

Committee Opinion
March 22, 1988
Committee Op Note Update
November 18, 2021

LEGAL ETHICS OPINION 1056

FEES – OVERHEAD CHARGE.

You advise that your firm charges a four percent overhead charge, based upon the amount of the fee for items such as telephone expenses (local and long distance), telecopier charges, postage, routine duplicating, local travel (including tolls and parking), routine secretarial overtime and deliveries made by your firm personnel. Your firm does not otherwise bill these expenses. You also advise that prior to charging the overhead fee, a written fee agreement is executed by the client.

You wish to know (1) whether the surcharge is ethical in any case, and (2) whether the surcharge is ethical in a contingency fee situation. LE Op. 710 we believe is dispositive of your inquiries.

In LE Op. 710, the Committee opined that it is not improper in matters not involving litigation to charge a client a predetermined percentage of the legal fee as administrative costs, provided that the attorney explains fully to the client the method by which the client's bill will be calculated and the client consents.

In matters involving litigation, the client must pay the actual cost associated with the case file. Accordingly, the Committee opines that it would be improper for you to charge the client a percentage of overhead in litigation matters.

Following the rationale of LE Op. 710, the Committee opines that this "administrative charge" would be improper in contingent fee matters. In a contingent fee matter that you describe, should there be no recovery, the client would not be responsible for the costs associated with the case file; this would be improper pursuant to DR:5-103(B).

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Legal Ethics Committee Note: Rule 1.8(e) allows repayment of advanced costs and expenses to be contingent on the outcome of the matter.

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