How to Control Legal Fees

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Imagine that your company needs an attorney to handle a legal matter of considerable importance to you or your company. The only times you have ever used an attorney in the past were to buy or sell a home, deal with a speeding ticket, or prepare a very simple will. What can you do to ensure you get a knowledgeable attorney and that your important, complex legal matter will be handled competently and at a fair price? Three rules come to mind:

Rule 1: **As Abraham Lincoln said, "A lawyer's time and advice are his stock in trade." In a sense, all that a lawyer has to sell is time.**

Rule 2: **"A good lawyer is expensive, and a bad one can cost you a fortune." (Author unknown.)**

Rule 3: **Your own failure to prepare and assist your attorney can be very costly.**

It follows that you need first to find a good attorney who is experienced in the matter for which you need representation. It also follows that you yourself need to do all that you can to assist your attorney in understanding your matter and in representing your interest.

1) Selecting an Attorney

A good start is to check the Internet, attorney directories, and the Yellow Pages to find an attorney who has expertise in your matter. There is nothing wrong with asking trusted friends and relatives for a recommendation. However, studies show that people tend to recommend friends and acquaintances rather than limit their recommendations to truly competent professionals. How many of us have recommended our stockbroker to someone seeking a broker even though our broker has never made us any money and indeed we are suffering from the last time we took his or her recommendation? For a truly complex legal matter, you might even consider hiring an attorney on a per-hour basis to a) select an experienced, competent attorney, and b) negotiate a fee arrangement with that attorney. In fact, many corporations have in-house counsel who do just that.

Alternately, you may know a good, conscientious attorney who is not experienced in the specific area of law but who wants to handle your matter and gain the experience. You might consider engaging him or her on a flat-fee basis or some reduced-fee arrangement whereby the attorney learns at his or her own cost, not yours.

2) Assisting with Your Case/Legal Matter

a) Prepare for the First Meeting – The following is suggested for virtually any matter other than criminal law matters. Do not simply show up at the first meeting and cause the attorney to spend two hours extracting from you a three-year history of what occurred, names, titles, roles, dates, addresses, telephone numbers, and so forth. Instead, organize your facts and dates, have the materials typed, gather the necessary facts while you are at your office or at your home, and review and copy the necessary documents. If possible, copy your attorney by email or bring in on disk anything you have typed to avoid retyping and possible staff errors.

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See attached summary of the basic information the attorney will generally need – i) information regarding parties; ii) a brief chronology; iii) key documents; and iv) a brief summary.

b) Your Time Can Easily Be Worth $400 Per Hour and Improve Quality Control – There are many, many occasions when you, being familiar with the facts, parties, dates, products, services, history, business, and so forth (and your attorney not being familiar with any of these), can gather information, prepare a chronology, summarize the facts, and so forth twice as fast as your attorney. If your attorney is billing $200 per hour, you **save yourself $400 per hour** for every hour that you will spend **doing what your attorney otherwise must do in order to provide you with competent representation.**

For the same reason, you can often achieve much greater quality control and much better representation if you will organize and put down in writing what you know. When dealing with a complex matter that takes a year or more to be resolved, and especially where more than one attorney or paralegal in the firm works on your matter, it is most helpful to be able periodically to read the client's original summary of what happened. Even if your attorney is working on a contingency-fee or flat-fee basis, you should still involve yourself enough to ensure quality control.

c) Attorney-Client Partnership – The best way to view your working relationship with your attorney on a complex matter is to think in terms of a partnership, as is true with most long-term supplier-customer relationships. You and your attorney need to work together and, if you are willing, you need to do all that you can in the way of fact-gathering at the outset and later in responding to pleadings and discovery as the case goes forward. Your attorney will still have plenty to do. When interrogatories and document requests are needed or are being answered, you should have considerable input. Consider drafting the first response to each paragraph of a Complaint or Counterclaim and each set of interrogatories, even though only your attorney will be permitted to see your response. (Always mark everything **"Prepared for Counsel"** and add your attorney's name.) Your attorney will then take your proposed answers, which contain your superior knowledge of the facts, parties, dates, your business, its history, and so forth, and provide a "legal response." By working together, you and your attorney can best come up with a final product that is accurate and best represents your interest and, in addition, is done at a much lower cost than simply leaving your attorney to gather all the facts necessary to draft and finalize the pleadings.

d) Word Processing and Email – When doing summaries, chronologies, lists of names, addresses and telephone numbers, you can often save the attorney and the attorney's staff a great deal of time by delivering a diskette or CD-ROM, or by emailing the materials to the attorney in order to avoid re-typing as well as attendant cost and possible errors. Be careful with email as it is not totally secure for a number of reasons. For truly sensitive matters, you may prefer to bring in or mail a disk. And, as always, type "Attorney-Client Privilege" and the name of your attorney on the document—hard copy and stored copy.

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Take care to ensure the firm you select does use "high tech" methods of delivering legal services. If the firm does not use email or have high-speed Internet access, that is a good sign that you will not receive the benefits of electronic legal research and maximum use of technology to keep labor costs down and improve quality control.

e) Negotiate the Rate – Attorneys often will negotiate their rates. Fees are generally 1) per hour, 2) flat fee, or 3) contingency fee. In a contingency-fee arrangement, the attorney generally receives an agreed percent of the amount recovered for the client , with no attorney fee due if there is no recovery. The client is responsible for costs. Fees can also be some combination of the foregoing. Any one of these arrangements may be negotiable, especially if a) you make it clear you are willing and able to assist with the work; b) you pay up front or pay a retainer and allow the attorney to bill against the retainer; c) you agree to pay promptly upon billing; d) your contingency-fee case is especially attractive in terms of amount, liability, or solvency of the defendant; e) you tell the attorney you need a break; or f) you are simply a good negotiator or you use a good negotiator. Take care, however; no attorney (or doctor, architect, plumber, etc.) wants to deal with clients who nitpick invoices or imply the services are not worth the charges. And, you do not want your matter receiving last priority because you negotiated a rock-bottom price from an attorney who is much in demand.

Do not assume or accept as fact that all personal injury cases are "one-third contingency fee." If your case is high-dollar with a lock on liability and a solvent defendant, you may be able to negotiate an even better contingency-fee arrangement than a person with a small claim with disputed liability and a defendant with little or no assets. And, if you have already organized the facts before going to see your attorney, your attorney should realize your efforts will reduce both the attorney time and staff time required to handle your case.

When going over rates, discuss whether you will be billed for secretarial or paralegal time and the billing rates. Establish a good working relationship with law firm support-persons, as they can often answer your questions about the status of pleadings, dates, deadlines, and much more. If your question does not require a legal answer from an attorney, by all means ask the attorney's secretary instead of the attorney.

Flat fee arrangements work reasonably well for routine matters such as certain wills, title searches, uncontested divorces, demand letters, certain contracts, and other matters that are predictable and lend themselves to forms and/or can be handled by trained staff. One major problem with the use of flat fees in other areas is that client demands and client conduct can be impacted by the fee arrangement. A given task handled on a per-hour basis and assistance and reasonable demands on the attorney. That same task offered in a flat fee basis may result in excessive demands and little client coordination in fact-gathering and other matters.

f) Litigation Support Team – For complex legal matters that will require a great deal of discovery, document production and review, and many months (or years) to resolve, have the company President or the Board of Directors set up a "Litigation Support Team." Select competent,

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knowledgeable in-house persons to work closely with the attorneys and to do much of the document review and fact-gathering that the attorneys and paralegals would otherwise have to do. Be careful to coordinate closely with and under the direction of the attorney or law firm that takes responsibility for the case or matter.

Much has been written about the shortcomings of per-hour fee arrangements. Much could also be written about the many shortcomings of contingency-fee and flat-fee billing. On balance, the fairest way for both the client and the attorney may be to deal honestly on a per-hour basis with an attorney experienced in the field, have the client do the parts that do not require lawyer skills, deal in good faith, and keep communications open. It is often impossible for the attorney or client to predict all of the twists and turns a litigation or other complex legal matter will take, and honest per-hour billing can be the fairest billing method for both the attorney and the client. Many people prefer the flat fee or contingency-fee arrangement, and if that is your preference, be prepared to convince the attorney that your case is a matter that can be understood and resolved without the need to devote hundreds of hours of attorney time to it. Otherwise, the attorney will either not take your case or quote a hefty fee to deal with the expected time and effort to resolve the matter.

g) Attorney-Client Privilege – It is important when assisting your attorney or law firm that documents you create and summaries you provide to your attorney be protected by the attorney-client privilege. This protects your work created for your attorney from disclosure to the other side when the work is intended only for the eyes of your attorney. As the attorney-client privilege applies to communications to your attorney for the purpose of seeking legal advice, it is a good idea to use transmittal letters that begin with the words: "**For the purpose of obtaining legal advice, I prepared and am herewith providing to you the following information. . .**" It is also important to use the words "**Prepared for Counsel**" when preparing documents and drafts for your attorney and it is suggested that you put your attorney's name with the word "**Attorney**" to avoid inadvertent disclosure of protected materials and information.

h) Stay in Control; Avoid the "Orphaned Litigation" – All too often companies (and some individuals) turn a litigation over to a law firm and simply abandon the matter. Some litigations last for years, employees change jobs, and on occasion the law firm is the only entity that seems to care what happens to the case. (Thus the term "orphaned litigation.") It is up to the client to keep in touch and keep in control, especially as time goes by and personnel changes.

i) Benefit from the Litigation – Depending on the nature of the litigation, the client can also use the litigation as an opportunity to reassess its internal practices regarding quality assurance, employment practices, extensions of credit, the need to update contracts and contracting proceedings, and much more. All too often a small business extends credit (sells on a "net-30" basis) without realizing its forms and procedures are woefully inadequate, a loss in an early collection litigation can be the catalyst needed to correct the problem early on, before a great deal of credit has been extended. Many times "preventative law" can easily meet the "ounce-of-prevention-equals-a-ton-of-cure" test.

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j) Non-litigation Matters, Contracts, Planning, Etc. – Many of the foregoing matters apply equally well to transaction law and non-litigation matters. Never simply have a law firm "redo our contract" or "update our employee manual." Take charge or assign competent employees to take charge of the project and do the significant "nonlegal," fact-gathering and company policy portions of the project. Then work in close partnership with an experienced attorney, allowing him or her to exercise professional judgment and do the part that truly requires doing by a licensed attorney experienced in the matter.

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