

## Payment Plans

I am thinking about agreeing to payment plans with clients in what appear to be simple divorce matters (few assets, no kids, etc). The clients would have steady income, but cannot afford much of a deposit.

I know that vetting the clients and cases will be key to making this work.

I am looking for sample language for the retainer agreement. Any feedback from fellow Sezzers would be appreciated as well.

Thanks!

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Once the work is done your clients will not pay you. They just will not. Good clients, bad clients, nightmare clients, they just will not. I have it set up for automatic withdrawals from a checking account or credit card and, in the past, once the work was completed, they would promptly log into the system and cancel auto pay.

It could just be my area but the only way i take installments is if they agree that all payments are made before the case is completed and even then I have to withdraw (if the court even lets me).

Robert Louque, Louisiana

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I agree with Robert. I have done a couple divorces for people like you're describing--no minor children, very little in the way of assets, and not a lot of income. I charged a reasonable hourly rate and required a retainer upfront. I would bill against the retainer and then, when the retainer needed replenishing, requested another deposit. After the hearing on this one case, I did a final accounting of my time and sent the client a bill (\$300-\$400). He never paid me. I sent a follow-up about a month later and still no payment. I decided it wasn't worth small claims court. It was partly my fault for not keeping a closer eye on the amount of time I was spending the last couple months (it was sporadic). Had I done so, I would have realized that the client needed to replenish the retainer and he likely would have done so since the case hadn't been finalized. Once the divorce was granted, he had no reason to pay me (apparently, there was something missing in his moral compass).

Oddly enough, he referred someone else to me for a divorce. I kept a better watch on my time with that client and wasn't stiffed by her.

Barbara J. McDonald, Minnesota

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I will never forget the client who was paying me \$750/month on a custody case. Went to the hearing for him custody. Promptly canceled auto pay.

2 years later he came to my office for a copy of his final divorce papers.

The final divorce that never happened because he stopped paying me and after 12 letters (at least) I finally withdrew and notified him his divorce was not final.

He couldn't understand for the life of him why I wouldn't finalize the divorce until he paid the \$5,000 he still owed me.

"Will you take payments."

Ha tried that. Remember.

Robert Louque

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And got him custody \*

Robert Louque

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The only way I have seen this work is if you take monthly deposits to build up the retainer needed before you file. Make sure you have an adequate retainer to complete the divorce. Never become a banker for your client (been there, done that). If it is important to them they will borrow the money from family or friends, or do an advance on one of their credit cards. If they have no capacity to borrow, you are certain not to get paid.

Darrell G. Stewart, Texas

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6 years ago I ran my accounts receivable and saw I was owed over \$250,000 (not a typo) on cases I handled in the past on payment plans. Every single one was a family law/domestic client, every single one. The clients in family law cases are just a different animal. Granted it was \$1,000 here and \$2,500 there that added up an shame on me for letting it get that bad but family law clients, you just cannot do it. You just cannot. Once their divorce is final or the children are in their custody you can forget hearing from them until they need copies. They will not even come to you for modifications because they know they owe you the money.

I have found that if you firm with them on fees they either truly do not have/cannot get the money and move on to another attorney they will eventually not completely pay OR they will show up with your retainer.

I could not even solve the problem with automatic withdrawal payments because they would make a conscious effort to log into the payment system and cancel the future payments.

I actually had one client who set up her initial retainer to be auto deducted for a week into the future with the understanding nothing would be filed until the payment went through. She tried. She called hour after hour for an appointment to "sign the papers" because "I am going to pay you, it's being taken out automatically!" Predictably, the night before the payment I get an automated email from the payment processor that the payment was declined for a credit card that was canceled.

Debt collection defense clients pay, maybe that is because the debt buyers let the cases drag on so long. Criminal clients pay. Most clients I have represent pay, except for the family law clients where I was foolish enough to do all the work while still being owed money.

For some reason, family law clients, even the good honest clients, are just a different animal.

Robert Louque

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I don't know what the big deal is with payments. I take them all the time from clients. I am cautious about who I take them from. But I find my low income clients are the best about paying me. They may have to pay \$50 some months and \$150 other

months, but in almost 13 years, I have been burned twice - and once was by a fellow attorney.

Jonathan G. Stein, California

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A large percentage of my clients was close to the "modest means" category where a retainer is a big hurdle. I modified the payment so they could prepay for the next phase, e.g., the first phase would include intake, fact gathering, preparing to either file a petition or file a response. How long it took depended on OC, the people, and the matter. Drafting the petition or response might be the second phase.

Discovery, prep for hearing or settlement, final docs and wrap-up. The problem with that, of course, was not getting paid and having to withdraw mid-case. I never had a judge decline my request to withdraw.

CJ Stevens, Montana

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Your experience mirrors mine, but I pretty quickly stopped doing any family law that was "indeterminate" - no minor children, no property disputes. I limit myself to uncontested divorces, stepparent adoptions, and settlement agreements - all done on flat fees, prepaid.

I would estimate (without taking the time to look) that at least half of everything I've ever billed on a family law matter that was not an uncontested, no-kids divorce was never collected.

Richard J. Rutledge, Jr., North Carolina

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Thank you for the feedback everyone. I have never really done a formal payment plan before, but I have had clients pay in drips and drabs. I don't know if I have just been lucky, but out of five years' worth of family law clients I can easily count on one hand those who have stiffed me in any amount. It totals a few thousand bucks, most of which came from one case where, in hindsight, there were red flags. I think because I work in a small community, my clients know that I can usually track them down if need be.

My inquiry was rooted in the fact that I have met with two different clients this week that I am sure would pay me if they could - both are local, they work full time, and one is also a full time student. They are currently exhausting other options, such as family members, to come up with a reasonable deposit. Neither have a credit card (at least with any available balance).

Thanks again for the responses - very helpful as always.

Marshall D. Chriswell, Pennsylvania

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My theory: Family law is so odious a practice field that courts will support the attorney and order a deadbeat to pay. If courts leave fam law attorneys twisting in the wind, attorneys will stop handling family law, period. Nothing the court likes more (sarcasm) than pro se family law litigants.

As with many other services, attorneys do need to toughen up: Get at least a portion of the estimated total fee in advance of each stage, and/or have a 3rd party money handler. By 3rd party I mean your 'financial officer' who might be your secretary or might be your partner, just anybody who isn't you, so client can't finagle and whine at you.

After a while, firing nonpayors was not out of my comfort zone (which had grown).

CJ Stevens

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The payment plan is simple. You have to know how to size up clients. If you think for a second they may be tough to get money from you have to decide how tough the case will be. Then charge accordingly. If I know a case is going to be tough or require a lot of work I demand full payment up front. If they're serious they'll understand and make it happen. If not let them find another lawyer. If the case isn't going to be too tough then I charge what I can live with as full payment up front and if they pay any more like they say they will then call it a windfall. Clients, with the rare exception usually only pay once. Get all you can.

Clark V. Stewart, Alabama

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I never had a court order someone to pay me. It has usually been

J: "what can you pay your attorney within the next 5 days?"

C: "I cannot pay him anything. I have already given him \$5,000!!!!"

Me: "the agreed upon fee was \$12,500.00. I have already done way more work than \$5,000 and I have given him/her months to pay in installments and they have not."

Most of the time I am allowed to withdraw because by the time we have gotten to this point, there is a lull in the work that needs to be done and the client is not prejudiced.

I once had a consult with a potential client who threatened me with a bar complaint for not wanting to take installments because she knew I accepted installments from the person that referred her. The referring client was "exhibit A" for why I almost never take installments now.

Robert Louque

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It could just be my area but I find ALL family law clients will be tough to get money from after the initial retainer and I have not accepted a family law case on installments in a very long time. Like you said the ones who want to hire me find the money, the ones who do not find someone else who will eventually have to chase them down for money.

Robert Louque