

LAWYER BILLING FOR NON-USEFUL TIME

by Rabbi Yisroel Belsky ztl

Question 93

As an attorney, due to certain circumstances, there are times when a client won't benefit from the time I spend on the case. Can I still charge the client for this time, or do I have to absorb the lost time?

RABBI BELSKY

The answer depends on which of two basic types of work you do for the client. The first kind of work is where the client pays only for the result. For example, there are some litigators who advertise that they'll fight for you and only take money if they win the case. These people try to win millions of dollars in damages. They become ruthless because they have a personal interest in it. You pay only if he wins. Therefore, you're not paying for his effort, but for a successful result.

A similar example is if I contract a man to build me a house. He can't come to me and say pay me if the house was not built. Can he say he worked 7,000 hours, and deserves to be paid, even though he wasn't successful in building the house? You're paying for the house, not for the builder's efforts. Unless he builds the house, you don't have to pay him.

There's a second type of work where people are paid to do their best. This is true when their work is to investigate as well as they can, and to figure out what's going on. For example, let's say a person goes to a doctor to find out the source of a certain pain. In order to diagnose the problem, the doctor takes many tests. He may take an MRI, a CAT scan, and other tests in order to find the source of the pain.

Perhaps after all his investigation, he tells you he didn't find anything. Even though it ended up that he didn't help you, he didn't work for free. He did the best work that his professional skill enabled him to do, and he still wasn't able to discover the source of the pain. Now you have to go to someone else who has better equipment, or is more knowledgeable. Still, the first doctor did his work faithfully, which is all he was expected to do. If the work that was done is b'etzem (really) investigatory work, such as examining, then the client is paying for the effort, not the result.

You can see both types of work involving a plumber. If a plumber is asked to install a sink, he can't leave you with the work incomplete and expect to be paid for his effort. You're paying him for installing the sink, not for his effort.

It's different when a plumber is asked to try to fix a leak. He may try his best to fix the leak. But he may reach a point where his ability to find the leak is prevented by some other factor. For example, he can't be expected to take the apart the whole house from top to bottom to localize the leak. There are times when a person may be doing the work, putting in a great deal of effort, but without results. Still, the work is investigatory so it is purposeful, and the person deserves to be paid, even without results.

The answer to the original question depends on which of these two types of work you are doing. In most cases it's easy to ascertain which of these two types of work a person is being hired for. You have to know what the tzurah (form) of his work is in order to make such a determination.

QUESTIONER

Let's say I normally charge the client for making copies, and I intend to copy a 50-page document, but I copy the wrong 50-page document. Even though it was my mistake, can I still say, "I have to be allowed to make certain mistakes - no one's perfect." If so, would that mean he has to pay for my mistakes as well?

RABBI BELSKY

People have to live together. "Live and let live" means its good for people not to be so exacting towards each other. Still, the reality is that you're copying the wrong papers. That is really not part of the work you are doing for the client. It's as if instead of copying the correct papers you decided to eat popcorn or chew gum. Even though it was a mistake, you didn't really do anything for the client.

You are not being paid to copy the wrong papers. You are being paid to copy the right papers. So you shouldn't charge for it. On the other hand, if you copy the right papers, and do the job correctly, but it turns out that the client originally gave you the wrong papers, then it's not your fault. If because of the client's mistake you have to start all over again, then that's not your fault. Then you're doing the work you are being paid to do.

NEXT WEEK'S QUESTION 94: RETURNING AIRPORT LUGGAGE CARTS

There are airports that provide self-service carts to help the passengers out with their luggage. You have to pay \$2 to use it, and then get 25 cents back when you return it. If I found a loose cart that someone had not returned, can I use the cart without paying? If so, after I finish using it, would I be obligated to return it, or can I leave it loose just as I found it? And if I do return it, can I keep the 25 cents?

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