

1.4: PART III- HOW ATTORNEYS GET PAID AND ATTORNEY FEES

Some attorneys work as salaried employees just like many others in our economy. Examples of salaried attorneys are patent/trademark attorneys who work for major corporations. Others may be agency or government employees such as criminal prosecutors who work for a District Attorney's Office, or criminal defense attorneys who work for a Public Defender's Office. Some may work as trust officers for a bank or other financial institution or become judges or town attorneys. Some go into politics or become television personalities. However, these are not typically the attorneys you would hire to give you legal advice or represent you in a legal matter.

Client-specific attorneys often work for themselves as solo practitioners, or perhaps share office space with other attorneys, but not their clients. Many are associates and/or partners in law firms which can range in size from two attorneys to thousands of attorneys in national and even international law firms.

How do client-specific attorneys get paid?

Attorneys are paid primarily for two things, their time and their legal advice. How much an attorney charges for these two things varies greatly from attorney to attorney. The cost of an attorney often varies based on the location. Attorneys in New York City often charge much more than those in Upstate or Western New York State. It can vary based on the particular area of law concentration or expertise of an attorney or law firm. It can vary based on the reputation of an attorney as well. Regardless, the compensation of client-specific attorneys is determined, directly or indirectly, in one of four ways: flat fee, hourly, on a contingency fee basis, or on retainer.

Flatfee payment arrangements: This is a task-based method of payment. This fee arrangement is particularly suited to a legal task that is deemed routine or predictable, in both time required and complexity.

Some examples of this type of legal work may include:

- Name changes
- Uncontested divorces
- Real Estate Closings
- Wills
- Power of Attorney documents
- Criminal Defense Representation
- Traffic Court Appearance
- Evictions

Hourlyfee payment arrangements: This is legal compensation based on a fixed hourly rate. Most attorneys charge more per hour for "in court" time than they do for office work. Fractional hours are billable hours. This may range from one-tenth of an hour (i.e. every six minutes) to every quarter-hour (15 minutes), or half-hour (30 minutes). Phone calls (whether to, from, or about clients), text messages, and emails count as much as face-to-face meeting time. These fees can range from small town attorneys charging \$100 per hour, to large firm attorneys in major cities charging \$725 per hour. Back in 2013, the ABA Journal published that the average billing rate for partners ranged from \$343 at firms of 50 or fewer lawyers to \$727 at firms of more than 1,000 lawyers.

Contingent fee payment arrangements: With this fee arrangement, an attorney only gets paid if he/she wins a case. The attorney then gets paid a percentage, often between 25-33% of any monetary judgment or settlement. What is important to remember is that an attorney who takes on a contingent fee case, and loses, does not get paid. Secondly, contingent fee arrangements are uniquely applicable to personal injury actions, and are inherently inapplicable to matters like criminal defense, divorces, obtaining patents, or adoptions. Most often in personal injury actions, there are expenses that go beyond attorney fees. Filing fees, fees for obtaining documents, expert witness fees, travel expenses, deposition transcripts, and getting copies of medical records all cost money. An attorney who works on a contingent fee basis cannot pay for these client expenses of litigation. The client is responsible for these expenses whether they win or lose their case. With all of this in mind, attorneys who work on contingency fee cases are careful to take on cases they believe they can win. They typically do not want to work for free. When a client unsuccessfully shops their case around with several firms, it is usually because the case is likely not going to go well for the client.

On retainer fee payment arrangements: In some circumstances, a client anticipates having an on-going and substantial need for an attorney's professional services. In these circumstances, an agreement may be reached that for an agreed-upon fee, the attorney will be "on call" to such a client. The attorney is then guaranteed at least the agreed-upon amount for remaining available to do whatever legal work is required for the client. This sometimes referred to as being on retainer.

What is a retainer agreement?

A retainer agreement is a signed written document between the client and the attorney on how the attorney is going to be paid. Not all legal representation requires the signing of a retainer agreement. Often attorneys forgo a retainer agreement for legal work such as representing a client in a town court for a traffic ticket or preparing a will. However, retainer agreements are highly encouraged, and in some circumstances, legally required to prevent any down-the-road misunderstandings of how an attorney is going to be paid. This signed written confirmation of the mutually-agreed-upon fee arrangement is to be distinguished from “being on retainer” in that a retainer agreement sets out how an attorney is to be paid, whether by flat fee, hourly, on contingency, or being on retainer. It may also set out whether the attorney is requiring an advance or upfront payment by the client. This is much like a deposit which the attorney can draw from as the legal matter proceeds. Part or all of an advance, or upfront retainer fee, may be refundable depending on the agreement between the client and attorney. There are also some legal restrictions placed on attorneys on how much of an advance, or upfront retainer fee, they can keep if the legal representation of a client prematurely ends.

The following is an example of a contingency fee retainer agreement:

CONTINGENT FEE RETAINER AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of ____, 20__ by and between the law firm of _____, hereinafter referred to as “law firm” and _____, hereinafter referred to as “client(s).”

WHEREAS, the law firm is a firm of regularly practicing attorneys located in _____, New York, who engage in litigation involving personal injury and property damage, and

WHEREAS, client(s) believe(s) that (s)he may have claim or cause of action for personal injury and/or property damage against (insert appropriate name(s)) or any other person, firm, or corporation that may be liable thereto resulting from an incident that occurred on the (date) day of (month, year).

WHEREAS, the client(s) is/are desirous of hiring said law firm to proceed against said Defendant(s), or some of them, or any other person’s legal entities or insurers against whom a recovery might be obtained, as determined by the discretion of said law firm.

NOW, THEREFORE, the client(s) and law firm do hereby mutually agree that the law firm will proceed as it shall deem appropriate to affect a recovery for any and all personal injury and/or property damage that has been sustained by client(s).

Client(s) shall, upon the signing of this Agreement, pay the law firm the sum of \$(dollar amount) that shall be applied upon account for expenses as needed, to obtain photographs, hospital reports, to secure records and documents, to pay the costs of medical examinations and reports, fees for expert witnesses, and the costs of service of notice of suit and filing of Petition. Law firm may demand from time to time, and client(s) shall pay such, additional sums as shall be necessary to pay said expenses. Any expense fund balance shall apply on law firm’s fees; however, such balances so applied, unless hereinafter otherwise set forth, shall be considered in determining the percentages hereinafter referred to.

Client(s) further agree(s) that, in addition to the expenses or including the expenses referred to in the preceding paragraph, or if not otherwise paid, the client(s) will pay in advance all out-of-pocket costs of suit, including any and all costs of suit, including any and all costs as may be necessary for the opening of an Estate, Guardianship, or Conservatorship, as herein after set forth, and all out-of-pocket expenses to discover, preserve, and present evidence, to prepare for trial, and client(s) further agree(s) to pay all reasonable incidental expenses, including reasonable and necessary travel costs. Client(s) agrees(s) to pay all said fees promptly at the request of the law firm.

Client(s) and law firm further agree that, in the event of recovery, such expenses as hereinabove referred to, not already paid, shall be paid by client(s) from his/her/their share of the proceeds as hereinafter set forth.

In the event of recovery, the amount of recovery shall be used as a basis for compensation as hereinafter specified. **The firm shall receive an amount equal to thirty-three and one-third percent (33 1/3rd) of said recovery in money or property if effected by settlement made after service of notice of suit, or up to the time of the beginning of the selection of the jury in said trial or if made at any point between the beginning of the selection of the jury and the final decision of the jury, or after appeal if an appeal is taken.**

Client(s) and law firm further agree that law firm may, at its own expense, employ another attorney, or attorneys, in such place or places as may appear desirable to assist in the above matter. If client(s) employ(s) another attorney, or attorneys, in this matter, such

employment shall be at the client's expense and shall not affect the amount due law firm under this contract. If client(s) should settle or collect his/her/their claim himself/herself/themselves, such fact shall not affect the amount due law firm under this agreement. Client(s) agree(s) that any settlement of this claim shall be made through, and at the offices of, said law firm.

Client(s) and law firm further agree that, in the event the proper prosecution of this case requires proceedings in an Estate or Guardianship, the law firm herein shall in addition to the contingent fee herein agreed upon, be reasonably compensated for such services in the event of recovery as allowed by the Court and provided by law. Should there be no recovery, client(s) shall pay to the law firm such reasonable amount for opening and closing such Estate or Guardianship as allowed by the Court, and as provided by law.

Client(s) and law firm further agree that all sums due herein shall be paid at the offices of (your address).

Client(s) and law firm further agree (insert as needed).

Client(s) and law firm further agree that except as may be heretofore set forth, or as provided by law for the administration of assets other than this lawsuit, said attorneys shall receive no compensation for services rendered under this Agreement if there is no recovery of money and/or property.

Signed and dated at _____, on the date first above written.

(Law Firm Name)

By: _____
(Attorney Name)

(Client name)

(Client name)

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