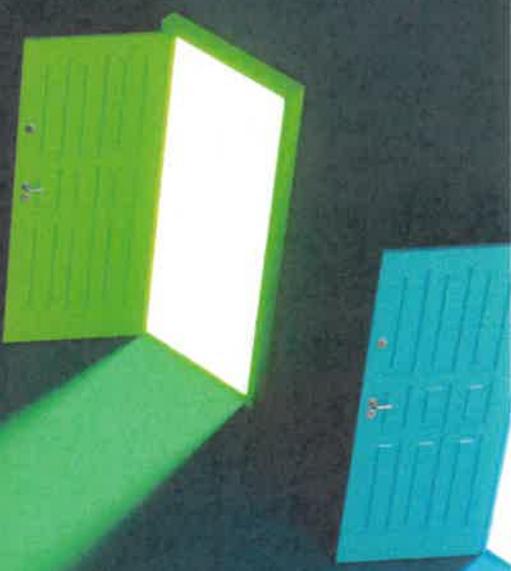


FAMILY ADVOCATE

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Fees and Billing

BY MARK A. CHINN



Most lawyers become lawyers because they want to help people. They care very much that their life's work be viewed as a service to people and to the betterment of the community and nation. For that reason, many lawyers are somewhat embarrassed to bring up the subject of fees. But lawyers know that clients need to know the basis for the charges they are about to incur. So, if your lawyer does not bring up the matter of his charges, don't be afraid to take the initiative and ask the lawyer how he charges. You might say something like, "Is there a charge for the initial consultation?" Or, "How does your firm charge for its services?"

Finding the Right Fit for Your Case

In the initial discussion with your lawyer, ask basic questions to quickly determine if the lawyer handles the type of case you have. You will also need to share enough personal information for the lawyer to determine if there is a conflict, such as the lawyer having previously worked for one of the parties. Neither client nor attorney is well served if a businesslike approach is not taken to quickly determine if the two are right for each other.

Do Some Homework

Before you agree to hire a lawyer, do some homework as to the qualifications of the lawyer and the typical charges by other similarly qualified lawyers in the area. You can do this by checking the internet and asking your CPA, friends, and other lawyers in the community.

Types of Fees

Flat Fee

A "flat fee" is a one-time charge which is designed to cover all of the work. For example, a lawyer might charge \$1500 to draft a property settlement agreement where the understanding is that the parties have reached an agreement. Another example is that a lawyer might charge a one-time fee to attend a hearing. Of course, flat fees can be designed to encompass almost any situation. The fee can be due "up front" or it can be divided into installments. The primary attribute of the flat fee is that it will not change depending on what happens in the case or how long it takes. The flat fee has several advantages. First, it allows the client to determine on the front end whether the project is affordable. This is

different from the “hourly billing method” where the true cost of the project cannot be known until the very end of the project. Second, the flat fee fixes the cost for the client. As long as the project remains within the bounds of the understanding as to what is to be done, the client should not be charged more than the agreed-upon price, no matter how much time is expended by the lawyer.

Hourly Billing

The most common form of billing in the divorce world is the “hourly fee.” Attorneys record their time in predetermined intervals and then charge the client according to the time spent. The most common intervals are either quarter hour intervals or sixth of hour intervals. For example, under the quarter hour interval method, the minimum charge for any effort is at least 15 minutes. Under the sixth of hour method, the minimum charge for any activity is 10 minutes.

The attorney keeps track of his or her time every month and then sends the client a bill which usually sets forth the date something was done, a description of the activity and the amount of time spent. The bill will vary each month depending solely on how much time it takes the lawyer to perform the work.

The advantage of the hourly billing method is that it metes out the cost of the litigation according to the amount of time it takes. If something takes very little time, then the amount of the charge will be less than if the matter drags out. On the other hand, if the matter becomes difficult and protracted the cost to the client will increase accordingly.

Value Billing

Many Codes of Professional responsibility allow for what is called, “value billing.” What this means is that the attorney and client negotiate a price for the work based upon what the client seeks to accomplish and the value of that work to the client. Value billing requires a lot of work between the lawyer and client to customize the price to the project. Since such charges are based upon “value” there is an infinite combination of arrangements that the attorney and client can devise. For example, a client might agree to pay a certain amount of money each month for a service. Or, an agreement might call for certain charges for certain tasks, such as fixed charges for depositions, hearings, or mediation.

Contingency

Contingency charging involves the lawyer taking a percentage of the amount collected on behalf of the client. In family law cases this method of charging is generally not permitted by State Codes of Professional Responsibility, except in child support arrearage cases, where contingency fees are generally permitted. For example, if a person is owed \$18,000 in

past-due child support pursuant to an order, it is permissible for the attorney to agree to take the case and collect a percentage of the amount collected from the delinquent parent when the money is received. This is the same way most personal injury lawyers might handle a car accident case. They might collect a sizeable percentage, but they don’t collect anything unless they make a collection. The advantage of this form of charging is that the client can obtain an attorney without having to advance any funds.

Retainers

Most lawyers employ the use of “retainers.” A retainer is a certain amount of money that is obtained in advance of the work. This retainer is placed in the trust account and used as a reserve for the lawyer to charge against. Abraham Lincoln, who was a great trial lawyer, advised that a retainer is important because the lawyer then knows he has a client and the client knows he has a lawyer.

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The amount of the retainer should be determined from a number of different factors. The factors are much the same as setting an hourly rate or flat fee. The advantage of a retainer is that it secures the lawyer’s representation for a certain amount of time and additional payments do not have to be made until the retainer is exhausted. Clients should always understand, though, that a retainer is not to be confused with the price for the work and the actual cost of the project may exceed the retainer.

Refundable or Non-Refundable. Retainers can be either refundable or non-refundable. A refundable retainer is where the amount of retainer left in trust after charges is refunded to the client upon closure of the case or termination of the

representation. A non-refundable retainer is not refunded. The attorney simply keeps whatever is left, whether they have billed for the work or not. The rules vary from state to state on whether non-refundable retainers are permitted.

End Retainer or "Evergreen Retainer." The end retainer is a method of holding a certain amount of retainer until the end. The lawyer takes the retainer in at the beginning of the representation but does not use it. Instead, the client is expected to pay the bill as it is incurred so the retainer is not used. Typically, the full amount of the retainer is refunded at the conclusion of the representation if all other bills have been paid. The end retainer or evergreen retainer gives the attorney comfort that his final charges will be paid.

Expenses

There are many expenses above and beyond the payment of attorneys fees. These include charges for support staff such as paralegal. These are often charged at a rate of about one quarter to one third of the hourly rate of a lawyer. The following list contains other expenses: copying, long distance telephone, computer legal research, service of process, court reporter fees, expert witness fees, private investigator fees and mediator fees. These fees are usually charged to the client at the rate paid by the attorney. Sometimes attorneys charge for office expenses such as copying and long distance by adding a simple per cent age surcharge, such as 3% to the bill.

Reducing Costs

The best way to reduce costs is to ask your attorney how you can keep the cost of your case down. There may be specific suggestions that can be given to help reduce the cost of your particular case. In addition, there are some cost-cutting techniques that may be applicable in just about any case, such as:

- Tell your attorney you do not want a copy of everything that comes in or goes out of his office. Ask for only the most important documents;
- If documents need to be copied, copy them yourself;
- Don't call your attorney unless it is absolutely necessary and keep the calls short;
- Don't call your attorney about matters that should be discussed with your therapist;
- Ask your attorney what certain actions might cost so you can decide if you really want to pay for it;
- Suggest that your attorney tape record or video noncritical depositions in order to save reporter fees;
- Don't ask your attorney to subpoena unnecessary witnesses or documents;
- Communicate by email; and
- Do record searches, such as corporate searches or deed searches yourself.

Always be careful with attempts to cut costs. Make sure with your attorney that an effort to save a cost won't be detrimental to your case.

Timely, Regular Billing

If the billing agreement is "hourly," both the attorney and the client are best served by regular monthly billing. Clients have the right to know how their retainer is being spent and how the expense of their case is progressing. Clients should feel free to ask their attorneys for statements on a regular basis such as once a month.

Talking About Fees

It is important to talk candidly and often with your attorney about your fees. Ask him or her what the things you are asking them to do will cost. It is important for you to know the cost, or an estimate of the cost before you embark on a course of action. A good example of this comes from the movie, "Kramer vs. Kramer." Dustin Hoffman has just lost custody of his child to Meryl Streep and he is talking with his lawyer at a bar about what to do. The lawyer has a glass of scotch, and when Dustin Hoffman emotionally protests the trial result, the lawyer calmly replies, "You can appeal, but it will cost you \$20,000." Hoffman elects not to appeal. That scene is very important. The client was not left with an unclear picture of what lay ahead. The client was given the information necessary to formulate his decision. And, if Hoffman had elected to appeal, he and the lawyer would know and understand that \$20,000 was necessary to start the work.

If you are struggling with payment of a bill, it is best to communicate immediately and honestly with your lawyer. The same is true if you are not happy with your lawyer's handling of something. Call your lawyer and tell him or her what is on your mind. If you are concerned about charges, be prepared to tell the lawyer exactly what charge you are concerned about and why. This will be of much more benefit to you *and the lawyer* than simply stating the "bill is too high."

Written Fee Agreement

Most states do not require that your fee agreement be in writing, but it is always best that contractual relationships be placed in writing. Ask your lawyer to provide you with a written fee agreement which outlines what he or she is going to do for you and how he or she is going to charge. 



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