

B 3 FEE GUIDELINE (15.1.2009)

(Unofficial translation)

Introduction

This guideline concerns the determination of fees and invoicing between an advocate or his office and client. The fee charged by an advocate is determined according to an agreement between the advocate and the client and these guidelines.

In addition to this guideline, the legal provisions on the matter shall be taken into account in determining an advocate's fee.

1 Determination of advocate fees

1.1 General principles

An advocate is entitled to receive a fee for handling an assignment.

A fee can also be charged for loss of time due to travel as well as separately for work performed by an advocate's legal assistant or other office staff instead of the advocate.

The fee shall be commensurate with the nature of the task and the amount of work required, and shall otherwise be reasonable.

When assessing the reasonableness of a fee, it must be taken into account that an advocate is only able to use part of his annual working hours in the pursuit of assignments. Part of his time must be spent in organising and supervising his office work, in maintaining and developing his professional expertise as well as in other duties that the profession entails, and a reasonable period of annual leave.

1.2 Fee discount

If an advocate allows a client a discount and invoices the insurance company based on legal expenses insurance, a corresponding deduction shall also be made in respect of the insurance company.

1.3 Fee increase

Unless the fee basis has been agreed upon acceptance of an assignment or otherwise agreed with the client, the fee may be increased if the assignment is

1. to be conducted in a foreign language or in exceptional conditions;

2. especially urgent for reasons beyond the control of the advocate must be performed outside of regular working hours, or

3. exceptionally difficult and requires special expertise, experience or professional skills.

1.4 Time-based fee

When it is agreed that an advocate's fee shall be based on the time required to perform the assignment, the time deployed must be reasonable. Unless otherwise provided by the client's special requirements, the measures necessary for the proper performance of the assignment must be taken into account when considering what constitutes reasonable time.

1.5 Pactum de quota litis and pactum de palmario

In specific cases, it is possible to negotiate in advance a percentage of the final sum achieved for the client (pactum de quota litis), or draft an agreement for a specific amount of compensation payable to the advocate in the case of the intended settlement being reached (pactum de palmario).

An agreement such as this shall be concluded in writing.

2 Invoicing criteria and cost estimate

Upon acceptance of an assignment, an advocate shall at the client's request supply his fee criteria and invoicing practice and provide an estimate of the fee for performing the task or part thereof. In respect of consumers the estimate must be given inclusive of VAT.

This estimate shall be given based on the information available to the advocate at the time. The advocate shall notify the client if it becomes evident during the course of conducting an assignment that the estimated fee will be exceeded.

3 Costs

3.1 General expenses

General expenses resulting from business are covered by the advocate's fee. General expenses consist of office staff salaries and payroll costs, ordinary insurance premiums including pension insurance contributions, and office maintenance costs, such as rent, machinery and equipment.

3.2 Direct expenses

Direct costs of conducting an assignment may be charged in addition to the fee. Such costs include administrative fees, travel and accommodation expenses, as well as postal, telephone and photocopying costs. Direct costs shall be itemised on the invoice, unless other invoicing criteria have been agreed with the client.

4 Advance payment

An advocate is entitled to demand as a condition of accepting an assignment that his client make an advance payment on the fee and costs.

After acceptance of an assignment, the advocate is entitled to demand an advance payment on his fee only when an agreement to that effect has been concluded in conjunction with acceptance of the assignment or when in the light of the circumstances there exists a justified reason for the demand.

Even after acceptance of an assignment an advocate is entitled to demand that his client make advance payments to meet the direct disbursements incurred in the assignment.

The advance payment must be proportionate to the estimated fee and to the direct disbursements incurred in the task.

The withdrawal of an advance payment from a client's funds requires the client's consent. Accounts on withdrawal of advance payment shall be rendered to the client without delay.

Advance payments received shall be itemised in the advocate's invoice.

5 Advocate's invoice

Invoices shall be itemised in the manner agreed with the client. An advocate's invoice shall, unless otherwise agreed, include a breakdown of costs appropriate to the nature and scope of the assignment on the basis of which the client can assess whether the invoice is reasonable and compliant with the agreement.

Unless otherwise agreed, the advocate's invoice may be drawn up for payment by the client based on the nature, scope and other circumstances at reasonable intervals or by court instance.

Reasonable time shall be allowed for payment of the invoice.