



## Successful Small Firm Practice Series Session Four: Banking and Fee Setting

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*Presented by*

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*Practice Management Advisor*

*D.C. Bar 2020*



# Applicable Rules

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- [Rule 1.1- Competence](#)
- [Rule 1.5- Fees](#)
- [Rule 1.15- Safekeeping of Property](#)



# Small Firm Bank Accounts

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- Two Recommended
  - Operating (business) checking account
  - IOLTA Trust Account (Mandatory)
- Resources
  - [IOLTA Registration Form](#)
  - [How to Open a DC IOLTA](#)
  - [Approved IOLTA Banks](#)

## IOLTA Eligible Funds

Are funds that are nominal in amount,  
or,

Held for a short period of time;

Such that cost to administer exceeds interest income. Interest is now 1% or less.

## Exceptions to IOLTA

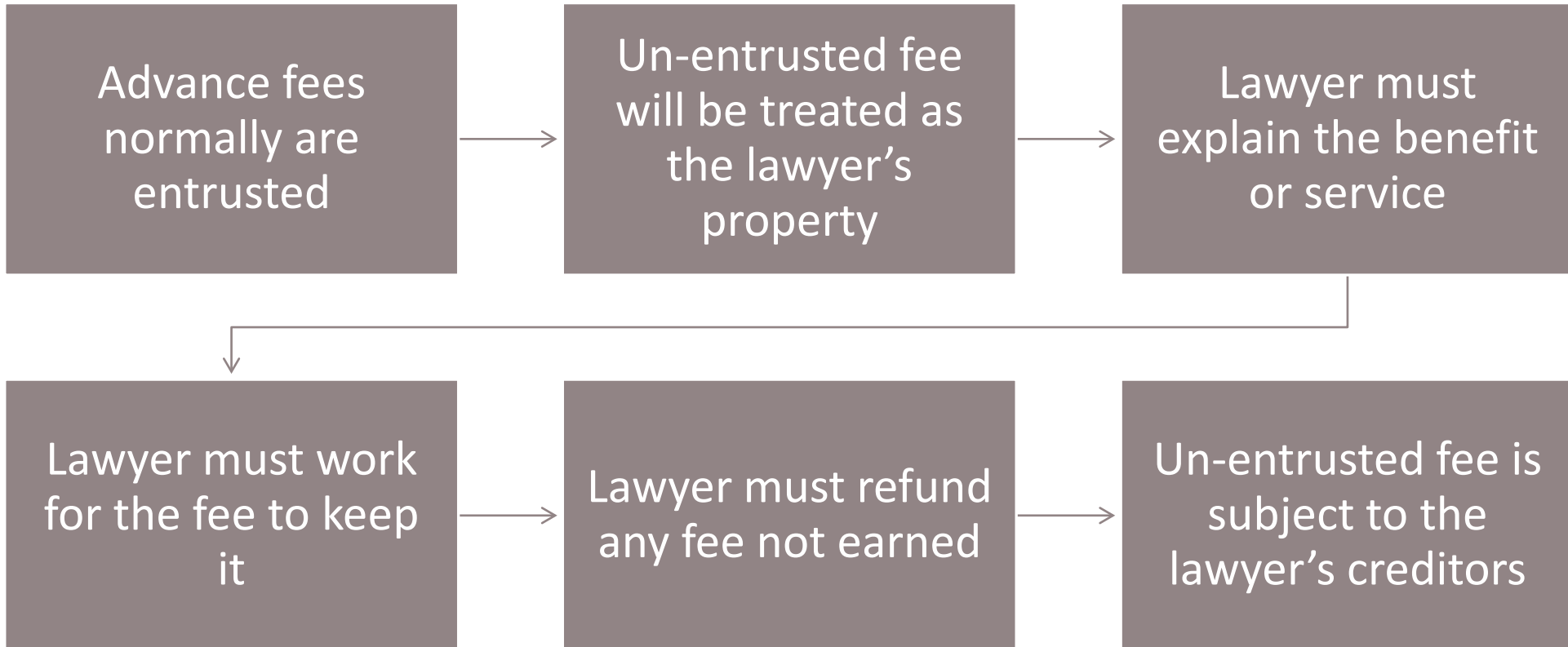
### DC Rule 1.15(b)

“... when the lawyer is otherwise compliant with the contrary mandates of a tribunal ...”;

If you are licensed and principally practice in another jurisdiction and are IOLTA compliant there.

# IOLTA Exception Informed Consent

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# IOLTA Account Name

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Examples:



\*Rochelle Washington Lawyer DC IOLTA\*



\*The Washington Firm DC IOLTA\*

# Trust Account Record Keeping

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What are you required to keep? Complete records - Rule 1.15(a);

How long? . . . for a period of five years after termination of the representation. Rule 1.15(a);

But is it ever safe to destroy trust account records when there is no statute of limitation on a Bar Complaint?



# Complete Trust Account Records

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What are complete records?



Hint:

If Bar Counsel cannot figure it out from your records, then your records are not complete.



In re Donald A. Clower, 831 A.2d 1030, DCCA 2003.

# Bank Statements

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01

You Open!

02

Examine  
them  
regularly

03

Do not  
delegate

04

Reconcile the  
bank  
statement



Fri 9/4/2015 12:56 PM

HOTRONIC FACTORY TOOLS <gerentetrespasos@ramosecopini.com.br>

LEGAL AID

To

Dear Attorney,

We are currently facing severe pressure from our Supplier in Asia to pay up the balance funds that we owe them. The debt resulted from an outstanding payment of \$318,200.00 for goods delivered to our customer (A local company in yours).

As contained in our Supplier's commercial invoice, the due date of payment was February 18th, 2014. However, the products were delivered in perfect conditions, at receiver's location in Canada where they are currently working on a new business (as stated in the acknowledgment letter we received from them). Ever since the expiration of payment deadline they kept asking for more time because of their current business situation in Canada. We did extend the payment deadline before now, but they failed to come up with the payment.

We want to confess that we are tired of waiting endlessly, hence we choose to draw your attention to this relationship with our customer, which though was cordial and successful over the past few years, but going soured now. Earnestly, it is our desire to keep the relationship after collection of this outstanding sum owed to us, which informed these details. So as to enable you approach the issue politely, by issuing a basic demand letter to them giving them fourteen days deadline to come up with a payment plan. Failing which, we shall be left with no other option than commence litigation by file a lawsuit against them.

Kindly give us legal idea of your fee structure & rate both for the demand letter and litigation in phases after you had finish with conflict check on our customer

I look forward hearing from you timeously.

Sincerely yours,

Frank Chadwick  
International relationship Manager  
HOTRONIC FACTORY TOOLS  
SHOP1 GF TECHLEE COURT

# SCAMS and IOLTA Accounts

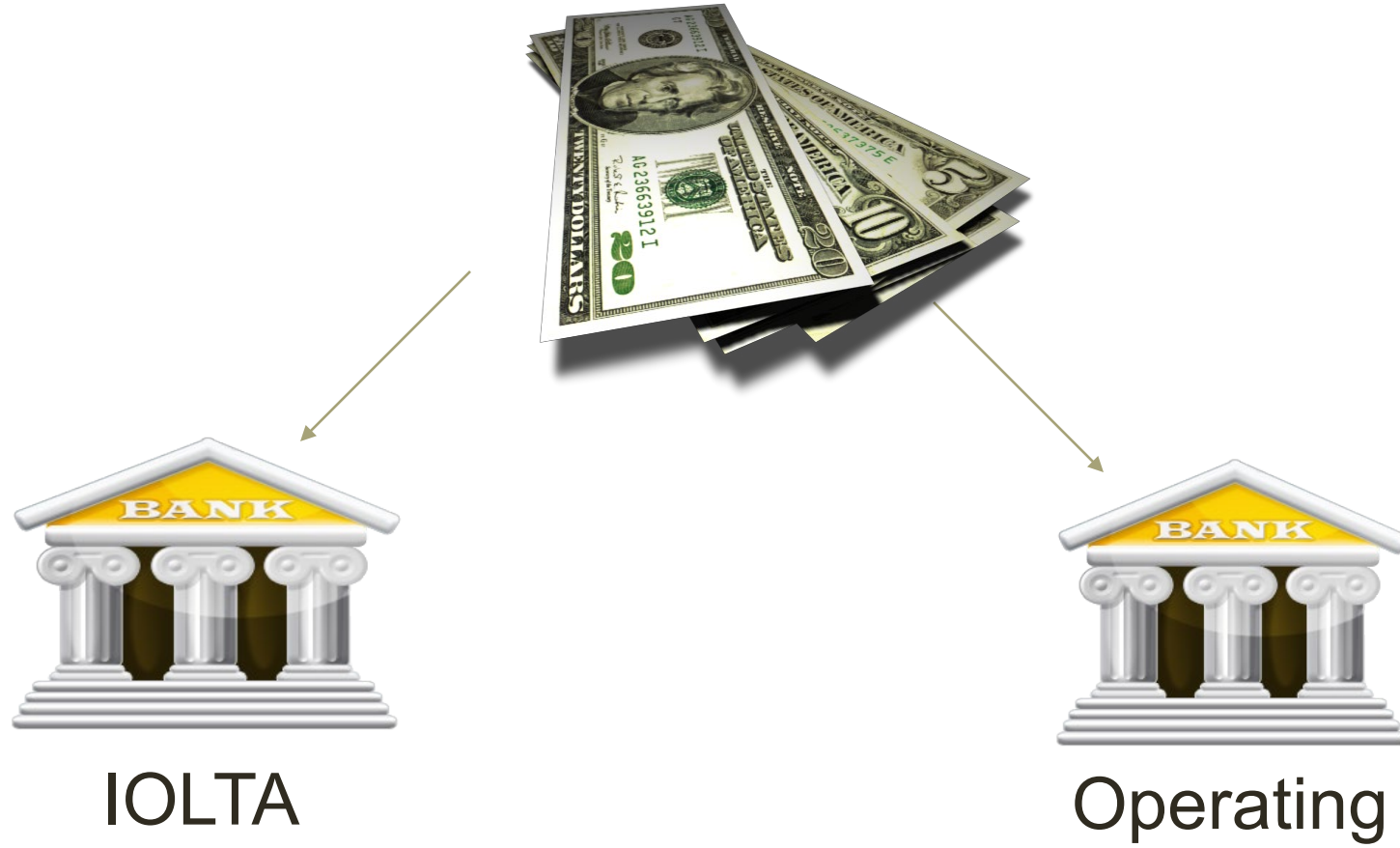
# Handling Suspicious Checks

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## Collection UCC 4-501

# TRUST ACCOUNTING





So where does the money go?

If the Fee is an ...



Advance Fee



It goes in your...



IOLTA Account

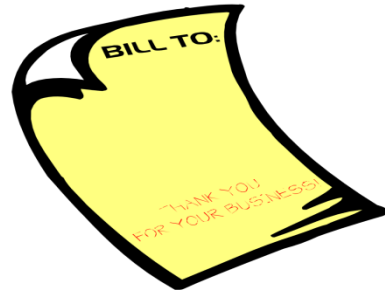
Then you....



Perform the work



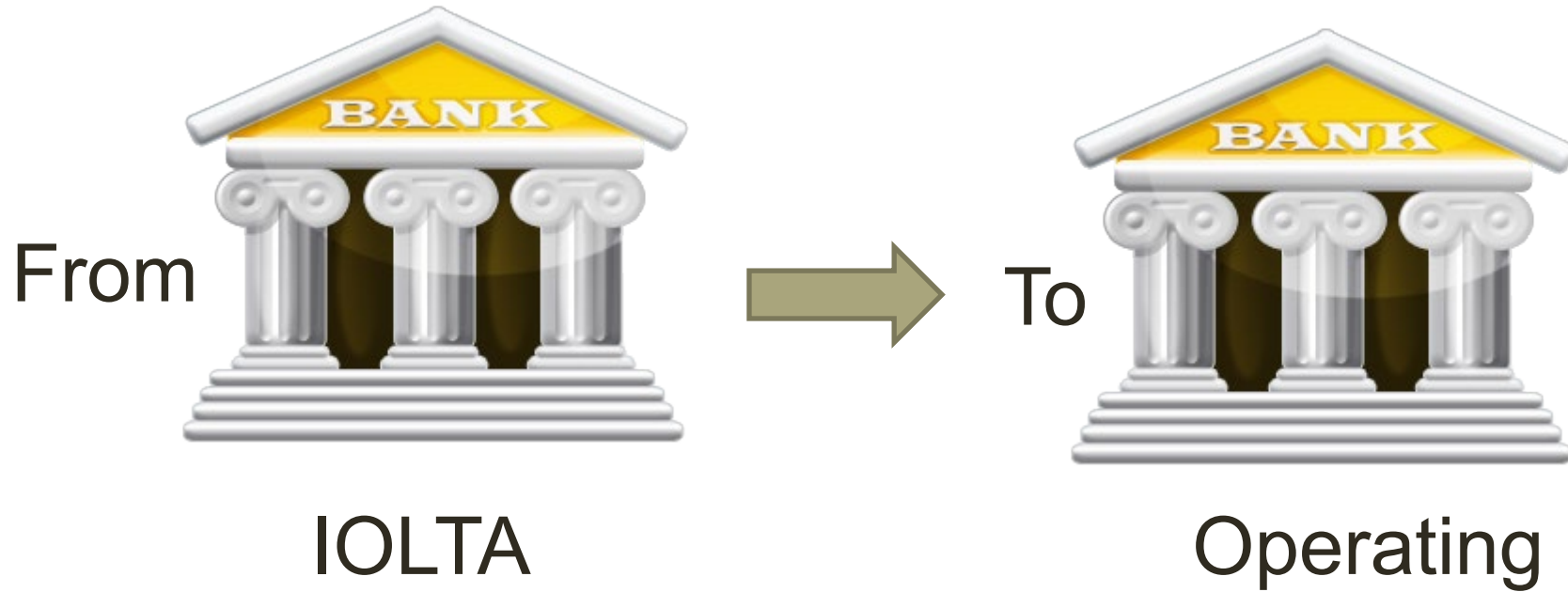
And then...



Send invoice



Move the money per your fee agreement ...



What if you get paid after the work is performed?

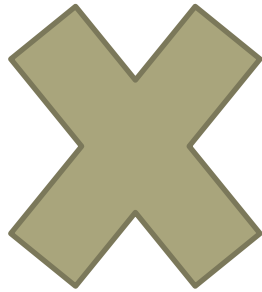


Then you deposit straight to...



Operating Account

NEVER



Advance Fee



Operating Account

UNLESS.....

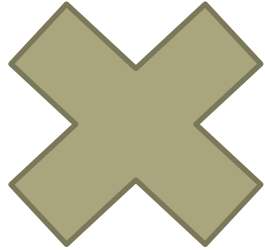
You obtain the clients “Informed Consent” to deposit their money into your Operating account

Best Practice Tip: Don't Do This!



NEVER

Your Money



IOLTA Account

Except....

Can you put your money in the IOLTA account?

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Per D.C. [Rule 1.15\(f\)](#):

Yes, but ONLY to cover bank charges made against account



# Fee Disputes

- In Re Kenneth Martin, D.C. Court of Appeals, No. 11-BG-775, March 28, 2013 :
- When notified by a client “with reasonable promptness” of a fee dispute then...
  - Can not remove disputed fee from Trust;
  - Or, immediately return to Trust;
  - With “reasonable promptness” (case by case).

# ACAB- Attorney Client Arbitration Board

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Fee Dispute Program

LEO: 211, 218


Now LEO 376: Mandatory Provision in  
Fee Agreements



# Fee Dispute Traps

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There is no requirement that the dispute be “genuine,” “serious,” or “bona fide In Re Paul S. Haar, D.C. Court of Appeals, No. 96-BG-307, July 17, 1997



An award by the ACAB can be challenged but not unreasonably by the pursuit of unsubstantiated or frivolous claims.



Cannot enter into an agreement with client requiring client to withdraw a bar complaint or to not cooperate with disciplinary proceedings.

# D.C. Court of Appeals Address Haar Case

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[Click here to listen](#)

September 23, 2020



# Accepting Credit Card Payments

- [LawPay](#)
- [LEO 348](#)
- [Square Card Reader](#)
- Ask your bank: Do not honor a chargeback without a retrieval request.
- Credit card provisions for fee agreements
- PayPal risks - avoid commingling

# SETTING FEES

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# Setting Fees

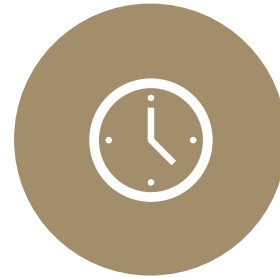
[www.laffeymatrix.com](http://www.laffeymatrix.com)

[USAO Laffey Matrix](#)

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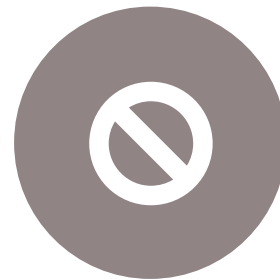
Rule 1.5 - what's reasonable?



Know what your productive hour is worth



Effort  $\neq$  Value



Avoid appearance of Greed

## How We Project Greed

We over dramatize facts;

We unfairly attack the opposition;

We exaggerate claims;

We sue for \$500k and pay \$100k to settle;

Punitive terms in our fee agreements.



# The Clients View

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- Clients view of the problem helps you to determine the Fee
- Fees are driven by emotions and value and

FEES DETERMINE PROFIT

# In Re: Abrams & Abrams, P.A.

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605 F.3d 238; 2010 U.S.  
App. Lexis 10071;  
U.S.C.A. Fourth Circuit,  
May 18, 2010;

\$6 million fee reduced  
to \$600,000.00 - federal  
judge abused discretion;  
remanded for further  
proceedings;

Federal judge failed to  
recognize the  
significance of the  
contingency fee & the  
result obtained.



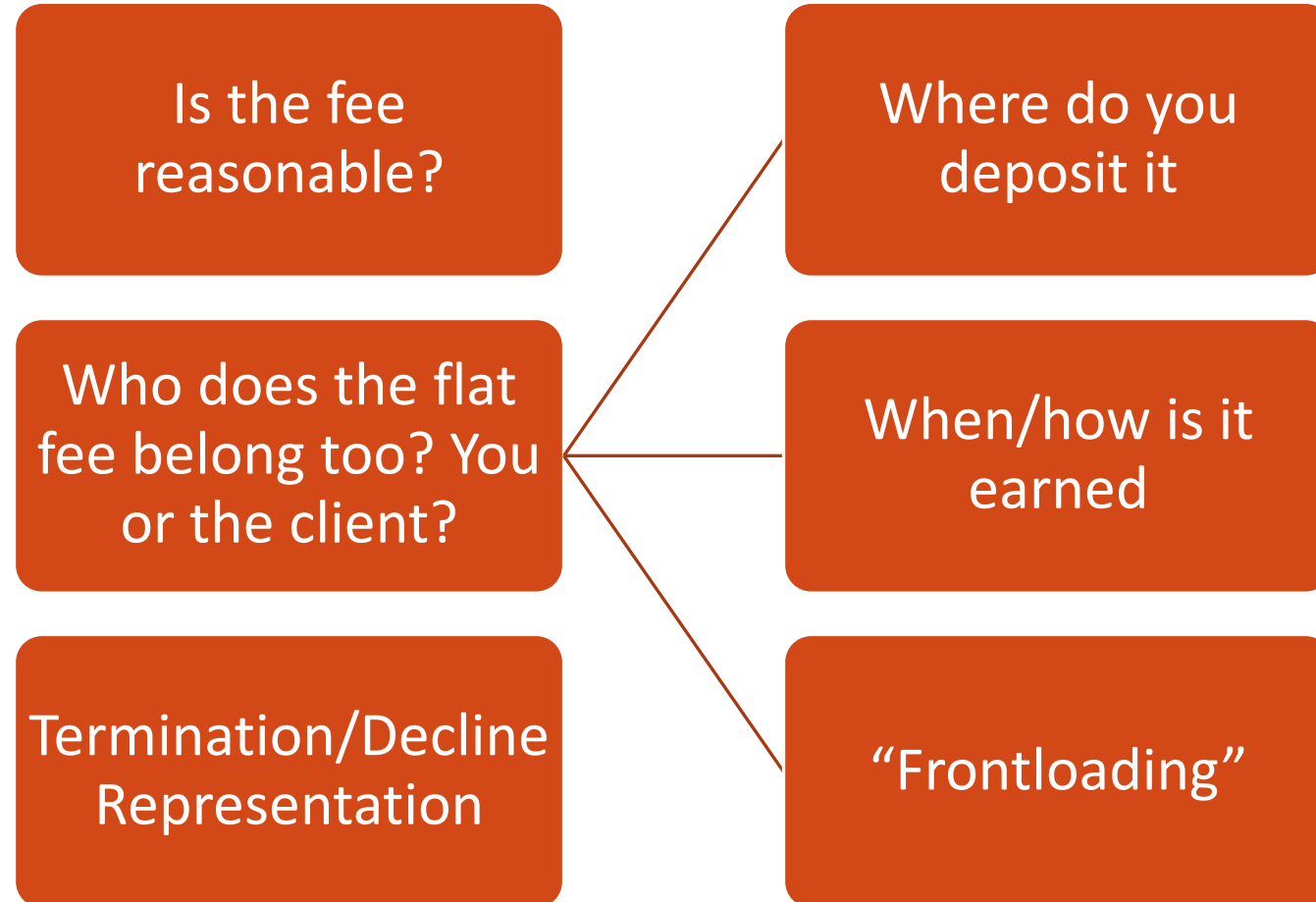
# How do you charge?

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**FLAT FEE v. VALUE BILLING v. HOURLY**

# Advance Flat Fee Problems

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# Case Law On Flat Fees

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IN Re Robert Mance, 980 A.2d 1196 (D.C. 2009)

- Advance flat fees are unearned fees
- Must go into trust account unless client gives informed consent
- Create an earning mechanism in the fee agreement

# Handling the Advance Flat Fee

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- Mance and [LEO 355](#)
- When is the fee earned
  - Milestones / stages / passage of time
  - Cover in the Fee Agreement
  - Impact of Early Termination
    - Rule 1.16
    - Avoiding a Bar Complaint

## Review of Advance Flat Fees

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Reasonable Fee

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Earning mechanism

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Deposit to IOLTA unless client gives  
informed consent

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Withdraw funds per earning mechanism

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Return unused/unearned portion

# Contingency Fees

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In re Kenneth A. Martin, D.C. Court of Appeals,

No. 11-BG-775, March 28, 2013:

- Cannot charge additional fees for the collection efforts on a contingency fee arrangement unless explicitly agreed to by client
- Attorney can not acquire a greater interest than the client. 45% attorney fee deemed the “outer bounds of reasonableness”
- Attorney fee sharing arrangement on contingency must still be reasonable. Total attorney fee combined should not exceed 45% of the award

# Flat Fee- Hourly



Usually determined by: Hourly rate x average time = Flat Fee



Not really a flat fee but hourly in disguise



Could potentially be unreasonable



Time  $\neq$  value.

# Flat Fee-Value Billing

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Value billing: the amount billed is based on the *value* of the service (or information) instead of the number of hours spent.



[Handbook from Association of Corporate Counsel](#)



# Value Billing

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- Problems with value billing
  - cases that “blow up” and take much more time or work than anticipated when setting the fee (family law)



## Advantages

Client knows upfront cost

Client can make a better-informed decision about case and strategy

Reduces likelihood of fee disputes

Can limit an attorney's commitment to a case

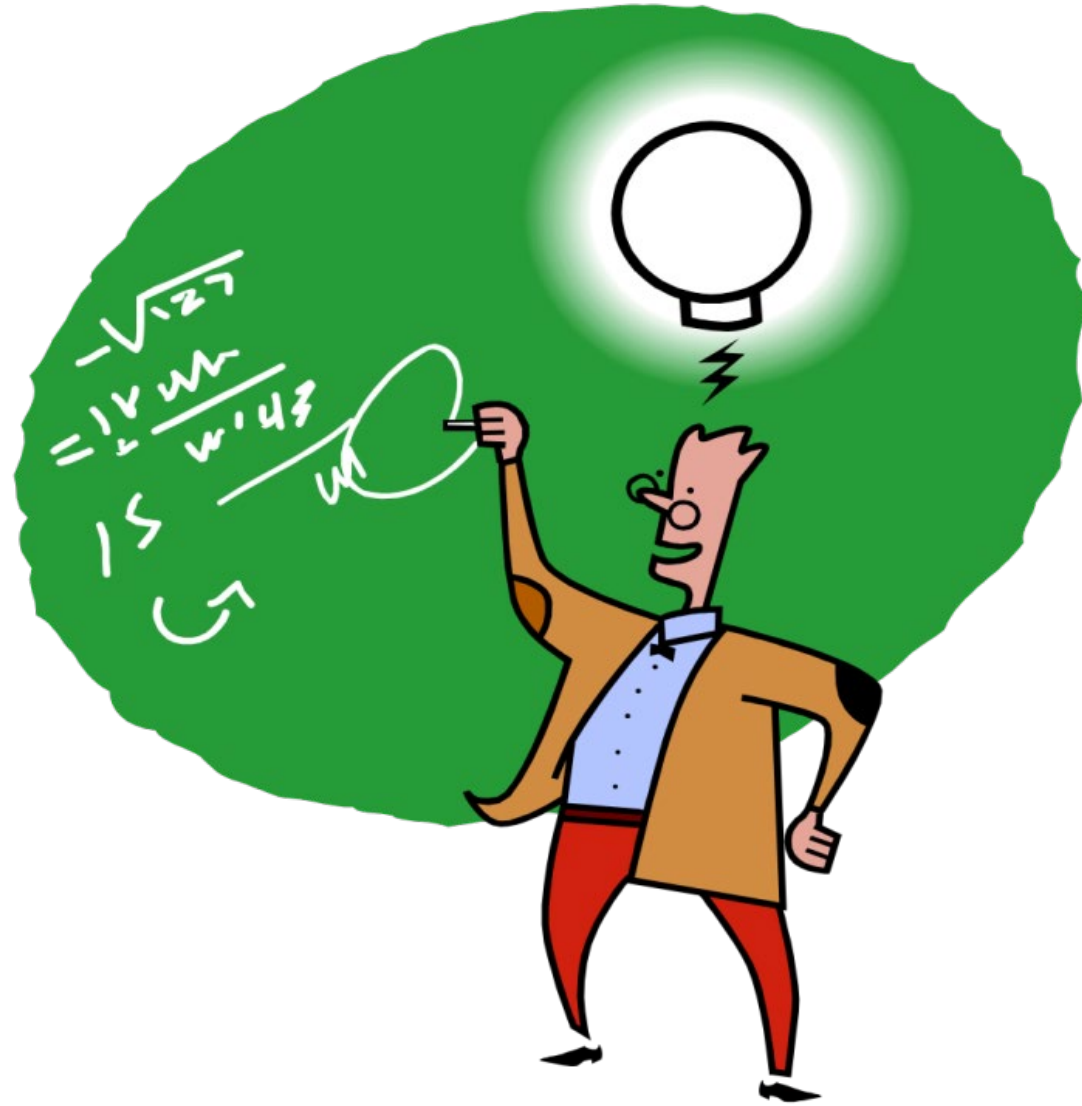
## Hourly Billing

### Pros:

- Allows you to get paid for the time you put in on a case

### Cons:

- Could overcharge client
- Could underpay yourself



# By Case Formula

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Total Fixed Cost = ?

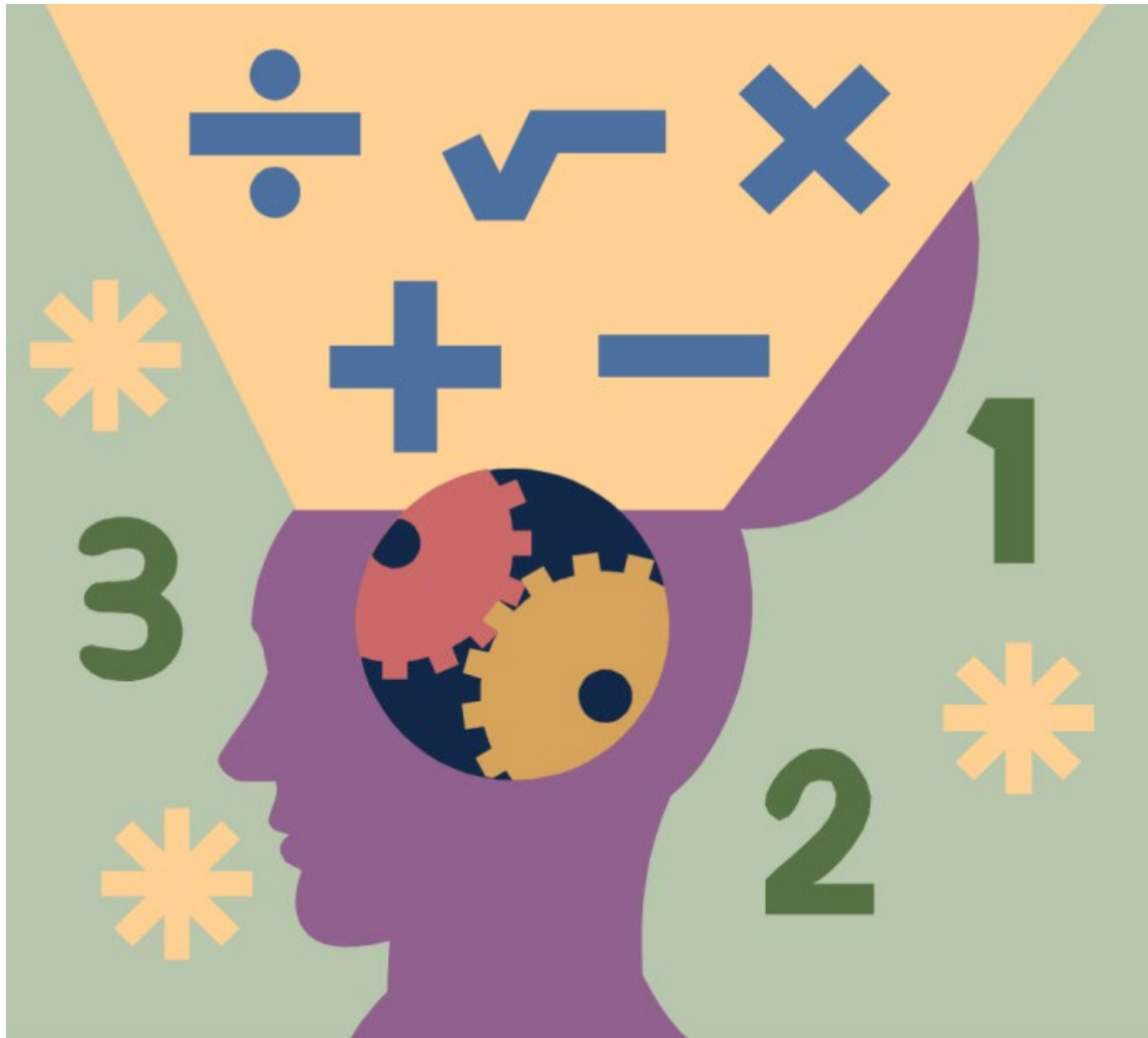
Matter price - Cost

## Matters Needed to Break Even

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$$\frac{\$5000.00}{\$1000.00 - \$750.00} = 20$$

You will need 20 matters to break even



# Rate Formula

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\$11,250

$\frac{\$1000.00 - \$250.00}{}$  = 15 matters to break even



## Rate Formula

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- \$20,000.00 Monthly Fixed Cost
- Every new matter has \$500 in profit.
- 40 new matters each month to break even.



# Rate Formula

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- \$1000.00 in monthly fixed costs
- Every new matter has \$500.00 in profit
- 2 new matters each month to break even





# The Hourly Rate Formula

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THE LOWER YOUR OVERHEAD THE MORE QUICKLY YOU CAN BREAK EVEN AND SHOW A PROFIT

What should  
you charge?

How do you determine  
your cost for solving a  
problem?

Know the value of a  
productive hour

# Do the Math....

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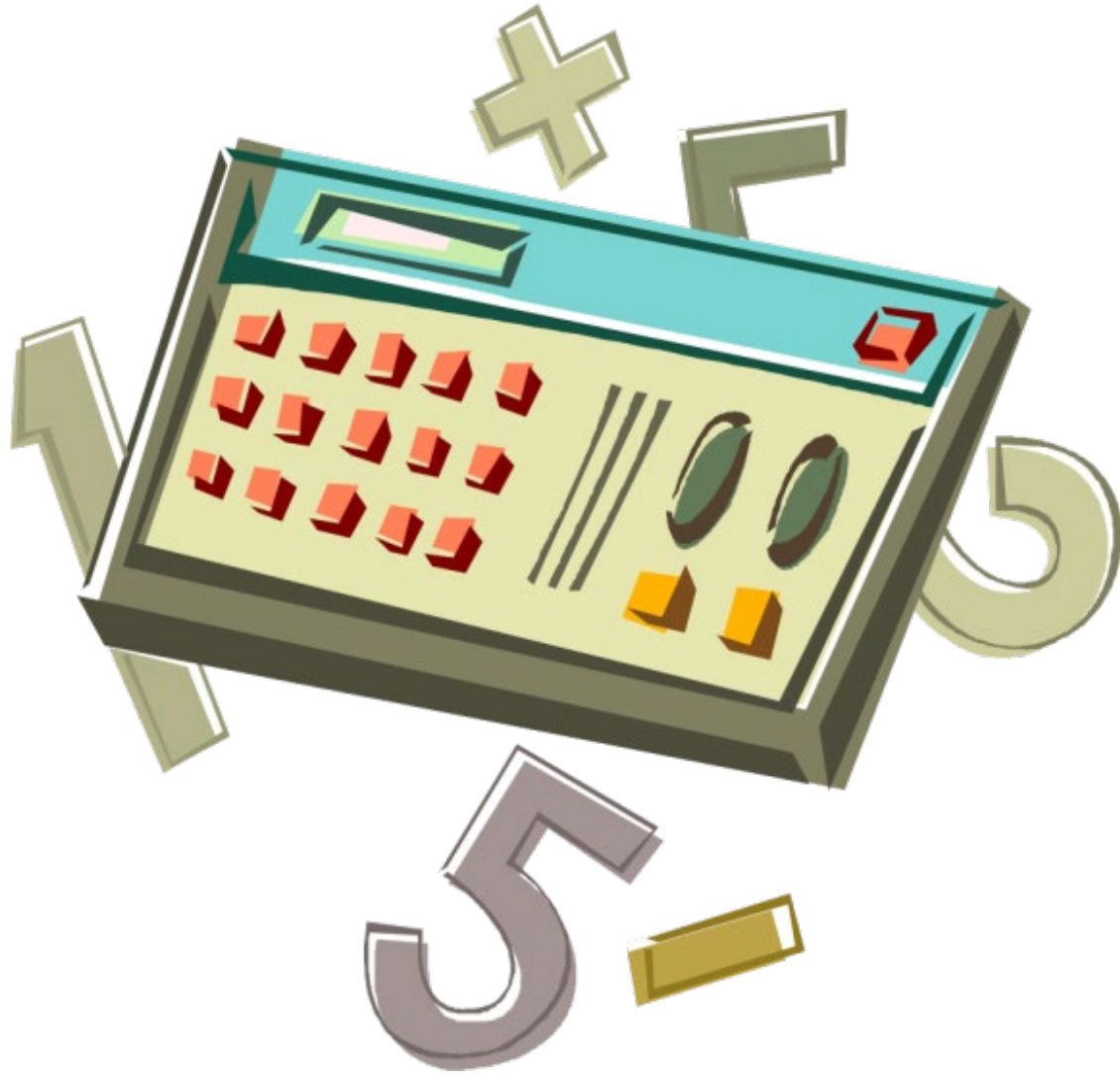
- \$200,000 in annual revenues
  - Over a 50-week period
  - Over 5 days a week
  - Over 8 productive hours a day
  - A productive hour is worth \$100.00



## How much is your time worth?

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- \$300,000.00 in annual revenues
- Over a 50-week period
- Over 5 days a week
- Over 3 productive hours a day
- A productive hour is worth
- \$400.00



# The Formula

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$$\frac{\text{Annual revenue}}{\text{\# of weeks you will work}} =$$

Then divide by Number of  
productive hours in a week

# INCOME

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Productive billable time determines income and



HOW YOU SPEND THE REST OF THE TIME  
DETERMINES YOUR FUTURE

Practice Management Advisory Service

# Lunch and Learn



October 8- *The Impact of Social Media Marketing on Your Firm's Online Reputation*, presented by Robert Gordon of [Thomson Reuters](#).

October 15, 2020 — *Practice perfect: Strategies for Growing Your Firm*, presented by [Ruby Receptionists](#).

# Networking Events

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**October 9, 2020, Networking Lunch, Network Friday, at 12:30 p.m. RSVP to [steven@stevenkriegerlaw.com](mailto:steven@stevenkriegerlaw.com)**

**October 30 , 2020, *Network Friday*, at Noon. RSVP to [rsjillions@gmail.com](mailto:rsjillions@gmail.com)**



# HOMework

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- You may obtain copies of these slides by contacting [rwashington@dcbar.org](mailto:rwashington@dcbar.org).
- Follow me on twitter for law practice management articles and tips **@attywashington**
- **We will see you on October 19**
- Homework:
  - Work on your business plan- Financial spreadsheets
  - What's your productive hour worth? Calculate