

PI Attorney Charging Expenses in Advance

Have any of you heard of personal injury attorneys charging for anticipated expenses in *advance*? In the scenario at hand, the attorney is essentially asking for a retainer which is to be used only to cover anticipated costs.

Just curious...

I do it on certain PI cases. For example, if someone comes to me with a MIST case, my rule is that they pay the filing fee and service fee before I file the complaint. It has proven effective at getting clients to buy in to my system and resolving cases. It is limited, but it does happen. I know a mold attorney who does something similar.

Jonathan Stein, California

Yes I've heard of it, but it is not commonly done, at least not here in New York City where I practice. I have an occasion taken in advance retainer for expenses on cases I thought were questionable but they were not your run-of-the-mill injury case.

I think if a lawyer were to insist on getting expenses upfront here she would not get too many cases. Most attorneys, again around here at least, are willing to front the expenses.

Robert Weiss

In my state, it would be an advance fee and would need to be put into a trust account and only drawn upon after it is earned and the client is billed.

P. Jayson Thibodaux, Washington

Not a PI attorney, but I've heard of this being done as, like Jonathan says, a sort of "weed out" mechanism. If you won't float a few hundred bucks for the filing fee you are probably going to be difficult. Plus, it's also a well-documented quirk of human psychology that we value things more if we have to pay for them, however slight (i.e., a used Ford pickup truck will be seen as more precious than a new Corvette acquired for free).

Having those extra few hundred bucks at stake can really help with settlement.

Incidentally, I was just doing my business taxes, and this is apparently a huge source of gnashing of teeth for the Plaintiff's bar (I do everything on a flat fee or hourly, paid up front, thankfully). If you advance costs for your client to be recovered out of the settlement funds later, that is apparently a loan according to the IRS, and non-deductible until recouped.

So, if a case drags out for years you're hit with not being able to deduct those "loans" until you get the settlement funds. Ouch.

http://woodporter.com/Publications/Articles/pdf/Lawyers_Who_Deduct.pdf

(The above is NOT tax or legal advice, it is for academic discussion purposes only.)

Bryce Davis, Florida

Happens all the time.

Josh Friedman, Illinois

Yeah, and in fact I do it. I don't necessarily enforce it; but I do have a clause in my PI/Contingency cases to the effect of upon instruction by client to file suit a cost deposit of (anticipated filing fee plus summons issuance and service cost) will be required; it helps in the case of a 'small potatoes' case; if I manage to negotiate a decent offer pre suit and present it to client and they reject it and say 'sue them' I can say, fine get me \$XXX and I'll file suit.

It gives client some skin in the game. The problem with PI cases and contingency cases in general is, client risks nothing by taking it to court in most cases; as far as they are concerned it's a lottery ticket and it didn't cost them anything. If they got to pay costs up front they realize they may lose some money.

Ronald Jones, Florida

Thanks for the feedback, everyone! I thought it made sense to ask for an advance on costs, and figured not all PI attorneys would be comfortable with (or capable of)

fronting everything until the end, but it does seem that clients all think they have to pay literally nothing until the case ends and even then only if they win/settle.

Shlomo Himmel, New Jersey

There are lots of lawyers who will routinely advance all costs on PI cases. And they advertise as such. Pretty much all of your PI mill types, the high-volume ones who advertise on billboards and TV and the back cover of the yellow pages; which is where clients get the idea that all lawyers will advance costs.

However, having said that; most of these PI mills do two things; first they tend to turn down 'small potato' cases and they tend to be fairly cursory on review of cases; in other words, they're looking for some significant damages, but clear liability and insurance; and at least one large PI firm in Florida who I won't mention, seems to be willing to settle a bunch of cases on the cheap (I've heard from dissatisfied clients). So, they get something a bit out of the ordinary, they turn it down; I had client who was crossing the street and was hit by a Villager; he was run down on 441. He was lifeflighted to Shands and spent a week in ICU; driver had decent insurance. He calls up nameless PI firm and intake lawyer asks "Did you have any broken bones?" He says no, they said 'not interested'. Go figure that one. As it turns out I sent him to my own PI guy and he said "GOOD CASE".

But from a marketing perspective, the PI mills create an expectation that there will be no costs to client; that may be accurate for the cases they take but that doesn't mean every PI lawyer has to do it, particularly on smaller cases and somewhat more 'iffy' cases.

Ronald Jones