Popular Threads on Solosez

Suing For Fees

Hi all: (a bit long, but hopefully entertaining)

Want to share with you a (somewhat) humorous story. I sued a former client for fees in small claims - the Complaint was about 4 pages long (4 causes of action - breach of k; account stated; quantum meruit; and unjust enrichment) - for about $3500. He filed an Answer that admitted virtually all of the elements of the causes of action, and had an additional 12 pages of "defenses" which were nothing more than a diatribe about how I didn't do my job right (not a counterclaim for malpractice).

The underlying case was one in which I had to eventually withdraw as counsel because (a) he wasn't paying my fees; and (b) we had a fundamental difference on how to proceed after losing a summary judgment motion (my advice was to settle because of one affirmative ruling that the underlying judge made in the summary judgment opinion). This was a case where the client wants to be a lawyer and kept sending me 30 page memos with legal citations, most of which were inapplicable.

In the fee suit, client is complaining that (a) I set him up to withdraw as counsel and (b) my fees were unreasonable, despite the fact that we had a written and signed retainer agreement.

Judge sets trial for 12/13. Sometime in October, I sent the client a settlement offer for about 70% of my fees requested. No response.

So we go to trial on Friday. I'm figuring the case will be about 1 hour long, everything included. My case in chief, including opening statement (client didn't make one) and all of my testimony and evidence (none of which he made objections to and, frankly, some of it was probably objectionable). No cross examination by client and I tender all of the documents into evidence over no objections. I rest.

It's client's turn and he opens a 3 ring binder, I'd guess there are about 50 pages, all single spaced typed, and mostly case citations and quotes (he goes to a law library and reads digests). He begins his diatribe, which isn't testimony at all. I object on the basis that its legal argument. Judge upholds the objection and tells client that he must tell his side of the story, not argue. Client, now fumbling through the 50 pages, begins again. Judge interrupts him, without my objection, and instructs him that this case is not about whether I did a good or bad job or the reasons why I withdrew as counsel. Judge says, I'm not going to get into or redecide whether Mr. Thurston was permitted to withdraw. I'll allow a little leeway here, but do you see where I am going?

Client basically ignores Judge's suggestion, but Judge allows some leeway. Several times I object on the basis of legal argument (client is citing caselaw in his case in chief), which is upheld; client submits the same documents I have, and I object as duplicative, which is upheld; client starts arguing about why I withdrew as counsel, and Judge admonishes him again. I do some cross to the only testimony that got in, which is that client believed my services ended on a certain date, which is one month prior to withdrawing. The funny part about that is client actually opposed my motion to withdraw via an opposition AND a reply to my reply AND appeared in court to argue against. In other words, even on the date of withdrawal, client was still arguing to keep me as counsel, even though he hadn't paid the bill for 2 months.

We have closing argument and I just basically say that the evidence proves all of the causes of action and client has proven no defenses. During Client's closing, he again rambles and cites cases that are nowhere near

on point, but since its argument, judge allows it. He drones on and on. I do a very short rebuttal. Then client asks judge if he can respond again (I'm trying not to laugh at this point and I think the judge, his clerk and the deputy are too), and the judge says, no, I got last say because it is plaintiff's burden.

Judge takes case under advisement and will issue a decision next week. (Not sure why he did this, but it was late in the day and maybe he wants to look fair to the client). Anyway, what I thought would be a 1 hour trial, was 2.25 hours long and I didn't even get a judgment - all for $3500 + some interest and costs.

I was angry on Friday, but today I sit back and laugh at this. How silly is it that you have to wait 8 months and have a 2.25 hour trial just to get paid by your client? I'm sure that most other professionals don't have this same problem - at least not on a regular basis.

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I'm glad that you see the humor in this.

Actually, I think that other professionals must have similar problems or else they wouldn't call me several times before my appointment. When I look at my mother losing her medical bills, I am sure that they have these problems. Then, they have to deal with the insurance companies just saying no.

We're in a mess and I blame a lot of politicians for obligating insurance companies to provide all kinds of coverage, and setting salary limits right after WWII. I also blame the courts for being a little too accommodating to pro se attorneys. Some judges forgot what it was like to be an attorney. Some judges think that we all make the big bucks of large firm lawyers and are, therefor, a deep pocket. When I went to law school my father said that a lot of courts just like to give a little something to each side, regardless of the facts and law.

Good luck.

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Thanks Lynne. You're absolutely right. And I've heard all of the naysaying about why lawyers shouldn't sue their clients (counterclaims for malpractice; ARDC complaints; PL insurance premiums go up; etc. etc.). But my response to that is this is how my family eats. I don't care if the general public doesn't get that, they should. Would you ask a policeman to arrest somebody and then say, "Oh that one's for free, right?" Would you ask a plumber to unclog your pipes and then say, "Consider that a freebie?" No, and I don't believe legal professionals should have to put up with that either. $3500 is a lot of money to my practice and to my

family. I missed at least 6 pay periods this year (I try to pay myself a fair living every 2 weeks) because of clients not paying or paying slow. My response to their complaints is "tough crap". Don't hire me in the first place if you don't intend to abide by our fee agreement (i.e. CONTRACT).

TJ Thurston

And what will your reaction be when he appeals the judges ruling or worse files a meritless complaint with the bar association which will require time for you to reply and will require you to report it to your E & O carrier which may raise your rates regardless of how it is resolved. Was it worth it? Was it a good business decision in the long run?

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Yes it is, because I'm confident that any complaint to the bar would be dismissed. Can you afford to go without $3500? If your answer is yes, consider yourself extremely lucky. I can't. Its that simple. Or else if I take two or three hits at that amount, I'm out of business. So, yes, its worth it to keep me and my family from going bankrupt.

TJ Thurston

I am fortunate enough to now be able to say - I'd rather be knitting. I desperately try not to get cases where I won't be paid, for whatever reason.
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I agree with TJ...!!!!

If I did the work competently, and had a reasonable outcome, I am not going to give in to "extortion" or the fear that some client might sue me or report me to the ARDC. I was amazed to hear some attorneys on this list say that they would walk away just to avoid the hassle. Hmmmm, and here I thought atttorneys were supposed to be courageous, have guts and principles and stand up for what is just and proper. Yet some have proclaimed they don't even want to stand up for themselves.

Moreover $3500 is not a paltry sum that I would walk away from, if it was billed fairly and earned ethically.

"to sin by silence.... when you should protest.... makes cowards out of men"
(and women)

M

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Dear Murray:

In theory I completely agree. As a practical matter, going after a deadbeat client often is "throwing good money after bad." I don't need to do more unintentional pro bono work.

As always, best regards,
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By the time you get done responding to the Bar complaint and advising your E & O carriers inquiries, you may change your mind. The best way to avoid this situation is always work against funds on deposit in your trust account.

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Sure, in a case of dead-beat, uncollectable clients it may be a much different story, since then risk might indeed outweigh reward.

I agree it would be great to always get enough funds up-front and not need to bill for any deficiency; but this is not always the way it works until you have clients knocking-down-your-door for services. There is always a question whether to take a case with a marginal retainer knowing you will have to ask for more fees sooner rather than later.

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If the client cannot deposit funds into trust, what makes you think the client will be able to pay you later? The only thing holding you back from getting deposits in trust is you not the client. Ask for the deposit with

authority or do not take the case.

Martin J. Sable

If you are making a decision up front that you may not collect but there are other benefits in taking the case, that is okay, but you may need to accept in those circumstances you simply may be eating your time and not collecting.

Ronald Jones

See, this is the thing about sue or not for attorney fees: It's a business decision. Some attorneys reflexively think that they should sue because they're lawyers and this is about right and wrong. OK, fine, if that's the basis for the decision, have fun and good luck.

And, on the other hand, there's lawyers who will NEVER sue for fees; for fear of bar complaint, malpractice claim, increase in malpractice premiums. That's fine, too, but you had dang better be sure you get every possible dime up front.

What you need to ask yourself is, to the best of your ability to evaluate it; are you better off devoting your time and effort elsewhere to raise the same amount of money? You got a deadbeat, judgment proof client who isn't going to be able to pay no matter what the judgment says, you are throwing good time and money after bad. You would be better off spending the time working for a paying client; or even spending the time marketing so you can get paying clients, or maybe even just not working and playing on the internet.

If there's good chance of malpractice claim, what are the chances of your quickly prevailing and defeating it? If you can get the thing dealt with quickly in a small claims case, it might be worth it. In fact, it might be worth it just to triger the claim; once raised and defeated in small claims, they can't keep it over your head. Bar complaints are a pain the the butt, but if you're a lawyer, odds are you'll have to deal with them at one time or another. Now, if there's a good chance that it is going to turn into extended litigation over malpractice, maybe it isn't best to sue for the fee. Particularly if the fee is not all that much.

The point I'm getting at is, guys, there's no hard and fast rule. Whether or not to sue a client for fees should be evaluated by you just as you would analyze a potential client's case whether or not to sue: what are odds of winning; what are odds of actually collecting; what downsides are there for counterclaims; what's it going to cost in terms of opportunity cost.

Dawn Jackson

If you guys haven't already seen it, check out Ed Poll's very timely article, "A Law Firm Should Not Be A Bank." Excellent advice, if we follow it. Link below.

http://www.lawbiz.com/nlimages/tip-12-16-08.html

Dawn Jackson

I'm with Marty on this one. $3,500 is just not worth a trial, bar complaints, etc. A false bar complaint can cost thousands in lost time, possibly fees to the bar for a hearing and maybe even having to hire a defense attorney of your own. And I can see this guy appealing - I have had clients just as stubborn. Just 1099 the guy for dismissed debt and move on! ;)

THanks for the article, Dawn.

Ryan

But why is the threat of an appeal a concern? No appellate court in the land would take an appeal from a bench trial judgment for $3500. If he filed an appeal, I just wouldn't respond. If the appellate court granted it, well, then he's spent just about as much as he would repaying me, so who cares? I think the odds of an appellate court taking it are way in my favor.

And why are all you attorneys so frightened of a little litigation? Isn't that what we do for a living? Isn't a legal fight the reason we went to law school, spent hours studying for a bar exam (or three in my case), and learning how to be a lawyer?

TJ Thurston

This has been an interesting thread to follow...good points all around. What I have been wondering, though, is how the contributors' responses would vary if the amount in question was $35,000, or $350,000?
FWIW...

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It's not about being frightened of litigation, it's a *($ = time)* business decision. What are you really earning per hour after all this? What could that time have been invested in? My threshold for bringing a fee lawsuit is much higher because I've already seen clients fight dirty with other attorneys, my partners and myself, and I'm going to save those fights for the bigger accounts receivables. It's not that I won't sue those clients eventually.

Be careful about false bar complaints, I've seen them cause a lot of time and cash to get rid of... even if found baseless you can be out thousands more. That person is going to tar you continually to everyone he interacts with as well. You may find yourself rated by that person on sites such as RipOff Report - which IMO are pure extortion - but trying to get rid of online opinions is a heck of a battle in and of itself. Your lawsuit against the client doesn't exist in a vaccuum, there are many other things that person can/might/will retaliate with. And if the client is unstable or clearly a gadfly, all the more reason to be cautious.

Ryan

First question I would have is how could your client be that much in debt to you? $35k or $350k is a boatload of money and you should have withdrawn long before that.

That aside, I would say the risks people are talking about are much greater at these amounts, than my piddling $3500. At those amounts, you want to consult with your PL carrier and probably outside counsel to handle collecting those amounts. $350k is probably unreasonable - both from an accounts receivable and from a 'fee must be reasonable' ethical perspective. At these amounts, be very very careful.

TJ Thurston

I haven't participated in this tread until now, but at 35k it is getting close to worth the risk in my mind, assuming you are secure in how you handled the matter. 350k obviously is definitely worth the effort and the risk if again you are comfortable with your work.

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Thanks for the answer TJ, I hope I hear from some of the other contributors as well. The question is hypothethical, but, to me at least, an interesting one. I probably should add "assume the amount ethically is reasonable" and "assume your client won the at a jury trial." Given those additions, would you be more, or less, likely to pursue your fees, and if so, why? Sorry about the poorly-stated original hypothetical.

Alan

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How is easy: you have a fair-sized client who after a decent relationship has relaxed from up-front retainer to paying up their bills on Net 30 basis, and is paying fine, so you keep working. You bill $XX,000 in one month, like previous months... but they stop paying. Sure, you stop work after that month, but you're out some big coin.

Second scenario is that the retainer runs out a few weeks before trial. They can't refill it right then, but it's too late to get off the case without malpractice/abandonment accusations. So, you plow through and go to trial, and they don't pay.

Clearly, the rules broken here are to 1) only work off of retainer and 2) make the retainer big enough for the whole trial at once. But, we're sometimes foolish and overly optimistic in the good will of our clients.

Ryan

PS: Alan, I would say $10-15k is my breaking point. And yes, once the debt is big enough you should use outside counsel.

But if he is not paying you, isn't he already talking bad about you? What's to lose re: your reputation with him.

Micah Guilfoil

With those caveats, I would agree with Shell. Those amounts are worth the risks.

TJ Thurston

To all you windmill tilters out there. The reason you don't go after a 3,500 bill is the same reason that you advise clients not to sue someone for $5,000 when the fees are going to be $10,000. It is not a question of being "scared" or not willing to fight - it just doesn't make financial sense. Unless you are really slow, the 20 hours you spend chasing the deadbeat could be spent working for a paying client, and generating more than that 3,500.

Said by the guy who sued a client for $800, but that is another story.

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Frankly this risk is way overblown, in my opinion. I have filed suit against clients/former clients and never had a malpractice counterclaim or bar complaint filed. And I only sue clients I know have the means to pay. I don't waste my time going after deadbeats. Not that anyone here commits malpractice, but some files are more "clean" than others. Those are the files it is okay to file suit on the clients on, in my opinion. Here in GSOT, I get my fees for bringing the suit as well. I have collected on every case but one that I have filed. I am getting ready to file a couple more.

Sharon Campbell

Well said. And Sharon made me think of one more point: if you sue, especially in small claims, but in any context and client fails to counterclaim for malpractice, you have possibly barred a later malpractice suit. Your argument is the 'totality of circumstances' theory, that if there was a malpractice claim, it should have been brought in the fee suit. I've seen this work under either res judicata or collateral estoppel. I'm not saying this is universally going to work, but I've seen it and you effectively cut off the SOL.

TJ Thurston