

What Fees Are Lawyers Entitled to Collect?

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Nothing creates adversity between attorney and client quite like attorneys' fees.

No matter how much our clients love us or appreciate our work, fees are a friction point in the attorney-client relationship. Clearly, far more complaints to the ARDC and actions for legal malpractice have their origin in fees than is apparent on the face of things.

So, in light of the financial importance of fees and the professional problems they engender, what fees are lawyers entitled to collect?

The general answer can be stated quite simply: Lawyers are entitled to collect whatever is agreed to that does not violate any rule of ethics. In other words, the matter is primarily one of contract law but with an added layer of professional responsibility.

Since the right to fees is largely contract-based, many problems obviously can be avoided by taking care in the formation of the contract. This should be evident to any lawyer, for lawyers insist upon clarity and completeness of terms when negotiating and drafting contracts on behalf of clients. They also generally insist that the agreement be reduced to writing.

For some reason, however, lawyers often take far less care when their own interests are involved. I have seen many instances, for example, in which attorney-client relationships have proceeded for extended periods of time without mutual agreement on basic terms of representation such as scope and cost. Such a situation is likely to present more than a contract problem, for there are professional responsibility implications, as well.

A lawyer's professional responsibility obligations with respect to fees are set forth in Rule 1.5 of the Rules of Professional Conduct. Simply put, Rule 1.5 is mandatory reading for any lawyer who wants compensation for services.

According to Rule 1.5, it is incumbent upon the lawyer to explain the particulars of the fee arrangement at the outset of the relationship and to do so in a manner that will enable the client to make informed decisions. In other words, the lawyer is responsible for ensuring mutuality of understanding on the matter of fees.

Must the fee agreement be in writing? Rule 1.5 says no, unless the agreement is for a contingent fee. Nevertheless, prudence would suggest written agreements are never a mistake and are particularly appropriate whenever there may be some ambiguity or potential for claimed ambiguity in the fee agreement such as with a new client relationship or one that is limited in scope.

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But above all, Rule 1.5 requires that a lawyer's fee be reasonable. The Rule sets forth eight objective criteria to be considered in determining reasonableness. In brief summary, they include:

- time, novelty and skill required;
- preclusive effect from other work;
- customary fees for similar work;
- amount involved and result obtained;
- time limitations imposed by the client or the circumstances;
- nature of the relationship with the client;
- experience, reputation and ability of the lawyer; and
- whether the fee is fixed or contingent.

There is no exception to the rule that a fee be reasonable. Consequently, there are times when an agreement may be reasonable but collection of the fee is not. This may occur when, for example, a perfectly legitimate and customary contingent fee contract is entered into and the lawyer achieves a good result in virtually no time at all. As stated above, an agreement's calling for a contingent fee is but one factor to be considered in determining whether a fee is reasonable. Among other things, the actual amount of time involved cannot be disregarded.

Just about any fee arrangement is enforceable if it is understood and agreed to by the client and if it is reasonable. But do not forget. Fees are a friction point with the client and as such require attention. What occurs with respect to the subject of fees at the inception of the attorney-client relationship will impact the chances of getting paid.

Take a little extra time to discuss fees with your clients before fees become an issue. It will pay off in the end. It is also the professional thing to do.

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