

Attorney's Fees



This chapter explains various types of attorney fees, and how those fees are often determined. Some helpful tips to the consumer on how to keep their legal costs down are also included.

DETERMINATION OF FEES

An attorney bases fees on such factors as the degree of difficulty of a particular legal task, the amount of time involved, the experience, and skill of the attorney in the particular area of law and the attorney's cost of doing business. The cost of doing business, referred to as overhead, usually includes rent, equipment, salaries, maintenance of a library, and costs associated with maintaining the lawyer's level of professional skills and education. A lawyer's overhead normally comprises 35 to 50 percent of the legal fees charged.

A lawyer's services normally involve research, investigation and case preparation. Most of the work is done after the client leaves the lawyer's office and it can be very time-consuming. As a result, the client is often unaware of the amount of time a given legal matter will actually take.

A client should always discuss the prospective charges at the first meeting with the attorney. At the initial meeting, the attorney and the client should discuss the time anticipated to resolve the case, the difficulties likely to be encountered, and the complexity of the legal issues in the particular case. An early agreement concerning fees will prevent surprises and misunderstandings for both the client and the attorney. A client should be prepared to decide how much money he or she can afford to invest in the resolution of the problem. The attorney/client relationship involves a mutual commitment. Both parties have a need from the outset to have a full and complete understanding of the commitment.

COST DEPOSITS AND RETAINERS

Under the Rules of Professional Conduct for the legal profession, lawyers are prohibited from engaging in frivolous lawsuits. Therefore, many lawyers require a cost deposit or retainer before they will take a case.

A retainer is an advance on legal fees to be charged in the future. A cost deposit is different from the attorney's fees to be charged in a case. If a lawsuit is filed and certain court costs are charged, your lawyer may

ask for additional monies if the costs incurred exceed the original deposit. In the initial conferences with your lawyer you should ask for an estimate of total costs for your type of lawsuit. Whether a retainer and/or a cost deposit is refundable in the event that your case is not filed is a matter that may vary from case to case and should be discussed with your lawyer.

Upon receipt of a retainer or a cost deposit, your lawyer will ordinarily deposit the funds into a special bank account called a trust account. A trust account is a separate account that a lawyer maintains specifically for clients' funds. A record of the costs in your case will be kept by your lawyer and is available to you for examination.

TYPES OF ATTORNEYS' FEES

There are several distinct types of legal fees. As stated above, a client must realize when considering a lawyer's fee that many factors, such as time, ability and experience, may determine an attorney's fee.

Fixed Fees: For frequently performed services such as drafting an uncomplicated will or assisting with an uncomplicated real estate transaction, many lawyers may charge a fixed fee that can be readily quoted to you. The lawyer's fee may be set to average out all costs for such uncomplicated services handled by the attorney.

Hourly Charge: Many lawyers establish a fixed hourly charge for their services. The lawyer's fee is computed by multiplying the fixed hourly charge by the number of hours the lawyer spends working for his client. The final fee may still include other direct out-of-pocket expenses, such as court filing costs, photocopying charges, long distance telephone charges, travel costs or other expenses directly related to a particular case.

When retaining an attorney on an hourly basis, you may wish to ask for an estimate of the costs for the requested service. Also, you should understand what complications might arise in your case and the effect they will have on your fee. Hourly rates of lawyers will vary depending upon a lawyer's experience and involvement in a particular area of the law. No set hourly rate for lawyers or services exists. Rates do vary among lawyers.

Contingent Fees: In certain types of lawsuits—such as personal injury, collections and auto damages—the

lawyer who represents the person suing may agree to accept a part of the money the client recovers as the fee for services. Such an arrangement is called a contingent fee. Under the lawyer's ethics rules, the lawyer and client must enter into a written fee agreement at the outset of the representation, stating what portion of the recovery the lawyer will receive. The fee is generally fixed at a percentage of the recovery. An additional percentage may be added if the matter is tried again or appealed to a higher court. Customarily, the attorney does not receive any contingent fee when the lawsuit is unsuccessful, but the client is expected to reimburse the attorney for out-of-pocket expenses such as court filing fees or expenses paid to witnesses. If the client wins the suit, these same expenses may be deducted from the client's share of the recovery.

In a contingency fee contract, you and your lawyer agree that the lawyer will not get paid any fees unless you win your case. However, even if you do not win your case, you will have to pay your attorney costs unless your contract specifically says that you do not have to.

The contingency fee contract must be in writing and signed by the client and any attorney or law firm who will be paid under the contract. The contract must state what percentage of the recovery the attorney may keep, other expenses which will be deducted from the recovery and how these expenses will be deducted.

How much the attorney will be able to keep as a contingency fee (remember this does not include costs) will depend on what stage of the case you are in and how much is recovered.

The following limitations are contained in the Rules of Professional Conduct and only apply in cases involving personal injury or property damage that occurred as a result of tortious conduct such as auto accident, medical malpractice or products liability cases. You and your attorney may agree to a lesser percentage than those listed below. However, if you want the fee to be greater, you must go to court before your case is filed or at the same time your complaint is filed to get the percentage increased.

- If you and your attorney settle your case before the filing of an answer or demand for appointment of arbitrators or, if no answer is filed or no demand for

appointment of arbitrators is made, the expiration of the time period provided for such action, the fee is 33 1/3 percent of any recovery up to \$1 million.

- If the case is concluded at any point after the filing of an answer or demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment, the maximum fee is 40 percent of any recovery up to \$1 million.
- In addition to the above fee, if you and your attorney settle your case for an amount between \$1 million and \$2 million, or if you win at trial and your recovery is between \$1 and \$2 million, the fee is 30 percent of the recovery between \$1 million and \$2 million.
- In addition to the above fees, if you and your attorney settle your case for an amount above \$2 million, or if you win at trial and your recovery is above \$2 million, the fee is 20 percent of the recovery above \$2 million.
- At times, the person you are suing may admit that they are liable but may disagree with you on the amount of damages that they owe you. If all of the defendants admit liability when they file their answers and only want a trial on the question of damages, the fee is 33 1/3 percent of any recovery up to \$1 million, 20 percent of any recovery between \$1 and \$2 million, and 15 percent of any recovery in excess of \$2 million.
- If after the trial or settlement your case is appealed or your attorney has to seek post-judgment relief or file an action to help you collect your judgment, an additional 5 percent of the recovery may be added to the fee.

In addition to fees, you may be responsible for paying costs and expenses if this is what your agreement requires. These will have to be paid even if you lose your case and your attorney does not collect a fee. At the end of your case, your attorney should give you an itemized bill showing all of the costs and expenses and, if you have won, the fees. This statement must be signed by you and all of the attorneys who represented you. If you have any question on any of the charges, ask your attorney.

Division of Fees: At times, the attorney that you hired will hire an attorney in another firm to help with the case. You must agree to the hiring of this other attorney. If that happens in a case involving personal injury or property damage resulting from wrongful conduct, then this agreement must be in writing and the attorney with primary responsibility for your case is entitled to a minimum of 75 percent of the fee and the attorney with secondary responsibility is entitled to a maximum of 25 percent of the fee. If the attorneys of the different firms participated equally in this type of case, they will have to go to court to determine how the fee will be split. The splitting of fees between the law firms should not affect the amount of money that you receive. If another law firm is hired in a case in which you are charged an hourly fee, the fee may be divided in one of the following two ways: the fee can be divided based on the work done by each lawyer or law firm or you can agree in writing as to how the fee will be divided.

Fees Set by a Judge: There are more than 200 Florida Statutes which allow for an award of attorney's fees in certain legal actions. In most instances, such a fee would be set by a judge.

In all probate matters, which includes guardianships, fees are either set by the court or are subject to review and approval by the court either periodically or at the time the matter is finalized.

The amount of attorney's fees set by a judge can vary greatly, depending upon various factors. The guidelines for the judge setting such fees are provided by the attorney's Code of Professional Conduct, Rule 4-1.5(b):

1. The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill required to perform the legal service properly;
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
4. The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

5. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and
8. Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

A survey of judges has indicated that they give the most weight, in setting a fee, to the results obtained by the lawyer. Also considered is the fee customarily charged for similar services in that same locality. The need for having a judge set the fee, and the resulting uncertainty to the client, can usually be avoided by the client and attorney entering into a contract which sets the fees and requires the judge's approval. Often, it is granted.

Fees Awarded by the Court: In some cases, a client may receive an award of attorney's fees as part of his recovery. This is an amount which will be owed by the opposing party to the client. The amount awarded by the court may be more or less than the amount which you have already agreed to pay your attorney. These possibilities should be provided for in the initial fee arrangement.

Fees for Divorce Cases: Divorce or dissolution of marriage cases merit special discussion because legal fees for this type of work may include one or a combination of all the fee arrangements already mentioned (with the exception of the contingent fee). In a dissolution action where the husband and wife already agree on all matters—such as support, property and custody—a lawyer can set a fixed fee, provided that the matter remains uncontested until completion of the case. Since legal fees are partly determined by services rendered, it is not usually possible to determine in advance the total fee for a case that may have contested issues. In such instances, lawyers may advise the client of his minimum

fee— as the least it would cost— and, additionally, of the hourly charges for time that might be expended beyond the minimum time given in the lawyer’s original estimate. Certain complications often arise in family law cases such as divorce. For instance, the court may order one spouse to pay all or a part of the fees and costs of the other spouse. In addition, the court can order a spouse to pay fees to his or her own attorney should a fee dispute arise.

HOW TO HOLD DOWN LEGAL COSTS

Before meeting with your lawyer:

- Gather all information together in a logical order;
- Be sure you have current correct telephone numbers and addresses of interested parties and witnesses, if applicable;
- Prepare a written statement of your problems and what you want done;
- Make photocopies of everything and offer originals or photocopies to your lawyer. Let your lawyer decide if originals or the copies are needed.

During your initial consultation:

- Present an overall view of your position.
- Share all relevant information, let your lawyer decide what is not in your favor. It is much better for your lawyer to know, rather than be surprised later.

Discuss legal fees and related costs during your initial consultation:

- There are several ways in which legal fees can be computed. It is not always possible for attorneys to give you an estimate of their fees since they cannot control the other side of an issue. However, you should be prepared to discuss how much you are willing to invest in the resolution of your problem.
- In addition to the fee charged by your lawyer, there will probably be certain associated costs, such as costs paid to the court for filing fees, sheriff fees and costs for a court reporter. Most of these costs cannot be controlled by your lawyer, if the attorney is to be an effective advocate on your behalf.
- If your lawyer requests a fee deposit, sometimes called an “advance” or “retainer,” ask whether or not

any part of it will be refunded if you do not proceed. Money accepted for the payment of costs will be placed into your lawyer's trust account and any unused portion will be refunded to you. Fee retainers can be refundable or nonrefundable. Be sure you understand this point. On occasion, some lawyers may refund the unused portion of an advance or retainer after reimbursing themselves for any services actually performed.

- If the fee your lawyer will be charging is going to be substantial, suggest a monthly payment arrangement. This will allow you to spread out the expense over a period of time. Few people can afford one very large fee, but can afford the fee when it is broken into monthly payments. If your lawyer agrees, inquire if interest will be added to the outstanding balance. This practice varies from lawyer to lawyer, but you have the right to know up front what the policy is. Lawyers can accept payment by major credit card— inquire whether your attorney offers that payment option.

FEE ARBITRATION

Arbitration clauses in fee contracts

An agreement with your attorney that requires arbitration of fee disputes must contain the following language in bold print:

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without the use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

In spite of efforts to understand a lawyer's legal fee or billing practices, some disagreements may arise. In

such case, you should first discuss the matter with the attorney. Most complaints specifically regarding attorneys' fees are not addressed by the lawyers' Rules of Professional Conduct and are therefore not within the scope of The Florida Bar's disciplinary authority. When a client indicates that a dispute involves an illegal or clearly excessive fee, the Bar may investigate that claim through its regulatory system. Otherwise, The Florida Bar provides a statewide, uniform Fee Arbitration Program to resolve disputes between attorneys and clients over legal fees. The arbitration program is voluntary and cannot be put into effect unless both parties agree to arbitrate. The arbitration process can be initiated by either the client or the attorney. Once an Agreement to Arbitrate form has been signed by both parties and returned to the applicable circuit committee chairperson, both parties are legally bound to arbitrate the dispute and to accept the decision of the arbitrator(s).

The circuit committee chairperson will assign the matter to a sole arbitrator if the matter involves \$2,500 or less, or to a three-member panel, made up of at least one attorney and at least one non-attorney, if the amount in controversy exceeds \$2,500. The arbitration hearing has only one purpose—to decide what the fair and reasonable value is for the legal services performed. The decision of the arbitrator(s) will be rendered, in writing, within 10 days after the close of the hearing. If arbitration is not an option, a fee dispute may require resolution through the courts.

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