

Westport Insurance Corporation

Fee Disputes

Lawyers' Risk Management Note: *A review of the claim information forwarded to Westport includes allegations that the lawyer did not adequately explain the fee structure or charges that would be incurred for litigation. Alternatively, the original claim began with the lawyer suing to recover fees for services and eventually escalated when the client countered with a claim for malpractice. Below are precautions that, if taken, may reduce the risk of litigation resulting from fee disputes.*

1. Use a retainer agreement or engagement letter to outline fee arrangements. If billing on an hourly basis clearly set forth your hourly rate. Discuss your expectations of the number of hours you will spend on the case. Consider including in the letter an arbitration provision to address a fee dispute.
2. Review the status of the case with your client on a regular basis so your client will not be surprised by the number of hours billed or the outcome of the case.
3. Clearly itemize billings so the client can see the time and labor performed and the expenses for which he or she is being charged.
4. Bill your clients regularly, on a monthly basis if possible.
5. Keep records of your time so that you can reconstruct how time was spent and provide details to your client if questions arise.
6. Review your unpaid billings regularly. If a client is falling behind in payments, contact your client to determine if any problems are emerging.

Before you sue for fees consider whether the recovery is worth the effort. Review the following:

1. Attempts to collect unpaid fees lead to a disproportionate number of retaliatory counterclaims for malpractice. Before commencing litigation to recover fees, review your handling of the client's case with a critical eye for any defects, no matter how small, in your handling of the case.
2. Evaluate the amount of your likely fee recovery. You will be awarded only reasonable fees. If your fees could be considered excessive, deduct that amount from recovery. Deduct the income taxes that would be charged on the portion attributable to the recovery of fees. Deduct also the time you will spend pursuing recovery or the legal fees you will incur if you retain someone to pursue the fee action on your behalf. Also consider if your client is solvent. Even if you are successful, will you be able to collect?
3. If you draw a counterclaim, at best, you will be out the deductible under your legal malpractice insurance policy. At worst, the counterclaim may not be covered, depending on the nature of the allegation. Consider also the possibility you will not be awarded the recovery of any fees.
4. Only if the fee dispute is substantial and all other risks have been evaluated should you consider proceeding with litigation to recover fees.