

ARBITRATION ADVISORY

95-02

STANDARDS FOR ATTORNEY FEE BILLING STATEMENTS

June 9, 1995

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INTRODUCTION

Most arbitrators are aware that Business and Professions Code section 6148 requires attorneys to have written contracts for services in most cases. Arbitrators should be aware that section 6148 also has requirements for billing statements. Under the statute, if the requirements are not met, a fee agreement may be voidable at the option of the client, entitling the attorney to collect only a "reasonable fee."

ANALYSIS

Section 6148(b) of the Business and Professions Code states that:

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses.

The statute also requires that the attorney provide a bill to the client no later than 10 days following a request unless the attorney has provided a bill within 31 days prior to the request, in which case the attorney must provide a bill no later than 31 days following the date the most recent bill was provided. The client is entitled to make requests at intervals of no less than 30 days following the initial request.

Arbitrators may be called upon to determine whether a billing statement complies with the statutory requirements. For example, producing a computer-generated

statement that simply has columns for "Total Services" and "Total Expenses" with dollar amounts and no itemization whatsoever, does not comply with the statute (see Example 1). A billing that lists a detailed itemization of services by date but fails to reveal which attorney or paralegal performed the services, fails to reveal how much time was expended, and fails to reveal hourly rates, also does not apply (see Example 2).

Clearly, the bills in these examples do not include the "amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs."

The American Bar Association Committee on Ethics and Professional Responsibility confirms from an ethical standpoint the duty to "render statements to the client as to how [the] basis for billing has been applied" to "tell the client what he or she needs to know in order to understand how the amount was determined."¹

Section 6148(c) states that "failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee." This Committee is of the opinion that if an arbitrator finds that the billing statements do not comply with the requirements of section 6148(b), any written fee agreement may be voided by the client and the arbitrator should analyze the attorney's entitlement under a "reasonable fee" basis.

A related issue is a change in the attorney's hourly rate. Many fee agreements allow for an increase in hourly rates or allow charges in "regular hourly rates." Increases in hourly rates are acceptable if allowed in the fee agreement, but only with prior notice to the client. In *Severson & Werson v. Bollinger* (1991) 235 Cal.App.3d 1569, the Severson firm had an agreement to charge at the firm's "regular hourly rates." Throughout the course of the representation of the client, the firm increased the hourly rates without notifying the client of the changes. The bills sent by the firm did not set forth the hourly rates or contain information from which changes in hourly rates could be determined. The Court of Appeal held that as a matter of law, the firm could not unilaterally change the hourly rates. The court cited Business and Professions Code section 6148 and discussed the general policy that "attorneys have always had a professional responsibility to make sure clients understand their billing procedures and rates. This responsibility logically precludes any changes in agreed-upon rates without notification."

CHECKLIST

The following is a checklist arbitrators may use as a guide in analyzing billing statement issues:

1. Consistent with Fee Agreement: Is the statement consistent with the fee agreement as to hourly rates or other fee computation and costs?
2. Description of Services: Are the legal services adequately described as to what work was done and who performed it?

¹A.B.A. Standing Committee on Ethics and Professional Responsibility, Formal Opinion 93-379, "Billing for Professional Fees, Disbursements and Other Expenses," December 6, 1993.

3. Hourly Rates and Time: Are the hourly rates charged for each time keeper adequately identified? Can it be determined how much time was charged for each task?

4. Costs and Expenses: Does the bill adequately identify costs and expenses? Are the costs adequately itemized and can the basis for calculation be determined? (e.g., "Travel Expense: \$500.00" vs. "Air Fare: \$300.00, Hotel (1 night): \$100.00, Taxis: \$50.00, Meals: \$50.00.").

5. Sending Bills: Have bills been sent to clients promptly? Has the client requested billing statements?

6. Rate Increases: If rates have increased, does the fee agreement allow an increase, and if so has the client received adequate notice of the increase?

CONCLUSION

In a fee arbitration, arbitrators should examine the billing statements as well as the fee agreement. If the statement does not comply with the requirements of Business and Professions Code Section 6148(b), including the "amount, rate, basis for calculation or other method of determination of the attorney's fees and costs," the arbitrator should determine whether the fee agreement can be voided by the client under section 6148(c). If the agreement is voided, the attorney is allowed only a "reasonable fee." If there are any increases in hourly rates, the arbitrator should determine whether the client was properly notified of such changes.

EXAMPLE 1

HOBART, COLFAX & WHEELER
411 Bauchet Street
Los Angeles, CA 90012
213-680-9600

1. Joyce B. Crawford
1765 Butterfield Rd., Apt. J
Los Angeles, CA 90064

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INV# #02644
Date December 22, 1994

RE: For Professional Services Rendered

TOTAL SERVICES	\$2,493.30
TOTAL EXPENSES	\$139.41
TOTAL THIS INVOICE	\$2,632.71
RETAINER APPLIED	(\$591.25)
BALANCE DUE (PLEASE REMIT)	\$2,041.46

\$625.00 TO REMAIN IN RETAINER UNTIL END OF MATTER

PLEASE RETURN
THIS COPY WITH REMITTANCE

EXAMPLE 2

HOBART, COLFAX & WHEELER
411 Bauchet Street
Los Angeles, CA 90012
(213) 680-9600

Services Rendered from September 29, 1994 through October 28, 1994

Legal Services

December 22, 1994

09/29/94 Analysis re expert, appraisal expert, real estate expert;
evaluate handling overlapping depositions
09/30/94 Take deposition of John Doe's legal research re
Association's standard of care to John Doe
09/30/94 Review correspondence to John Doe's attorney re document
production; review correspondence from John Doe's
attorney re settlement
10/03/94 Prepare issue conference statement; prepare jury
instructions; meet with John Doe to prepare for their
depositions
10/04/94 Defend deposition of John Doe; prepare voir dire questions;
prepare summary of witnesses and testimony for trial;
analysis re length of trial
10/05/94 Prepare issue conference statement; prepare jury
instructions; prepare for John Doe's deposition
10/06/94 Prepare for John Doe's deposition; take John Doe's
deposition; prepare voir dire questions; prepare summary of
witnesses testimony; prepare jury instructions
10/06/94 Prepare proposed list of exhibits
10/07/94 Prepare jury instructions; legal research in support of brief of
issue conference statement; prepare brief; prepare
statement to jury; prepare letter to John Doe
10/07/94 Work on issue conference statement, jury instructions,
voir dire statement, summary of witnesses statements
10/09/94 Telephone call to clients re motion to amend and claims
against John Doe
10/10/94 Prepare notices to appear at trial for John Doe's insurance
policy
10/10/94 Telephone call to client re motion to amend, possible
settlement with John Doe and clients deposition
10/10/94 Work on motions in limine, requests to appear at trial with
documents; analysis re handling claim by
10/28/94 Review trial brief, jury instructions, statement of case and
voir dire questions and assist in general trial preparation

TOTAL FEES

\$12,236.00

EXAMPLE 2

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HOBART, COLFAX & WHEELER
411 Bauchet Street
Los Angeles, CA 90012
(213) 680-9600

Services Rendered from September 29, 1994 through October 28, 1994

Legal Services

December 22, 1994

DISBURSEMENTS:

Witness Fees (John Doe)	37.90
Witness Fees (John Doe)	37.90
Witness Fees (John Doe)	61.10
Witness Fees (John Doe)	39.35
Deposition Expenses, John Doe Reporting Svc., Inc.	214.39
Witness Fees (John Doe)	42.25
Witness Fees (John Doe)	37.90
Deposition Expenses, John Doe Reporting Service	124.23
Telephone	41.80
Photocopy	238.20
Postage	2.36
Miscellaneous	1.38
Travel Expenses/Milage	148.23
Computerized Legal Research -	68.00
Delivery/Messenger Service	265.20
Telefax	175.00
Copy Service	48.10
Jury Fees	250.00

TOTAL DISBURSEMENTS \$1,833.29

TOTAL DUE \$14,069.29

BALANCE DUE AND PAYABLE WITHIN THIRTY DAYS OF RECEIPT