



# LEGAL FEE ARRANGEMENTS AND BILLING PRACTICES

**B**illing is the lifeblood of law firms. While many lawyers leave the grind of firm life for the freelance nature of a smaller firm, it is important to realize that without a good foundation of billing practices, your firm will not achieve its full potential.

New firms should take time to develop a standard fee agreement and implement good billing practices. The State Bar offers several CLE materials on these issues ([texasbarcle.com](http://texasbarcle.com)) and a number of private vendors offer tips on drafting invoices with the client audience in mind.

Many smaller firms have been successful in having non-traditional fee arrangements, including flat fees, outcome-based fees, and project billing. However, a series of ethics rules prohibit various types of billing arrangements, so be sure to study those when being creative. For example, Texas Disciplinary Rule of Professional Conduct 1.04 forbids lawyers from, among other things, charging an illegal or unconscionable fee. "A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable."

There are a number of instances where certain fees are unlawful. TDRPC 1.04(e) prohibits contingent fee agreements between attorneys and criminal defendants. Contingent and percentage fees in family law matters may tend to promote divorce and may be inconsistent with a lawyer's obligation to encourage reconciliation. It is also unlawful to have an unwritten contingent fee agreement. Additionally, agreements to divide fees among lawyers from different firms are not lawful unless the lawyers comply with TDRPC 1.04, which specifies that the lawyers are only paid in proportion to the services performed.

When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. As such, it is important to clearly set forth the fee in a written client agreement that should be executed at the beginning of representation.

One of the biggest obstacles for lawyers starting a firm is deciding how much to charge for services. It is important to

not underprice your services but to also match the client's expectations. If you send a client a large bill that far exceeds the amount in controversy, expect an uncomfortable conversation with the client. Similarly, if you take a case on an hourly basis, be sure to get an appropriate retainer as it could be the only money you receive from the client.

You should seek the advice of experienced lawyers in your field to determine the best billing arrangements to meet the needs of you and your client. Take time to consider and research your client agreements and be sure to develop a rock solid system for tracking time. Billing is an area where good habits will really pay off.

### Client Trust Accounts

It is imperative that you not mingle client trust funds with money in your law firm's operating account. Lawyers have been jailed for improperly raiding client trust accounts to cover business expenses.

Each licensed attorney, if handling client funds, is required to set up a separate Interest on Lawyers Trust Account (IOLTA). While it is permissible to use one IOLTA account for all clients, it is necessary to keep accurate and detailed records on transactions for each client.

A separate interest-bearing non-IOLTA trust account must be established for client funds to be held for a longer period of time and which are expected to earn interest in excess of the cost of maintaining a separate account. The interest earned in these cases belongs to the client.

The requirements for IOLTA accounts specify that an attorney or law firm must direct the financial institution:

1. To remit, at least quarterly, interest earned on the average daily balance in the account, less reasonable service charges, to the Texas Access to Justice Foundation (TAJF);
2. To provide TAJF with information regarding the name of the attorney or law firm for whom this remittance is made, the interest rate applied, and the amount of service charges, if any, deducted;
3. To provide the attorney with a copy of all the information sent to the TAJF.

TAJF uses the money to fund legal aid organizations that provide legal services to the poor. TAJF provides an IOLTA Notice to Financial Institution and Foundation form that must be completed by the attorney or law firm and given to the financial institution. A copy of this form must be sent to TAJF within 30 days of establishing the IOLTA account. Additionally, in the event of any change in account status or account closure, an attorney must notify TAJF in writing within 30 days of either event.

When choosing a bank for your general operating account, you should first inquire whether the bank provides IOLTA accounts. There are special requirements for IOLTA. When selecting your bank, visit [teajf.org](http://teajf.org) to ensure compliance. You can also look for the TAJF Prime Partner banks, which have committed to providing the highest interest rates, thus provid-

ing more funding for legal aid. Be sure your bank is approved by TAJF before opening an IOLTA account. Having your operating account and trust account at the same bank typically makes account transfers easier, and banks are willing to provide the IOLTA service so they can get your business on the operating side.

This article is excerpted from *Office in a Flash*, created by the Texas Young Lawyers Association to provide attorneys with information on various topics relevant to establishing a law practice. Visit [tyla.org/officeinaflash](http://tyla.org/officeinaflash) for more information.

## Important Information For Lawyers Who Accept Credit Card Payments\*

Changes in the law regarding the reporting of credit card transactions have the potential to negatively affect IOLTA accounts.

Pursuant to the Housing Assistance Tax Act of 2008, credit card processing companies are required to verify and match each merchant's federal tax identification number and his or her legal name with those found on file with the IRS. An exact match is required.

For the purposes of this requirement, lawyers who accept credit card payments are considered "merchants."

If there is *not* an exact match between the information provided to the credit card processing company and the information on file with the IRS, there could be serious consequences, including:

- Beginning January 2013, the IRS will impose a 28 percent withholding penalty on all credit card transactions, including those that the lawyer directs to his or her IOLTA account, and
- If client funds that should be in the IOLTA account are withheld due to the lawyer's failure to act and thus are not available to the client on demand, ethical issues could be raised.

Credit card processing companies should have received information from the IRS if a mismatch occurred and already notified the lawyer of the problem. However, it is not known if all processing companies have provided such notice. Here are steps lawyers can take now to avoid potential ethical issues:

- Contact the credit card processor to determine that a match occurred.
- Correct mismatches if informed of one.

For more information on this issue, see <https://www.lawpay.com/news/irs6050w.pdf>

*\*From the National Organization of Bar Counsel.*