

Introduction

The rise of generative artificial intelligence – artificial intelligence that can generate text and other content – has led to renewed interest in whether and how lawyers can appropriately bill for work done with the assistance of generative AI. While it is clear that time-based billing, such as hourly fees, can only be based on the actual time spent on a task, lawyers increasingly seek guidance on the ethical parameters for non-hourly fee structures and how to assess reasonableness when using time-saving tools that rely on generative AI. This opinion discusses the ethical bounds and considerations when a lawyer is able to produce work dramatically more efficiently than in the past using generative AI. Though this opinion is specifically addressing productivity improvements generated through the use of generative AI, its principles may be equally applicable to a lawyer's use of other technological tools that result in comparable productivity improvements.

Applicable Rule of Professional Conduct

Rule 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

Analysis

Rule 1.5(a) – Reasonableness

Much of the discussion about value-based or other non-hourly billing schemes arises in the context of generative AI, but the application of Rule 1.5 is the same regardless of the reason for increased efficiency in legal work. When applying Rule 1.5's reasonableness factors to value-based billing, the tension lies between “the time and labor required” and “the skill requisite to perform the legal service properly,” both of which are components of 1.5(a)(1).

While generative AI can dramatically reduce the “time and labor required” for certain tasks, such as drafting routine documents, conducting preliminary research, or analyzing large volumes of data, it would not be reasonable to conclude that a lawyer is ethically required to reduce or limit the fee based solely on that factor. Rather, the “skill requisite to perform the legal service properly” might actually increase, as effective AI use could require specialized knowledge to prompt, verify, supplement, and integrate AI outputs into competent legal work product. The lawyer's judgment in determining when and how to deploy AI tools, and the expertise needed to critically evaluate AI-generated content, represent valuable services for which the lawyer reasonably can be compensated.

The factors concerning “the novelty and difficulty of the questions involved” (notably, this factor is included in the same sub-paragraph as the two factors discussed above) and “the experience, reputation, and ability of the lawyer” take on new dimensions in the AI context. The difficulty now includes properly configuring AI systems to address complex legal questions, understanding the limitations of current tools, and maintaining sufficient domain expertise to identify AI hallucinations or errors. A lawyer's unique value proposition might involve their ability to frame legal problems in ways technology can address while knowing when human judgment must predominate, which provides a sound basis for maintaining value-based fees even as raw production time decreases.

The factor addressing “the amount involved and the results obtained” supports value-based billing models that focus on outcomes rather than inputs. If AI assists a lawyer to achieve superior results more efficiently, the client benefits from both the improved outcome and potentially reduced total costs compared to a lawyer using traditional methods.

The committee notes that some other ethics opinions have reached a different conclusion. For example, ABA Formal Opinion 512 (2024) indicates, in the context of flat or contingent fees, that “if using a GAI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the GAI tool as when not using it.” Likewise, in

2024 Formal Ethics Opinion 1, the North Carolina Bar cautioned that, “[i]f the use of AI in Lawyer’s practice results in greater efficiencies in providing legal services, Lawyer may not inaccurately bill a client based upon the ‘time-value represented’ by the end product should Lawyer have not used AI when providing legal services.” The North Carolina opinion goes on to suggest that flat fees may be appropriate in this context, but it is unclear to what extent the flat fee must be adjusted for the use of AI.

The committee disagrees with the conclusions stated or implied by those opinions, concluding that it is not per se unreasonable for a lawyer to charge the same non-hourly fee for work done with the assistance of AI as work done without the use of AI. Any legal fee, regardless of the basis or type of fee, must be reasonable considering all the factors identified in Rule 1.5(a), but the time spent on a task or the use of certain research or drafting tools should not be read as the preeminent or determinative factor in that analysis. The opinions cited above fail to appreciate the value of advancing technology and the reaction of the legal markets to that technology; while over time, the market rate might drop based on dramatic improvements in efficiency, Rule 1.5 should not require the lawyer to surrender any benefit from the efficiency gains if clients continue to receive value from the lawyer’s output.

Rule 1.5(b) – Adequate explanation

Separate from the reasonableness requirement in Rule 1.5(a), a lawyer’s fee must also be adequately explained to the client under Rule 1.5(b). When a lawyer uses a fee arrangement that is primarily based on the lawyer’s skills and the value of the anticipated final product, as opposed to time spent or reaching a fixed endpoint of a proceeding, the lawyer must ensure that the basis for that fee is adequately explained to the client. This could also be particularly important if the lawyer’s time spent on the specific representation is substantially reduced due to the productivity-enhancing tool, such that the client may need additional explanation of why the lawyer’s experience, technical skills, or other efficiencies contribute to the value of the services and determination of the fee.

Conclusion

When evaluating fee reasonableness for a lawyer who uses generative AI or other productivity-enhancing tools or experience, Rule 1.5 does not equate reduced time with proportionally reduced fees. Such an approach would fail to account for the investment lawyers make in developing AI expertise and the continuing value of their professional judgment. Instead, a proper analysis should recognize that reasonable non-hourly fees can reflect efficiency gains, the specialized skill of effectively incorporating technology, and the value of the relevant services and output.