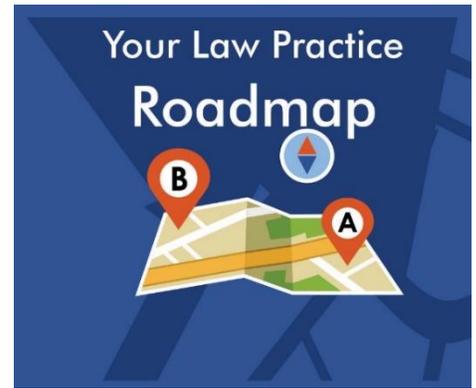




2020 CCCBA Education Series
YOUR LAW PRACTICE ROADMAP
Practical Guidance for
New & Established Attorneys



Session #2

1 Hour General MCLE Credit – Provider #393

February 12, 5:30pm – 7:00 pm
John F. Kennedy University - College of Law, Room S209
Pleasant Hill, California

RETAINERS, TRUSTS AND BILLS, OH MY!

~Speakers~

Heidi Coad-Hermelin

Hermelin Law Firm

Carol Langford

Law Office of Carol M. Langford

Jen Lee

Jen Lee Law

David Pearson

Brothers Smith

Topics

Fee Agreements | Trust Accounting | Billing Clients and MORE....

THANK YOU to OUR SPONSORS



Biographies

Ms. Langford has a solid educational background in professional responsibility matters through her adjunct professorships at the University of San Francisco School of Law and her previous lecturer position at the University of California Berkeley, Boalt Hall School of Law. She is also an adjunct professor at Hastings and USF.

She has co-authored a nationally adopted legal case book entitled *Legal Ethics in the Practice of Law* (Lexis, Fourth Edition), as well as *Legal Ethics: Rules, Statutes and Comparisons in the past* (Lexis, updated annually) and *The Moral Compass of the American Lawyer: Truth, Justice, Power and Greed* (Ballantine). She has published numerous articles on ethics and malpractice avoidance. She has spoken at well over 125 continuing education programs on ethics conduct issues. Recently she was appointed Chair of the Drafting Committee of the Disciplinary Standards Task Force and was appointed to the California Commission for the Revision of the Rules of Professional Conduct. She also served on the Commission for the Revision of the Rules of Professional Conduct and assisted in drafting all the new Rules.

Ms. Langford has many years of experience in fee dispute matters and the firm has been involved in a variety of matters involving the determination of a fair and reasonable fee. Her fee dispute matters have included everything from multi-million dollar patent matters to disputes involving lesser sums in family law, business, estate and other cases.

Ms. Langford also serves as a national expert witness on the ethical conduct of lawyers and has consulted with hundreds of lawyers, including individual law firms and individual and institutional clients. She has evaluated numerous legal malpractice claims and has been an expert witness or consultant on a variety of attorney conduct matters. She served as Chair of the State Bar of California's Committee on Professional Responsibility and Conduct and a Special Advisor to the Committee. She was Chair of the State Bar of California's Law Practice Management and Technology Committee and Chair of the Council of Section Chairs. She has also served as the Chair of the Ethics Committee of the Intellectual Property Section of the American Bar Association.

Jen Grondahl Lee is a debt and credit strategy attorney. Jen Lee Law has offices in San Francisco, San Ramon, and Tracy, CA. Her firm's primary focus is on helping individuals and business owners understand their rights when it comes to debt and credit. She helps clients examine their financial situations and provide long-term solutions for reducing debt and stress in their lives.

Before moving to California, she grew up in a very small town in North Dakota with a population of about 500. She earned her law degree (JD) from the University of Richmond in Richmond, Virginia. Prior to law school, she worked for 8 years managing different teams with the insurance industry. She decided to open her own firm because of her background in business and wanting to have direct contact with the people who need legal help the most. In addition to a law degree, she has an MBA and a B.S. in Business Management.

Heidi Coad-Hermelin has been a partner with the Hermelin Law Firm since 2008. She practices law with her husband David Hermelin in Martinez focusing on real estate, bankruptcy and business law. Ms. Coad-Hermelin has been attorney for 27 years and has worked in small firms for the majority of her career. Ms. Coad-Hermelin graduated from the University of California at Davis in 1989 with a degree in Economics and earned her Juris Doctor degree from McGeorge School of Law in 1992. She is currently co-leader of the Solo and Small Firm Section of the Contra Costa County Bar Association and serves on the Education Committee.

Agenda

A. Talking to Your Clients About Money

- 1) Prior to Consultation
- 2) Intake sheet
- 3) The Initial Consultation: To Charge or Not to Charge

B. Types of Fee Agreements

1. Contingency fees
2. Flat fees: based on estimate of experienced attorney
 - a. Advantage: Most clients prefer certainty in billing
 - b. Disadvantage: Underestimate the fee and work for free
3. Hourly Fee Agreements
 - a. Advantages:
 1. Sophisticated clients are accustomed to hourly rates
 2. More simple and profitable for attorney
 - b. Disadvantages:
 1. Unsophisticated clients will balk at most hourly rates, prefer predictability
 2. New lawyers will spend too much time and cannot bill it all
 3. Fees are not related to value provided or results obtained
4. Fee by stages:

Break work into stages, estimate work, and set a fee for each stage

Charging a Reasonable Fee: Unconscionable Fee Factors

- a. Amount of the fee in proportion to the value of the services performed
- b. Relative sophistication of the lawyer and the client
- c. Novelty and difficulty of questions involved and required skill
- d. The likelihood, if apparent to the client, that accepting employment will preclude the lawyer from accepting other employment
- e. Amount involved and the results obtained
- f. Time limitations imposed by the client or by the circumstances
- g. Nature and length of the professional relationship with the client

- h. Experience, reputation, and ability of lawyer performing services
- i. Whether the fee is fixed or contingent
- j. Time and labor required
- k. Informed consent of the client to the fee agreement

C. Fee Agreement Issues

1) Retainers - Refundable vs Earned

2) Writing

a) >\$1000

b) Corporations

c) Repeat client

3) Waivers of Conflict

4) Mandatory Provisions

Fee Disputes - arbitration

Malpractice Insurance

D. Trust Accounting

E. Billing

Frequency

Credit Cards

Costs

F. Collection

G. Avoiding Malpractice Claims

FEE AGREEMENTS

Business and Professions Code 6147.

(a) An attorney who contracts to represent a client on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the client, or the client's guardian or representative, to the plaintiff, or to the client's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

- (1) A statement of the contingency fee rate that the client and attorney have agreed upon.
- (2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the contingency fee and the client's recovery.
- (3) A statement as to what extent, if any, the client could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.
- (4) Unless the claim is subject to the provisions of Section 6146, a statement that the fee is not set by law but is negotiable between attorney and client.
- (5) If the claim is subject to the provisions of Section 6146, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

Business and Professions Code §6148

(a) In any case not coming within Section 6147 in which it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000), the contract for services in the case shall be in writing. At the time the contract is entered into, the attorney shall provide a duplicate copy of the contract signed by both the attorney and the

client, or the client's guardian or representative, to the client or to the client's guardian or representative. The written contract shall contain all of the following:

- (1) Any basis of compensation including, but not limited to, hourly rates, statutory fees or flat fees, and other standard rates, fees, and charges applicable to the case.
- (2) The general nature of the legal services to be provided to the client.
- (3) The respective responsibilities of the attorney and the client as to the performance of the contract.

(b) All bills rendered by an attorney to a client shall clearly state the basis thereof. Bills for the fee portion of the bill shall include the amount, rate, basis for calculation, or other method of determination of the attorney's fees and costs. Bills for the cost and expense portion of the bill shall clearly identify the costs and expenses incurred and the amount of the costs and expenses. Upon request by the client, the attorney shall provide a bill to the client no later than 10 days following the request unless the attorney has provided a bill to the client within 31 days prior to the request, in which case the attorney may provide a bill to the client no later than 31 days following the date the most recent bill was provided. The client is entitled to make similar requests at intervals of no less than 30 days following the initial request. In providing responses to client requests for billing information, the attorney may use billing data that is currently effective on the date of the request, or, if any fees or costs to that date cannot be accurately determined, they shall be described and estimated.

(c) Failure to comply with any provision of this section renders the agreement voidable at the option of the client, and the attorney shall, upon the agreement being voided, be entitled to collect a reasonable fee.

- (d) This section shall not apply to any of the following:
- (1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.
 - (2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.
 - (3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.
 - (4) If the client is a corporation.

TRUST ACCOUNTS

CA Rules of Professional Conduct - Rule 1.15

(a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction.

(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer's or law firm's operating account, provided:

- (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and
- (2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.

(c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:

- (1) funds reasonably sufficient to pay bank charges; and
- (2) funds belonging in part to a client or other person and in part presently or potentially to the lawyer or the law firm, in which case the portion belonging to the lawyer or law firm must be withdrawn at the earliest reasonable time after the lawyer or law firm's interest in that portion becomes fixed. However, if a client or other person disputes the lawyer or law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.

Trust Account Record Keeping:

(1) A lawyer shall, from the date of receipt of funds of the client or other person through the period ending five years from the date of appropriate disbursement of such funds, maintain:

- (a) a written ledger for each client or other person on whose behalf funds

are held that sets forth:

- (i) the name of such client or other person;
 - (ii) the date, amount and source of all funds received on behalf of such client or other person;
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person; and
 - (iv) the current balance for such client or other person;
- (b) a written journal for each bank account that sets forth:
- (i) the name of such account;
 - (ii) the date, amount and client or other person affected by each debit and credit; and
 - (iii) the current balance in such account;
- (c) all bank statements and cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).



Notice of Client's* Right To Fee Arbitration

Client's Name: _____
Client's Address: _____
Client's City, State & Zip: _____

Attorney's Name: _____
Attorney's Address: _____
Attorney's City, State & Zip: _____

You have an outstanding balance for fees and/or costs for professional services in the amount of \$ _____
charged to you in the matter of _____

I have filed a lawsuit against you in the: Court: _____ Case No.: _____
Address: _____

I have filed an arbitration proceeding against you with the: Agency: _____ Case No.: _____
Address: _____

No lawsuit or arbitration proceeding has yet been filed but may be filed if we do not resolve this claim.

You have the right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of these fees or costs by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and clients.

You will LOSE YOUR RIGHT TO ARBITRATION UNDER THIS PROGRAM if:

1. YOU DO NOT FILE A WRITTEN APPLICATION FOR ARBITRATION WITH THE BAR ASSOCIATION WITHIN **30 DAYS** FROM RECEIPT OF THIS NOTICE USING A FORM PROVIDED BY THE LOCAL BAR ASSOCIATION OR STATE BAR OF CALIFORNIA FEE ARBITRATION PROGRAM; OR
2. YOU RECEIVE THIS NOTICE AND THEN EITHER (1) ANSWER A COMPLAINT I HAVE FILED IN COURT; OR (2) FILE A RESPONSE TO ANY ARBITRATION PROCEEDING THAT I HAVE INITIATED FOR COLLECTION OF FEES, AND/OR COSTS, WITHOUT FIRST HAVING SERVED AND FILED A REQUEST FOR ARBITRATION UNDER THIS PROGRAM; OR
3. YOU FILE AN ACTION OR PLEADING IN ANY LAWSUIT WHICH SEEKS A COURT DECISION ON THIS DISPUTE OR WHICH SEEKS DAMAGES FOR ANY ALLEGED MALPRACTICE OR PROFESSIONAL MISCONDUCT.

I have the right to file a lawsuit against you if you give up your right to mandatory fee arbitration. If I have already filed a lawsuit or arbitration, you may have the lawsuit or arbitration postponed after you have filed an application for arbitration under this program.

I have determined that:

There is a local program which may have jurisdiction to hear this matter. The arbitration program listed below is available to you:

Name of Program: _____
Address: _____
City, State & Zip: _____
Telephone No.: _____

You may wish to check the State Bar's website at www.calbar.ca.gov to see if there are other programs available to you.

There is no approved local program which has jurisdiction to hear this matter.

The State Bar of California will conduct fee arbitration (1) where there is no approved local program, (2) where there is a local program but it declines for any reason to hear your case, (3) where there is a local program and you wish non-binding arbitration of this dispute and the local program refuses to allow non-binding arbitration of your dispute, or (4) if you believe you cannot receive a fair hearing before the local bar named above. If you need assistance, please contact Mandatory Fee Arbitration, State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, (415) 538-2020.

Date: _____ Attorney: _____

*The request for arbitration may also be made by a person who is not the client but who may be liable for or entitled to a refund of attorney's fees or costs.

(Mandatory State Bar Approved Form Rev. March 2013)