

Dear Sir/ Madam,

I have become aware of the investigation that is being conducted by your agency into the legal services market in the United Kingdom. The issue of law firm billing is also a controversial one in the United States. I am currently involved in litigation over an issue which is relevant to the subject matter of your inquiry. Even though I am myself a practicing attorney, I fell into a situation where the enormity of the legal billing presented by the attorney that I retained to represent me in a civil matter, became such a burden that I was forced to confront the issue directly. This led to a motion to withdraw on the part of my attorney and the requirement to engage the services of another law firm to represent me in opposing that motion. The motion to withdraw occurred after I had already paid in excess of two million dollars in fees over a period of two and a half years without the case having proceeded beyond the pleading stage.

I am attaching a copy of a memorandum that I sent to my current attorneys on December 16, 2015 expressing my concern and suggesting changes in our current system that would provide the same level of protection to small businesses and consumers of legal services as are provided to consumers of other high cost products and services.

In addition I am attaching four articles that have appeared in various legal journals in the United States commenting on the injustice of our current system and its propensity to encourage overbilling and breach of the fiduciary relationship between lawyers and their clients. Some have advocated the position that hourly billing creates an inherent conflict of interest between attorneys and their clients.

The motion in my particular case will be heard before a magistrate judge in \_\_\_\_\_ and may conclude with a negotiated settlement of the issue. If not, it may progress to the Federal District Court Judge to whom the underlying case was assigned. In either case, the results are less likely to have as much of an impact as the work that your agency is undertaking. I would encourage you to conduct a thorough examination of the problem. If there is significant reform in the United Kingdom arising from your efforts, it is bound to influence the discussion in this country as well.

If I can be of any further service, please do not hesitate to contact me.

Yours,

The recent order of referring the fee dispute to a magistrate judge has brought to mind certain issues that have caused me concern. These issues include: whether or not an unrestricted hourly billing is unethical per se as an inherent conflict of interest between lawyer and client; or if not inherently unethical whether it is or may be unethical as applied if it is not accompanied by full disclosure; whether it should be applied uniformly to all clients in all situations rather than being tailored to the specific client; and whether or not the standard hourly fee agreement is sufficiently drafted and explained to the client so that the client's decision to enter into the contract is made with informed consent.

The decision to initiate the filing of a lawsuit is not an inconsequential matter. Once one enters into litigation one is often unable to extricate oneself from the situation without facing the prospect of retaliation by the opposing party through counter litigation. One may not be able to easily change attorneys in the midst of the litigation without sacrificing the special knowledge and experience that the attorney brings to that particular case. One may not be able to find a substitute attorney who is willing or able to enter the litigation when it has reached an advance stage or to afford the cost involved in bringing that new attorney up to the current level of the proceedings.

The Pennsylvania Rules of Professional Conduct enacted on October 16, 1987 as amended and the prior Code of Professional Responsibility were designed to address this problem. A comment on the prior code notes that "The Rule includes the factor of ability to pay; a person of ample means may justly be charged more for a service, and a person of limited means less, other factors being the same. EC 2-17 states that "a lawyer should not charge more than a reasonable fee..." (See PA Rules of Professional conduct p. 17, official publication, The Disciplinary Board of the Supreme Court of PA).

The current Rule 1.5 though not using the term "reasonable fee" and stating instead that "a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee." (Rule 1.5(a). It proceeds to list eight factors to be taken into consideration in determining the propriety of the fee. Among these eight factors is "the amount involved and the results obtained." (Rule 1.5 (a)(5).

In my situation the propriety of the fee already charged, and the fees to be charged in the future, should take into account the enormous amount that I have already paid just to conclude the pleading stage of the proceedings, as well as the result achieved which was the dismissal of most of the claims in the complaint.

At the inception of the lawyer-client relationship there should be a clear understanding by both parties of the risks involved and the responsibility and obligation undertaken. A lawyer, like a business man should perform "due diligence" before agreeing to represent a particular client. The lawyer, rather than the client is in the better position to analyze the costs involved, the time involved, and the prospects of success. Those factors need to be taken into consideration along with the nature and background of the client; the resources available to the client to pay for the costs of the litigation; the impact of the cost of the litigation on the clients resources; and the

prospects of the ability to collect on any judgment obtained. The lawyer should then set the amount of the retainer in a reasonable proportion to the estimated costs of the representation so that the client begins the relationship with a substantial portion of the costs already paid. The attorney should be required to provide the client a reasonable range of estimated costs for the litigation divided into basic stages of the proceedings; specifically the stages of pleadings, discovery, settlement negotiations, trial and appeal. If possible a maximum fee should be provided after which any remainder of the proceeds of the litigation should be fairly apportioned. The fee agreement should contain appropriate warnings and caveats in bold print as are required in other consumer contracts.

Certainly a fee that results in more harm to the client than the value of the benefit conferred cannot be considered a reasonable fee. This is akin to the old bromide where the doctor tells the family of the patient that "the operation was a success but the patient died."

In my situation a fee which jeopardizes the continued existence of my law practice, and which presents the prospect of potential impoverishment, the loss of jobs for my employees, and a crisis for hundreds of clients is not a reasonable fee. One should not be able to say the case was a success but the client was ruined. In this case a reasonable, and proper fee can only be determined in relationship to the final outcome of the case.

Finally, as regards the public perception of the issue of unrestrained hourly billing, I am attaching five articles from the legal press which discuss the issue and which argue that this system is structurally unfair and should be changed.

I would like you to take these thoughts into consideration. This aspect of our case, if it proceeds to the Third Circuit Court of appeals, presents a rare opportunity for the court to address the broader implications of the issues involved. If the judges wish to avoid deciding this controversial issue they can do so by simply denying the motion to withdraw and rendering the broader issues moot. For these reasons the arguments should be included in our presentation to the magistrate judge.

Very truly yours,