

Berks County Bench-Bar Conference

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Double Tree Hotel – Reading, PA

Getting Paid in Family Law Matters

Software Review and Practical Tips

Joel B. Bernbaum, Esq.
BERNBAUM FAMILY LAW

33 Rock Hill Road

Suite 250

Bala Cynwyd, PA 19004

joel@bernbaumfamilylaw.com

1. SCREEN YOUR CLIENTS

Not only should your clients choose you, but you should choose your clients. This means that you should not accept just anyone who walks through your doors as a client. You must do your due diligence. This not only impacts whether you get paid. Avoiding problem clients may also prevent disciplinary complaints and malpractice suits.

Red flags are triggered by people who are argumentative, have unreasonable expectations, are unable to pay your fees, have engaged other attorneys before you, give you a bad feeling or were referred to you by a source you do not trust. I have a three lawyer/paper bag rule. If the prospective client has two previous lawyers and brings the relevant documents in a paper bag...do not offer to represent them. Be forewarned!

You can collect information about a potential client through your intake form, an initial consultation and/or a referral source. Referrals should come from trusted sources and from those whom you have educated about your target clientele.

Finally, have an initial consultation, charge for it and present the client with your Fee Agreement and related documents (information sheet, etc.) I charge a flat rate equal to 70% on my hourly rate regardless of the duration of the conference. This begins the establishment of trust and connection with the potential client.

2. USE A WRITTEN FEE AGREEMENT

Unless you work for a nonprofit legal aid or services organization, your clients will (or at least should) expect to pay you for your services. When you first meet with a client, do not avoid discussing money; tackle that elephant in the room before it becomes a problem. Broaching the subject of money up front sets expectations for the client and helps alleviate the fear of asking to get paid down the road. **A written fee agreement is required** and is beneficial for a plethora of reasons, including for getting paid, and indeed, it is required in many jurisdictions. Your fee agreement should lay out attorney and client expectations, detail your billing procedures and provide the consequences, should the client fail to pay you for your services. You should take the time to explain each of the terms of the fee agreement to your client. Having a written fee agreement that you review with the client will not only help the client to better understand your relationship and the nature of your services, but it also provides you with a written set of collection terms to fall back upon should your client fail to pay.

3. COLLECT MONEY UP FRONT

Whether you bill by the hour or use an alternative fee arrangement, collect something up front. This could be a **retainer**, advanced deposit or flat fee. Payment up front demonstrates both the client's ability to pay you for your services and investment in his or her case. If the potential client does not have any funds to pay you at the onset of your engagement, he or she likely will not have funds to pay you down the road.

4. BILL EARLY AND OFTEN

The more time that passes without payment from a client, the less likely you are to get paid. Therefore, you shouldn't let too much time pass without requiring a payment. Billing with some regularity—for example, at least monthly—helps your clients know when they will need to pay, so they can be more prepared to do so. Send your client a professional invoice that is clearly and conspicuously labeled as such and that includes a due date for payment. Some firms use a colored envelope to set their invoices apart from other mail. Your bills should explain the work that you did for the client in a way that the client can understand. Don't use abbreviations or legalese. When your clients understand and value the work that you have done for them, they will more likely be motivated to pay you for your work.

It should go without saying that to get paid what you are owed, you must track and record your time. If you are billing at the traditional rate, failing to record your time for a mere six minutes per day can result in thousands of dollars lost over the course of a year. Track your time contemporaneously with your work. The most efficient way to track your time (contemporaneously) is by using an electronic system that integrates with your billing program. Many such programs are available with applications for mobile devices that can track calls, texts and email.

5. KEEP IN TOUCH WITH CLIENTS

Maintaining good client communication is essential to getting paid. If your relationship goes sour or you completely lose track of your client, odds are you are not getting paid. Sending regular reports via phone or email to your clients regarding the status of their cases and the good work you are doing will help demonstrate your value and thus help your clients feel better about paying your fee. Keeping clients apprised of their cases may also minimize excessive phone calls and email received from them. Further, generating status reports is a great marketing tactic; clients who hear from you regularly may be more inclined to send you referrals. I suggest that you do not charge for this but show the time as either "No Charge" or "Non-Billable" on the invoice. Clients will appreciate your care for their matter without feeling unnecessarily billed.

6. DON'T BE AFRAID TO GET OUT

Be proactive about getting out of cases when you are **not getting paid**—review the local (County) court rules. Make sure to seek and acquire leave of the court prior to terminating the client relationship if required. Rely on your written fee agreement to get out when your client does not meet the expectations delineated in that agreement. If your client is or becomes insolvent, they will likely have other creditors in addition to you, and it is unlikely you will ever get paid.

7. COLLECTION AS A LAST RESORT

The foregoing tips are meant to prevent, or at least minimize, the necessity of hiring a collections agency and/or suing for fees owed. But if you find yourself struggling to collect your fees, you may need to take more severe measures. Before you take those measures, be sure to

have, and follow, State and Federal Laws regarding debt and collection. As a last resort, you can hire a collections agency to help you collect your fees. And, if all else fails, you can sue your client to recover your fees. When embarking upon these measures of last resort, be sure to weigh all the risks and associated costs including Countersuits for malpractice, etc.

Thanks to American Bar Association, Law Practice Magazine, Volume 39, Number 5

Time and Billing Software

A Practice/Case Management Software Comparison Chart for Solo/Small Firm, and a Time & Billing Software Comparison Chart for Solo/Small Firm. Last updated: February 2017.

https://www.americanbar.org/content/dam/aba/images/legal_technology_resources/Charts/PracticeCaseManagement_TimeBilling_IntegratedSoftwareChart.pdf

BERNBAUM FAMILY LAW

33 Rock Hill Rd #250 Bala Cynwyd, PA 19004 Phone: 610-667-7902 Fax: 610-879-3745

E-Mail: joel@bernbaumfamilylaw.com

Jane Doe
123 Cornell Road
Bala Cynwyd, PA 19004

Re: Doe v. Doe

Dear Jane Doe,

Pursuant to the Rules of Professional Conduct, which govern all Pennsylvania, attorneys, kindly accept this letter as an outline of the basis upon which this firm will charge you for legal services to be provided in connection with our office's representation of you. We have agreed to accept a retainer as set forth at the end of this letter as our minimum charge in your matter. The retainer will be credited as payment on account of services that may be rendered thereafter.

During the course of our representation, the time expended on your behalf will be charged to you at an hourly rate of **\$450.00** for Joel B. Bernbaum, Esquire, or the appropriate rate for any associate or paralegal performing services on your behalf. Our time will be billed in three-minute increments for all work performed, such as, by way of illustration and not by way of limitation, negotiations, legal research, court time and telephone calls. We will maintain time records, which you may periodically review upon request. You will receive an itemized bill every thirty (30) days for services rendered. We reserve the right to increase the hourly rate to you annually, with thirty (30) days advance notice of any increase.

All bills are to be paid upon presentation. We are confident that our clients make every effort to pay us promptly, and know you will so likewise. Occasionally a client will have difficulty making a timely payment. To avoid burdening those clients who pay their statements promptly with higher fees reflecting the added costs we incur as a result of clients who do not pay on a current basis, any balance outstanding ninety (90) days after the charges are incurred will be subject to an interest charge of one and a half percent per month (18% per annum). Notwithstanding the foregoing, in the event your retainer is consumed; your case goes to trial; an emergency issue arises; or appeals are taken, we reserve the right to require an additional retainer to apply on account of attorney's fees. Please note, it is the policy of our firm to suspend our activity in those cases where outstanding balances are more than 90 days overdue, unless other arrangements, including authorization for credit card payment have been agreed to in writing. We reserve the right to terminate our attorney-client relationship for non-payment of fees or costs.

Legal costs and expenses incurred and to be incurred are always the obligation of, and are to be paid by, you upon our billing the same. We usually require some sums to be paid in advance on account of costs, and we bill promptly upon need for additional costs. Unused costs may be applied to any balance due for fees. We shall have the authority to make advances on your behalf of such amounts as we shall determine best in representing you, which advances shall be for expenses including, but not limited to, toll telephone charges, photocopies, excess postage, travel expenses, subpoena expenses, deposition expenses, court costs, accounting and appraisal fees, and fees and expenses of other experts.

It is impossible to predict the course that a domestic case will take, and accordingly, we cannot determine in advance the amount of time that will be needed to complete your case. We shall use our best judgment to determine the amount of time and the nature of the services to be performed in your best interests.

The primary responsibility for all fees is yours. Sometimes, in negotiations in a case, the other party will pay part or all the fees on your behalf, or the court will award part or all of the fees to your attorney. You are to remain primarily liable for payment of the total fees, costs, and expenses. Any amount received pursuant to agreements, negotiations, or court orders will be credited to your account, but does not set or limit our fee in any way.

During the course of your case you should try to keep a continuous detailed diary of events. Do not make changes or take what may seem to be unimportant steps without consultation. Do not hesitate to ask questions. However, bear in mind that although we do attempt to return all telephone calls promptly, under certain circumstances, we might have some delay in returning the calls, particularly when preparing for or on trial in another case. You may contact our firm via e-mail; however, it is your responsibility to protect the confidential nature of the communication to and from your e-mail address. You acknowledge that electronic communication cannot be guaranteed 100% secure and assume the risk if you choose to communicate in this manner. We strongly advise you not to use a business email address for communication with our office.

There will be times when I will be in court, in meetings, or otherwise unavailable to answer your call. Please remember that matrimonial law is extremely litigious and much of our time is spent in court. I will endeavor to return your communication promptly.

It is our firm policy to retain client files for a period of 5 years after the conclusion of a matter, or until the time periods for performance of any terms under court order or any settlement agreement have expired, whichever is longer. At the end of that time, your file will be destroyed. Prior to its destruction, you may forward a written request for return of your file, which we will provide to you at no additional cost except for postage or shipping charges, provided that all sums due and owing the firm have been paid in full. Upon closing of the file, the firm will return to you, at your last recorded address with our firm, any original documents contained in the file. Please be sure to notify the firm of any change of address, even after representation has ended, so that we may communicate with you prior to final disposal of your file. If we have already returned your original documents to you and you do not choose to request return of your file prior to the destruction date, you agree that all remaining contents

may be destroyed, even if we are unable to contact you. The firm will destroy the contents of the file in a manner designed to preserve confidentiality.

Both you and this firm have the right to terminate our attorney/client relationship at any time upon written notice to the other. We also have the right, subject to our responsibilities under the applicable rules of professional conduct, to withdraw with your consent or for good cause. Good cause includes your breach of this agreement; your refusal to cooperate with us or to follow our advice on a material matter or any other fact or circumstance that would render our continuing representation unlawful or unethical.

In the event either you or this firm terminates the representation, all outstanding balances for legal services rendered will be immediately due and owing. Further, in the unlikely event of any dispute arising out of the subject matter of this Fee Engagement Letter and/or legal services provided, you and I agree that all such disputes will be submitted to the Montgomery Bar Fee Dispute Committee.

You acknowledge receipt of this letter and acceptance of the terms herein set forth by signing and returning the enclosed copy.

Sincerely,

JOEL B. BERNBAUM

I have received the original of the above and agree to the terms set forth therein.
I shall pay a minimum fee retainer of \$*.

Date

Jane Doe