

ATTORNEY FEES IN GOOD TIMES AND BAD

Reflection for Attorneys and Judges Alike

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A judge who I recently met in an informal setting made the following observation: “it breaks my heart when I see a family that goes through a divorce have to spend tens of thousands of dollars in attorney fees and that’s money that won’t go to the children.” I can understand that perspective. That perspective, however, is totally short-sighted. I suspect that she is not the only judge who feels that way about fees. I am compelled to point out a few things in this article about attorney fees and discuss generating and collecting fees in good times and in bad.

One of the hardest things for me to get over was the idea of forcing a client to pay for my services. I suspect that it is that way for many newer attorneys. It is still hard. I still give clients discounts on their bill under the auspices of what I call “professional courtesy.” I follow this practice even though I put no charge on my time sheet for a myriad of reasons through the course of the billing month. When I research a legal issue or a motion I will often put no charge for chunks of time. If I send or respond to an e-mail that requires little or no thought I will frequently, although not always, put it down for no charge. If I play phone tag with another lawyer or secretary and end up communicating via voice mail exchange I almost always no charge for leaving or listening to messages.

At the end of the month, if I still look at a client’s bill after all of the no charges and say to myself “wow, that’s hefty,” I will usually write a note that I am reducing it by some percentage and usually that discount is a quid pro quo for an immediate payment. If I am billing against a trust account then I simply use the good old “professional courtesy”

annotation. It makes me feel better and I presume it makes the client feel better (no one's complained about it). That practice can backfire if the client reads the professional courtesy annotation as a "ok, what did he screw up that caused him to do that because I KNOW that lawyers don't just give their time away." I have not had that direct question from a client but I've anticipated it. My canned response is: "professional courtesy means that I am developing our professional relationship and I want you to realize that I am not just doing things in the course of my representation of you to generate fees." With the economy flailing I would probably add to that: "besides, times are tough."

I am not sure that the approach that I just described is the best approach but, my momma always told me: "a bird in the hand is worth two in the bush." Further, in the unfortunate and hopefully rare, event that you have to sue a client for a fee: the client's going to have a harder time with the old "he did things just to generate more fees" argument, if you write off fees during the course of the case. Besides, I recognize that hiring an attorney is expensive. When someone hires a lawyer the person pays for a service. It is not like buying a car. Almost always it is because they have no choice to resolve a problem ranging from a criminal charge to collecting fees from a deadbeat customer. Further, we have MRPC 1.5 to keep in mind: "the lawyer shall not charge a clearly excessive fee."

Now, attention all judges: here is the flip side. When we take on the duty and responsibility to represent a client we don't take it lightly. In private practice, if we don't get paid our bills don't get paid. If the work is not done for the client, the client does not have much incentive to pay or conversely, they'll take their retainer elsewhere. So, if Saturday morning rolls around and the only time I have to review the file, draft the

motion or whatever, is on Saturday morning: I better do it. I don't get to have breakfast with my kids, spend time with my wife, go fishing, sleep in, go workout or whatever I might want to do. If I come to court, I better be prepared. If a lawyer is not prepared – you know it as a judge, you know it as a lawyer on the other side and you know it as a client. The point is that many of us work hard. I am not making work for myself just to generate fees for which I can chase a client. You do not need to look at a lawyer who is making a claim for a fee in court, no matter what the context, as if the lawyer is trying to get rich on someone else's pain. Trust me: the client's pain is to a large degree my pain. It is not fun, pleasant or enjoyable to listen to a client going through the pain of a divorce, the fear of a criminal charge or the angst of a civil lawsuit with a former business partner, employer, employee or customer.

You might feel as though the lawyer is making a demand for fees that are too much. Is it clearly excessive in violation of the rule? If not, then why would you second guess that lawyer? Ask to see a redacted time sheet if you are concerned about it. By the time I am in front of a court and asking the judge to order attorney fees in a certain amount you can rest assured that I have already discounted time and fees. You can rest assured that if I am in front of you because I had to sue a client, then that it is the absolute last resort. Why would I spend so much time and energy to get the client the best result possible so that the client turns out to be a positive referral for me only to turn around and sue that client and undercut all of that effort?

Lawyers: regardless of what your philosophy is toward your fees one thing is clear: if you did the work then you should have no compunction about collecting your fees. The economic reality certainly dictates decisions that you have to make about how

aggressively you pursue 100% of your fees but understand this: the stress of taking a client's problems on your shoulders makes every penny that the client pays you worthwhile to them and justified to you. Do not sell yourself short in any economy.

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