



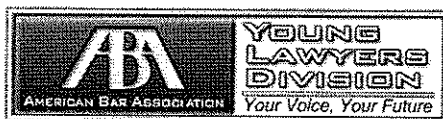
Defending Liberty
Pursuing Justice

**American Bar Association
Young Lawyers Division**

2007 Midyear Meeting

**The Proper Retainer Agreement and Bill: Solid
Writing, Strong Planning, Prompt Payment**

Visit the E-Library Section of www.abanet.org/yld/resources.html for additional resources from this conference.



**The Proper Retainer Agreement and
Bill: Solid Writing, Strong Planning
Prompt Payment**

By
ABA YLD Member Service Team
ABA YLD Law Practice Management Committee
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Fee Agreements 101

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Types of Rates

Time Basis	The number of hours worked times the per hour charge
Blended Rate	Different hourly rates based on different levels of staff
Contingency Fees	Percentage (usually 25%-40%) of recovery plus out-of-pocket expenses
Value Billing	Higher billing rate if attorneys achieve a favorable result
Non-Refundable Retainer	Advance payment that guarantees attorney availability
Statutory/Probate Fees	Fees set by law
Flat Fee	Set fee for particular matters (e.g. contract review)

Candor and the Fee Agreement

- Make Sure Clients Understand That Fee Agreement is a Legally Binding Contract
- Be Candid During the Billing Discussion!
 - Candor can often prevent "sticker shock" when clients receive their first bill.
- Explain Policies/Penalties for Late Payments
 - Be sure to comply with local laws, do not exceed the highest level of interest allowed in your particular state
- Explore Your Alternatives For Collecting Late Payments!
 - Examples: Sue the client (NOT advisable), use a collection agency, use local bar association dispute programs, stop work for client until bill is current.

Fee Agreements: Retainer v. Deposit

- | | |
|---|---|
| <p>Retainer:</p> <ul style="list-style-type: none"> • Consideration is paid in exchange for a commitment of Attorney's future availability to provide services. • Generally, this money may be deposited into an operating account, but check local rules. | <p>Deposit:</p> <ul style="list-style-type: none"> • Money paid to an attorney that is tied to the provision of legal services. • This money must generally go into an IOLTA account, but check local rules. |
|---|---|

Essential Provisions for Fee Agreement

Scope of Representation/Matter	Date (agreement executed)	Fee Amount and Deposit or Retainer	Parties-who is the client?
What Services Fee Does NOT include (I.e. litigation)	Minimum / Maximum Fee (optional)	Expenses (reimbursed or client pays directly)	Other Attorneys (of counsel, co-counsel, litigation, etc.)
Billing Cycle/Payment Due Date	Terminating Services/Withdrawal	Use of Experts, investigators, court reporters	Existence of Malpractice Insurance (optional)
No Guarantees	Client Responsibilities	Confidentiality	Trust Account Rules
Late Payment Penalties/NSF	Preferred method of Correspondence	Notice: Client / Attorney Addresses	Fee Disputes

Illegal Fees and Unreasonableness

- Check Local Rules for Specific Examples of Illegal Fees
 - These can vary from jurisdiction to jurisdiction
 - Check your agreement periodically to ensure compliance with your local rules
- Some Examples of Illegal Fees (MD):
 - Non-refundable retainer retainers *unless* the fee is an engagement fee
 - Up-charging: charging clients a higher dollar amount than the attorney paid for a particular service (\$.10 to the client for a copy that you paid \$.05 for).
- Example of an Unreasonable Fee:
 - Changing hourly rate during representation without notification to the client
 - Gouging clients by drumming up unnecessary high fees

Malpractice Issues

- Some States Require a Written Explanation of Fees
 - A written fee agreement is not required in all jurisdictions, but having one is good business practice
- ABA Rule 1.5(a)
 - Fees must be reasonable
- ABA 1.5(b)
 - Contingency fees **must** be in writing
- Expenses Should be Clearly Identified in Fee Agreement
 - Spell out in writing how much clients will be charged for copies, phone calls, mileage, etc.

Practical Advice-Do's

- Put fee arrangement in writing
- Check local and state rules/ethics
- Provide client an opportunity to ask questions about fee arrangement & services
- Have client sign agreement
- Provide client with a copy of the agreement
- Update your agreement to reflect client's or your needs/experience
- Be reasonable

Practical Advice-Don'ts

- Don't Wing it
- Don't rely on the client or your recollection about the fee arrangement
- Don't brush client's questions or concerns under the rug
- Don't be afraid to ask other attorneys for advice or suggestions
- Don't stop revising and fine tuning your agreement

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The Ethics of Engagement (Letters)

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Money matters

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- Most states do not require an engagement letter.
 - New York has a court rule that requires written engagement letters unless fee < \$3000
 - California has a statute that requires written fee agreement for non-corporate clients if total fee plus expenses will exceed \$1000
 - Alaska's Rule 1.5 requires if fees > \$500

Money is no issue

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- Mandatory states
 - Arizona, Colorado, D.C., Montana, New Jersey, Pennsylvania, Rhode Island, and Wisconsin do require written fee agreements
 - Connecticut requires writing when client is not someone you regularly represent

Required for Special Engagements

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- ABA Model Rules do require a writing for certain types of engagements:
 - Rule 1.5(c) – contingent fees
 - Fee division between lawyers not in the same firm

Rule 1.5(c) – Contingent fees


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- Writing signed by the client
- Method of fee determination
 - % to the lawyer if settlement v. trial v. appeal
- Other expenses to be deducted from recovery
 - Deducted before or after contingent fee calculated

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Other Rules of Note


- Rule 1.2(c) – restricting the scope of an engagement
- Cannot contract out of certain obligations
 - Rule 1.1 – competence
 - Rule 1.2(a) – decisions belonging to client



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Other Rules of Note (cont.)


- Rule 1.5(a) – fees shall be reasonable
 - Other law may be relevant
 - Statutory caps, such as in medical malpractice suits



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Purpose of Engagement Letter


- Who is the audience?
 - Immediate – recipient of letter
 - Secondary – judge, arbitrator, or jury
- Best letters understood by both audiences



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Avoidance of Ethics Issues


- Address who is/is not the client
 - “Corporate family” issues
- Define the scope of the representation
 - Two concepts: (1) scope of the matter in which you are representing; and (2) any specific limitations on what is expected of you.
- Fee basis



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Traps for the Unwary


- Contracting for an unreasonable fee
 - What about minimum time increments?
- Limiting liability
 - Rule 1.8(h)(1)
 - What about arbitration provisions?
- Failing to update your engagement letter when circumstances change
- Retainers v. advances



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What About “Non” and “Dis”?

- Non-engagement letters
 - Rule 1.16
 - Contents
 - Not your lawyer
 - Why/conflict . . .
 - Time warning
 - Return materials



What About "Non" and "Dis"? ADAMS AND REESE LLP

- Disengagement letters
 - Rule 1.16
 - Rule 1.3 – Comment [3]
 - Benefits/detriments
 - Current to former client

By the way . . . ADAMS AND REESE LLP

- Don't forget Rule 7.1
 - "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services."

Drafting a Bill Your Client Will Pay

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Introduction

- Bills say a lot about the attorney and the work completed
 - Very important to review all bills carefully before they go out
- The following 9 guidelines will help you structure a bill in a way that will please clients
 - May seem like common-sense, yet many attorneys violate these guidelines everyday

#1 - Provide Detail

- All Bills Should Include:
 - Description of task completed
 - Date on which task was completed
 - Amount of time spent on task
 - Name of attorney who performed task
 - Billing rate of attorney

#1 - Provide Detail Con't

- Examples:
- Bad descriptions
 - "Talk to client"
 - "Research"
 - Good descriptions
 - "Conference call with client re: whether to file a summary judgment motion"
 - "Research re: statute of limitations for retaliatory discharge claims in Illinois"

#2 - Be Consistent

- Bills should be in the same format each month
- Bills should be reviewed carefully for errors and inconsistencies
 - Example: associate bills 0.5 for a meeting and the partner bills 0.75 for the same meeting

#3 - Show Your Good Will

- Write off some time when it is appropriate
 - Example: New associate who is not yet adept at researching
 - Example: New attorney on the case who needs to get up to speed
- Include time that is written off on the bill and then mark it "NO CHARGE"
 - This shows the client that you value them and are considerate regarding their money

#4 - No Surprises on the Bill

- A client should expect to see most things listed on the bill
- Surprises are bad; Communicate with client before the bill is sent
- Examples of Surprises:
 - Amount of time spent on one task
 - The type of task performed not discussed with client
 - Number of people on the case
 - External vendor charges client was unaware of

#5 - Follow Client's Requests

- Don't use your "firm" style of billing if client requests another style
- Find out if client prefers a certain method of recording time: block billing vs. task billing
- Inform client of the increments used to record time (.25 vs .1); be flexible if possible

#6 - Be Cost-Effective

- Save the client money when you can
 - Example: scan and e-mail documents when possible
 - Example: Don't send everything by overnight mail if regular mail is sufficient
- Consider when to e-mail client versus calling them
- Don't add upcharge for vendors' charges; bill client the same as you are charged

#7 - Submit Bills Regularly

- Bill the client monthly
 - Client will appreciate seeing bills close in time to when the services were performed
- Keep track of your time daily
 - Attorneys who "re-create" their time may not remember things accurately
 - Disservice to either the client or your firm

#8 - Make Sure a Treat is a Treat

- Don't charge for taking client out to lunch
- Don't bill the client for your time spent at lunch unless it really is a working lunch

#9 - Admit Mistakes and Don't Charge for Them

- Mistakes will happen – discuss them with the client immediately
- Example: Missed a deadline for a court filing; discuss the situation with the client and don't charge for the motion for extension which needs to be filed
