

**PROFESSIONAL
RESPONSIBILITY
AND DISCIPLINE**

By

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FEE DISPUTES

A substantial number of complaints we receive involve fee disputes. All of these complaints come from people who have either employed an attorney for the first time, or who seldom require the services of an attorney. A great majority of the complaints stem from divorce actions. The complaints fall generally into the following categories:

1. That the fee is excessive.
2. That the attorney demands that the wife pay his fees after assuring her that the husband would be required to pay them.
3. That a lawyer who has been discharged refuses to give the client the file until his fee is paid.
4. That the attorney has agreed to perform services for a certain amount and then submits a bill for a substantially higher amount.
5. That the attorney for a plaintiff in a divorce action refuses to proceed to trial unless his fee is paid in full.

Complaints that fees are excessive, except in situations where they are obviously unconscionable, could largely be avoided if lawyers would take the time to keep daily records of the work performed for the client. Most laymen have little knowledge of the time required to take care of their legal affairs. Neither can they understand the justification for an hourly charge ranging from \$25 to \$50 an hour. Not only should a lawyer keep accurate time records, but he should have a definite advance agreement with the client in writing. Among other things, the agreement should specify the hourly rate which will be charged.

The remaining complaints listed above can, for the most part, be avoided by written fee agreements signed by both the lawyer and the client. Such agreements should specify the amount of the fee to be charged. If the attorney cannot fix the fee at the beginning, the agreement should spell this out and specify that an additional fee may be required. As soon as it is apparent that an additional charge will be required, the client should be informed.

In divorce actions, the attorney for the wife should spell out in the agreement that an attempt will be

made to require the husband to pay the fee; however, if he does not pay it, the wife will be required to pay it.

As to the complaint that a discharged lawyer refuses to give the client a file until his fee is paid, we recognize that the attorney has a right to take this position. However, we suggest that in most instances, the lawyer who has rid himself of a dissatisfied client is much better off than one who is holding papers belonging to the client until his fee is paid. All of us have to take a loss occasionally; foregoing the fee in these cases is very often the better choice.

The complaint that the lawyer for a plaintiff in a divorce action refuses to proceed to trial unless his fee is paid in full requires special attention. Recently the Supreme Court of Michigan suspended a lawyer from the practice of law for three months because of his failure to proceed with the trial of a divorce action. In that case, the lawyer accepted a retainer to represent a client and then refused to proceed because his full fee was not paid. The Michigan Court said:

“Once a lawyer accepts retainer to represent a client, he is obliged to exert his best efforts wholeheartedly to advance the client’s legitimate interests with fidelity and diligence until he is relieved of that obligation either by his client or the court. The failure of a client to pay for his services does not relieve a lawyer of his duty to perform them completely and on time, save only when relieved as above.”

There is an indication in the decision that if it had appeared that the client willfully refused to comply with an agreement for prepayment of fees, the Court’s decision would have been otherwise.

Summarizing, we suggest that practically all fee disputes could be avoided if lawyers would keep accurate time records and reduce the fee agreement to an advance writing signed by both the client and the lawyer.