

Fee Dispute with Client

All: I have a situation I am not sure how to handle, my first fee dispute with a past client. I started the matter for him on a flat fee basis due to his assurance that it would be an uncontested matter. I quickly learned that it would be contentious, and that my client was difficult to work with, to say the least. My retainer agreement allows for flat fee cases to be converted to hourly in just this situation. At the time the file was converted to an hourly basis, I added up the hours spent and considering the fee he had paid I had already done about 7 hours of work for free. I asked for, and received, an additional retainer from him and started billing hourly at that point (basically forgiving the other time). Over the course of time our relationship deteriorated, he was not following advice, extremely difficult to work with, etc., and after a time I had enough so I did a motion to withdraw after proper notification to the client, etc. I did a final invoice to the client after all was said and done, and the retainer he had given me was exhausted and in fact I would be forgiving another hour or so in legal fees.

He sent me an email this morning stating he does not accept my "offer", which, no offer was made, pursuant to our legal services contract he was given an accounting of my time, and he requested a refund of 80% of the additional retainer he gave me. He stated he had two other attorneys look at the "work" I had done, insinuating I did nothing for him, and if I give him the requested funds he will "not pursue it any further." I kept a detailed accounting of every call, every email and communication with this guy, and all work I performed. I don't want to refund him any money because I do not feel it is due, and yet I know this guy and I think he will likely make some sort of complaint to the disciplinary board or something if I don't give his inference in his email. I knew this guy would come back to bite me in the butt when I decided to fire him as a client, but I couldn't take him anymore. Thoughts?

Most bars have fee dispute arbitrations. Look to see if your state does and then go through the procedure for it.

And anytime a client tells me that had x many attorneys look over something, it means 1 of 2 things

- 1) they really didn't and they think that they can intimidate you to give them what they want (they are lying)
- 2) IF they found an attorney who would not only look over your work (let alone 2 attorneys) who then gave the guy a report on not just the quality of your work but also the value of it, they have found the bottom of the barrel attys who are either willing to tell a client whatever they want to hear or completely (imo) unethical.

Erin M. Schmidt, Ohio

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Fee disputes here don't go to the disciplinary committee. In My county the Bar Association runs a fee arbitration service. Unless Indiana is really strange I suspect they handle fee disputes pretty much the same way.

John Davidson, Pennsylvania

1. Make sure your documentation is in order.
2. Consider having someone else review it.
3. Carefully control what you say to prior client.
4. If prior communication was ever less than professional, expect it to bite.
5. Learn from experience and move on.

If objective review suggests you need to do something else, do it. If all was in order, then stand up for yourself. I have in the past encountered some of these that I documented and ran off. I may not have gotten paid on extra work outside of retainer, but I did not concede a refund either.

Darrell G. Stewart, Texas

Unless you are talking about a very large bill, it sounds like a bunch of BS to me. I don't believe other lawyers looked at your billing and if they did it was to go after you. I don't believe this guy paid for that either.

If you have your file and time well documented I wouldn't worry too much about a bar complaint. It will be obvious that he is making the complaint to get out of paying you.

Is there fee arbitration in your juris? I yes maybe file that right away to pre-empt a bar complaint.

Good luck

Robert Weiss

This is one where it is easy for those of us on the sidelines to say, "stand your ground." However, you are the one that is going to have to go through everything and put additional time into it, time you will not be compensated for, if he decides to pursue it. You need to decide how much "principle" is worth to you.

Now, personally, I think this is verging on extortion and I probably would not stand for it, but ultimately it is a business decision. Is it worth pursuing or not. If it is (and from your description of your details of the work, it sounds like it is), then I would call it a day and see if Mr. PitA does anything else.

Good luck,

Frank J. Kautz, II, Massachusetts

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Had a similar complaint in 1991 I think it was.

I had so much documentation my secretary almost quit over my meticulous response. The complaint was eventually denied.

Side comment about something I learned/noticed back in 1991.

The State Bar of Texas complaint form, at that time anyway, failed to notify the complainant on its face that the complainant was waiving confidentiality privilege because for an attorney to properly respond he/she may have to disclose client communications. I pointed out that the complaint form should warn the complainer and I think the State Bar edited the form after that.

If your state's forms say that, I am thinking that may discourage some. Having said this, the crazies are clueless about reality.

Here is the rub, assuming in your state the complainer is waiving the privilege, do you warn the former client about that or stay silent on that point. It has been recommended that you be careful what you say. I agree with that.

I am wondering what list members think about noticing the former client about possible waiver?

My inclination is to be silent about the waiver in any response. Would I furnish the former client a blank complaint form? Do not know.

By the way. Fee disputes. Our local bar used to have, not sure if they still have it, a fee dispute program whereby the client and lawyer would participate in an informal hearing/meeting and try to work it out. I went through one many years ago here. I was irritated because only one of the three committee members were lawyers. The other two were not even experienced people from private business. Rather they were public employees who were clueless about business. You can count on those kinds of feel good bar association programs to pressue the lawyer to cut a lot of slack. No matter how meritorious the fee claim may be the moment that program is involved you are not going to recieve validation of your claim in full.

About that program. I do not recall if participation required a waiver of right to sue or counterclaim.

Yet another thought. Do your state rules require you to have 'how to file a grievance' pamphlets prominently displayed in your waiting room? If yes, you got 'em?

Rob V. Robertson, Texas

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I would not mention that point. They are no longer your client so you should not advise them. Plus, you don't want to sound like you are threatening them.

An irrational person can hear "you may be waiving the privilege" and think you're saying "I will use confidential information to blackmail you if you file this." It's just too risky, especially when you are dealing with unstable people.

Michael Jack Kaczynski

The Fee Dispute process we have here in San Antonio is binding arbitration, so yes, the client must waive any right to file suit. I served on the committee a few years - it can get contentious. Most amounts are small, so not much dispute. But, once we had a large attorney fee from a PI case. There was a lot of arguing that day and a very large turnout for the meeting. This was before we started having laypersons sit on the committee. I would be interested to see how different the process is with laypersons. But, even with all lawyers, I thought that we generally favored the client. Ties generally went to the client.....

Kim, I would wait a few days and draft a *very* carefully worded letter explaining why you will not accept his offer. Refer him to any available bar avenues, such as a fee dispute committee. And hope for the best.

Tom Crane, Texas

Remember this is the person's whose legal understanding got him here. Looking at his legal reasoning I think he's substantially short of the minutes ABA requires for contracts class. I'd offer him the name and number of the fee arbitration services of the bar association.

I had a client do this I knock a couple of hundred of the bill and then he stiffed me.

John Davidson

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Based on my experience, I would sit tight.

Here in Massachusetts the Board of Bar Overseer (those who would receive the complaint) seem to have little patience for fee disputes unless the allegation is that the fee was excessive.

In your case, your initial fee agreement was in writing and the client paid you pursuant to the terms of that agreement. It's hard for him to argue, therefore, that the fee was excessive.

As for the lawyers who purportedly reviewed your work, I am, to say the least, skeptical. How many lawyers do you know who would pass judgment like that on a colleague's work?

Just as a side issue: In Massachusetts, the statute of limitations for contract actions is 6 years. The statute of limitations for tort actions is 3 years. Theoretically, if you wait 3 years and then sue for breach of contract, he should be out of luck on any malpractice claim, but I'm afraid if he wishes to counterclaim for malpractice, that action would probably relate back.

I had a client who owed me \$21,000.00. That was too much for me to eat. I called my malpractice insurer and asked whether they had any suggestions for how I should proceed. They said they would, of course, prefer that I not sue, but they didn't have any suggestions on how we should move forward.

My lawyer filed the complaint and went into court with my fee agreement and all of my invoices and got an attachment on my former client's house. I still have the attachment. .

No counterclaim. So far, also, no money, but of course interest is accruing.

Jo Fray, Massachusetts

I did sue a client for substantially less. She did not answer, a default judgment was entered. After the 30-day appeal [motion to open judgment, I think it's called - I'm not a litigator, and I'm no fool, I have a collection attorney]], she filed an appeal, raising all kinds of so-called defenses, such as the work I did was bad, didn't accomplish what it was supposed to, she had to get another attorney do it over, that it jeopardized her medicaid [she was creating a SNT for her son with my help, I kept telling her to consult with an Elder Law attorney before she did anything, because it might jeopardize her eligibility for medicaid, Duh], and that I had told her I didn't know how to do the SNT anyway.

My lawyer's associate accompanied me to the hearing, where the judge allowed this crazy lady to repeat all these things as justification for opening the default judgment even though the time had passed. My lawyer kept tugging on my sleeve to make me shut up when I couldn't contain myself at hearing these fantastic lies.

The crazy lady also made a complaint to the PA Disciplinary Board. They were kind enough to call me, I told them what had happened, and the Board caller said she figured that was the case from the way the complainant was

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raving. I asked if I had to report this to my LPL carrier. She said no, we're not taking any action, you don't have to do anything. And I didn't.

The Philadelphia Bar has a Fee Dispute Program, I've been on its Executive Committee for years. Notwithstanding that, I did not take this to the Dispute Program. Don't ask. It has a monetary limit of \$100,000, last I looked. The program is not binding unless both parties agree. Panels consist of 2 lawyers and one non-lawyer, all of whom are volunteers and form a list from which they are assigned to a panel. There is a mediation option, which can lead back to the dispute program to the extent that no agreement is reached in mediation. Very few lawyers take advantage of this, and, yes, it is sort of PR to the community, but the panels are not weighted in favor or against either party.

Miriam N. Jacobson, Pennsylvania

I think the OP has learned something important about clients.

Nobody told me in law school that clients behave like this, that they all want services at a huge discount or even for free. This is why you get your retainer up front, and shouldn't be surprised if you don't get any more pay after the retainer has been exhausted.

You've got the money. You've done everything right. If the client really does "show this to some other attorneys" they will certainly see that you have done everything right. If the client really does want to take this further, any tribunal or mediation or whatever will see you have done everything right.

Tell the client firmly that you are collecting your fee exactly according to the fee agreement he signed, and that is final. There is no point in him talking further about this. And I hope it goes without saying that you will never do any more legal work for this person.

You don't have to take this to arbitration, whatever, that's all up to the client.

Of course, now that I have learned what clients are really like, I am seriously re-examining my career decision to be a lawyer.

Karl E. V. Paananen

Part of the reason I selected business law as my practice area is that corporate clients tend to see legal fees as just another cost of doing business. I've never had anyone stiff me on a bill. Some of my clients will have a check in my hand the day after they get their invoice.

Michael Jack Kaczynski
