



INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

The information included in this column is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.

RETAINING A LAWYER

What You Need to Know About Fee Agreements

BY CHAD BARUCH

Hiring an attorney is a lot like entering into any other consumer transaction. A consumer's best weapon is knowledge. You — the consumer — should know the attorney's qualifications, understand generally and be comfortable with how the attorney intends to meet your needs, and possess a written fee agreement clearly detailing your payment obligations. In most cases, this means asking questions — lots of them. This article contains a brief summary of issues relating to attorney fee agreements and a checklist of questions that you may wish to consider asking a lawyer before signing any fee agreement.



Meeting with the Lawyer. Prepare for your meeting by making detailed notes, including the questions you intend to ask the lawyer. Take any important papers with you to the meeting (and err on the side of inclusion in deciding what is important). Be sure the lawyer answers all of your questions. Finally, insist on a written fee agreement that includes *every single term* agreed upon between you and the lawyer during the meeting. If necessary, ask to take the fee agreement with you and review it for a day or two before signing it.

Selecting the Lawyer. When selecting a lawyer, the most important factor to con-

sider usually is experience. But don't make the mistake of equating experience with years of practice. After all, a lawyer can practice divorce law brilliantly for decades without learning a thing about bankruptcy or DWI defense. When interviewing a lawyer, some questions to consider asking include the following:

- What experience do you have handling matters like mine?
- Are you certified by the Texas Board of Legal Specialization in this practice area? (*Editor's note: Texas attorneys are not required to be board certified. For more information, visit tbs.org.*)

- When have you most recently handled a case like mine?
- What was the result?
- What was your general approach in that case?
- Is there a former client I might be able to speak with about your representation? (Remember, though, that the lawyer cannot reveal the identity of a former client without that client's permission.)
- Do you carry professional liability insurance?

This last question engenders some controversy. Texas lawyers are not required to



carry professional liability insurance. Some lawyers believe it is critical for clients to know whether their lawyers carry this kind of insurance and further believe that the existence of such insurance plays a critical role in protecting consumers. On the other hand, some lawyers believe the existence of insurance should play no role in retaining an attorney and could mislead consumers into believing they have protection against mistakes when they really do not. This much is certain: If you want to know about a lawyer's insurance, ask. And if you ask, no lawyer should have any trouble providing you with a forthright answer.

Understanding the Fee. First, know whether the lawyer will charge you on an hourly basis, a contingent fee basis, or a flat fee basis. You may wish to ask the lawyer to explain whether each of these potential fee arrangements would be advisable or practical in your matter. In some cases, a flat fee works to the client's advantage. In others, it is not practical.

If your attorney will charge you a contingent fee, here are some questions to consider asking:

- What percentage will be charged?
- How will that percentage be calculated? (Will the percentage be calculated based on the gross recovery or the post-cost net recovery?)
- Will the attorney actually pay the costs or only advance them? (If the attorney will advance costs, ask him or her to provide monthly or other periodic statements of costs; you don't want to discover the total amount of costs for the first time when you are considering settlement offers.)
- Who pays the costs if I lose?
- If you withdraw from my case for some reason, what rights do you have to receive payment for fees? (The fee agreement should explain the attorney's entitlement to a contingent fee, if any, should the attorney withdraw.)

If you are being charged on an hourly basis, here are some questions to consider asking:

- How often will I be billed and how long will I have to pay after receiving my bill?
- What interest and other fees are added to any unpaid amounts?
- How detailed are the bills? Do they include an itemization of all services performed and the amount of time spent on each service individually?
- Will I be billed for work performed by other attorneys or any staff members?
- What is your minimum billable increment and how is it applied? (For example, if the minimum increment of billable hours is .25 hour [15 minutes] and the lawyer makes five telephone calls of three minutes each throughout a given day, will each phone call be entered as a separate .25 hour or will the phone calls be combined to form one time entry of .25 hour? That could mean the difference between being billed for .25 hour or 1.25 hours.)
- How does my retainer work? Do you bill against my retainer? Am I obligated to replenish my retainer?
- Does the agreement require that you bill me only for time actually spent on my matter or does it allow you to bill me for more than the time you spend based on "value billing"?

Understanding the Costs. Many consumers focus their attention solely on fee provisions while overlooking equally important terms concerning payment of costs. Particularly in extended litigation, costs can be substantial. Be certain you and the lawyer agree on what costs you will pay and at what rate. In some cases, you may wish to reserve the right to be consulted about and approve any cost exceeding a specified amount. Some of the questions to ask about costs include the following:

- What types of costs am I responsible to pay?
- What amount will I be billed for copies and faxes?
- Will I be billed for electronic research costs? If so, how is the billing calculated?
- Are there ways I can help control the costs? If so, how?

Other Fee Agreement Issues. Of course, fee agreements present issues other than payment. One of these issues is responsibility for making decisions. Be sure the fee agreement spells out clearly what types of decisions you get to make and what types of decisions, if any, your lawyer gets to make. For example, you may want to require that the lawyer obtain your approval before preparing certain types of costly motions, particularly summary judgment motions. Also, be certain you understand what will occur in the event of a disagreement between you and the lawyer over fees or case strategy, or simply in the event of a personality conflict. The fee agreement should define the circumstances under which the lawyer will withdraw and any resulting liability for fees. If the agreement contains an arbitration provision, be sure you understand all of the arbitration terms and know whether you are giving up your rights to proceed in litigation against the attorney.

Conclusion. Again, a consumer's best weapon is knowledge. Don't be afraid to ask all of the questions necessary to ensure that you understand the terms of your agreement with a lawyer. And before you sign any fee agreement, be sure it accurately and completely sets forth the terms you have agreed upon. ✪



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