Even a "Flat" Fee Must be Reasonable

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Reprinted from *Minnesota Lawyer* (June 1, 2009)

There has been debate recently in the professional responsibility field concerning a lawyer's ability to receive a nonrefundable fee; i.e., a fee that need not be placed in a lawyer's trust account. Most of those fees are "flat" fees, a fixed amount for a particular service rather than an hourly billing.

This article focuses on the requirement of Rule 1.5(a) of the Minnesota Rules of Professional Conduct that all fees, whether earned upon receipt, flat, fixed or billed after completion of the services rendered, must be reasonable.

An example based on a recent complaint to the Office of Lawyers Professional Responsibility illustrates the issue.

On a Saturday night, a person was arrested for alleged traffic offenses. The next day, the person's spouse spoke by telephone with the lawyer, and the lawyer and the person's spouse (acting on his behalf), agreed to have the lawyer represent the client through trial for a flat fee of $6,500. No written retainer agreement was signed, and no money was paid to the lawyer. That same evening, the lawyer met with the client in custody for a short period of time.

The next morning, the lawyer appeared at the first hearing with the client. The client was dissatisfied with the lawyer's performance at the hearing and, after the hearing, discharged the lawyer as counsel. Three days later, the lawyer sent to the client a letter requesting payment for services rendered in the amount of $2,500. The letter further stated that if the $2,500 was not paid within two weeks, the full flat fee of $6,500 would be billed. The client did not respond to the letter.

The lawyer then commenced a conciliation court action seeking $6,500. Although the lawyer had acknowledged that the value of services rendered was no more than $2,500, the lawyer sought to collect the full fee and received a default judgment in the full amount.

Upon the client's subsequent request, the conciliation court case was reopened. The lawyer then amended his complaint, seeking damages in the amount of $2,500. The court awarded the lawyer only $2,000, plus interest.

Rule 1.5(a) states in pertinent part, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

It may well have been that, in the context of the criminal charges that faced the client, $6,500 would have been a reasonable fee for the total representation. Regardless, however, of the reasonableness of the potential overall fee, when only a small portion of the total work envisioned by the agreement is completed, an attorney is generally not permitted to seek collection of the entire fee. See, e.g., *Att'y Grievance Comm. of Md. v. Lawson*, 933 A.2d 842 (Md. 2007) ("[A]n initially reasonable fee . . . may become excessive in cases where the attorney does little or no work."); *Or. St. B. Ass'n Bd. of Governors*, Formal Op. 1998-151, 1998 WL 717731 (July 1998) ("If Attorney does not complete all the work contemplated by the fee agreement, either because Attorney resigns or the representation is terminated by the client before Attorney completes the work, Attorney may not charge the client for the unperformed work. To do so would result in an impermissible excessive fee.")

In the matter described above, the lawyer met with the client at the jail for less than one-half hour on Sunday evening and prepared for and appeared at the hearing the next morning. The entire period of representation lasted less than 24 hours. Although the lawyer subsequently amended his request for the full $6,500, he did so only after the client appeared to contest the lawyer's conciliation court judgment for $6,500. By commencing and pursuing an action for payment of the full $6,500, the lawyer sought monies that he had not earned. This constituted the charge of an unreasonable fee, which violated Rule 1.5(a). The lawyer received an admonition.