

Collecting Fees

Attorneys typically charge their clients on an hourly basis, a fixed fee basis, or a contingency fee basis. Variations of the three methods and combinations of the three are permitted.

The secondary issue is: what methods may an attorney ethically use to collect a fee? To secure payment of a fee? See pages 124-131 of Morgan & Rotunda and 54-61 of Brill. Consider the following examples. Are these methods permitted? Are more facts needed? What common sense advice would you give the attorney?

- 1) Attorney takes a credit card for the fee.
- 2) Client offers to pay the \$10,000 fee with a car worth \$10,000.
- 3) Client offers to do carpentry work at the law offices as payment for the fee.
- 4) Client does not pay in a timely fashion. Attorney sends out a new bill with a late fee (or addition of interest).
- 5) Client does not pay. Attorney sues for the fee, asserting breach of contract.
- 6) Attorney turns the client's debt over to a collection agency.
- 7) Under the terms of the attorney-client agreement, the fee dispute goes to mandatory arbitration.
- 8) Client says "I can't pay now. But I promise to pay next year and will sign a promissory note."
- 9) Following up on #8, Client also says: "And I'll give you a second mortgage on my house."
- 10) Client says: "As your fee for setting up my corporation, I'll give you one percent of the stock."
- 11) Client says, "I will give you a share of the patent ownership if you are successfully able to defend the patent." Rule 1.8(i)
- 12) Attorney says: "I acknowledge receipt of the \$10,000 retainer for my fees. This amount is non-refundable, regardless of the amount of work or the outcome." Rule 1.16(a)
- 13) Client says, "I can't pay. But my boss has agreed to pay the fee for me because this matter is work related." Rule 1.8(f)

- 14) Attorney says to client: “You have not paid me in three months. I am going to stop working on your case.” Rule 1.16
- 15) Attorney says: “Because you have not paid me, I am keeping all the files on the matter, and the documents you entrusted to me. You can have them when you pay my fee.”
- 16) Attorney says to client: “You have not paid me in three months. As I told you in the beginning, you will forfeit the attorney-client privilege. I will be forced to reveal to the bank and the IRS that you lied on your tax returns. You have 10 days to make the payment.”