Getting Paid: Fee Agreements and Alternative Fee Structures

WRITTEN BY: **JEN LEE**

Before you get clients to retain you, make sure you have sound practices and procedures for your fee agreements and billing structures. In this Business of Law guidebook, Getting Paid: Fee Agreements and Alternative Fee Structures, Jen Grondahl Lee, jenleelaw.com, gives you pointers on billing, flat fee agreements, and alternative fee structures to get away from the billable hour.

Initial Consultations

- Free consultations
    - you don't have to, but they can be good marketing
- Paid consultations
    - don't be afraid to do so
- Either way, have a written representation agreement for initial consultations
- When done with initial consultation, you should have a script that details how you are going to charge for the next stage of representation

Fee Agreement Terms and Requirements

- Comes under Business and Professions Code 6147-6148
- Make sure you include all details of representation
- Terms must be in writing, must be signed by both attorney and client, and a duplicate must be given to client
- Fees exceeding $1000 must be in writing, but best to have everything in writing

Types of Fee Arrangements

- Keep track of your time no matter what methods you use!
- Contingency fees
    - usually found in personal injury, veteran's benefits, and social security
    - you can't use these in certain family law situations or for representing defendant in criminal case
- Flat fees
    - improve profitability in law firms
    - very powerful but can be difficult to pull off because most attorneys base fees on estimated time
        - value the fee differently than your time
    - follow state bar rules
    - you don't have to charge the same flat fee for everything
    - outline the scope of your representation and limit it—if you go beyond that initial scope, charge another flat fee
- Hourly
    - the most common and traditional way of doing fees
    - be sure to outline the scope of representation
- Milestone
    - this charges a flat fee for successive parts of a case
- Hybrid
    - could be part contingency, part flat fee, part hourly
- Client must understand how fees and expenses are going to work

THE BUSINESS OF LAW

CEB presents
The Business of Law
webinar series
ceb.com

Fee Disputes and Arbitration Clauses

- Use State Bar fee agreements
- Use Mandatory Fee Arbitration Clauses in your fee agreement
- Use Notice of Client's Right to Fee Arbitration in your fee agreement

Malpractice Insurance Disclosure

- Rules of Professional Conduct 1.4.2(a) says you must disclose if you don't have malpractice insurance
- Disclosure must be in writing
    - exceptions: if engagement is less than four hours, or emergency rendering of legal services, or government or in-house counsel, or if you have previously informed client

Trust Accounting

- Funds held for the benefit of the client
    - use the account appropriately
- Most hourly cases will need trust accounts to take fees up front and bill against
- Flat fees can put into trust accounts
- Use a bookkeeper that knows how trust account works
    - if not, reconcile regularly
- Maintain records of statements and a written ledger
- Earning fees from trusts
    - earned fees must be withdrawn at the earliest reasonable time (RPC 1.1(c)(2))
- Disputed fees should remain in trust until resolved

Billing and Getting Paid

- How often should you bill? — it depends on the type of case
    - hourly — should bill once or twice a month
    - flat fee — no billing required (but you should still track time in case of disputes)
    - contingency — continuous time tracking, probably very little billing
    - hybrid/milestone — varies, but no less than once a month
- How are clients going to pay you? Make it easy for them to pay!
    - credit cards, ACH, personal checks, cash, cashier's checks/money orders
    - if accepting credit cards, increase your fees to include credit charge service charges
    - Venmo OK, Zelle OK, PayPal not recommended because you are providing a service, not a product

Collection Issues

- Evergreen retainers
    - requirement that clients replenish retainers
    - ensures timely payment
    - allows for withdrawal at the first sign of nonpayment (subject to professional conduct rules on withdrawal)
- Suing for fees
    - try to avoid
    - can bring up potential professional liability insurance issues
    - not fun to sue your own client
    - arbitration clause helps to avoid this
- Avoiding accounts receivable
    - avoid accounts receivable if possible
    - tracking and forecasting revenue is easier if you avoid accounts receivable