



KEEPING
LEGAL COSTS
DOWN

HEALTH INSURANCE,
SOCIAL SECURITY,
RETIREMENT

DIVORCE,
ALIMONY,
CHILD SUPPORT

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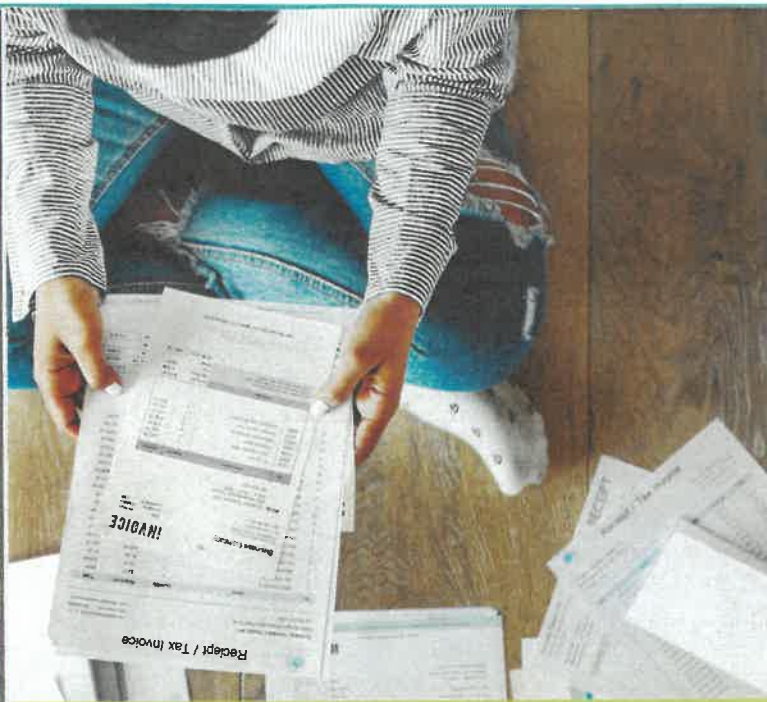
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Capturing Legal Costs and Containing the Bill

By MARK CHINN

Most lawyers got into law practice to help people. Because of that, they are often reluctant to talk about money. But clients have a right to know how they will be charged. Clients should be forthright in asking lawyers how they charge and when bills will be sent. Here are the questions you should ask:

- How do you charge?
- What is your retainer?
- What time increments do you bill in?
- Will I receive a monthly itemization of your fees and expenses?
- Do you have an estimate of what the case will cost? (Usually, this is a hard question to answer because lawyers often can't predict fees, but the question should be asked.)
- Can I be advised beforehand of significant expenditures of time?

Setting Fees

Every state has a Code of Professional Responsibility, which should show standards for setting fees. You might want to look such a code up online. Next, find out what other lawyers in your area are charging. Consult with close lawyer and judge friends to see what they know others are charging. The hourly rates of lawyers often depend on years of experience and expertise. Look your lawyer up on his website to see his experience and credentials.

Types of Fees

Flat Fee

Prior to the 1970s, the most common method of charging was probably the "flat fee." Then the U.S. Supreme Court decided that fee schedules were unconstitutional. Since that decision, and with the growing influence of insurance companies, the flat fee has faded in prominence. Although flat fees are in use in some areas, lawyers find them hard to quote in more complex cases. Many lawyers feel there is no way to know, at the beginning, what the course of litigation will be. A case that appears to be all about finances can suddenly become an intense custody battle. Once the fee is set, it is very difficult, if not impossible, to change. If you like the idea of the certainty of a fee, you might see if there are lawyers who will charge on that basis.

Hourly Fee

The most common form of billing in the divorce world is the "hourly fee." Attorneys record their time in predetermined intervals and 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 fifteen minutes. Under the sixth-of-hour method, the minimum charge for any activity is ten minutes. A bill might look like this:

6/9/06	Telephone conference with client	0.25
6/10/06	Receive and review correspondence from opposing counsel and telephone call with client	0.50
6/20/06	Receive and review interrogatories, correspondence to client; prepare Motion to compel	1.50

Total Time 2.25 × \$300 per hour = \$675

Contingency

Clients will often hear commercials on TV where personal injury lawyers advertise that there is "no fee unless we collect for you." These personal injury lawyers charge what are known as "contingency fees," where the lawyer takes a percentage of the amount collected on behalf of the client. State Codes of Professional Responsibility generally *do not* permit this method of charging, except in child support arrearage cases.

Retainers

Lawyers who charge by the hour usually ask for a "retainer." This is a sum of money requested at the outset of the case to serve as an initial fund out of which to pay the hourly fees. This retainer is placed in a "trust account." The amount of the retainer depends entirely upon what the lawyer wants to obtain upfront to secure payment of his fees. Clients often confuse retainers as being an amount their case will cost. In fact, retainers often bear little relationship to the final cost of the case.

Retainers can be either refundable or nonrefundable. With a refundable retainer, the amount of retainer left in trust after charges is refunded to the client upon closure of the case or termination of the representation. With a nonrefundable retainer, the retainer is not refunded. The attorney simply keeps whatever is left, whether or not the work has been billed.

End Retainer or “Evergreen” Retainer

The end retainer (sometimes called the “evergreen retainer” is a method of holding a certain portion of the retainer until the end. The lawyer receives the retainer 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. Another method is for the lawyer to request that a retainer be replenished when it is exhausted.

The Contract

Some states do not require written contracts of fee agreements. However, it is always a best practice for both the lawyer and the client to have a written understanding. Clients should ask that the attorney set forth in writing at least the following terms:

- the hourly rate
- the time intervals that will be charged
- the amount of the retainer
- the scope of the employment or what the attorney is going to do.

Court Costs

Counties and other jurisdictions charge for the filing of suits. These charges can range from \$50 to \$250 or more, depending upon the type of case. These expenses are almost always the responsibility of the client.

Service of Process

Once a suit is filed, it must be “served,” or handed to the opposing party. Charges for this might range from \$50 to \$150 depending upon the location or situation. These are costs to be borne by the client.

Depositions

A “deposition” is a sworn statement taken by an attorney of a party or opposing witness. Costs associated with this may be serving the opposing witness with a subpoena to the deposition, usually ranging between \$50 and \$150. In addition, the court reporter must be paid. If your attorney is taking the deposition, the court reporter will charge an appearance fee. If your attorney requests a copy of the deposition (which is almost always the case), there will be a per page charge for the deposition, usually in the hundreds of dollars. These are costs to be borne by the client.

Subpoenas

Attorneys have the power to subpoena people to trial or to depositions. They also have the power to subpoena banks, companies, or other individuals to produce documents. The service of subpoenas costs money (\$50 to \$150), and if documents are requested from an entity—such as a bank for checks—there could be substantial charges for the production.

Request monthly statements of what the lawyer is going to do and what the upcoming costs might be.

Ways to Save or Conserve

Here are some tips in controlling or being aware of your legal expenses.

- Seek monthly statements of itemized billing if you are being charged by the hour.
- Request monthly statements of what the lawyer is going to do and what the upcoming costs might be. When you ask your lawyer to do something, ask what the pros and cons and costs of the actions might be.
- Be careful about requesting depositions or the subpoena of documents. Talk with your lawyer about what is necessary. This will avoid unanticipated service of process and document production costs. If you wish to subpoena documents, such as banking documents, work with your lawyer to narrow your request to exactly what you need. Ask your lawyer to ask the bank or other document producer for an estimate of costs.
- For depositions, ask your lawyer if depositions can be recorded without a court reporter. This will save hundreds of dollars. If it is later determined a transcript is needed, a transcription of the tape can be obtained. [FA](#)



MARK CHINN (mark@chinnlaw.com) operates a Mississippi statewide practice in family law. He has served on the Family Law Section Council and currently serves on the Publications Board. He is the author of three ABA books: *How to Build and Manage a Family Law Practice*, *The Constructive Divorce*, and *Forms, Checklists and Procedures for the Family Lawyer*.