

WHAT YOU SHOULD KNOW ABOUT ATTORNEYS' FEES

WHAT IS THE BASIS FOR A LEGAL FEE?

Lawyers' fees are almost always a matter of agreement between you and your lawyer. Fees vary based on the particular lawyer and town. A basic ingredient of most lawyer fees is the amount of time spent working for you. Practically all lawyer work is done when you are not there. You may be unaware that the concise advice given to you, or the three-page document prepared for you, is the product of many hours of work. It may have also involved time spent by other people in the lawyer's office, such as legal assistants, secretaries and other lawyers.

HOW DO LAWYERS FIGURE THEIR FEES?

There are several methods used to do this.

Hourly fees

The hourly rate is normally based on the circumstances of the matter and the lawyer's experience and expertise. Most times, you will be responsible for your lawyer's out-of-pocket expenses and for time spent doing "legal" work like drafting documents, phone conferences, meetings, legal research, and court appearances. Examples of out-of-pocket expenses include filing fees, deposition expenses, expert witness fees, travel expenses, sheriff's fees, transcript expenses and other incidental expenses.

Contingent fees

Contingent fees are primarily used in personal injury, social security and collection cases. Contingent fees are not allowed in criminal and divorce cases because your lawyer does not receive a fee unless you recover money. If money is recovered, the lawyer is paid an agreed-upon percentage of the recovery, generally ranging from 25 to 40 percent. The percentage often depends on how complicated the case is and how sophisticated the legal issues are. If the case is very complex or if appeals are required, the percentage can be higher. Contingent fees can be figured as a percentage off the top (the gross amount collected) or of your net recovery.

You will be responsible for out-of-pocket expenses like filing fees, depositions, and long-distance calls. If you dismiss your lawyer before the end of the matter, you may be required to pay a reasonable fee for services rendered to that date.

Fee agreements

The law requires lawyers to put all **contingent fee** agreements in writing. You and your lawyer must sign the agreement and you must be given a signed copy. The written agreement should say what percentage will be applied to the amount collected for you, regardless of whether it is achieved by settlement or trial. The agreement should also list the out-of-pocket expenses you will be responsible for.

With a **flat fee arrangement**, your lawyer will provide a specific legal service for a fixed amount. Criminal

defense, will preparation and house closings are often done by flat fee. Usually, all services normally required to complete the matter are included in the flat fee. On occasion, unexpected complications arise and it becomes necessary to modify the flat fee arrangement. A signed fee agreement is suggested for this type of arrangement.

A **percentage fee arrangement** is often used in the administration of estates. The fee for administration of an estate or the probate of a will may be fixed by a percentage of the value of the property. A signed fee agreement also is suggested for this type of arrangement.

WHEN SHOULD YOU DISCUSS FEES?

During the initial interview, your lawyer may not be able to set the exact amount of time and effort required, but will be able to give you an estimate based on past experience. Your lawyer can sometimes quote a total charge or give an hourly rate figure for the estimated time required. Except in flat fee, percentage or contingency arrangements, the lawyer may not be able to tell how much work will be involved. Even if your lawyer cannot set a fee, he or she can explain to you how the fee will be figured. You should always discuss questions about fees any time during the handling of your matter — even after you receive a bill.

If you believe there is an error in the fee you are charged, discuss it with your lawyer as soon as possible. The sooner you and your lawyer discuss these questions, the easier it will be for both of you to work it out and prevent problems from getting bigger.

WHO IS RESPONSIBLE FOR THE FEE?

You are. In some cases, the court may order the other side to reimburse you for some or all of your lawyer fees, but this does not release you from your obligation to pay your lawyer. This should always be discussed with your lawyer.

WHEN DO YOU PAY?

Most arrangements require that you pay a retainer fee or deposit that will be applied to expenses or future charges. You should expect to pay this when your lawyer agrees to represent you. Frequently, a lawyer will send you bills while the work is being done. You can ask for an itemized account of services performed and expenses paid.

Contingent fee matters are usually billed when finished, except for expenses for which you may be billed while the case is in progress.

HOW CAN YOU CONTROL LEGAL FEES?

- Discuss legal fees and costs during the initial interview. Ask for a written fee agreement which says what you are expected to pay for.
- If the lawyer asks for a retainer fee or deposit, find out what portion will be returned to you if the relationship ends before the conclusion of your matter.
- Write down the names, addresses and telephone numbers of all people involved, and all facts you can recall that relate to the matter. Bring a copy of any papers relating to the matter to the first interview. This will cut down the time your lawyer will have to spend gathering information.
- Be as brief as possible in all meetings and telephone conversations with your lawyer. You will probably be charged for telephone conversations in hourly fee arrangements.
- Be honest and fully disclose all facts, good or bad to your lawyer. If you are not open and honest, you are likely to start the lawyer on the wrong course. This could damage or destroy your rights; it will certainly make the work more expensive. Be as accurate as possible. Your lawyer is required by law to keep the facts in confidence.
- Ask for periodic itemized bills and status reports. Ask questions as soon as possible if you are unclear about anything you receive from your lawyer, including bills.
- If you must work within a budget, tell your lawyer about your financial situation upfront or when something changes. Ask your lawyer what can be done within your budget.

This pamphlet is issued as a public service of the Massachusetts Bar Association and does not constitute legal advice, which can only be given by an attorney. The contents of this pamphlet pertain only to the laws of Massachusetts at the time of publication.

Legal assistance is available through the Massachusetts Bar Association services listed below.

■ DIAL-A-LAWYER

Call and speak to an attorney, free of charge, on the first Wednesday of every month.

5:30–7:30 p.m. (617) 338-0610

■ LAWYER REFERRAL SERVICE

Open Monday through Friday, from 9 a.m. to 4:45 p.m., the Lawyer Referral Service helps solve legal problems by referring callers to lawyers or appropriate agencies. The LRS does not offer legal advice. There is no charge to use the service. To contact the LRS, call:

Boston area: (617) 654-0400
Toll-free: (866) MASS LRS (866) 627-7577
TTY: (617) 338-0585
E-mail: LRS@massbar.org
Web site: MassLawHelp.com

■ LEGAL FEE ARBITRATION BOARD

When your attorney's fee is in dispute, call:

Statewide: (617) 338-0552
E-mail: fab@massbar.org
Web site: MassBar.org/LawHelp

■ MASSLAWHELP.COM

Free legal information and online referrals to attorneys are available on the Massachusetts Bar Association's Web site at www.MassLawHelp.com.

■ SPEAKERS BUREAU

Whether you're looking to educate your group or class about a particular area of law or trying to add variety to your regular meetings, the Massachusetts Bar Association Speakers Bureau is your solution. Speakers Bureau attorneys are available to deliver presentations on a wide variety of legal topics at no cost.

Statewide: (617) 338-0571
E-mail: communityservices@massbar.org



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