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# Five Different Ways to Structure Fee Agreements in Business Litigation Cases

Most business litigation is handled on an hourly fee basis. That isn't the only option, however. California Business and Professions Code Section 6148 permits lawyers and their clients to agree to a wide range of fees.

In California, there are five basic types of fees that lawyers can charge: hourly, fixed, contingency, true retainers, and taking an interest in a client's property. The first three kinds of fees - hourly, fixed, and contingency - are largely self-explanatory. True retainers are used when clients pay to only secure the availability of the attorney for a given period of time. The retainer isn't paid for specific work performed by the lawyer, but only to secure his or her availability. True retainers can be appropriate when an entity is repeatedly sued in connection with a recurring fact pattern, and it wants to make sure that a particular lawyer or law firm is available to defend it in future anticipated lawsuits.

The least common way for lawyers to get paid in business litigation cases is for them to take a financial interest in property owned by the client. You see this more often in transactional work on behalf of start-ups, where lawyers may get paid by receiving company stock. Although lawyers are allowed to be paid by taking a property interest in client property, the ethics rules (specifically Rule 3-300 of the Rules of Professional Conduct) impose additional obligations on lawyers who seek to get paid in this way.

California lawyers may also charge a combination of different fees in the same representation. For example, since most business litigation cases end up settling, it may make sense for a lawyer to charge a flat fee to try to settle a case before litigation begins, charge an hourly rate for work performed during the pretrial phase, such as discovery and law and motion, and then charge a higher hourly rate for trial preparation and the actual trial. It is also possible for lawyers and clients to agree to an hourly rate until a certain total has been reached, subject to a contingency fee that kicks in once the hourly fee cap has been reached.

There are, of course, potential benefits and drawbacks to all the fee types discussed above. In my experience, however, most lawyers and clients settle on hourly fees by default. Business litigation should strive to meet the client's business and strategic objectives. One way to do that is to expand the scope of discussions regarding fees, and to make sure that lawyers and clients know that they have options beyond the billable hour.

If you have any questions or comments, I would be delighted to hear from you.

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