95 per hour and $10 per hour, respectively. The lawyer argued that the referee improperly concluded that billing the client $125 per hour for case management and personal services was excessive. The lawyer insisted that the client understood the nature of the services she was providing and the basis of the fee she was charging, as evidenced by the fact that the client reviewed all her bills before paying them. The lawyer contended further that it was not unreasonable for her to charge the legal-services rate for nonlawyer services. With respect to the "fetching services" she performed for the client, the lawyer asserted that for the most part they were merely incidental to her performance of other services or in some cases were provided on an emergency basis. The Wisconsin Supreme Court rejected the lawyer's arguments and found that her billing was unreasonable.

The supreme court also found it was unreasonable for the lawyer to charge the client for time the lawyer spent consulting ethics counsel when the primary purpose of the consultation was to ensure that the lawyer's plan to have the client transfer his funds to the lawyer's own account would not raise questions of the lawyer's own ethical propriety – the purpose was not to obtain assistance in creating a plan to advance the client's interests. In this situation, the fees incurred obtained results that benefited the lawyer, not the client.[7]

Recently, a lawyer was publicly reprimanded for charging his lawyer rate for work performed by a paralegal. The lawyer charged the client $13,000 over a three-month period to handle a divorce. When successor counsel inquired into the amount of the fee, the lawyer acknowledged a paralegal had done all the work on the case and handled all communications with the client. The lawyer attempted to justify the fee by asserting that the paralegal always had real-time access to him through his office's chat system.[8]

Putting aside the question of whether it was proper for the lawyer to allow a paralegal to perform all the work related to the representation, raising questions under SCR 20:5.3,[9] the services performed required no labor or skill by the lawyer.

While not addressed in the reprimand, this case also raises questions under SCR 20:8.4(c)[10] in that the lawyer did not disclose in his billing statements who had performed the work the client was charged for.

## Another Consideration

It's clear that lawyers cannot charge their legal-services rate for helping a client move. But if a lawyer agrees to perform nonlegal work for a client at a rate appropriate for the work, the lawyer should consider how agreeing to do so might otherwise affect the representation.

For example, might the client's expectations about the quality and quantity of the nonlegal work create tension that bleeds into the legal-services aspects of the representation and impairs the lawyer's ability to otherwise competently and diligently represent the client?

While the desire to help a client in need is understandable and admirable, especially when it could strengthen a client's position in the legal matter the lawyer was hired to handle, it may not be in the client's best interest for the lawyer to do so.

## Conclusion

A lawyer is not prohibited from performing nonlegal tasks for a client. However, an analysis under SCR 20:1.5(a) makes it clear that the lawyer cannot charge a legal-services rate for work to which the lawyer's legal skill and expertise do not add value. Furthermore, a lawyer cannot charge a client for work that benefits the lawyer but is of no value to the client. **WL**

### ENDNOTES

[1]*In Re Green,* 11 P.3d 1078 (Colo. 2000) (emphasis added).

[2]The court also considered the appropriateness of the appointment of the lawyer's wife as conservator and found that the appointment, standing alone, did not constitute misconduct.

[3]*Committee on Pro. Ethics v. Zimmerman*, 465 N.W.2d 288 (Iowa 1991).

[4]*See In re Taylor,* 100 B.R. 42, 45 (Bankr. D. Colo. 1989) (noting that charging lawyer's or paralegal's rate for performing "ministerial services" is excessive because having lawyer or paralegal perform such services "does not increase the value of that service").

[5]Wis. Stat. section 857.05(3) allows a lawyer to act as both personal representative and lawyer for an estate but does not allow charging at the lawyer's usual billing rate for nonprofessional services. *Sherman v. Hagness*, 195 Wis. 2d 225, 536 N.W.2d 133 (Ct. App. 1995).

[6]*Disciplinary Proc. Against Gilbert*, 27 Wis. 2d 444, 595 N.W.2d 715 (1999).

[7]SCR 20:1.5(a)(4).

[8]*See Public Reprimand of Johnson*, 2024-OLR-09 (Nov. 4, 2024), https://compendium.wicourts.gov/app/raw/000204.html.

[9]SCR 20:5.3 states, "With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

[10]SCR 20:8.4(c) prohibits a lawyer from engaging in conduct involving "dishonesty, fraud, deceit or misrepresentation." **WL**