

## Responding To An Ethics Complaint: On Whose Dime?

by  
**Craig D. Klausing, Senior Assistant Director**  
**Minnesota Office of Lawyers Professional Responsibility**

Reprinted from *Minnesota Lawyer* (February 13, 1998)

Retainer agreements often contain a provision making the client responsible for legal costs incurred by the lawyer in collecting her fee.

What if the lawyer also "incurs" legal costs in responding to an ethics complaint concerning the bill, or some other aspect of the representation? May the lawyer also bill the client for the "legal costs" incurred in responding to the ethics complaint?

The short answer to both questions is no, the lawyer may not. Because of the chilling effect that billing for time spent responding to a complaint can have, and because of the absolute immunity provided for filing ethics complaints, lawyers are not permitted to charge for the time spent responding to such complaints.

### **Case in point**

In one such case, the lawyer sent his client a billing statement reflecting a balance due. The client initially refused to pay the balance, alleging an oral agreement that limited the lawyer's fees. The lawyer denied the existence of any oral agreement and continued to bill the client. Based on his belief that the lawyer was acting unethically in billing him the additional fee, the client filed an ethics complaint with the Director's Office as well as its Wisconsin counterpart (the lawyer was also licensed in Wisconsin). Both complaints were dismissed based upon the fact that the allegations concerned a fee dispute and did not involve possible unethical conduct.

However, after the complaint had been dismissed, the lawyer again wrote to his client demanding the payment of the additional fee and stating that under the terms of his retainer agreement, he was entitled to charge for the time he spent responding to the ethics complaints. While the lawyer's letter indicated that the billing statement excluded such charges, in fact, the bill included charges for time spent responding to the ethics complaints.

The lawyer argued that at worst, his letter only reflected a threat to charge should the client fail to pay the outstanding bill. The client subsequently filed another complaint with the Director's Office, at which time the Director issued an admonition, finding the lawyer had violated Rules 1.5(a) (unreasonable fees) and 8.4(d) (conduct prejudicial to the administration of justice).

The lawyer appealed the admonition to the Minnesota Supreme Court. *In re Panel No. 94-17* 546 N.W.2d 744 (Minn. 1996). The Court upheld the admonition, finding that "[a] threat to charge a client for time spent responding to ethics complaints has a chilling effect on the public's right to bring ethics charges and is

therefore prejudicial to the administration of justice in violation of [MRPC]." *Id.* at 747. The Court further held that "attempting to charge any fee for time spent responding to a client's charge of unethical conduct is inherently unreasonable and violated MRPC 1.5(a), which provides that a lawyer's fee shall be reasonable." *Id.*

### **Lawyer v. Lawyer**

Similarly, the Director has taken the position that a lawyer may not seek to tax costs for time spent responding to an ethics complaint. For example, in a recent complaint filed with the Director's Office, the lawyer filed a complaint against the opposing attorney in what could only be described as extremely contentious litigation. The complained-against lawyer threatened to have legal costs taxed against the complaining lawyer.

For other reasons, the Director's Office decided not to issue an admonition. However, it noted that Rule 21, Rules on Lawyers Professional Responsibility, provides that an ethics complaint is absolutely privileged and may not serve as a basis for liability in a civil lawsuit.

Therefore, in addition to the public policy considerations set out by the Court in *In re Panel No. 94-171*, Rule 21 suggests that seeking to tax costs for time spent responding to an ethics complaint is improper.

For the disciplinary system to work properly and for the public (and lawyers) to have confidence in that system, complaints need to be brought without the fear of retribution. Seeking to charge others for the time spent responding to an ethics complaint has a potentially chilling effect on the right to bring such complaints and is therefore prohibited.