Billing a Client for Defending Against a Motion to Disqualify Counsel

Question: May a lawyer bill a client for defending against a motion to disqualify the lawyer?

Discussion: A motion to disqualify seeks to remove an attorney from a case, typically based on alleged conflicts of interest, the misuse of confidential information, or other ethical violations. Because disqualification is a drastic measure that destroys the attorney-client relationship and deprives a party of its chosen counsel, courts generally view these motions with caution and scrutiny. *See Schwartz v. Cortelloni*, 177 Ill. 2d 166, 178 (1997).

At the same time, courts balance this caution against their inherent authority to protect the integrity of the judicial process and safeguard client confidences. Disqualification remains necessary when required to "protect[] the attorney-client relationship, maintain[] public confidence in the legal profession and ensur[e] the integrity of judicial proceedings." *Kensington's Wine Auctioneers & Brokers, Inc. v. Hart*, 392 Ill. App. 3d 1, 12–13 (1st Dist. 2009); *see also Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197, ¶ 312.

Defending against such motions often requires substantial legal work, including factual investigation, evidence gathering, legal research, and drafting. Consequently, this expenditure of time raises the question of whether the lawyer can ethically charge the client for the time spent in preparing a response. Under Illinois Rule of Professional Conduct 1.5(a), a lawyer's fee must always be reasonable. Consequently, whether a lawyer may ethically bill a client for time spent defending against a motion to disqualify the lawyer depends largely on whose interests the work primarily serves and the underlying conduct that triggered the motion.

If the opposing party files a motion to disqualify that is ultimately determined to be unfounded or a bad faith maneuver to remove opposing counsel, the lawyer's efforts to defend against it are usually a necessary aspect of representing the client and advancing the client's objectives. In those circumstances, the time spent investigating the allegations, gathering evidence, and preparing a response may be treated like any other legal service and billed accordingly, provided the fee is reasonable.

However, the answer may change when the lawyer's own conduct creates the basis for the motion. If the motion arises because the lawyer accepted a representation despite a conflict of interest, failed to identify or address a conflict, or engaged in conduct that triggered legitimate ethical concerns, charging the client for the resulting work may be improper. In such cases, the lawyer is acting primarily to protect the lawyer’s own ability to continue the representation or to avoid the consequences of the lawyer’s conduct, and may not shift those costs to the client.

While no caselaw or advisory opinions directly address this question, an analogy can be drawn to other situations in which billing a client for services performed primarily for the lawyer's own benefit is considered unreasonable or improper. Courts in other jurisdictions have held that as a matter of law a lawyer violates Rule 1.5(a) by charging a client for the time spent representing the lawyer’s own interests such as responding to a bar complaint or pursuing the lawyer’s interest in a fee dispute. *See People v. Abrams,* 459 P.3d 1228 (Colo. O.P.D.J. 2020); *In re Lawyers Responsibility Bd. Panel No. 94-17*, 546 N.W.2d 744 (Minn. 1996); *In re Gorokhovsky*, 824 N.W.2d 804 (Wis. 2012). These courts have noted that a lawyer’s “duty to respond to disciplinary matters is a duty personal to the attorney involved.” *People v. Brown,*840 P.2d 1085, 1089 (Colo. 1992). Since the lawyer is representing their own interests in responding to the complaint or pursuing a fee interest, the lawyer should not charge the client for that work. *See Brown*, 840 P.2d at 1089 (finding that a lawyer violated the precursor to Colo. RPC 1.5(a) when the lawyer charged the client for work the lawyer performed in responding to a grievance); *In re Benett*, 331 Or. 270, 14 P.3d 66, 71 (2000) (finding that a lawyer representing only the lawyer’s own interests in a fee dispute with the lawyer’s former clients could not properly bill them for that time and thus charged an excessive fee).

Conclusion: Whether a lawyer may bill a client for time expended in researching and responding to a motion to disqualify depends on whose interests the work primarily serves and what caused the motion. Work that benefits the lawyer and not the client should not be billed to the client. When the motion is filed by an opposing party and the lawyer's continued representation will advance the client's objectives, the time spent preparing or defending against the motion is generally a billable legal service, provided the fee is reasonable under Rule 1.5(a). However, when the motion results from the lawyer's own conflict of interest, ethical lapse, or other conduct creating the basis for disqualification, charging the client for the resulting work may be considered improper. Consistent with ethics opinions and disciplinary decisions prohibiting lawyers from billing clients for work undertaken primarily to protect the lawyer's personal interests, a lawyer should not shift to the client the costs of addressing problems of the lawyer's own making. Accordingly, the propriety of billing for work on a motion to disqualify turns on whether the services were reasonably necessary to advance the client's interests or were primarily undertaken to protect the lawyer from the consequences of the lawyer's own conduct.

Resources: IL RPC 1.5