

# The Fastest Way to Get Sued for Legal Malpractice: Sue Your Client for Fees

by Wendy Inge

Suing your client for fees is never a good idea. It often results in a counterclaim for legal malpractice which then has to be reported to your carrier and defended. It can also draw an ethics complaint. Unless the fee is substantial, and the result was positive for the client, a suit over fees is usually not worth the time, money, and effort to pursue it.

Before accepting representation, discuss the fees that will be generated by the representation. Determine whether the potential client can pay for the services. If you feel uncertain about a potential client's willingness or ability to pay, require an advance to bill against and require the client to replenish it periodically. Consider credit cards as payment options but consult with your state licensing authority to determine the ethical implications of credit card billing. (See Virginia LEOs 999, 186A, B, and 1848.)

At your first meeting with the client, explain the basis on which your fee will be determined and what expenses will likely be incurred. Answer questions and explain what will be required.

Put your fee arrangement in your engagement letter and have the client sign the agreement. Provide information on termination of representation if the client fails to pay the bill. Professional rules of conduct must be considered and complied with prior to any withdrawal and court permission must be obtained if the matter is in suit. (See Virginia Rules 1.5 and 1.16.)

If your state or local bar offers a fee dispute program, consider inserting a clause in your engagement letter referring such disputes to that program. Even if your state does not have a pro-

gram, it may still be appropriate to include a mediation or arbitration clause. Consult your state ethics rule to determine what level of disclosure is required and whether the client must be encouraged to seek additional counsel. Even though this may add some additional disclosure and discussion, it may be well worth the extra time. (See VSB Fee Dispute Resolution Program at [www.vsb.org](http://www.vsb.org). See LEO 1586 addressing use of an arbitration or mediation clause in a fee agreement.)

Billing early and often will help you learn whether the client is going to be a problem payer. This will allow you to end representation. How often should you bill? Monthly billing should allow for smaller bills that are easier to pay. A client who might balk at a large sum payment over several months may have no problem paying smaller monthly bills.

The average client needs to understand and appreciate what you are doing for him or her. Fee disputes usually occur when the client does not understand what's been done and why so much time has been spent. Detailed bills often eliminate misunderstandings, especially if you review them carefully and talk to the client if it is unusually large or has a charge the client may not expect. When necessary, prepare the client for a larger bill.

If a bill is unpaid after thirty days the lawyer should consider contacting the client to find out if there is a problem with the bill and why it hasn't been paid. Identify concerns or questions the client might have and let the client know that receipt of payment is important. The longer a bill goes unpaid the less

likely it becomes that it will be paid in full, especially after ninety days.

If you cannot avoid a fee dispute and feel that you must sue for a fee, only file suit if you:

- have a clear, unambiguous and fully understandable written fee agreement;
- obtained a good result for the client;
- have determined that the client has the ability to pay the bill;
- had an experienced, objective, and unbiased lawyer review the file and/or she determined that no errors were made;
- determined the unpaid fee amount warrants litigation (and is more than your deductible);
- are prepared to face a counterclaim for legal malpractice and fee forfeiture.



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