

## Don't Use the "R" Word

By Sara Rittman

Which "R" word? It is one of the favorite words of attorneys – retainer. Now you're wondering, why on earth would I want to avoid using the word "retainer?" I want to get paid! The simple answer is that the word "retainer" is ambiguous.

This ambiguity translates into a number of problems that all lawyers want to avoid. The lowest level of problem the ambiguity can cause is a basic misunderstanding with the client. If this misunderstanding goes to the next level, it can involve a fee dispute, a disciplinary complaint, a lawsuit, or some combination of these.

How is it ambiguous? The word retainer is used in multiple ways by attorneys. An Illinois case demonstrates this well. In *Dowling v. Chicago Options Associates, Inc.*,<sup>1</sup> the Supreme Court of Illinois explained its view that there are three types of retainers: (1) the "true," "general," or "classic" retainer, (2) the "security" retainer, and (3) the "advance payment" retainer. Another court or group of lawyers might come up with different categories or variations. Most clients are not familiar with these variations. Clients may not know what you mean when you use the word "retainer," but they think they know.

Instead of using this ambiguous word, use descriptive terminology. If you mean that a specific amount is just an advance deposit toward your fees, call it an "advance deposit." This best fits the situa-

tion in which the client will pay you a set amount of funds that you will deposit in your trust account and bill against. If you are taking a case on a flat fee basis, but you will start the representation without full payment, consider calling it a "partial payment" or "down payment."

Clients often believe that, once the "retainer" has been paid, the entire fee has been paid. This situation leads to two primary problems. First, if clients believe your entire fee has been paid, clients are unlikely to make additional payments. Second, clients who believe you have already been fully paid are likely to conclude that you are trying to take advantage of them. Once clients come to either conclusion, you will be extremely fortunate if they talk to you about it on their own initiative. You will be somewhat fortunate if they only fire you.

If you become aware of a fee dispute, try to resolve it. Try to understand the client's perspective and try to explain your perspective to the client. Once you determine that you have a fee issue with a client that you cannot easily resolve, be sure the client is aware of the fee dispute resolution program in your area. Hopefully this will provide an outlet that will divert the client from filing a disciplinary complaint or malpractice action and will resolve the dispute without litigation. Although the disciplinary process and malpractice actions are not designed to deal with fee disputes, clients who are unhappy with fees can usually come up

with other aspects of your representation about which they are unhappy in order to provide some basis for proceeding in that manner.

In the long run, you can best avoid fee disputes by communicating clearly with the client about the fee arrangement at the outset. The Missouri Bar has forms that can be used as a basis for developing fee agreements or engagement letters. Go to [www.mobar.org](http://www.mobar.org), click on "Law Practice Management Online Center" and then select "Forms." Forms are available in the Sample Fee Agreements and in Client Keeper. Complaints about fees often arise from misunderstandings about expenses in addition to misunderstandings about the actual fee. Be sure your communication about fees clearly explains both.

Avoid the "R" word to enhance clarity in your communication about fees. Explain the fee arrangement in terms that non-lawyers use. Remember, the best way to communicate with any audience is to use language they understand.

### ENDNOTES

1. 875 N.E.2d 1012, 1018 (Ill. 2007).



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