

## Suing For Fees: When is it Appropriate?

Collecting unpaid fees from clients is an issue that consistently elicits debate within the legal community. Typically, an unpaid bill means that the client is either unable or unwilling to pay—or both. Given the current economic climate, some attorneys may feel justified in suing for fees in order to maintain consistent revenue.

In most cases, it is not advisable to sue for fees. However, here are some factors and guidelines to consider before making your decision:

- **Be prepared for a counterclaim.** A frustrating result of suing for fees is that clients often feel compelled to file counterclaims for malpractice. Losing a malpractice case could be far more costly than the amount the client owes you or your firm. So, unless you feel absolutely certain that a malpractice claim is justified, do not let unpaid fees put you on the offensive.
- **Do not sue if the client's case was not successful.** Even if you perform your job flawlessly, a positive outcome is never guaranteed. Imagine explaining to a jury, however, that you charged over \$250 per hour\* — but it wasn't your fault the client lost the case. Chances are, your own case may not evoke much sympathy.
- **Seek outside legal assistance.** Being a competent attorney does not necessarily make you an effective witness on your own behalf. Have someone outside of your firm evaluate your case, and point out actions or considerations that could leave a negative impression on the jury. This "second opinion" could prove invaluable.
- **Consider the financial implications of a suit.** When suing a client for unpaid fees, factor in the following costs:
  - Time you could be spending on paying clients.
  - Legal and other expenses necessary to pursue your claim.
  - The likelihood of collecting fees even if you get a favorable judgment.

The bottom line here is: only sue if it makes financial sense to do so.

- **Do not sue if there was no written fee agreement.** Without an up front payment agreement in writing, your case may lose credibility.

Perhaps the most prudent advice on this issue is to take action early on to avoid having to sue for fees later. This can be accomplished through a number of good practices:

- **Bill early and often.** Do not run up a bill that reaches a point where you feel compelled to sue.
- **Start with an Engagement Letter.** You and the client should agree up front—and in writing—on the exact duties of the firm, the assigned lawyers and the client. The document can state how fees are determined and which expenses will be paid—and it can even contain a clause that permits you to withdraw from the case if fees are not paid.

Finally, you should always consider the long-term implications of suing clients for unpaid fees. You don't want to risk losing business that you would normally obtain through referrals from existing clients. Obviously, disgruntled clients are less likely to refer potential new clients.

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For more information on suits for fees, visit the American Bar Association's risk management website at [apps.americanbar.org/legalservices/lpl/preventionlibrary.html](https://apps.americanbar.org/legalservices/lpl/preventionlibrary.html).

\*National average attorney fee: \$284/hour; source:<http://research.lawyers.com/How-and-How-Much-Do-Lawyers-Charge.html>

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