

## Lawyer Fees are an Uncomfortable Subject for All

Let's face it, neither lawyers nor clients like to talk about what the fee is going to be. Many lawyers feel squeamish about asking for money, wishing the whole thing would be hidden because asking for money might drive away the client. (They say British trial lawyers—barristers—wear robes so the client can stuff money into the almost invisible pocket in back of the robe, to be taken and deposited later by a 'clerk' and never touched by the barrister.) Clients on the other hand often fear they are being ripped off, and they sometimes are.

Abe Lincoln, a lawyer before he was President, famously said that a lawyer's time and advice were his (there were no "hers" then) stock in trade—all he had to sell. Lawyers often just sell their time, then, the billable hour. From the client's view point how many hours were expended is largely irrelevant, so long as the problem gets fixed or avoided. The fee, client may think, should depend on the "value to me" of the fix or the avoiding.

But how do you put a dollar value on something for which there is no market where the thing is traded? "Things" like a serious traffic charge trial (including interview, prep, and waiting in court for the case) has a market. And these are often done on a fixed fee basis, with lawyers competing on price among other things.

Trying a negligence case from the plaintiff's side (e.g., auto accident) has a well-defined value from years of acceptance, namely 1/3 of recovery plus expenses.

But what is the value of a contract reviewed or drafted? How does anyone know how many dollars of cash flow or assets will be preserved that would otherwise have been lost? It may be—and both attorney and client must frankly address this question—that any fee that relates to the value of the work will either be much too high to be worth it to client or much too low to be worth the lawyer's time, so that the work ought not be done.

What about a deal *negotiated* by a lawyer? What is the value of the bargaining to client? Does that value have any relation to the amount of time taken, which depends largely on the emotional responses of the principals on both sides? Is there any way to set a fixed fee that is fair to both lawyer and client? Some would say some kind of percent of the value of the deal. Lawyers are discouraged from these types of fees. The reason is that in the process of doing the work the lawyer would then become part of the deal, and not be certain to give *independent* advice, since his or her fee might depend on the outcome. For example, he or she might advise the client to take the latest offer, even though it is not so great, because the lawyer does not want to spend any more time on the matter.

Plumbers, electricians, HVAC technicians, auto technicians and many others charge by the hour, and often without even providing an estimate up front. This can be a customer relations issue afterward. Still, lawyers and their clients are

increasingly searching for alternatives. This may be because some law offices have charged more time than was reasonably needed, e.g. by sending two or three hourly lawyers to a meeting when one would have sufficed.

I do not have any magic answer for how to agree on a fee in every kind of legal service situation. I do think there is a good deal of wisdom in the Rules of Professional Conduct for attorneys, rule 1.5, which requires the fee be reasonable, setting out 8 factors to consider in deciding reasonableness, and requiring almost always that the fee agreement be in writing, and that changes if any be conveyed immediately to the client with the reasons why.

Someone suggested to me some kind of monthly payment plan, “all you can eat” legal advice and document drafting/review for a fixed monthly price, payable whether you need anything that month or not. The idea is to make the amount predictable and ‘budgetable.’ I would be open to discussing this, although I am not user how to set the monthly for a new client without knowing his or her consumption rate. Any of you readers have any ideas?

With some trust and good will on both sides, and a *written* fee agreement, most of the time the fee for services can be made fair to both client and attorney.

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