



PRACTICE MANAGEMENT ADVISORY SERVICE

February 2026

From the Desks of Your D.C. Bar Practice Management Advisors



Can Your Fee Agreement Get You in Trouble?

By Kaitlin McGee

Lawyers often assume that if a fee agreement looks professional or has been used by other lawyers for years, it must be rule-compliant. In practice, many fee agreements are built from inherited or borrowed forms that lawyers did not draft, have not revisited, and may not fully understand.

Dan Mills and I recently presented a [program on fee agreements](#) to address recurring issues and misconceptions we see in our review of D.C. lawyers' fee

agreements. One of the most common is the belief that reading the text of the Rules of Professional Conduct alone is sufficient. In reality, compliance in this area depends heavily on how those Rules have been interpreted through D.C. case law, particularly *In re Mance* and *In re Alexei*.

As a result, older or recycled forms frequently include provisions that are inconsistent with current law — or simply not good for business — and should be revised or removed.

Below are several of the issues we see most often, along with practical ways lawyers can improve their fee agreements.

1. Treating Advance Fees as “Earned on Receipt” or “Non-Refundable”

One of the most persistent problems we see is language suggesting that a flat or advance fee is earned immediately and is non-refundable. That approach is not permitted in the District of Columbia.

Advance fees — meaning any fees paid before work is completed — must be treated as client funds until they are earned. Language stating otherwise is a significant red flag and can trigger disciplinary scrutiny.

Key Point: If a client pays before work is started, the agreement should treat that payment as an advance fee and explain how and when it is earned.

2. Failing to Explain How an Advance Fee Is Earned

D.C. case law allows lawyers to charge flat fees and to earn them before the conclusion of a matter, **but only if the fee agreement explains how that happens.**

An earning mechanism can be based on hourly work, stages of the case, passage of time tied to work performed, or another reasonable structure. What matters is that the agreement clearly describes when and how the lawyer earns the fee.

If an agreement does **not** explain how an advance fee is earned, the fee is earned at the conclusion of the representation. That can create serious cash flow problems if the matter lasts a long time or the client decides to terminate representation early.

In Short: If you want to earn a flat or advance fee before the end of a matter, the agreement must explain the earning process in clear terms.

3. Vague or Incomplete Scope of Representation

Another frequent issue is a lack of detail about the scope of representation. Some agreements say little more than “representation in this matter,” without addressing what is included, excluded, or requires a separate agreement.

Scope clarity benefits both the lawyer and the client. It sets expectations and functions as a risk-management tool if disputes arise later about what work was — or was not — part of the engagement.

What to do instead: Define the scope carefully, and where appropriate, state what the representation does *not* include.

4. Using the Fee Agreement to Control Client Behavior

Some fee agreements attempt to manage difficult client behavior through sanctions, penalties, or aggressive provisions. These often reflect past bad experiences rather than thoughtful drafting.

Fee agreements are not an effective substitute for client screening, communication, or relationship management. Overly defensive provisions can undermine trust, confuse clients, and increase the likelihood of conflict.

Bottom line: A clear, readable agreement that explains fees, scope, and expectations is more effective than one that tries to anticipate and punish every possible problem.

A Drafting Rule of Thumb

If a provision is in your agreement because “it’s always been there” or because it came from someone else’s form and you can’t clearly explain what it does, that provision deserves a second look. Complexity and volume do not equal protection.

Learn More

You can join us in March for Managing Money to examine these issues more comprehensively.

PMAS provides free, confidential consultations and can review fee agreement templates with you. To learn more, contact pmas@dcbar.org.

Basic Training & Beyond

If you’re starting a firm, [Basic Training & Beyond](#) is a great jumping-off point. [Day One](#) will teach you the essentials to get your firm off the ground, and [Day Two](#) will help you grow and manage your firm.

Here is how to start, grow, and manage a law firm in a large, urban market.

This month's [Basic Training & Beyond](#) is set for **February 3 & 5, 2026**, from 9:15 a.m. to 4:30 p.m. and **will be held virtually** due to recent weather conditions and related disturbances. The program is presented monthly for members and law firm staff.

This program has been presented more than four hundred times for more than 5,000 lawyers over the last seventeen years, and many have launched and are now operating small firms. We stay connected with many small firms, and what we learn informs the content for this program.

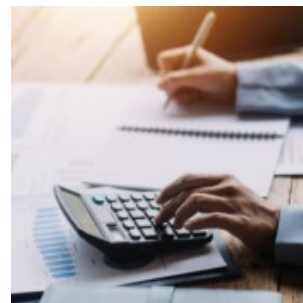
Managing Money

Managing Money

Our next in-person session of Managing Money is set for **March 30, 2026**, from **9:00 a.m. to 12:30 p.m.**

We also present Managing Money on request for a law firm or organization.

[Register for an upcoming session or schedule a session for your firm here.](#)



Lunch and Learn

PMAS is collaborating with the Law Practice Management Community to bring you the following Lunch and Learn program:

- February 19, 2026 – Can a Newsletter Really Help Grow My Law Firm?

LPM  PMAS Productions

All programs begin at Noon on Zoom. Register for any or all [here](#).

Successful Small Firm Course

Are you interested in a business incubator approach to growing your law firm?

Consider working with us on an individual basis. We offer the **Successful Small Firm Practice Course** in a series of one-on-one sessions on Zoom.

The Course serves as an incubator for solo attorneys and small firms and helps them work through their business and marketing plans with support, feedback, and guidance. Lawyers focus on the type of firm they want to create and work through the Course at their own pace with built-in accountability for achieving their business goals. If you are interested in this approach to creating and growing a law firm, contact PMAS@dcbar.org.

Resources

Missed any of these recent sessions? You can [access the recordings and materials anytime](#).

Here's a glimpse of some recent sessions:

- **Can Your Fee Agreement Get You in Trouble?**
- **Artificial Intelligence (AI) Literacy for Solos & Small Firm Counsel**
- **What's It Like to be a Criminal Defense-Court-Appointed Lawyer in D.C.?**
- **AI for Small Firms**

If you are interested in a practice management assessment, [click here](#).

– Kaitlin & Dan

In other news . . .

[Legal Ethics Opinion 389](#), Flat Fees, Subscription Fees and Disbarment has been revised.

[D.C. Lawyer Assistance Program \(LAP\) Winter Newsletter](#)

For more information on the D.C. Bar Practice Management Advisory Service (PMAS), [click here](#).

CLE, Communities Events & Pro Bono:

Continuing Legal Education programs are [here](#).

Communities Events are [here](#).

Pro Bono Center training programs are scheduled [here](#).

As we return to D.C. Bar headquarters for meetings and events, everyone entering the building will need to comply with the [COVID Guidelines](#).

Our Practice Management Advisors are:

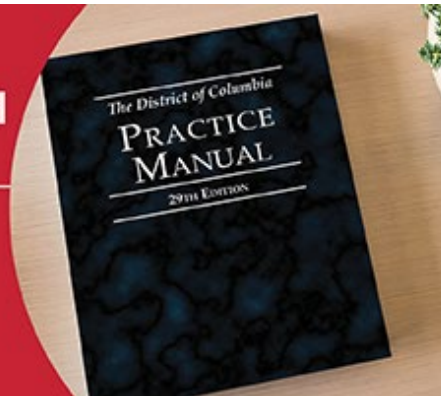
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Practice Management Advisors have a free and confidential relationship with D.C. Bar members pursuant to Rule 1.6(j) of the D.C. Rules of Professional Conduct.

District of Columbia Practice Manual

Every D.C. Lawyer's Must-Have Resource



This two-volume title, typically priced at \$495, is being offered to subscribers of this newsletter at a discounted rate of \$450. To obtain the discount code, please reach out to communitiesregistration@dcbar.org.



[Practice 360°](#) | [Courses and Trainings](#) | [Mentoring Resource](#)