



Collecting Your Legal Fees in a Divorce

By Kathleen Newman, Esq.

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Ask any family law attorney and they will tell you that collecting legal fees is high on the list of the stressors in their practice. In the past several years, the situation has gotten much worse with home values falling and retirement accounts still recovering from the effects of the recession.

Even good intake procedures do not provide the safeguards they once did. A client with a good income today can be unemployed tomorrow, and severance packages are shrinking or becoming nonexistent.

If you are representing the dependant spouse, your risk is even greater. Unless the income earning spouse chooses to be fair, you rely on the court or your client's relatives for your retainer and monthly payments toward your fees.

So how can you protect yourself and your firm?

Intake Procedures

All clients calling for appointments should be interviewed by you or someone on your staff before scheduling an office appointment. Potential clients need to know your hourly rate and retainer requirements. During this initial call, it can usually be determined whether they can afford to retain you, and if not, they can be referred to someone more affordable.

It is not fair to you or the prospective client to have an hourlong initial consultation only to have the client leave after finding out they cannot afford you. You should be prepared to ask a prospective client how they are going to pay your fees when it is obvious they have neither the income, assets or resources that would allow them to pay you. Sometimes, you will find that a parent or other relative will pay the retainer and/or your monthly bill. In that case, be sure to have the person paying the legal fees sign the retainer letter and specifically guarantee your fees.

Before you meet with a prospective client, have them fill out a basic intake sheet so that during the initial conference you can form an opinion and understanding of their assets. This will give you a bigger picture and the chance to inquire as to how the client is going to pay your retainer and ongoing monthly charges. It is extremely important that this be discussed at the initial conference so you and the prospective client can make an informed decision on whether they can afford your services.

If the estate has assets or the other spouse has significant income, you may choose to take on the client even if they have few or no resources and hope to secure your fees at a temporary motion.

Your retainer letter should be specific as to the payment arrangements. If your agreement is a monthly payment, be specific about the amount and the due date. Your agreement should provide for a prehearing retainer and an expense retainer for trial preparation costs. You should plan on at

least two days of preparation for every day of trial, and additional time to prepare post-trial submissions. Your pretrial retainer should cover that estimated cost of trial preparation and trial

Finally, make sure the retainer letter is signed, returned and kept in a secure location in your office separate from the file. Have it scanned into the computer as well.

Monthly Receivable Management

Every office, no matter how small, should have a monthly receivable report, showing a client's previous month's balance, any payments, the itemized billing for the month and the remaining balance of the retainer.

You should have a specific time set aside every month to review this report, apply retainers to past due balances, send out letters asking for retainers to be replenished and make the decision on whether you need to withdraw from a client's representation. The decision to withdraw or to continue on the case is one of the most important monthly functions of your firm. This can be done individually for sole practitioners or in regularly scheduled department meetings for larger firms.

One of the most difficult decisions to make is whether to stay in a case where your fees are delinquent in the hope that you will get paid at a later date. If there are significant marital assets you may decide to stay in the case, but if so, attempt to secure your fee by the use of an attorney's lien or an assignment of assets. Obviously, if there are no assets and it is unlikely you will be paid, it is better to withdraw and cut your losses. The time you save can be used for marketing your practice and improving your collection procedures.

At your monthly receivable meeting (even if you are only reviewing receivables by yourself), you should send letters to clients who have had their retainers used for monthly fees, and request that they replenish their retainers, ask for pretrial retainers, and advise clients that no further work is being done unless their account is brought current. This may also be the time to send withdrawal letters. Once you have withdrawn from a case, you can make the decision on how to proceed to collection, using either a lien action, fee arbitration, conciliation court or a district court proceeding.

