

Flat Fees

I hope everyone is having a wonderful week!

I have a question which probably applies to every lawyer who charges a flat fee...

I have many clients that I have prepared estate plans for and unfortunately many of them do not make it a priority to review the documents and schedule a time to finalize everything. So for those that haven't, I haven't been able to pay myself from the trust account. Now that is completely understandable, because in their eyes, they have already paid me. They don't understand the rules of ethics we are bound by.

I called the Ethics hotline to get advice or direction from them, and they directed me to California Rules of Professional Conduct 1.15(b) which I've already looked at.

Going forward I plan to include a breakdown of what fees are earned and at what stage of the estate plan, so that I can pay myself for the work I've done.

Any advice or suggestions from someone who has dealt with this problem would be greatly appreciated!

I used to have an issue in bankruptcy cases when I first started practice.

I drafted agreements that limited the amount of time to file the case and provided for payment for work done if they did not finish as well as more money if I had to redo the case because of their delay.

Mitchell Goldstein, Virginia

I have been working with an attorney for an estate plan. She charged me half the flat fee to draft the docs, and half at signing.

Kevin Grierson, Virginia

That's what I do. Half at first meeting, half when signed. My engagement agreement makes it clear that the first half is earned immediately by having that first meeting.

That said, I currently have two clients in limbo between first meeting and finalizing. In one case, the friends they were planning to nominate as guardians declined (!) and they need to figure out who to name. In the other case, the client decided to move and wants to put the new property in her trust. It's a coop, tho, so lots of drafting implications. So, we're waiting till that closes so we can coordinate everything.

Stuff happens.

Meg Tebo, Illinois

I'll add another vote for half up front, half when you sign your estate plan documents. I switched to that a couple years ago and haven't had any issues with my clients. Everyone is motivated to get the documents drafted and signed that way in my experience.

Andrew M. Ayers, New York

For ,y family law flat fees I charge 90% up front and remainder at conclusion. Why not? Clients have never complained.

Matthew Rosenthal, California

Actually, my agreement now says that half of the fee is earned upon delivery of document drafts, and the other half earned at signing _or_

45 days from the date of the agreement, whichever is earlier*. Usually, though, I just collect the second half at the signing. I have a number of clients with estate plans pending, to whom I send regular reminders.

Sigh.

* Wish I'd done that with a fellow whose 1/2 retainer I just sent back.

Had to get a cashier's check, because he never cashed the regular check I sent him the first time.

Michael Koenecke, Texas

For contract clients I charge the full fee once I send them the contract because the work is completed.

Why can't you charge once you've completed your part?

Our estate planning attorney told my husband he had never lost a client between drafting and signing. My husband didn't sign his docs for a year.

Good story, eh?

Andrea Goldman, Massachusetts

My fee agreement for estate planning says 1/2 of the full fee is payable in advance in order for me to begin the work and that the balance of the fee is due and payable upon my completion of the draft documents, not upon execution of the documents. This gets around the problem of the clients not getting around to reviewing and signing the documents.

Miriam N. Jacobson, Pennsylvania

My engagement letter includes the following regarding when I will move the fee from the trust account to my operating account:

50% of the fee is deemed as earned when I have completed the *first draft* of your documents for you to review. The remaining 50% is deemed as earned when the *final documents are ready to be executed* by your signatures.

Sharon Plavnick, Michigan

When the CA Bar updated its ethics rules last year, it made an even bigger distinction between earned vs. unearned fees and between true retainers and advance fees.

When you are putting your new paperwork together, think about when you have actually done the work and could prove (using an hourly rate, time records, etc.) that you had actually earned whatever you paid yourself. You will likely never run into a problem, but if a client's kid comes in demanding a refund, because mom or dad died before they signed the paperwork, you should be able to prove to the kid and the court that you did the work for which you were paid.

I also have a section in my paperwork discussing what happens after a breakdown in client communication, client's disappearance, etc. and what happens to the money. I even added a clause for when I have to hire a PI to find you, I will bill you.

Corrine Bielejeski, California

I prepare condominium and planned community documents on a flat fee basis. My representation agreement says that 75% of the fees are earned when the

initial drafts of the documents are provided, with the balance earned when the recordable document is provided.

Caroline A. Edwards, Pennsylvania

All my flat fees are earned at the time the document is produced. That's where my job ends - the client's signature on the document is the client's responsibility and subject to the client's calendar.

Michael Jack Kaczynski, Connecticut

My fee agreement also says the flat fee is earned in full when drafts are sent. The bulk of the work is done then. Getting clients in to sign is not always their priority, and to allow them to control when I get paid is never OK with me. Also, I write in a "delay paragraph" that says if it takes over 30 days to finish, for reasons that are not due to me, it reverts to an hourly rate, which is usually more. I did that after a client took 18 months to sign and my second half of the payment was not made until it was signed back then. Those two together seem to really work for me.

Eliz. C. A. Johnson, California

Not a California attorney, but for my estate planning clients, for my fixed fee work (which is most but not all of my EP work), my fee agreement indicates a minimum fee for consultation, discloses my hourly rate (even if fixed fee), and that my full fee is completely earned when I've done the first draft. That's when I usually pull it from trust. If I have no trust retainer, I produce the draft only upon receipt of payment in full. If there are some costs in there, like a recording or deposit fee, I either write the check from trust at the same time as pulling the fee, or leave it in trust.

Sometimes we change a lot from the first draft, sometimes we change absolutely nothing.

I've also had clients who have put off signing for months and years - it actually isn't all that uncommon. I know that people delay coming back specifically so they wouldn't have to pay me. Most folks are more likely to come back and sign if they've already paid for it.

Cynthia V. Hall, Florida

I consulted with our state's chief ethics counsel on a similar question.

If the fee is, say, \$1000 and you tell the client that after x hours of work you will have earned the fee, you should be able to pay yourself. The only restriction on that in my state is that the fee needs to be reasonable. Given our market rates, I'd have to probably set that number at 3-4 hours to be safe.

Deena L. Buchanan, New Mexico

Elizabeth -

I like that concept of reverting to hourly rate after a specific period of time - I will think about using that.

Caroline A. Edwards
