



**New York State Bar Association  
Committee on Professional Ethics**

Opinion 1090 (3/31/2016)

**Topic:** Billing client for work performed by an unpaid student-intern

**Digest:** A law firm may bill a client for work performed by a student-intern despite the fact that the law firm does not pay the intern, because the intern receives academic credit for the work, as long as (i) the internship program complies with applicable law, (ii) the educational institution does not object to the client charges, and (iii) the charge is not excessive.

**Rules:** 1.5(a) & (b)

**FACTS**

1. A law school has a student-intern program in which student interns work for local law firms and receive academic credit for their work in lieu of monetary compensation. A law firm asks whether it may bill clients for work performed for its clients by student-interns, despite the fact that the law firm does not pay the interns.

**QUESTION**

2. May a law firm bill a client for work performed by a student-intern despite the fact that the law firm does not pay the interns, because they receive academic credit for their work?

**OPINION**

3. Our jurisdiction extends only to interpretations of the Rules of Professional Conduct. We do not interpret otherwise applicable laws or render factual determinations.. Consequently, we assume that the proposals of the law firm to bill clients for the services of the interns and to hire those interns without compensation comply with applicable laws. (In that latter regard, we note that the 2010 standards of the U.S. Department of Labor concerning internship programs prohibited a private sector employer from deriving an immediate advantage from the activities of the intern. However, that standard was rejected by the Second Circuit Court of Appeals in *Glatt v. Fox Searchlight Pictures, Inc.*, 791 F.3d 376 (2d Cir. 2015) in favor of a non-exhaustive set of considerations that focus on the what the intern receives in exchange for his work.) We also assume that the educational institution that sponsors the internship program allows the law firm to charge its clients for the services of the intern.

4. Rule 1.5(b) of the New York Rules of Professional Conduct (the “Rules”) enjoins a lawyer to communicate to a client not only the scope of a representation but also “the basis or rate of the fee and expenses for which the client will be responsible.” (Whether that communication must be in writing is a question of law dependent upon the provisions of Part 1500 of the Rules of the Judiciary, 22 N.Y.C.R.R. Part 1215. *See also*, 22 N.Y.C.R.R. Part 1400, governing fee and retainer arrangements in matrimonial matters.)

5. A lawyer is further enjoined by Rule 1.5(a) not to “make an agreement for, charge, or collect an excessive or illegal fee or expense.” The test of whether a fee is excessive is whether “a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive.” While expenses are not specified in the definition of “excessive,” Comment [1] to Rule 1.5 makes clear the New York State Bar Association’s intent that expenses should be subject to the same limitation. *See* N.Y. State 1087 (2016). *See also* N.Y. State 1050 (2015) (relating to credit card processing fees as a client-reimbursable expenses).

6. Whether the charge for a given service, such as the service of a paralegal, recent law school graduate or law clerk, to all of which a student-intern may be likened, is a fee or an expense is a question that need not be resolved in order to answer the present inquiry. We note, however, that courts have in some instances treated the charges for the services of paralegals as fees. *See Missouri v. Jenkins*, 491 US. 274 (1989) (in fee shifting, it is proper to pay for the time of paralegals, law clerks and recent law graduates at market rates rather than at cost).

7. We find nothing in the Rules that would prohibit a sponsoring law firm from billing for the services of a law student-intern on a fee basis, even if the sponsoring firm is compensating neither the intern nor the sending law school, provided that the client has been advised of the firm’s intent to charge for the intern’s services and the basis of the charge (e.g., per task or per hour or some fraction thereof) and provided, further, that the fee is neither excessive nor illegal.

8. If the cost of a student-intern is charged as an expense, the lawyer may charge the client “either . . . an amount to which the client has agreed in advance or . . . an amount that reflects the cost incurred by the lawyer” to sponsor the intern (e.g. the cost of supervising the intern), subject to the same provisos. *See* Rule 1.5(a) and (b) and Rule 1.5, Comment [1]; N.Y. State 1087 [35-15], *supra*, N.Y, State 1050, *supra*.

## CONCLUSION

9. A law firm may bill a client for work performed by a student-intern despite the fact that the law firm does not pay the intern, because the intern receives academic credit for the work, as long as (i) the internship program complies with applicable law, (ii) the educational institution does not object to the client charges, and (iii) the charge is not excessive.

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