

SUCCESSFUL SMALL FIRM PRACTICE



Session 5: Fee Agreements and Billing



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Rule 1.5(a)- Fee Shall Be Reasonable



8 Factors:

1. Time, labor, difficulty and skills needed
2. Potential conflicts
3. What is customary
4. Value

Rule 1.5(a)- Fee Shall Be Reasonable

5. Case Limitations

6. Nature and Length of Relationship

7. Experience, reputation, and competency level

8. Type of fee



USAO Attorney's Fees Matrix

2015-2019

Rule 1.5(b)

When the lawyer has not regularly represented the client *then...*

You must put the agreement in writing and say what you are doing and how much.

What about Pro Bono or CJA

Do you need a fee agreement when accepting D.C. panel work or Pro Bono cases?

- YES

Talk About the Money

Have a conversation with the client:

- About your fees
- Your ground rules
- Clients expectations
- Your expectations
- How you will communicate

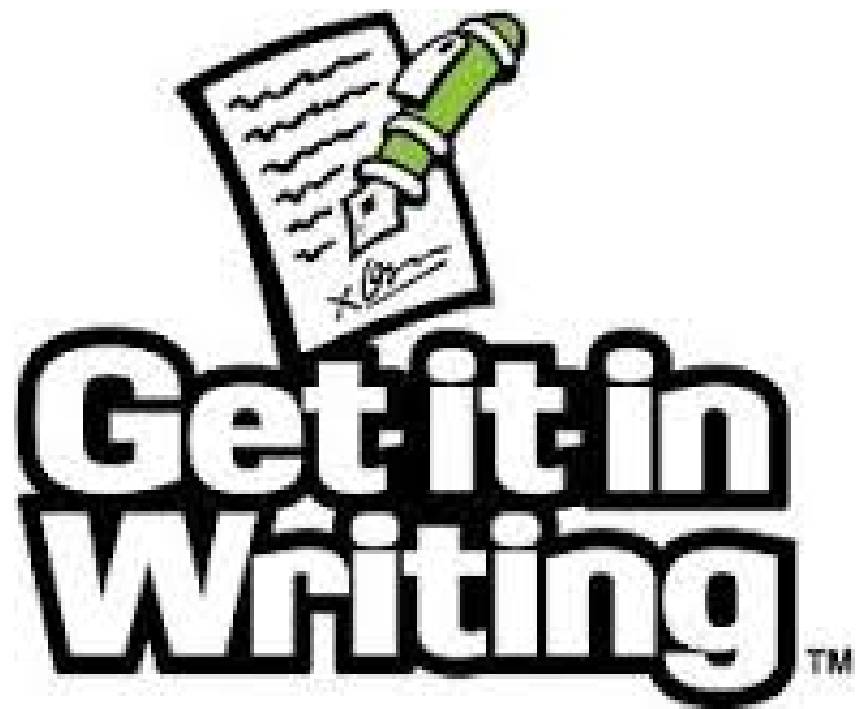
Let's talk about
MONEY 

The Bullet Proof Fee Agreement

Elements of Engagement Agreements:

- Identity of the client
- Scope
- Fee
- Expenses
- File Retention Policies





Best
Practice....

WHO?

Identify the Client

The Who...Who....

Identify the client.



Scope

The What...

- Describe the SCOPE of work you intend to do for the client.
- May have to describe what you Won't do.
- Litigation/Appeals





FEE

How much? And for What?

Rate/basis for fee

Describe in detail

Flat Fee v. Hourly

Explain trust accounting to client

Expenses



Describe what client may have to pay
(incl 3rd party)

When you will expect payment

How 3rd party will be chosen



ACAB- Attorney Client Arbitration Board

Fee Dispute Program

LEO: 211, 218

Now LEO 376:
Mandatory Provision in
Fee Agreements

Other Provisions - Expectations

Include clauses that help set expectations for the client

Billing Provisions

Billing

- When you will bill
- When is the client to pay
- Invoice Method
- Minimum fees or increments
- Explain all billing practices



Termination

Termination of relationship

- Handling client property
- Lawyer may have to keep a file 5 years ([LEO 283](#))
 - Note: no statute of limitations on a bar complaint
- File Retention Policy

No Promises

- Make no guarantees

Time Limit

- Put a time limit for signed fee agreements

You Sign

- Include a signature line for yourself

Fee
Agreement
Tips:

If it is a Contingent Fee...

Explain how the fee will be calculated in the event of a settlement or collected verdict.





If Taking an Advance Fee...

- Explain how you will charge against the fee
- Explain what happens when advance fee is exhausted
- Explain that unearned fees will be placed in trust and withdrawn as earned.

If Taking a Flat Fee...

Inform client if the start of work is contingent on the advance fee being paid and deposited to IOLTA.



If Taking an Hourly Fee



- Explain how your time will be billed
- Ex. (you will be billed hourly for preparation for a hearing, research and investigation, drafting a motion....)



What if
Someone Else
is Paying?

Third Party Paying Fees

Rule 1.8 (e) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) The client gives informed consent after consultation;
- (2) There is no interference with the lawyer's independence of professional judgment or with the attorney-client relationship; and
- (3) Information relating to representation of a client is protected as required by Rule 1.6.

Third Party Paying Fees

What are the issues if a Third Party is paying the legal fees?

- Sample Agreements available on request
 - Only disclose amount due
 - Can not discuss case with 3rd party
 - Be careful about conflicts
 - Best to allow client deal with 3rd party



Taking Credit Cards for Fees

Credit card provisions for fee agreements

Use an agreement that states you can take future charges

Clear all future charges with client in writing when possible



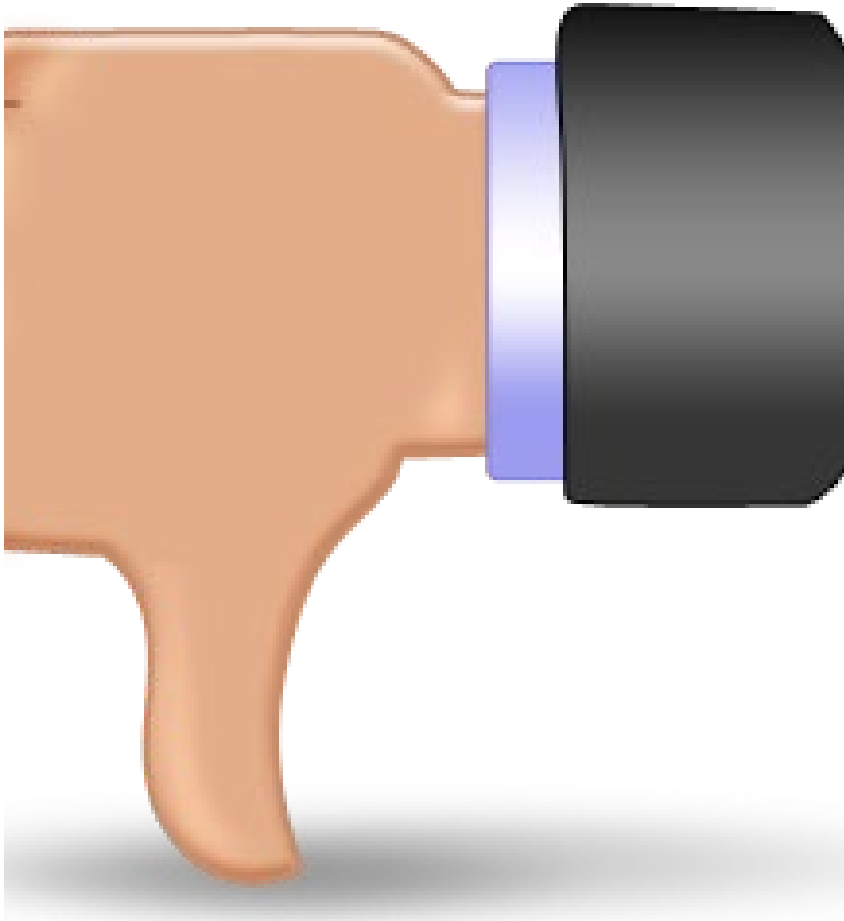
Close letters

Say thank you

Remind that work is over

File/Document Retention

Final Bill/Remaining Balance



Non-Engagement Letters

- Say you will not represent
- Say why (optional)
- Suggest other counsel/SOL
- Send by certified/return receipt- keep copy



Sample Forms

We have sample Fee
Agreements

Request:

SmallFirmCourse@dcbar.org

CREATE A BILLING SYSTEM

BILLING

&

INVOICING



The Psychology of Billing

- What we sell- Professional Judgment
 - Explain and educate
 - Speak to client
 - Don't get numb
 - Value vs. Time

Value and Need

Know what a solution looks like to the client



What is most important to them



Get them the most bang for their buck



Spend their money like it is your own money being spent

Make it Easy to Get Paid

Take advance fees, but follow the rules IOLTA

Flat fee parts of the case whenever you can

Consistent Invoicing and late notice procedures

Billing- Best Practices

Set
expectations
upfront

Be consistent

Deal with
expenses

Detailed
Statements

Billing Principals

1

1. Create incentives for clients to pay: before, now, or during the work

2

2. Have a functional system for educating the clients about what we do

3

Two Truths:

- There is a moment when we are needed most
- Clients DO read the bills



Track Your Time Now!

- Manual or electronic- but do it now not later!
- Saves you time
- Makes you Money
- Helps you bill timely and consistently

Tracking time now means...

Content of your
invoices will
improve

Better explanation
of the work

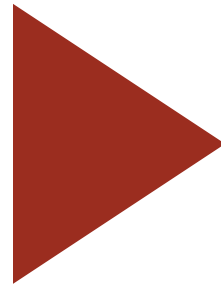
More likely to be
fair and accurate

Review before they
are sent to client

Block out time to
do this!

Include all you did,
even if you take off
billing time

Make Invoices Look Good



Include:

Date

Time worked

Expenses incurred

Prominently display the amount owed

Timeframe for client to dispute

How you take payments

Email or Snail mail, know your clients expectations



Invoice Timing



Follow the terms in your fee agreement



Bill when you say you will



If you don't send- they won't pay



Don't include invoice with work product- keep separate



A Few Suggestions:

- Resist billing for more than two hour blocks
- Total up smaller entries
- Send larger invoices early to give clients notice



A Few Suggestions:

- Make sure entries don't appear as duplicative work
- Include how client can dispute or question the bill
- Use technology to assist you!

Have a consistent collections process in place

Send standard letters

Follow up with calls to notify

Don't be deterred or delayed even if they say they will pay

Make them feel like it is part of the process

Don't bend

They will respect you more

If they do not
pay:

Lunch and Learn



October 10, 2019 — *Fastcase 101*, presented by Matthew Geary of [Fastcase](#).

October 24, 2019 — *Clearing Clutter: Tuning in to Time, Space and Mind*, presented by Niki Irish of the [D.C. Bar Lawyer Assistance Program](#).

Networking Events

October 13, 2018, Networking Lunch, Network Friday, at Alto Fumo, 2909 Wilson Boulevard, Arlington, VA (Clarendon Metro) at 12:30 p.m. RSVP to steven@stevenkriegerlaw.com

October 26, 2018, Network Friday, at Barrell& Crow Cordell Ave., Bethesda (Bethesda Metro) at Noon. RSVP to rsjillions@gmail.com

[Click Here: More Info on Our Free Programs](#)

HOMework

- You may obtain copies of these slides by contacting rwashington@dcbar.org.
- Follow me on twitter for law practice management articles and tips **@attywashington**
- **We will see you on October 21 (Dan Mills)**
- Homework:
 - Work on a Fee Agreement template for your firm (Tip: try to start with concept map)

A Few Resources

[Handbook for Value-Based Billing Engagements](#) January 2015

[2 Routes to Hourly Rates for Lawyers](#) April 2015

[Lawyer Hourly Rate Calculator](#) July 2015