

# Law Office Management Chapter 6

## Chapter 6

### *Tab Text*

## Legal Fees

### OBJECTIVES

After completion of this chapter, you should be able to:

- Describe the various types of fees charged in a law office.
  - Discuss the advantages and disadvantages of each type of fee.
  - Explain the rules and ethics that apply to lawyers and paralegals regarding fees.
  - Describe other methods of producing profits besides fees.
  - Explain the factors considered when determining a reasonable fee.
  - Explain liens for fees.
  - Describe a paralegal's ethical responsibility concerning fees.
  - Identify requirements for fee agreements.
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## Key Terms



The screenshot shows a software interface with a sidebar on the left containing six buttons: 'Key Terms' (highlighted), 'Internet Projects', 'Answers to Chapter Review Questions', 'Examples for Discussion', 'Possible Answers to Assignments', and 'Quiz'. The main content area is titled 'Key Terms' and contains a numbered list of six terms with their definitions. A vertical scrollbar is visible on the right side of the main content area.

**Key Terms**

1. **Actual cost:** True cost without consideration of a markup for profit.
2. **Advance:** To pay money before it is due; to loan money.
3. **Bait-and-switch:** A tactic used in advertising to attract customers to a sale item and then replace that item with one that is not on sale.
4. **Charging lien:** A lien placed on a client's proceeds or judgment for payment of an attorney's fees.
5. **Client funds account:** A bank account established exclusively for clients' funds; an attorney may not use this account for any other purpose; also called a client trust account.
6. **Contingency fee:** A fee consisting of a percentage of the possible recovery from a lawsuit.

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6. **Contingency fee:** A fee consisting of a percentage of the possible recovery from a lawsuit.
7. **Costs:** Expenses of one side of a lawsuit that a judge orders the other side to reimburse; includes filing fees, service fees, and recording fees.
8. **Database:** A collection of information for computer retrieval.
9. **Extraordinary fee:** A fee that is awarded in addition to statutory fees and that compensates an attorney for extra work required by the circumstances of a case.
10. **Flat fee:** One fee that is charged for an entire case; also known as a fixed fee.
11. **Hard cost:** Cost incurred for filing fees, service fees, deposition expenses, and so on.
12. **Lawyer hopping:** Going from lawyer to lawyer for advice and representation.
13. **Lodestar:** A method of calculating an attorney's fee using the attorney's hourly rate multiplied by the number of hours worked on a case.
14. **Markup:** To add a percentage to the cost of an item for profit.
15. **Multiplier:** An amount that is added to the attorney's lodestar fee to compensate for time limitations and risks.
16. **Per diem:** Latin term meaning "by the day."
17. **Portal-to-portal:** Of or relating to the time spent traveling from one place to another.
18. **Reasonable attorneys' fees:** The amount of attorneys' fees determined by a governing entity to be reasonable.
19. **Redline:** To mark a document to indicate changes made by other parties.
20. **Retaining lien:** A lien placed on property that belongs to a client and is in an attorney's possession.
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21. **Soft cost:** A cost incurred for photocopies, long distance telephone calls, faxes, and so on.

22. **Tort:** A legal wrong done to a person; a civil wrong that is not based on a contract.

## Internet Projects

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The *Of Interest* sidebar on page 227 of the text lists cases whose subject matter is the recovery of paralegal fees. Review those cases, or the following to enhance your knowledge of the topic:

*San Diego Police Officers Assn. V. City of San Diego*,  
76 CA4 19; 90 CR2d 6-(1999). Subject: Negative multiplier.

*Iverson, Yoakum, Papiano & Hatch v. Berwald*,  
90 CR2d 665-(1999) Subject: Executing a note for payment of fees.

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# Answers to Chapter Review Questions

## **Tab Text**

*Following are answers to the Chapter Review Questions found in the text.*

1. The four types of retainer fees are true, nonrefundable chargeable, nonrefundable nonchargeable, and refundable. A true retainer is used to ensure an attorney's availability. A nonrefundable chargeable retainer is applied to the costs of an attorney's services but is not refundable if it is not used. A nonrefundable nonchargeable retainer is not applied to the attorney's services and is not refundable to the client. A refundable retainer is refundable to the client if the client should discharge the attorney (p. 199).

2. A straight hourly rate is each timekeeper's rate specifically set forth in a bill. A blended hourly rate is an average of each timekeeper's hourly rate (p. 201).

3. The following variables are considered when determining an attorney's hourly rate: expenses; anticipated billable time; profit percentage; allocation of expenses; collection rate; billing rate; living standards; experience level; seniority; ability to pay; competitor firm's rates; specialties; attorney's ability; rule of three; and the firm's prestige (p. 204).

4. To determine a set fee, the following variables are considered: time involved in completing the case; attorney time; paralegal time; and hourly rates (pp. 204-205).

5. Task-based billing is using flat fees for a segment of a case or specific tasks performed (p. 205).

6. A contingency fee is a percentage of the recovery. A modified contingency fee is not based on

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the amount of recovery; it is a percentage of the difference between the amount at issue and the amount of the final judgment (p. 207).

7. The difference between the gross fee method and net fee method is that the gross fee method deducts the attorney's percentage before costs are deducted. The net fee method deducts the attorney's percentage after costs are deducted (p. 207).

8. The following four factors are considered when taking a case on contingency: risk, inflation, significant expense, and cash flow (RISC) (p. 208).

9. Apremium fee is an increased fee to encourage an attorney to obtain a favorable outcome (p. 210).

10. Hard costs are directly attributable to a client's case and include filing fees, service fees, and the like (p. 214).

11. Soft costs cannot be directly attributed to a client's case until applied to a client's case; include overhead expenses (p. 215).

12. The eight factors used to determine a reasonable fee are: time and labor required; other employment opportunities; customary fees in the community; amount involved and the results obtained; time limitations; professional relationship with a client; experience, reputation, and ability of the lawyer; and type of fee (TOCATPET) (pp. 219-220).

13. In calculating a reasonable fee, the lodestar approach is determining the number of hours reasonably spent on a case and applying the attorney's hourly rate thereto (p. 223).

14. The difference between a charging lien and a retaining lien is that a charging lien is placed on a judgment that the lawyer obtained for the client. A retaining lien allows an attorney to

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retain a client's property until the bill is paid  
(p. 224).

15. Paralegals should not quote fees because case law has ruled that it takes the judgment of a person with a law school education to identify issues and anticipate problems in a case so an adequate fee may be quoted (p. 225).

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## Examples for Discussion



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- 1. The Fee Feud**
  - A. A judge may review the lawyer's time sheets and apply the lodestar method to arrive at a fair fee for the attorneys.
  - B. Some judges may give Cecelia monetary consideration because the case was originally hers.
  - C. Model Rule 1.5(e) (p. 212) applies to this case.
- 2. High-Overhead Solution**
  - A. The administrator's compensation was improper because it constitutes fee splitting with a non-lawyer. Since this type of compensation was not offered other employees, it could not be construed to constitute compensation or retirement plan based on the profitability of the firm.

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#### **2. High-Overhead Solution**

- A. The administrator's compensation was improper because it constitutes fee splitting with a non-lawyer. Since this type of compensation was not offered other employees, it could not be construed to constitute compensation

or retirement plan based on the profitability of the firm.

B. This financial arrangement may be allowed in the District of Columbia where non-lawyers are allowed to own a portion of a law firm.

C. Model Rule 5.4(a) (p. 212) applies to this case.

D. A possible repercussion of this arrangement includes attorney discipline for violating ethical rules. The administrator may also have to return the money received from a portion of the firm's profits.

E. There are advantages to this type of arrangement in spite of ethical rules against it. An administrator would be encouraged to keep law firm profits high and expenses low.

### **3. The Fee Is Mine!**

A. One way to solve the problem is to set standards for referral fees. Should the fee be given to the attorney who recommends another attorney, or be set by the amount of work required to obtain another attorney? Should the client be the determining factor?

B. The students may have differing answers to this question. One student may feel that Ming is entitled to the fee because he recommended Albert. Another student may feel that Rachel is entitled to the fee because she worked the hardest to find an attorney. In the actual instance, the client resolved the problem by directing the referral fee to Rachel.

C. Model Rule 7.2(b)(4) (p. 210) refers to this case and forbids referral fees. Some states allow attorney referral fees and others do not. Your state's code of professional responsibility should be consulted.

D. The advantage of paying a referral fee in this case is that the case may be considered

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undesirable and it would encourage a lawyer to take the case. It also ensures that the client will be represented in the case.

E. Disadvantages are that the lawyer who took the case may not be the most qualified but may agree to take the case for the referral fee. This instance also resulted in a problem with Rachel's and Ming's relationship.

#### **4. Attorney Referral Fees**

Discussion re the pros and cons of referral fees.

#### **5. Creative Fee Structuring**

A. combination fee is a possible solution to this problem. Some possible combination fees include:

1. Low contingency fee with lower hourly rate;
2. Low contingency fee with low flat fee;
3. Nonrefundable chargeable retainer fee that is deducted from a contingency fee;
4. Flat fee payable in small monthly installments.

#### **6. Drill and Fill Dental Services**

A. The purpose of this illustration is to illustrate soft costs in a non-legal environment. Most students would react negatively to the invoice, but some may not have a problem with it.

B. The charges are probably proper from Drill and Fill's point of view, with the possible exception of the "free" toothbrush. There is very little difference between these charges and a law firm's charges. Law firms charge for equipment (database storage) and supplies. Some firms charge for use of the conference room, postage, and photocopies.

C. Doctors and dentists do not charge their patients like the invoice indicates because their patients would not let them. All of the invoice's charges are included in the doctor's flat fee for an office visit.

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D. Attorneys charge for soft costs because they needed to find ways to increase their incomes without increasing their fees.

E. Attorneys' soft costs are tolerated because their clients have not complained about them. However, corporate clients are beginning to rebel against soft costs and many refuse to pay them. This trend may lead to the elimination of soft costs.

## **7. Who Pays to Educate the Lawyer?**

A. The answer to this question is: it depends. If the value of Adam's property is \$150,000, a fee of \$825.00 to secure the title is a reasonable fee. If the value of Mark's property is \$300,000, a lower fee would be disproportionate to the value of the property, and therefore unjustified. The higher value of Mark's property justifies a higher fee than Adam's fee. If Mark's property is the same value as Adam's, the same fee would be justified. On the other hand, if the value of Mark's property is less than Adam's property, a lower fee is justified and proper.

B. Model Rule 1.5(a) (p. 219) lists the eight factors of a reasonable fee. This question refers to the amount involved and the results obtained in the reasonableness test (TOCATPET).

## **8. Bond or Bust**

A. The client is entitled to the bond money because she gave it to Doug for a specific purpose: to purchase a bond.

B. Model Rule 1.8(i) (p. 224) applies to this case.

C. A retaining lien was not proper in this case because it attached to property given to the attorney for a specific purpose.

D. Doug should have purchased the bond with the money and could have refused to proceed further on the case until Brenda paid his fees.

## **9. The Old Bait-and-Switch Tactic**

This scenario illustrates the problem that could arise if paralegals are allowed to quote fees.

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- A. The incident caused the client to distrust Susan, which damaged Susan's reputation.
  - B. The incident promotes lawyers' negative reputations.
  - C. Jan was negligent in quoting the fee, even though Susan probably allowed her to do so. Jan should have referred all fee requests to Susan.
  - D. Susan was wrong in allowing her legal assistant to quote fees. She should have been diligent to ensure that only she quoted fees.
  - E. Gail did nothing wrong. Some people would argue that she should have known that her bankruptcy was more complicated than the average bankruptcy, but most laymen would not know enough about bankruptcy to make that determination.
  - F. This incident could have been avoided if the paralegals did not quote the fee.
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## Possible Answers to Assignments



**Key Terms**

**Internet Projects**

**Answers to Chapter Review Questions**

**Examples for Discussion**

**Possible Answers to Assignments**

**Quiz**

### Possible Answers to Assignments

*Following are possible answers to Assignments provided in the text. The responses below are a guide to what an instructor would look for within the student's response. Some assignments are based solely on individual experience and/or opinion, and a general response for such questions is not provided.*

- 1. Fee disputes.**

**Situation 1:**  
The court found that the retainer clause was ambiguous and construed it against the lawyer. The clause did not clearly state that the "nonrefundable retainer" was intended to be a minimum fee or that the entire sum would be forfeited notwithstanding any event that terminated the attorney-client relationship prior to 25 hours of service. The court imposed the burden on the lawyer to establish that the client understood the terms of the agreement. Because the lawyer failed

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of service. The court imposed the burden on the lawyer to establish that the client understood the terms of the agreement. Because the lawyer failed to do so, he was ordered to return \$1,500 to client. *Jacobson v. Sassower*, 1 Law.Man.Prof.Conduct 1134 (1985).

**Situation 2:**

Courts have ruled both ways in this case. Some courts denied the use of multipliers indicating that a 50 percent chance of success was not an unusual level of risk and granting a multiplier may encourage frivolous lawsuits. Other courts have ruled (majority opinion) that the contingent nature of a fee justifies an adjustment of the attorney's hourly rate. Even when a client prevails, an attorney faces the risk that a court will find some of his time duplicative, unnecessary, or inefficiently expended. To deny consideration for the added risks an attorney must bear under a contingency fee agreement is not reasonable, and an upward adjustment may be required. The exact amount of the adjustment must be determined on a case by case basis. *Wildman v. Lerner Stores Corp.* 1 Law.Man.Prof.Conduct 977 (1985). and *Laffey v. Northwest Airlines, Inc.* 746 F2d 4, 1 Law.Man.Prof.Conduct 478 (1984).

**Situation 3**

The attorney may not foreclose on the client's home for a \$25,000 lien for a \$15,000 debt. To do so takes unfair advantage of the client who signed the \$25,000 note upon threats of the lawyer to withdraw from the case. If the note and deed of trust were for \$15,000, the lawyer would have been successful. *Terzis v. Estate of Whalen*, 489 A2d 608, 1 Law.Man.Prof.Conduct 680.

**Situation 4:**

A contingency fee is not appropriate in this case because it affects the amount of client's recovery. The contingency fee agreement may be set aside by the court if circumstances occurring after the agreement rendered its enforcement unreasonable. *McKenzie Construction, Inc. v. Maynard*, 758 F2d 97.

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**Situation 5:**

This fee is clearly excessive because it was not a difficult case and was settled because of the efforts of someone other than the attorney. The court estimated the attorney's hours and applied lodestar calculations for a fee of \$6,500. Kirby v. Liska, 351 NW2d, 421, 1 Law.Man.Prof. Conduct 357 (1984).

**Situation 6:**

This fee is clearly excessive and exceeded the fee charged for similar services in the community. The court found it inconceivable that a competent attorney could spend 800 hours on the case. The fee was reduced. S. v. Strawswe, 581 FSupp 875, 1 Law.Man.Prof.Conduct 152 (1984).

**Situation 7:**

Contingency fees are prohibited in domestic relations cases. The court ruled that property disposition did not constitute an independent action that would support a contingency fee in a domestic case. Meyers v. Handlon, 479 NE2d, 106, 1 Law.Man.Prof.Conduct 892.

**Situation 8:**

The lawyer acted improperly. She must obtain the client's consent to associate the appellate lawyer, and may not divide legal fees with that lawyer without a full disclosure to the client. Dallas Opinion 1982-1 (1982).

**Situation 9:**

The court ruled that the first firm had abandoned the case and was therefore not entitled to a fee. The court could find no justifiable cause for the withdrawal. Hensel v. Cohen, 202 CalRptr 85; 1 Law.Man.Prof.Conduct 247 (1984).

**Situation 10:**

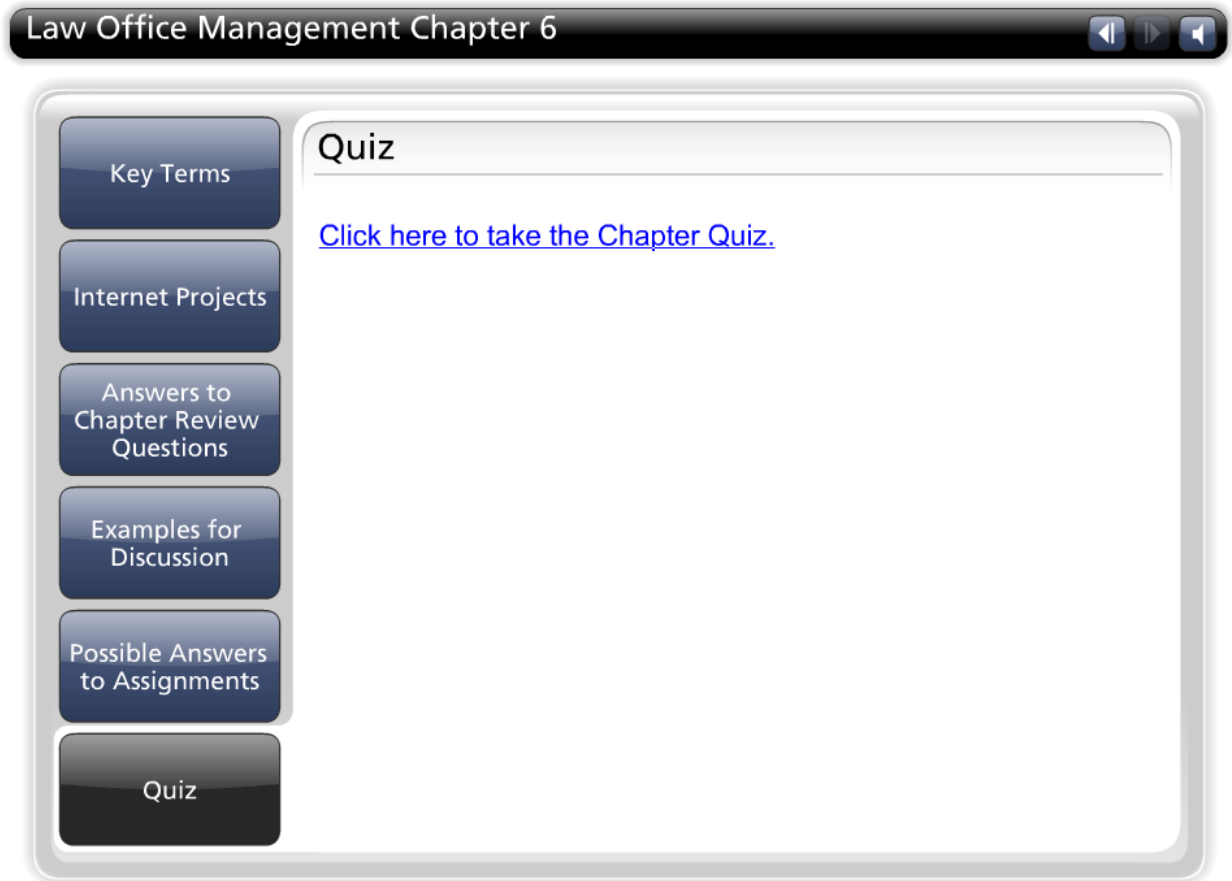
The lien is improper because it is for fees unrelated to the personal injury case. Pasin v. Kroo, 412 So2d 43.

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**2. Contingency fee agreement follows.**

## Quiz



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