



## Legal Fees by Jodi L. Wyman

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One of the more complicated parts of a lawyer's relationship with their client relates to fees. The lawyer, like any professional, needs to be paid for their work. The client wants to ensure that they get the best service for their money. If all the terms and expectations are agreed to in advance and followed, in theory there should be no problems. Yet, it remains a source for disputes.

The Code of Professional Conduct for lawyers has a chapter relating to the rules concerning fees. The first of the two primary rules is that a lawyer must not charge any fee or disbursement that is not fully disclosed, fair and reasonable. It only makes common sense that clients be made aware of any charges on their account and that all costs are fair, like with any type of business. In cases where the client is being charged based on the lawyer's time, they should receive an itemized bill of fees and disbursements on a regular basis.

Determining what is "fair" is not always as easy as it sounds. The Code says to look at a number of factors such as the time and effort

spent on the file, the difficulty and risk of the case, whether special skill was required, local tariffs, the results obtained, the urgency of the matter and the uncertainty of the success of the case. As well, one of the factors to be considered is any agreement between the lawyer and client. This includes contingency agreements, where a lawyer may be paid a percentage of any financial award recovered instead of simply being paid for their time. If there is such a contract, it must not only be in writing, but a client must receive a copy of it as well.

It is recommended that the lawyer give the client an early and fair estimate of fees and disbursements, and point out any uncertainties, so that the client can make an informed decision about pursuing the case. They cannot always simply drop the case if it is becoming too costly. The problem however, is that with litigation it is almost impossible to make an accurate estimate before the case has even begun. When there is an unpredicted change in the case which can increase costs the lawyer should try to keep the client informed of these changes and the resulting cost.

The second major rule about fees is that lawyers must never take money from the client's trust account without the authority of the client. Again, this is only common sense and applies to many types of professions.

As well, lawyers cannot keep the interest earned on client's trust account money. It can amount to a great deal of money, but the funds have to be paid to the Manitoba Law Foundation.

The Code dictates that lawyers must not enter into any arrangement where they pay or otherwise reward non-lawyers who refer business to them. The opposite is true as well. If a lawyer refers their client to a financial advisor or real estate agent for example, the lawyer cannot accept a referral fee without the client's consent.

The Code also directs lawyers to advise their clients of the availability of Legal Aid should it appear the client may qualify.