

# Collecting Fees for Solos and Small Firms

Attorneys who practice litigation as sole practitioners or in small firms often face the daunting task of collecting overdue fees. Their clients are frequently individuals for whom legal fees are a necessary but unwelcome burden. Moreover, if attorneys have already provided services to their clients, paying the fees for past services is often last on the list of a financially strapped individual's budget. If the litigation involves family matters, there are additional financial pressures that make paying attorneys fees an even lower priority. There are, however, techniques that can result in more successful collections and happier clients.

In order to collect fees successfully, an attorney must adopt a philosophy—and educate his or her staff—that providing information about fees and a client's responsibility to pay fees is part of the service an attorney provides to the client, not an unpleasant subject to be avoided. In order to represent a client

properly, an attorney should not only provide legal services, but also supply detailed information about fees at the beginning of representation, provide regular, transparent billing information during the course of representation, and promptly discuss any overdue fees with the client.

When clients come into an attorney's office, they are often feeling anxious and intimidated. Providing information about fees, just like providing information about other aspects of the client's case, reduces a client's anxiety. Similarly, as representation continues, providing information on a regular basis about the cost of the client's case eases a client's apprehension and results in a better working relationship between an attorney and his or her client.

Translating this philosophy into a method of providing fee information and collecting fees takes some effort. Here are some practical tips concerning billing and collection of fees.

## Initial Consultation

Initial consultations can be the bread and butter of a small litigation law practice. It is inadvisable to offer a free initial consultation for litigation services, other than for contingency fee cases, for a variety of reasons. First, an attorney who offers free initial consultation attracts clients who either are unwilling or unable to pay for legal services. Second, an attorney, by providing free initial consultation, is conveying the message that his or her advice has no value. Third, clients who are not paying for a consultation often take up more time than clients who know they are paying for an attorney's time. Fourth, if clients who do not pay for an initial consultation do retain the firm, they have already received the message that fees are not an important part of the relationship, and the attorney may have future difficulty collecting fees from those clients. A free initial consultation does not attract paying clients; it attracts people who want and expect free legal advice. The same caveats apply to free advice over the telephone, with the added danger that the attorney, without the ability to review any documents or learn enough information, risks providing inadequate

or wrong advice. Initial telephone consultations should be avoided like the plague.

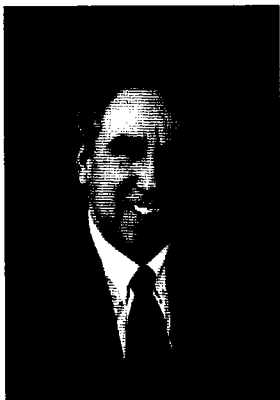
Collecting fees for the initial consultation is often difficult. Once clients leave and do not retain the attorney, it is nearly impossible to collect the consultation fees. That is why some attorneys do not charge for the initial consultation: they know they are not going to collect it anyway.

The following is a protocol whereby, if it is strictly followed, a law firm will collect all initial consultation fees.

The relationship begins with the initial call. The staff member who takes the new client call must always talk about fees as a part of the information she gives to the potential client. She should tell the client the hourly rate for attorneys and paralegals, and if the firm represents a client in court, how much the retainer is likely to be. In this way, the potential clients are immediately given vital information they need in order to make a decision about whether they want to retain the firm. The staff also should inform clients that they may benefit from a consultation even if they cannot afford a retainer. That service is appreciated by clients who cannot afford attorney representation in court, but can benefit from a consultation. The staff member who takes the call also should tell potential clients that the first consultation is not free, and that they are expected to pay at the appointment. The staff member gives specific information about the cost of the initial consultation, including the fact that the cost will depend on how much time a client spends with the attorney. The staff member also tells potential clients that they can pay with a credit card, cash, or check. The staff should be trained to know that clients are rightly concerned about fees, and that this information should be provided as a part of the information clients need to make decisions about legal services. Clients appreciate receiving this information without having to ask. They receive the message that the firm will be candid and transparent in all aspects of their case.

When a new client makes an appointment, the staff member should put the client on the attorney's calendar with a short memo about the subject of the representation and what the staff member discussed with the client about

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the fees and the retainer.

When new clients come in for their first appointment, they should be given an intake sheet that asks, in addition to other information, how the client is going to pay for the consultation, with a check off for cash, check, or credit card. Clients should also be given a written explanation of fees, because, although clients have been told over the phone about fees, they are often so overwhelmed and anxious, they need an additional explanation that they can read and take home with them. Once the intake sheet is filled in, the staff member puts the intake information into the firm's billing software program. If a client has not checked off how he or she is going to pay for the initial consultation, the staff member discusses that with the client. Occasionally a client will say to the staff that he or she has no funds to pay that day. Since the staff has already talked to the client about the requirement for payment at the initial consultation, the staff tells those clients that they will have to reschedule when they have the funds. The staff should be trained to talk about this issue cordially and sympathetically, and to understand that paying for legal services is difficult for many people.

When a new client comes in for consultation, the attorney interviewing

the client should keep accurate track of the time spent in the consultation. When the consultation is over, the attorney should escort the client to the front office, and give the information to the office manager as to how much time was spent in consultation. The office manager then tells the client how much he or she owes.

If the firm follows every step as outlined above, clients will pay the consultation fees every time.

If, during the consultation, the client wants additional services, attorneys should talk to the client about the cost, and how much of a retainer is required. Because the staff has already talked about the cost and the retainer at the initial call, clients are able to discuss the issue with knowledge and confidence. Clients do not want to be confronted in a lawyer's office with news of how expensive representation will be—meeting with a lawyer is traumatic enough. If clients have the information before the consultation about the likely cost of a retainer, they often have already made plans on how they are going to pay the retainer quoted by the staff. Indeed, many times clients are ready to pay the retainer on the day of consultation.

During the conversation about fees,

attorneys should also assist clients who cannot afford a retainer by telling them how to obtain information so that they can represent themselves, with information about legal websites and court or other legal assistance. It is also good practice to advise clients that if they wish further advice, including review of any agreement they may reach with the other side, the firm can provide those services at an hourly rate without the requirement of a retainer. The same protocol for such services should be followed as the protocol for the initial consultation. Clients who cannot afford a retainer often are happy to know they can have some additional advice at less cost than full representation, and they are willing to pay for that advice.

### Fee Agreements

If clients retain the firm, they should always be given a fee agreement to sign. That fee agreement is the next step in ensuring that fees will be paid.

The fee agreement should have the following elements to ensure fees will be paid on a timely basis:

- There should be interest charged on the overdue balance. This is to provide incentive for clients to pay

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on time. The interest rate should be high enough so that it is more economical for clients to borrow the money for fees elsewhere. Attorneys are not banks, and should not charge bank rates.

- There should be a specific outline of the hourly rates for attorneys and paralegals.
- There should be a statement indicating the firm has a right to change the rate upon written advance notice to the client.
- There should be a disclosure about minimum charges, what activities and other costs are charged to the client, and any other billing practices.
- The fee agreement should disclose that if the retainer is depleted to a set amount, an additional retainer will be required.
- There should be a statement that the full cost of litigation is difficult to estimate.
- There should be a clear outline of what will happen if the balance due is delinquent, including the right to withdraw from representation.
- The fee agreement should include an assignment to the attorney of any proceeds owed to the client at the

end of litigation, up to the balance owed, with the provision that the assignment can be disclosed to the opposing party or his or her attorney.

- There should be a provision for the client to provide in writing to the attorney any questions or concerns about the bill within thirty days of receiving the bill. This provides the client with a mechanism to question the bill, and ensures against complaints about the bill months later when it is difficult to recall the actual services provided that may be the basis for the complaint.

### Retainers

An attorney should require a substantial retainer. A substantial retainer is another way of providing clients information about the cost of litigation—and a way to help the client plan for paying for the litigation. A small retainer, when the litigation is likely to be substantially more expensive, does a disservice to the client, as the client has an unrealistic idea of the cost, and when more funds are required in the middle of litigation, it is often more difficult for the client to obtain the funds.

### Billing

Regular, transparent billing is an important component of the service—and the information—provided to clients, as well as a key to successfully collecting fees. The monthly bill not only should provide clients with information about the fees owed, but also with information about what services were provided to the client. All clients, including clients with retainers, should be billed each month at the same time. The bills for clients with retainers should provide the same information as the bills for clients without retainers: the attorneys' and paralegals' hourly rate, the amount of time spent by the attorney and paralegal each day, a detailed description of the service provided, and any out of pocket expenses. The clients with retainers should be provided with information as to how much is left on their retainer.

### Overdue Balances

Despite an attorney's best efforts, a firm invariably has clients who have overdue balances. Dealing with overdue balances requires the same philosophy as dealing with any fee issues. Attorneys

and their staff should assume the client wants to pay the bill, and approach the client with that attitude. Attorneys and their staff should work with the clients to help them pay the overdue bill. Here are some options to offer clients that can help collect the fees:

- Provide for payment by credit card. Many clients can pay the balance in full by credit card. For those who cannot, make arrangements with the client to authorize the firm to automatically charge their credit card each month a certain agreed-to amount. Always verify this arrangement in writing.
- If a client cannot pay monthly by credit card, consider requesting automatic payments from a client's bank account each month. Verify that agreement in writing.
- Most importantly, an attorney's staff must keep track of the clients who need to replenish their retainers, and those who owe balances, and persistently contact those clients to remind them of their obligations.

### Staff Training and Education

As indicated above, the attitudes and protocols for collecting fees must be part of the entire firm's philosophy and practice. Training staff is vital, with written protocols and adequate supervision. In addition, providing periodic financial reports to the entire staff can be an effective tool to help staff understand the connection between fee collection and the firm's overhead. There are often staff misconceptions concerning fees and firm expenses, and educating the staff can not only help dispel those misconceptions, but also help staff feel as if they are part of the team—which makes it easier for staff to adopt the firm's philosophy on fees.

Fee collection can be difficult for a small firm or solo law practice. However, if the firm provides information about fees to the client from the beginning of the relationship, and follows well-established protocols regarding retainers, fee agreements, and billing, then fee collection can be less challenging.

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