

Time Travel

What's Reasonable and Ethical When Charging for Travel?

By Rose Kuba-Herbig, Larry Smith and David Paige

David Paige of Legal Fee Advisors recently initiated a conversation on the CLM LinkedIn page about what is legal and ethical for attorneys to bill for travel time. It ignited quite the conversation. Billing for the time it takes to get from point A to point B in the interests of a client raises many issues. Questions regarding ethics and conflicts of interest surfaced.

Different issues are raised depending on whether the travel is local or long distance, and whether the mode of transportation allows for an attorney to actually perform substantial work in transit (planes and trains versus automobiles). There is the question of time where an attorney could theoretically work (particularly given technological advances) versus “dead” time — time spent getting to or from the airport or clearing security.

To top it off, there's the question of what constitutes a “reasonable” charge for travel — an issue that some clients reject completely, while others

have resolved by allowing non-working travel time at half the attorney's regular rate, or some other discounted rate. Other clients pay 100 percent for travel time.

Here are some of the comments made on the subject:

Tough issue! I agree that it would appear that attorneys bear a much higher burden of reducing or not billing for travel on the presumptive theory that they are not practicing law while behind the wheel of a car driving to trial. But, by not allowing an attorney to bill for travel time, you are guaranteeing that he is going to bill more time for other tasks on that file so the attorney can make up for the travel time the client won't pay for.

— Kevin Connors, Managing Partner, Connors Law LLP

An attorney sitting in traffic to travel to a location for one matter should be paid for their time as this is indeed part of the “legal services” provided. Moreover I don't think you can assume that they are working (phone

calls etc.) while driving. And is that a practice that should be promoted?
— Suzanne M. Ganier, President, ALEXI Professional Services, Inc.

The same rationale could be applied for denying time spent in court while waiting for a judge to call the calendar, during a recess at a hearing or while waiting for a tardy juror to appear on the second day of trial. Much like driving through heavy traffic to get to and from court, those are not times when it is suitable or practical to do other work. Even with plane travel, which provides more down time than local travel, I cannot spend the time driving to the airport, waiting in the security line, or boarding the plane doing other work.

— Martin Levinson, Partner, Hawkins Parnell Thackston & Young LLP

If an insurer states up-front in its billing guidelines that it doesn't pay for lawyer travel time and the firm knows that and agrees to it, what is the controversy? If a firm thinks this practice is unfair — and I understand that argument — it has a business decision as to whether or not

to agree to take case assignments from that insurer. The time to have that discussion is at that early retention stage. If the firm agrees at the front-end, don't whine at the back-end.

— *Kevin Quinley, CPCU, ARM, AIC, Advisor, CLM Advisors*

While it is certainly preferable to work this out in advance, I am still waiting to see the legitimate rationale for why an attorney's travel time should not be billed.

— *Christopher Reid, Owner/Consultant, Market Claim Services*

It is fair for lawyers to be compensated for rendering of legal services or for travel time if the travel has an opportunity cost (the travel precluded the opportunity to do other work). I must agree that an attorney is free to decline a case if he or she does not want to travel at lower or no fee.

— *David Paige, Managing Director, Legal Fee Advisors*

This is not just a rule of insurance companies and other clients. There are some court decisions that use the one-half time or one-half rate rule. For example, "As stated by the Court in the Amended Order regarding the fee application process, travel time will be compensable at one-half normal rates unless the Court is satisfied that work was performed during travel." In re Bennett Funding Grp., Inc.

— *Timothy Thornton, Owner, Nelsen Thompson Pegue & Thornton PC*

If there is an ethical aspect to this discussion, it would be that it is unethical for an attorney in a third party payer situation to agree to no pay for travel. The argument being that this creates an incentive to short the client (the insured) for the benefit of the payer (the insurer). The Courts that have found ethical problems with guidelines that restrict payment for travel time found that the insurer is interfering with the independent professional judgment of the attorney, which is what the client is entitled to expect.

— *Ron Green, Member, Green Chesnut & Hughes PLLC*

In a state where panel counsel must drive, sometimes two or more hours each way to cover a court appearance, and there is real lost opportunity cost, then I think it is unfair to disallow travel. But, this is something that should be negotiated. I think a distinction should be made between local travel within a reasonable serviceable area, and long distance travel by plane or train, where, theoretically real work can be done.

— *Beth Popik, Director & Vice President/Senior Legal Analyst, Legal Fee Advisors*

If the client wants to not worry about paying for travel time, then they should move to a task-based billing system. I have worked for clients that have task-based billing for court and depositions. Travel time is included in the task. Billable hours are then used for everything else. As attorneys, our first concern is always to protect the client and that we cannot allow the carrier to change how we would litigate a case — even if that means the carrier won't pay for a portion of our services.

— *David Glazer, Partner, Shafer Glazer, LLP*

When negotiating fees with outside counsel, it is paramount that I keep the total cost of the litigation or transaction in mind. Since the hourly rate for many of the attorneys I have retained is four figures, it is understandable how companies do not feel that they are receiving any value for the attorney to drive to court or destination. The attorney that is accepting to represent the client should have already calculated his/her hourly rate to include overhead and operating costs such as local travel and mileage to the courthouse.

— *Dana L. Degmon, Attorney/CCEP*

The West Virginia Office of Disciplinary Counsel issued a Legal Advisory Opinion that somewhat addresses this issue. In essence, an attorney in West Virginia cannot ethically agree to guidelines that

restrict the exercise of an attorney's professional judgment. The attorney's fees (including costs) must still be reasonable, but the attorney can bill for travel (and other "disallowed" activities) that, in his/her professional judgment, are necessary to protect the insured's interest. Therefore, if the attorney believes it is in the client's best interest for the attorney to travel to a deposition in person, or to meet with an expert in person, then that decision is left to the attorney. Obviously, in coverage or bad faith cases, this dynamic changes as the insurer is the client and can control its own destiny, so to speak.

— *J. Philip Fraley, Partner, Orndorff Hatfield & Fraley*

I deal with many, many attorneys engaged by insurance carriers to defend my client. The carrier's economic advantage and the firm's acceptance of the subservient position, in almost every case have overwhelmed the attorney's ethics regarding defending the interests of their non-carrier client. Too many times I see the carrier authorizing, and triaging, discovery requests contrary to the analysis of counsel and the interests of the non-carrier client. The issue of travel time is not that far removed from the innate conflict between the interests of the carrier and the non-carrier client.

— *John M Beringer, Jr., Principal, Beringer & Associates, A Risk Management Firm*

Insurers, insureds, auditors and risk management professionals all have different opinions on the subject of appropriate, fair, ethical ways for attorneys to bill time spent traveling, either local or long distance, on client matters. "Best practice" seems to suggest that discussing the matter upfront is time well spent. [LM](#)

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