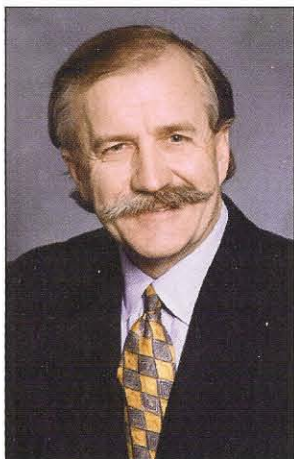


consider legal fees



By Mati Jarve
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SOME OF THE INQUIRIES I GET FROM PROSPECTIVE CLIENTS INVOLVE DISPUTES OVER relatively small amounts of money. A typical example would be the sale of a backyard horse. Or, sometimes it may involve a training fee or a boarding bill. After reviewing the facts of the case with the client, the discussion ultimately leads to the issue of attorney fees. This is when reality usually sets in. Some people believe that “loser pays” and of course they invariably believe that they can’t lose. However the general rule in America is that each party pays its own legal fees. Unless the dispute involves a written contract that addresses the issue of attorney fees, each side will be responsible for its legal fees and expenses. Only rarely will attorney fees be charged to the other side.

Other people have some vague notion that the attorney fee is based on a percentage of the recovery. Although this may be true in some contingency matters involving substantial amounts of money, it is rarely the case in relatively small dollar amount cases. Most attorneys will not accept a matter on a contingency fee basis unless they are fairly confident that they will be compensated for the time, expense and risk involved in litigating the matter. Unfortunately, very often it takes just as much time and expense to litigate a small matter as it does to litigate a larger matter.

Consequently, the only real option in hiring an attorney in small cases is to retain the attorney on an hourly fee basis. This is easier said than done. Hourly rates charged by attorneys can vary considerably from one part of the country to another. The lowest rates will probably be between \$100 and \$150 an hour. The upper range can be \$500 an hour, or more. Usually, the attorney will require a retainer. This is like a deposit, which the attorney will bill against as the case proceeds. If the case concludes before the retainer is exhausted, you will get a refund. On the other hand, if the case drags on, you may need to replenish the retainer from time to time until the case is over. The amount of the retainer requested can be for only a few hours of initial work, or it may be for the full estimated time it will take to fully litigate the matter. This is a matter to be negotiated between the client and attorney.

Unfortunately, when the cost-benefit analysis is done, it may be cost prohibitive to retain the services of an attorney. You may literally be “throwing good money after bad.” If the dispute involves the sale of a \$5,000 horse and the attorney requires a \$5,000 retainer to litigate the case, it is obviously not worth retaining the attorney. So, what can you do?

Most all jurisdictions have Small Claims Court. Probably everyone by now has seen one of the many television shows where litigants go to court and appear before the judge without an attorney. Although there may be slight differences in procedure, the process is generally the same. Although the rules of evidence are usually relaxed, you should nevertheless be prepared to bring in all your documentary evidence for the judge to see. Also, any witnesses should be prepared to come to court for live testimony. If you have any questions about the proper procedure, you can usually call the court staff prior to the hearing to have your questions answered. The court staff is generally very helpful. Also, even if you can’t justify retaining an attorney to represent you in court, you may consult with an attorney for advice on how to best present your case in court. Many attorneys will do so free of charge.

If you prepare diligently, you can successfully represent yourself in Small Claims Court and avoid “throwing good money after bad.” Hopefully, you will also win your case.

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