

Commercial Insurance

# E&O Edge

## Lawyers Professional Liability Fee Disputes

**Lawyers Risk Management Note:** Claim information forwarded to us often includes allegations that the lawyer did not adequately explain his/her fee structure or clarify what, if any, disbursements would eventually be passed on to the client for payment. Alternatively, a claim may be triggered by the lawyer suing to recover fees for services and the client counters with a claim for malpractice.

Here are some precautions that may help reduce the risk of litigation resulting from fee disputes:

- Use a retainer agreement or engagement letter to outline fee arrangements. If the lawyer is billing on an hourly basis, clearly set forth applicable hourly rates. Consider including an arbitration provision in the agreement/letter to address fee disputes.
- Avoid underestimating the costs of handling a matter. If a corporate client requires a budget, include the appropriate caveat that your budget is your best estimate based on known facts and circumstances.
- Review the status of the case with your client on a regular basis so your client will not be surprised by the number of hours billed or the outcome of the case.
- Clearly itemize billings so the client can better grasp the activity performed, the time spent on the activity and expenses incurred.
- Bill your clients regularly, on a monthly basis if possible.
- Keep records of your time so that you can reconstruct how time was spent and provide details to your client if questions later arise.
- Review your unpaid billings regularly. If a client is falling behind on payments, contact your client to determine if any problems are emerging.
- Consider if your client is financially viable. Even if you are successful, will you be able to collect enough to justify the time, trouble and risks?
- Research the applicable statute of limitations for malpractice in your state and whether you may have taken action that would toll that statute.

Attempts to collect unpaid fees lead to a disproportionate number of retaliatory counterclaims for malpractice. Thus, before you sue for fees, determine whether the recovery is worth the time, costs, and the risk of a counterclaim by considering the following:

- Before commencing litigation to recover fees, review your handling of the client's case with a critical eye for any defects, no matter how small.
- Evaluate the amount of your probable recovery. You will be awarded only reasonable fees. If your fees could be considered excessive, deduct that amount from recovery. Consider the income taxes that would be charged on the recovery of fees.
- Estimate how much in legal fees/expenses you will incur pursuing recovery if you retain someone else to pursue the fee action on your behalf.

Only if the fee dispute is substantial, all other risks have been evaluated and you have completed a thorough cost/risk/benefit analysis, should you consider proceeding with litigation to recover fees. Many experts opine, if you do just that, you will conclude that it is simply not worth it.

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This information is merely a guide and does not include all potential risk management practices and in no way should be considered a representation that, if the above tips are practiced consistently, there will not be a claim made against you. The above information is necessarily high level and is based on generally recommended risk management practices and is not intended to be exhaustive or all-inclusive. It should, under no circumstances, be construed to constitute legal advice.