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Getting Paid: Fee Agreements and Alternative Fee Structures

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Initial Consultations

- Free consultations
  - you don't have to, but they can be good marketing
- Paid consultations
  - don't be afraid to do so
- Either way, have a written representation agreement for initial consultations
- When done with initial consultation, you should have a script that details how you are going to charge for the next stage of representation

Fee Agreement Terms and Requirements

- Comes under Business and Professions Code 6147-6148
- Make sure you include all details of representation
- Terms must be in writing, must be signed by both attorney and client, and a duplicate must be given to client
- Fees exceeding $1000 must be in writing, but best to have everything in writing

Types of Fee Arrangements

- Keep track of your time no matter what methods you use!
- Contingency fees
  - usually found in personal injury, veteran's benefits, and social security
  - you can't use these in certain family law situations or for representing defendant in criminal case
- Flat fees
  - improve profitability in law firms
  - very powerful but can be difficult to pull off because most attorneys base fees on estimated time
    - value the fee differently than your time
  - follow state bar rules
  - you don't have to charge the same flat fee for everything
  - outline the scope of your representation and limit it—if you go beyond that initial scope, charge another flat fee
- Hourly
  - the most common and traditional way of doing fees
  - be sure to outline the scope of representation
- Milestone
  - this charges a flat fee for successive parts of a case
- Hybrid
  - could be part contingency, part flat fee, part hourly
- Client must understand how fees and expenses are going to work

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Fee Disputes and Arbitration Clauses

- Use State Bar fee agreements
- Use Mandatory Fee Arbitration Clauses in your fee agreement
- Use Notice of Client's Right to Fee Arbitration in your fee agreement

Malpractice Insurance Disclosure

- Rules of Professional Conduct 1.4.2(a) says you must disclose if you don't have malpractice insurance
- Disclosure must be in writing
    - exceptions: if engagement is less than four hours, or emergency rendering of legal services, or government or in-house counsel, or if you have previously informed client

Trust Accounting

- Funds held for the benefit of the client
    - use the account appropriately
- Most hourly cases will need trust accounts to take fees up front and bill against
- Flat fees can put into trust accounts
- Use a bookkeeper that knows how trust account works
    - if not, reconcile regularly
- Maintain records of statements and a written ledger
- Earning fees from trusts
    - earned fees must be withdrawn at the earliest reasonable time (RPC 1.1(c)(2))
- Disputed fees should remain in trust until resolved

Billing and Getting Paid

- How often should you bill? — it depends on the type of case
    - hourly — should bill once or twice a month
    - flat fee — no billing required (but you should still track time in case of disputes)
    - contingency — continuous time tracking, probably very little billing
    - hybrid/milestone — varies, but no less than once a month
- How are clients going to pay you? Make it easy for them to pay!
    - credit cards, ACH, personal checks, cash, cashier's checks/money orders
    - if accepting credit cards, increase your fees to include credit charge service charges
    - Venmo OK, Zelle OK, PayPal not recommended because you are providing a service, not a product

Collection Issues

- Evergreen retainers
    - requirement that clients replenish retainers
    - ensures timely payment
    - allows for withdrawal at the first sign of nonpayment (subject to professional conduct rules on withdrawal)
- Suing for fees
    - try to avoid
    - can bring up potential professional liability insurance issues
    - not fun to sue your own client
    - arbitration clause helps to avoid this
- Avoiding accounts receivable
    - avoid accounts receivable if possible
    - tracking and forecasting revenue is easier if you avoid accounts receivable