



Practice Management Pointers

Rules Regarding the Billing & Collection of Fees

(With a Sample Termination Letter)

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Fee disputes are at the heart of a significant percentage of all legal malpractice claims brought against attorneys each year. Typically, the attorney sues his client for unpaid fees and is then countersued for legal malpractice. Sometimes merely sending a final bill triggers threats of legal malpractice. Given this, the following tips are shared with the intention of helping you avoid this situation entirely.

- 1. Don't accept clients who cannot afford your legal services.** It is a lose/lose situation to take on a client who is overly concerned about fees and/or who ultimately will not be able to pay your bills. If you agree to represent such a client, you will place yourself in a situation where you naturally become torn between putting in the required number of hours and minimizing the final costs. Always try to determine whether the client can afford your services at the outset and learn to say no if and when they can't. This is one situation that doesn't get better with time.
- 2. Written fee arrangements.** Every engagement letter or contingency fee agreement should contain a clear explanation of the legal fees that will be charged for the work to be performed. Any restriction of scope of work should also be detailed in this agreement. Be specific regarding the types of out-of-pocket expenses for which the client will be responsible, filing fees, court costs, expert witness fees, photocopy charges, computer research, long distance calls, etc., because clients are often astonished by the amount of out-of-pocket expenses incurred on their behalf. Finally, it is never a good idea to try and adopt a new fee structure and write a subsequent fee agreement when a matter is pending.
- 3. Bill on a monthly basis.** Attorneys who charge an hourly fee should always bill the client at least monthly, unless the client has specifically requested otherwise. Avoid billing the client at the project's completion unless the total cost of the representation has been agreed upon in advance. **The key to hourly billing is to send bills and collect your fees on a frequent basis in order to avoid large, unexpected bills.** No one likes getting those, even you.

4. **Detailed billing statements.** Provide detailed billing statements that describe the work performed by each attorney on a daily basis and how long it took. Entries such as “10 hours for research” are unacceptable. Rather, the entry might read “10 hours of researching state case law on piercing the corporate veil.”
5. **Review all bills.** The attorney responsible for the case or matter should review every bill for errors before it is mailed to the client.
6. **Copy the client on all correspondence and other materials relating to the client’s matter.** Ask yourself which client would be more likely to pay her monthly bill: the one who hasn’t received a single sheet of paper from her attorney in the last three months or the one who regularly received informational copies from her attorney? Keeping your clients in the know does matter.
7. **TAKE PROMPT ACTION ON ALL ACCOUNTS IN ARREARS.** This is the single biggest mistake that attorneys seem to make with respect to fee disputes. Most attorneys joined the legal profession in order to practice law, not to collect delinquent fees. Unfortunately, the client who can’t pay your fee today isn’t likely to be able to pay it tomorrow. You are better off dealing with the delinquent client without delay and this doesn’t mean you go and tell your bookkeeper to call and ask for a payment. You should visit with the client directly before the client gets too far behind.

In a perfect world, the firm’s partners should review all past due accounts on a monthly basis. Then with any developing delinquencies, the partner responsible for a matter in arrears should be asked to contact and inform the client that the firm will withdraw from the matter if the fee issue is not resolved promptly.

Beware of clients who promise you money “next month.” That’s often one of those “fool me once shame on you, fool me twice shame on me” situations and the money never materializes. If you can, it is better to withdraw and cut your losses when you are owed \$1,000 rather than to wait and later have to sue the client in order to try and collect \$15,000.

8. **NEVER SUE FOR FEES.** Establish a strict policy against suing for fees. If you cannot work out a realistic payment plan with the client, consider other alternatives such as arbitration or mediation. If you are tempted to sue for fees, consider this: the counterclaim for legal malpractice usually seeks an amount far in excess of the legal fees in dispute. In the vast majority of these cases, the attorney ends up dropping the fee suit to get rid of the malpractice claim.

This is of particular importance. Never sue a client who never had the ability to pay your bill in the first place. Accepting them was your mistake, not theirs; and they will often counterclaim. What other option do they have?

9. **Collect retainers.** If you are having difficulty collecting fees on a regular basis, require a retainer fee up front. If the client takes their business elsewhere because you were realistic in setting the fees and in asking for a significant percentage of the fee as a retainer, this is a client that you may be better off not having.

The practice area with the reputation of having to deal with the greatest number of account delinquencies is family law yet there are family law attorneys who are quite successful in being paid promptly. These attorneys often have a well-crafted retainer agreement in place that requires the client maintain a certain amount on deposit and allows the attorney to withdraw if the client ever goes into arrears.

- 10. If you are thinking about taking action to collect on a past due account, have another attorney do a thorough, objective file review first.** When it becomes clear that the client has no intention of paying, before taking any action to try and collect on the debt have an independent attorney (perhaps one in the office who has had no relationship with the file or a local member of the bar who does collections work) review the case to assure that there are no facets of the work that could be questioned and that the client's matter was handled with the utmost diligence. The reason is that once a client is in your pocket for a significant sum, it is nearly impossible to be objective about the file and the work that you have done for that client. Understand that if and when that client file is put under the lens of a malpractice counterclaim in response to the collection action you started that file is going to be critically reviewed in every detail. There is value in knowing where the weaknesses are to enable you to make an informed decision about whether to try and collect on the debt.
- 11. Call the client.** Far more success is met with personal phone calls from the attorney to the client asking for the bill to be paid than are met by sending letters from the accounting department or submitting the file to a collection agency for further work. Even if the client steadfastly refuses to pay the bill, at least you have made a good faith effort and it is likely that you will learn about any dissatisfaction the client may have with your work. Keeping in mind that the precipitating factor for a professional liability claim is the perception of the client more than the reality of the facts, information from the call may provide a good indication as to whether further collection efforts are warranted.
- 12. If you decide to pursue collection activity, never do this work yourself.** One of the most important services provided by an attorney is objectivity. The client looks at their attorney as someone who is a knowledgeable third party and able to help protect their interests. Do something similar and send the matter to a specialist who can be objective and mediate any concerns that may arise.

Sample Termination Letter

{Date}

Re: Termination of Attorney/Client Relationship

Dear _____:

During the past ____ months, we have served as your counsel in the _____ litigation. In the course of this representation, you have paid \$_____ in legal fees and expenses. Unfortunately, and contrary to our agreement, you have not made a payment on your account since _____.

At this time, the outstanding and overdue fees and expenses total approximately \$_____. While we would like to continue our relationship, we will not finance your case or work without compensation. Until now we have continued to represent you despite the growing delinquent account. We can no longer allow this situation to continue.

Currently, we believe the trial court will permit us to withdraw as your attorneys. There is still sufficient time for you to retain other counsel without jeopardizing your case or adversely affecting the court's calendar. However, if we wait any longer, it is possible that one of these conditions for withdrawal may not exist.

If you obtain new counsel, we will be willing to discuss the case with your counsel under satisfactory arrangements to satisfy the outstanding account. Additionally, certain work product has been generated during the course of the representation. We will share it with new counsel to the extent our legal obligations require in the absence of full payment.

I enclose a notice of withdrawal that will be filed with the court in 10 days from the date of this letter. In the meantime, if you wish us to continue representing you, we would be pleased to do so if satisfactory arrangements are made to take care of the overdue account, and to ensure payment of future billings.

I look forward to hearing from you, and remain hopeful you can remain a client of the firm.

Sincerely,

Enclosure(s)



Risk Management Questions?

Mark Bassingthwaite, Esq. is the Risk Manager for ALPS Property & Casualty Insurance Company. He is available to answer risk management questions and can be reached at 1-800-367-2577 or mbass@alpsnet.com.

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