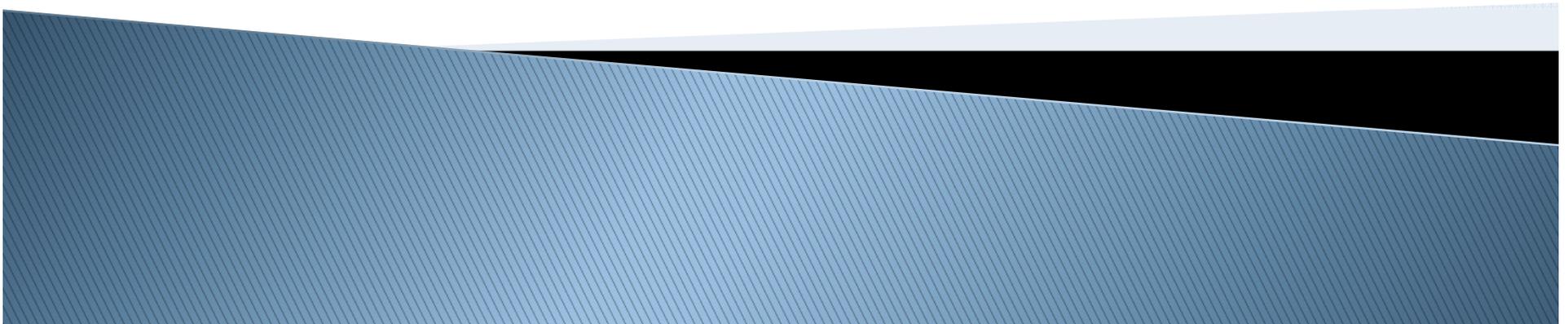


# Fee Disputes and How to Avoid Them



# What is a Fee Dispute?

- ▶ Disagreement between a client and an attorney over the amount charged in relation to the work performed.
- ▶ Does not always correspond with the quality of the services rendered.
- ▶ Dispute may be initiated by either the client or the attorney.



# Initial Responses

- ▶ *Are you kidding? I earned it!*
- ▶ *I performed way more work than for what I billed. My client actually owes me money!*
- ▶ *If my client wants money back, he can sue me!*



# Why Clients File Fee Disputes

In a nutshell, it's all about communication  
(or, a lack thereof).



# How to Avoid Fee Disputes

- ▶ Begin with good client intake hygiene.
  - Communicate expectations thoroughly.
  - Respond to client questions prior to entering into a contract.
  - Treat your client as you would a friend or family member.



# How to Avoid Fee Disputes

- ▶ Place your fee agreement in writing and make sure the client understands what it means.
- ▶ Identify the purpose of a retainer fee, how it is used and when additional fees may be charged.
- ▶ Clarify charges client will incur if client decides not to use your services at a later date or changes representation.

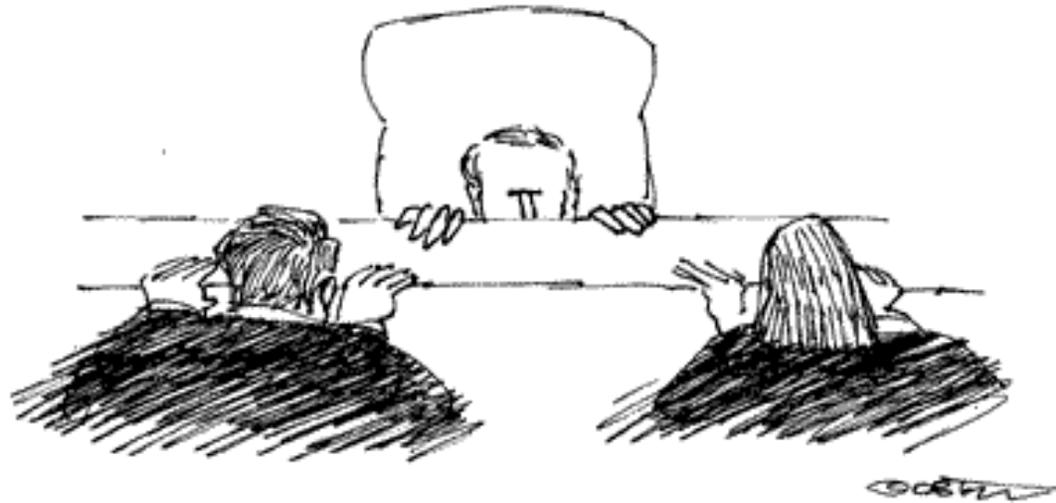


# How to Avoid Fee Disputes

- ▶ Keep the lines of communication open
  - Return phone calls
  - Give periodic status updates (even if there's nothing new to report). Can be done by phone, email or snail mail.
  - Don't avoid an upset client. Speak to a client who appears in your office without an appointment.



# Don't Let it Get to This...



*The attorney-client relationship was in decline.*

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# Reasonable Fees

## SCR 1.5 (a)

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) The fee customarily charged in the locality for similar legal services;
  - (4) The amount involved and the results obtained;
  - (5) The time limitations imposed by the client or by the circumstances;
  - (6) The nature and length of the professional relationship with the client;
  - (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) Whether the fee is fixed or contingent.
- 

# Contingency Fees

## SCR 1.5 (c)

A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state, in boldface type that is at least as large as the largest type used in the contingent fee agreement:

- (1) The method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;
- (2) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated;
- (3) Whether the client is liable for expenses regardless of outcome;
- (4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and
- (5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.



# Contingency Fees

## SCR 1.5 (c)

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.



# I Did All That...Now What?

- ▶ Work with your client to make a good effort to resolve the dispute.
- ▶ Weigh the costs of litigating or defending the fees with the amount in question.
- ▶ Determine what kind of future representation you may (or may not) want to have with the client.



# Resolving Fee Disputes

- ▶ Litigation
- ▶ Alternative Dispute Resolution (AAA, JAMS/Endispute)
- ▶ State Bar Fee Dispute Committee



# State Bar of Nevada Fee Dispute Committee

- ▶ Free service provided to clients and attorneys to resolve disputes of \$250 or more.
- ▶ Avoid filing claims in court.
- ▶ Disputes may be filed by client or attorney.
- ▶ State Bar resolves around 300 fee dispute petitions each year.



# State Bar of Nevada Fee Dispute Committee

- ▶ Fee disputes may be resolved through mediation or arbitration.
- ▶ Mediation is mandatory as a primary means of dispute resolution for claims of \$5,000 or less.
- ▶ Arbitration if mediation is unsuccessful or for claims over \$5,000.



# State Bar of Nevada

## Fee Dispute Committee

- ▶ Fee Disputes divided among six regional panels in Las Vegas, Reno, Carson City and rural areas.
- ▶ Panel members are volunteer attorneys and lay persons.
- ▶ Panel members will attempt to mediate disputes or, through arbitration, render an award.



# State Bar of Nevada Fee Dispute Committee

- ▶ Petitioner must sign a binding arbitration agreement.
- ▶ Respondent not required to agree to binding arbitration, but arbitrator can limit participation if agreement not signed.
- ▶ Arbitration award can be used in court by parties seeking to enforce decision.



# Volunteer to Serve

- ▶ Service on a Bar Committee increases positive public perception.
- ▶ Committee Members needed throughout the State.
- ▶ Good opportunity to network with attorneys and other professionals.



# Volunteer to Serve

- ▶ Average of three mediations/arbitrations per year.
- ▶ Current need for attorneys with mediation experience.
- ▶ Complete Application Form found on SBN website: [www.nvbar.org](http://www.nvbar.org).
- ▶ Applicants submitted to Board of Governors for approval.

