

THE ADVENTURES OF GRANGER AND GERTRUDE

The bar grades just came in. What great news! Granger and Gertrude did exceptionally well, scoring in the upper 90th percentile. They had both participated in their firm's summer clerk program after their second year in law school. And very shortly they would be joining the 2012 class of new associates at their firm. Granger in the Litigation Section and Gertrude in the Corporate Section.

As you may already suspect, Granger and Gertrude are fictional associates. Their fictional experiences as first-year associates in the Class of 2012 will be used as a teaching tool to help you respond to the issues and questions that confront every associate in the first year of their practices. Each month for the next year we will visit the questions, issues, and situations Granger and Gertrude will confront and the way they will ultimately respond to them. We hope you find this exercise both entertaining and helpful, as they progress through their first year of practice.

It Begins

Granger and Gertrude had become good friends through their participation in the clerkship program at their firm during the summer of 2011. When their clerkships ended, they each returned for their last year of law school — Granger to his school in the East and Gertrude to her school in Austin. They kept up with each other during their final year of law school. So it was only natural for them to continue their friendship once they commenced their employment at their new firm.

After several weeks at work, Gertrude called Granger and suggested they meet for lunch to discuss how they were finding life at their firm. Needing a break from performing a privilege review in a large document production for a client, Granger gladly accepted the invitation.

While dining, they discussed their participation in the New Lawyer Orientation program their firm sponsored for new lawyers at the firm. Both had found the program to be helpful. The presentation on billing practices had been especially helpful. But still some uncertainty about billing practices lingered.

“Did you find the New Attorney Orientation presentations interesting, Granger?” asked Gertrude.

“I really did - especially the programs that touched upon legal ethics and billing,” responded Granger.

“It's interesting you would mention that Eleanor because I am somewhat confused on what I can legitimately

bill on a client's matter. For instance, I have been working on a big piece of litigation for one of our largest clients. I routinely put in eight hours a day reviewing documents for privilege in connection with a large document production we are handling for the client. I am currently writing a memorandum to the partner in charge concerning a waiver of privilege issue that has been raised by the adverse party in the litigation. I have worked quite a bit on the matter."

"Last week I drove home to Amarillo to visit my parents. As you know, Gertrude, that is a very long drive from Houston. So, along the way, I turned off the radio and just started thinking about the research I had performed and arguments that could be crafted to respond to the waiver argument. I figure I spent at least six hours thinking about effective strategies we might employ to defeat the waiver claim. I came up with some really good arguments. I would pull over every once in a while to jot down my thoughts. When I reported them to the partner in charge, she commended me for my efforts. I realize I was driving, and not behind my desk, when I conceived these defensive strategies. But, nevertheless, do you believe, Gertrude, that I can bill those six hours to the file?"

"I really don't know," responded Gertrude, "but it is curious you raised this issue because I, too, have a question about billing. I traveled to New York City last week to work on a large transaction for a corporate client. The client allows firm attorneys working on its matters to charge our regular billing rates for all time spent traveling. So, I was able to bill all of my time traveling to and from New York City. So the deal closed in New York on a Friday evening and the matter was concluded. I caught a flight from La Guardia and returned to Houston. I billed the three and a half hours of travel time to Houston to our corporate client's file, as I am entitled to do. But, while flying home, I spent three hours working on a memorandum for another client on another matter. And those 3 hours were well-spent, inasmuch as I was able to draft a meaningful product, being away from the distraction of phone calls, emails, and tweets. Granger, do you think I can bill the three hours I spent on that file in addition to the three and a half hours I billed to the corporate client for travel?"

The questions Gertrude and Granger raised are very legitimate and typical of the questions and issues first year lawyers confront.

Discussion

1. Granger's Question: Should he record the time he spent thinking about his client's case while driving to Amarillo?

Yes. Granger should record his time. "But," you say, "he wasn't sitting at his desk in his office." "Do you mean I should bill a client every time I think about a matter, whether I am at the grocery store, or in the shower, or at a baseball game?" Of course not. But, there is no bright line answer to questions such as this, as you might expect.

Remember that as a lawyer you are paid for your time, advice, and legal assistance. The fact that Granger was not behind his desk in his office is not controlling. Here he spent a substantial amount of time developing legal arguments that could be brought to bear on issues his client was confronting. He did that effectively and was commended by the partner in charge for the strategies he developed.

So, in his instance, Granger should record the time he spent developing the client's defensive strategies. He should then vet the issue with the partner in charge to ensure that she likewise believes that time he worked on the matter, albeit while driving — should be billed. In light of the fact that she found his theories to be compelling, she would probably agree that the time should be billed to the client.

2. Gertrude's Question: May she bill travel time to one client while simultaneously working and billing time to another?

No. No gray area here. She can bill one or the other, but not both. In a sense, we, as lawyers, sell our time. But, we cannot sell the same time twice. Simple as that. Somewhat analogous would be a situation in which a lawyer who represents multiple parties in a matter, performs a legal task and then bills each client separately for the time incurred in performing the task. Without the informed consent of clients to such an arrangement, a lawyer may not employ such a practice.

Most discussions we have about the reasonableness and appropriateness of legal fees normally include consideration of the standards set forth in Rule 1.5 of the ABA's Model Rules of Professional Conduct, § 34 of the Restatement (Third) of the Law Governing Lawyers, and Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct. These rules set forth the ethical standards that govern our financial relationships with our clients. They are our guide posts. Take time to read these rules.

The Take Away

As you progress in your professional careers you will find that, like with everything else, with experience come sound reasoning and good judgment. With respect to issues such as billing clients, you will develop a sense for what is, and what is not, fair and reasonable. That judgment can come only with time and experience. You are not expected to have that judgment now. That is why we have partners who oversee matters and bill our clients. For now we simply ask that you record the actual amount of time you work on an assignment for a client. Remember that the partner in charge of the matter and the billing partner will review your entries and, if adjustments are necessary, they will make them. Remember also to bring to the partner in charge's attention any circumstances that you feel are worthy of mention or that trouble you. In the situations described above, Granger and Gertrude should each address the issues they raised with the partners in charge of their respective matters. Those partners would in turn provide the advice necessary to ensure that Granger, Gertrude, and the firm abide the ethical standards that govern their practice as lawyers.

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