

CONSIDERATIONS FOR RECOVERING YOUR ONLINE LEGAL RESEARCH CHARGES

ABA GP|Solo OLR Cost Recovery Survey

In April 2008, Keith McLennan, then Chair of the General Practice, Solo and Small Firm (GP|Solo) Division, emailed a survey to Division members about recovering costs for online legal research (OLR). Among the high percentage who responded, 50 percent recover all or part of their cost, and 50 percent do not. The cost recovery process varies for the 50 percent who practice it.

The decision to recover your firm's OLR costs is strategic and personal. The ABA GP|Solo Division does not endorse any particular OLR service or cost recovery path with this pamphlet. This is offered as a guide to inform you about current trends and to promote more consistent and ethical practices around small law firm cost recovery.

ABA Position on Recovering OLR Costs

The ABA Model Rules of Professional Conduct authorize lawyers to charge clients reasonable costs associated with online legal research as long as the charges are disclosed to clients. The guiding principle around ethical practice is that the client charge should be commensurate with the service charge and not be marked up for firm profit.

To read in its entirety the ABA ethics opinion interpreting the Model Rules regarding expense recovery, go to the ABA GP|Solo website: abanet.org/genpractice/resources/costrecovery/index.html.

Another important consideration is your state's opinion about recovering OLR charges. The ABA website link above also allows you to check if your state has rendered any opinions on OLR cost recovery.

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The states where no authority was found on the issue of OLR cost recovery include: Arkansas, District of Columbia, Kentucky, Maine, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, South Carolina, Tennessee, and Vermont.

The states where authority on the issue was found to be unresolved or undetermined include: Alabama, Oregon, Virginia, West Virginia, and Wisconsin.

Is It Ethical to Recover My OLR Service Charge?

As solos and small law firm attorneys, we hate to admit that the practice of law is also a business. Many of us started out spending hours on legal research with law books at the library and incorporated the time spent into billing charges. We did not have the ability to track the use of books or charge back the cost of our library except through a time/billing rate.

With the advent of online legal research, we significantly improved the efficiency and the quality of legal research but didn't change how we billed for that service. Most large law firms learned to use free online tools included in their OLR service to track in-plan and out-of-plan costs. Many small law firms recovering OLR charges have partners who came from larger firms and have established similar OLR policies and practices. However, solos and small firm attorneys without large law firm experience are less familiar with how cost recovery practices work within law firm operations.

Those of us in small law firms recovering our OLR service charges are doing so because that service is a critical component to accessing the best information for the client. It is in our clients' best interest to provide more time-efficient and quality research, which we could not do without our OLR service. This is also an important business practice to increase firm profitability and control costs.

Questions to Consider Regarding OLR Service Charges Recovery

- How much do I save my clients in billable hours by using my OLR versus law books? Does the savings equal or exceed my monthly service charge?
- How much do I use my OLR in client matters? How much value does it add to my ability to represent my clients better?
- Could my clients afford to pay some portion of our legal research service charge?
- Would I need different cost recovery practices for different clients?
- Does OLR cost recovery fit my practice?

Recovering OLR service charges is a decision for your firm based on myriad factors, including:

- the value of the OLR service in representing your clients;
- your clients' ability and willingness to pay for service costs; and
- your personal judgment about whether you think it is the right thing to do.

Client Communication

To begin the practice of cost recovery, you will need a written cost recovery clause for your client communication stating up front how clients will be charged. The following is an excerpt from a small law firm's statement regarding fees and charges at the beginning of the client engagement. This can be tailored for your firm's cost communication:

Out-of-pocket costs and expenses attributable to your case, including, but not limited to filing fees, transcript charges, travel expenses, costs of analysts or experts, online legal research, photocopies, postage, delivery, and telephone charges, are to be paid by you.

Cost Recovery Practices for Solos and Small Law Firms

Solos and small law firms have unique challenges in determining fair and reasonable charges compared with larger law firms. The Division membership survey indicates there is a variety of methods used to determine the appropriate charge passed on to clients.

Small law firms face variability in client matters per month and find it difficult to determine a fair and reasonable charge for OLR services. Listed below are some of the ways solos and smaller law firms determine a fair and reasonable way to charge for the OLR service:

- Most small law firms recovering OLR costs charge clients for any online research cost incurred by going outside of the firm's online legal research plan.

It is in our clients' best interest to provide more time-efficient and quality research, which we could not do without our OLR service.

- When the OLR service has been used for a number of clients, some law firms simply spread the monthly service charge across the clients according to usage. By using the service's free cost recovery tool, you can allocate those charges according to the relative dollar value of the OLR usage per client matter. The cost recovery tool can automatically figure the amount for you, provided you identify the client matter when accessing the OLR content. For example, if you pay \$200 per month for your OLR service, the free cost recovery tool reports the retail dollar value of the usage based on the time spent and content accessed for each client matter. If you do work for four different clients in a month, the tool will allocate the \$200 monthly fee of included plan usage among the four clients. This distributes the charges equitably among the clients for whom you did work.

- Some small law firms recover OLR costs by determining a per-minute rate. To calculate a per-minute rate, they use their annual OLR service cost and divide it by the total number of research minutes for the prior 12 months. This rate is then charged to those clients for whom an OLR service is used. For example, if you pay \$200 per month for your OLR service, and on average you use 120 minutes per month, you would charge \$1.67 per minute. The free cost recovery tool tracks the minutes you spend on each client and, in turn, enables you to calculate your client billing. Firms that use this method regularly verify the average

number of minutes they use to ensure that they are not under- or over-charging clients. The free cost recovery tool also allows you to document your billing practices.

- Some firms set guidelines that limit the amount of OLR charges they pass through to a client. These firms manually review the bills and adjust the charges as needed. This method also implies that you will not recover 100 percent of your OLR service charge each month and that you will need to spend time adjusting the charge per client.

ABA GP|Solo Cost Recovery Resources

If you are considering implementing cost recovery practices in your firm, the Division website, abanet.org/genpractice, has resources to help you. On the front page of the website, click on the link abanet.org/genpractice/resources/costrecovery/index.html under “Online Research Costs: Are They Recoverable?”

You will find the following information:

- 50-state survey compilation of any authority regarding the recovery of computerized legal research expenses
- Full text of the ABA Ethics Opinion regarding recovering OLR costs
- Articles about recovering OLR costs
- 2008 ABA GP|Solo membership cost recovery survey results
- Information about Quickview+[®], Westlaw’s[®] free cost recovery tool for customers

Making Your Decision

No one knows your practice better than you do. For some, OLR cost recovery makes sense, and for others it is an unwieldy burden that is best left for larger firms or ones with a different client base. No matter what you decide, taking the time to quantify how recovering more of your costs might improve your bottom line is a smart business practice.