

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion No. 12-03

Topic: Issuance of emailed billings.

Digest: As a matter of legal ethics, an email invoice for legal services constitutes a “writing” in satisfaction of rules requiring a written statement of services.

Rules: 1.0(x), 1.15, NYSBA Opinion 829

QUESTION

Does a lawyer’s electronically transmitted statement for services constitute a “writing” in satisfaction of court rules requiring a written statement for legal services?

OPINION

There may be a legal question as to what constitutes a writing within the meaning of the court rules. As an ethical matter, Rule 1.0(x) of the New York Rules of Professional Conduct defines a “writing” as “... a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording and email.” The question was addressed, in the context of a “written” conflict waiver, in NYSBA 829 (2009), wherein it was found that “... any type of writing, tangible (i.e. hard) and electronic (i.e. digital or electronically encoded) items qualify as writings. Thus even an email, from the lawyer to the client ... would be sufficient.”

The lawyer should further be cognizant of the requirements set forth in Rule 1.15 governing the record keeping and maintenance of financial and business records.

CONCLUSION

For the reasons set forth above, an electronic invoice for legal services constitutes a written statement.