A lawyer may bill a corporate client for personal non-corporate legal services furnished to an individual shareholder, director, officer or employee client when the corporation and the individual agree and the bill identifies the personal legal services as personal services and the charge for those services. This opinion supersedes informal opinion 1494, which is withdrawn.

The Committee has been asked to review ABA Informal Opinion 1494 (July 14, 1982). Opinion 1494 dealt with the propriety of an attorney's complying with a request from a client, the sole shareholder of a corporation, that the lawyer's charges for both corporate legal work and personal legal services be billed directly to the corporation without identifying the personal nature of the legal services included on the bill.

In Opinion 1494, it was noted the lawyer had reason to believe that the shareholder might cause the corporation to deduct the entire fee as a corporate business expense for federal and state income tax purposes. The Committee held, under those circumstances, that the lawyer had a duty to inquire of the client the purpose for requesting the combined billing and, if the lawyer was not satisfied that the client intended to comply with the tax laws, the lawyer should not issue the combined bill unless it adequately described the nature of the services. On further review, the Committee is of the opinion that regardless of the explanation of the reason for the request the lawyer should not comply with the request.

There are two issues presented: first, the propriety of billing the personal services to the corporation; and second, the propriety of including those services on the corporate billing without identifying them as personal services or indicating the amount of the bill applicable to the personal services. There may be many legitimate reasons for billing the personal services to the corporation, such as the existence of a compensation plan providing for payment by the corporation of certain personal legal expenses of employees. Absent any knowledge by the lawyer of facts raising questions about an illegal or fraudulent purpose for the billing to the corporation, it is not ethically improper for the lawyer to bill the corporation for the personal legal services (identifying the services appropriately). [FN1] The determination of corporate authorization must of course be made in the context of applicable corporate laws. [FN2]

The request that the lawyer not identify the services on the bill as personal services involves very different considerations. Rule 1.2(d) of the Model Rules of Professional Conduct (1983) provides in part that a lawyer, 'shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent ...' Model Rule 8.4(c) states that it is professional misconduct for a lawyer to 'engage in conduct involving dishonesty, fraud, deceit or misrepresentation.' The predecessor Model Code of Professional Responsibility (1969, revised 1980) contained comparable provisions in DR 7-102(A)(7) and DR 1-102(A)(4). Submission to the corporation of a bill which includes personal services to the shareholder without identifying those services as personal services and the amount of the bill applicable to them may, under these circumstances, constitute assistance to the client in conduct that the lawyer knows is criminal or fraudulent and is at least conduct involving deceit or misrepresentation by the lawyer.

In the absence of knowledge to the contrary, the lawyer normally would assume the reason for the request to be that the shareholder expected to treat the entire fee as a corporate business expense for federal and state income tax purposes. As noted in Opinion 1494, quoting prior opinions, a lawyer cannot avoid a violation of the rules against assisting a client in conduct the lawyer knows to be illegal or fraudulent by disclaiming 'knowledge' of illegality or fraud when the lawyer has, without inquiry, recklessly and consciously disregarded information that plainly suggests that a crime or fraud is involved. See, e.g., ABA Formal Opinion 346 (Revised) (January 29, 1982); ABA Informal Opinion 1470 (July 16, 1981). Thus, even though it might be argued the lawyer does not actually 'know' that the conduct of the client will be criminal or fraudulent, the facts ordinarily would present a sufficiently clear indication of criminal or fraudulent intent that the billing, without identification of the personal nature of the services and the charge applicable to them, would violate Rule 1.2(d) and DR 7-102(A)(7).

In any event, a bill for legal services addressed to a client, in the absence of a statement to the contrary, clearly implies the services were provided for the client. Thus, billing the corporation for personal legal services for a shareholder without identifying them as personal legal services and indicating the amount applicable to them constitutes conduct involving deceit or misrepresentation in violation of Model Rule 8.4(c) and DR 1-102(A)(4). It could be argued that there is no deceit or misrepresentation because both the corporate and individual clients know the nature of the services billed; however, there could be no reason for the request not to identify the services as personal services on the bill unless the client intended that the services not be so identified by someone entitled to know.

In conclusion, it is the opinion of the Committee that by agreement of a corporate client and an individual client who is a shareholder of the corporate client, a lawyer may bill personal legal services for the individual client to the corporation, but the lawyer must identify the services billed as personal legal services (without necessarily disclosing their nature) and indicate the amount of the bill applicable to them. The Committee believes this opinion applies equally to personal legal services for a director, officer or employee of a corporation which are billed to the corporation. Informal Opinion 1494 is withdrawn.

[FN1] Although the bill should identify the personal services as personal services, it need not include details which would compromise the individual client's right of confidentiality.

[FN2] The lawyer is cautioned to be particularly alert to conflicts of interest that may exist within the corporate structure as they relate to the person receiving the legal services and the person confirming to the lawyer the existence of corporate approval for the billing arrangement. No attempt is made in this opinion to resolve the various conflicts that might exist within the corporate structure or to address how a corporate entity may indicate its approval for such billing arrangements.

ABA Informal Op. 86-1517

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