

RETAINERSHIP AGREEMENT IN LEGAL PRACTICE: LIMITATIONS AND OPPORTUNITIES

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Abstract

Retainership Agreement is a contractual arrangement where a client pays a lawyer or law firm an upfront fee in exchange for guaranteed access to their legal services for a specified term. The limitation of payment for unused hour has deterred potential clients from accessing efficient legal services like Retainership agreement inspite of the benefits it promises. This paper evaluated Retainership Agreement in Legal Practice: Limitations and Opportunities and finds that the challenge of payment for 'unused hour' that confronted clients in accessing a mutually beneficial contract arrangement has already been surmounted in other jurisdictions through the use of 'Trust account' and repayment of unearned funds. A doctrinal approach of research is adopted by examining statutes, case laws, existing literature on the topic. This paper therefore recommends adoption of advance payment method in Nigeria and the use of Trust account to house client's funds until they are earned. An Intentional supervisory method by National Judicial Council on the activities of legal professionals as it relates to the use of Clients' Trust account in a Retainership Agreement is also recommended among other others.

Keywords: Retainership Agreement, Legal Practice, Limitations, Opportunities, Nigeria.

1.0 Introduction

Clients with recurring legal needs such as contract management, regulatory compliance, litigation or drafting matters may find the use of Legal Retainership model more convenient in accessing legal services than a one-off professional engagement. The impediment of payment for unused hour has deterred client from using Retainership agreement in solving legal problems. This paper evaluated Retainership Agreement in Legal Practice: Limitations and Opportunities and finds that the challenge of payment for 'unused hour' that confronted clients in accessing a beneficial contract arrangement has already been surmounted in other jurisdictions through the use of 'Trust account' and repayment of unearned funds.

This paper is segmented. the first segment clarified concepts; the second segment provided theoretical framework for contracts; the third segment reviewed existing literature on the subject; the fourth segment discussed the threats to Retainership Agreement in contemporary legal Practice; the fifth segment examined the challenges of enforcement of Retainership Agreement; the sixth segment examined the law and practice or Retainership Agreement in selected jurisdictions like UK, Canada and South Africa; the seventh segment summarized findings and the final segment concluded the paper and made some recommendations.

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2.0 Conceptual Clarification

Legal Retainership

According to the Rules of Professional Conduct for Legal Practitioners,³ 'Retainer' means an agreement by a lawyer to give his services to a client. The Rules⁴ further divided retainer into general and specific retainer. General retainer means a retainer which covers the client's work generally whereas special retainer means a retainer which covers a particular matter of the client.

Legal retainer can be defined as a contractual relationship between a hired lawyer and a client (individual or corporate) specifying the nature of the services to be rendered and the cost for rendering such services. Retainer may involve managing a cause, instituting or defending an action on behalf of a client.⁵

A legal retainer means that a client employs the legal services of a lawyer for a period of time with the payment of a fee called 'Retainer fee'. In return, the lawyer provides some legal services.⁶

Legal Retainership Agreement

A legal retainership Agreement is a long term contract in which a client (individual or corporate hires a legal professional to represent the person in one or more legal needs.⁷

There are stark differences between Retainership and engagement of a lawyer for a one-off legal services. The components of Legal Retainership Agreements include parties involved, scope of services, fees and payment terms, terms and termination, confidentiality clause, responsibility and availability, performance standards, dispute resolution, governing law and signatures. Etc.⁸

Legal Practice

Legal practice refers to the professional activities performed by a licensed attorney when applying legal principles, knowledge and skills to advice clients, represent them in legal proceedings or prepare legal documents. It encompasses a wide range of tasks that require specialized legal training, adherence to ethical rules and authorization to practice law.⁹

3.0 Theoretical Framework

Contract Theories

Contract Theory is a framework that explores how parties create legally binding agreements for the exchange of goods or services and encompasses key elements of law and economics. It focuses on two primary objectives and they are, deterring the types of agreements that can be enforced and outlining the consequences of any breaches.¹⁰

Agency Theory

This theory focuses on relationships in which the principal, who delegates decision –making authority, relies on the agent, who undertakes actions on the principal's behalf. Parties are assumed to be self-interested, prioritizing personal gain, bounded rationality with limited capacity to foresee all contingencies, and differentiated in their risk preferences, reflecting varying attitudes towards uncertainty. They also often pursue partially conflicting goals, leading to misalignment between principal and agent objectives. Information is asymmetric because agents typically know more about their attributes or actions than principals, and information is treated as a purchasable

³ Rules of Professional Conduct for Legal Practitioners, 2023. S 49 (4)

⁴ *ibid*

⁵ <https://www.resolutionlawng.com> “ Legal Retainership in Nigeria Accessed January 4, 2026

⁶ *ibid*

⁷ <https://www.deel.com> “ Retainer Agreement/Deel” Accessed on January 5, 2026

⁸ *ibid*

⁹ <https://lsd.law> “ What is legal practice? Simple Definition \$ Meaning” Accessed on January 5, 2026

¹⁰ <https://www.ebsco.com> “ Contract Theory/Research Starters” Accessed on January 5, 2026

commodity that can be acquired at some cost. Under these conditions, governance turns on the design of contracts, monitoring and incentives that align agent behavior with the principal's objectives.¹¹

Incentive Theory

At the core of Incentive Theory in contracts is the understanding that individual love leisure. In order to induce them to forgo some leisure, or put alternatively, to put forth effort, some form of compensation must be offered. Incentive theory in contracts uses financial or non-financial rewards to motivate parties or employees or workers to achieve specific goal. This is particularly when performance is not perfectly observable. There is an alignment of rewards with desired outcomes like efficiency, quality or effort. Performance and reward are tied together thereby making the contract profitable to the contractor only when objectives are met.¹²

Information Asymmetry Theories

Information Asymmetry is a situation where one party has more or better information than the other. It creates an imbalance of power in transactions, which can sometimes cause the transactions to be inefficient, causing market failure in the worst case.¹³ In simple terms, the balance of power could be in the hands of someone or a party with better or more information in contractual dealings. Problems with asymmetric distribution of information could lead to a situation before a contract is concluded (adverse selection and after the conclusion of the contract (moral hazard)).¹⁴

Incomplete contracts

Incomplete contract theory suggests that not all aspects of a contractual agreement can be specified or foreseen at the time of drafting. This theory is essential in understanding the dynamics between principals and agents. It highlights the challenge arising from uncertainty and the need for flexibility in contractual relationships.¹⁵ Incomplete contract theory relates to the principal-agent problem by illustrating how uncertainties in agreements can create misalignment of interests between the principal and the agent. When contracts do not specify all details or possible outcomes, agents may take actions that benefit themselves rather than the principal. This can lead to conflicts as agents might exploit ambiguities for personal gain, masking it crucial for principals to design effective contracts that minimize the risk.¹⁶

4.0 Literature Review

Few writers have written on the subject matter. Many have expressed preference over legal retainership agreement over any kind of legal services engagement. We shall review a few of them. Iguh,¹⁷ articulated the differences between Retainership and one-off Legal services as follows:

a. Nature of engagement.

A retainership involves an ongoing legal relationship where a lawyer provides continuous legal support over a period of time while one off- legal services are limited to a specific issue with no long-term commitment.¹⁸

b. Scope of Service

A lawyer may handle multiple legal matters as they arise under retainership agreement, depending on the terms or provisions in the agreement. However, one off- legal services are restricted to a single case, transaction or legal need as engaged by the client.¹⁹

¹¹ <https://open.ncl.ac.uk> "Agency Theory: A review-TheoryHub-Newcastle University" Accessed on January 5, 2026

¹² <https://renaud.bourles.perso.centrale-med.fr> "Theory of Incentives –Renaud Bourles" Accessed on January 6, 2026

¹³ <https://www.sciencedirect.com> "Information Asymmetry-an overview/science direct Topics" Accessed on January 5, 2026

¹⁴ Ibid

¹⁵ <https://fiveable.me> "incomplete contracts theory Definition-Honors Economics" Accessed on January 5, 2026

¹⁶ Ibid

¹⁷ <https://www.greenageattorneys.com> "How Legal Retainership keeps your Business Afloat" Accessed on January 5, 2026

¹⁸ Ibid

¹⁹ Ibid

c. Payment structure

In a retainer agreement, the client pays a fixed periodic fee known as retainers' fee (monthly, quarterly or yearly) for access to legal service. In one off legal service, the client pays per transaction either as a lump sum or based on an hourly rate.²⁰

d. Availability of lawyer

Clients with retainer can access their lawyer more readily without needing a new engagement process each time. In one off legal services the lawyer is only engaged when required which may lead to delays in urgent situations.²¹

e. Cost predictability

A Retainer provides predictable legal cost, making budgeting easier. One off-legal services can be unpredictable, as costs may vary depending on the complexity and urgency of the matter.²²

f. Risk Management

A retainer allows for a proactive legal advice, helping businesses prevent legal issues before they arise. One off-legal services are reactive, this is because a lawyer is only consulted when a legal problem has already occurred.²³

g. Client Lawyer Relationship

Retainer fosters a long term relationship, allowing the lawyer to understand the client's business deeply and provide tailored advice. One –off legal services are more transactional with limited engagement beyond the specific issue at hand.²⁴

A writer, in an effort to explain how legal retainer model works stated as follows:

*“Under the legal retainer model, clients pay a predetermined fee to retain the services of a legal team or individual attorney. In return, they receive access to a range of legal services, which may include consultations, document drafting, representation in legal proceedings and ongoing advice. This arrangement provides clients with predictable costs and priority access to legal assistance”.*²⁵

The benefits of the Legal Retainer model were highlighted as:²⁶

a. Predictable costs

The client is very certain as to the legal expense he will pay within the time frame since the payments are predetermined. The client can therefore budget effectively.

b. Relationship building

The relationship between the client and the legal professional has the tendency to grow as trust and familiarity ensures a deeper understanding between the parties.

c. Proactive Legal support

The client and legal professional relationship build through this model enable the legal professional to be proactive in handling the matters or the legal representation.²⁷

In the same vein, a writer from CFI Firm discussing the importance of retainer fee in Legal Retainer Agreement, noted that a retainer fee compensates the attorney for his expertise and reputation. When hiring an attorney, clients choose an attorney with good reputation in the legal profession to help them win a case. Choosing the right attorney can sometimes help the client obtain a settlement without even going to the court.²⁸

²⁰ ibid

²¹ ibid

²² ibid

²³ ibid

²⁴ ibid

²⁵ <https://chamber.com> “The Pros & Cons of the Legal Retainer Model” Accessed on January 8, 2026

²⁶ ibid

²⁷ ibid

²⁸ <https://corporatefinanceinstitute.com>. “Retainer Fee-Overview, How Retainer Agreements Work” Accessed on January 8, 2026

Secondly, the retainer fee aims to protect the attorney from unforeseen circumstances in the future that can prevent clients from meeting their obligations. Once the case has started, the attorney can charge any costs against the retainer fee instead of asking the client to provide extra funds.²⁹ Finally, if an unexpected event occurs during the court process that prevents the client from being able to pay out any more money, the attorney can receive some compensation for the work performed though having received the retainer fee.³⁰

5.0 Threats to Retainership Agreement in Contemporary Legal Practice

Retainership Agreement in contemporary legal practice has benefits both for the legal professional and the client. There are however some factors that threaten the full adoption of this kind of legal retainership arrangement. Some of them are listed below.

Vague scope of Representation

The scope of legal services covered in the agreement could pose a challenge if not appropriately defined. This could give rise to an action for professional negligence by the client against the legal practitioner or claims by the legal practitioner for extra or additional payment by services rendered to the client.³¹

Unused Hours/cost inefficiency

Retainership model may in the long run be cost inefficient where the payment is fixed but there are no corresponding legal activities to match up with the payment. This ultimately leads to payment for unused hours which payment may not be rolled over.³²

Predictability and flexibility

A major threat to legal retainership in contemporary legal practice is that there could be cases where complex legal issues may arise that may require specialized expertise that the retainer may not readily handle with the experience of an expert in the field. The client may necessarily look for an expert in the field to provide for legal support unless the agreement provides otherwise.³³

6.0 Challenges of Enforcement of Retainership Agreement

Although every contract is an Agreement, every Agreement is not a contract because to constitute a contract, the Agreement must be one which the parties intend to create legally enforceable rights and obligations. There are certain essential elements which must be satisfied for any contract to be enforceable at law. A valid contract must contain these essential elements. They are offer, acceptance, consideration, intention to create legal relations and capacity to contract. There must also be consensus ad idem (Coming together of two minds with an intention to create legal relations). A Retainership Agreement just like every other agreement can be rendered unenforceable where the essential elements are lacking.

Essential Elements

i. Offer

Offer is a definite undertaking or promise made by one party known as offeror with the intention that it shall become binding on the party making it as it is accepted by the party known as offeree to whom it addressed. In the case of *Hamid & Ors v Governor of Adamawa State & Ors*,³⁴ the court reinforced that valid contract formation requires a clear offer that meets all legal and statutory requirements to be enforceable.

³¹ <https://www.konumlegal.com> "The Pros & Cons of the Legal Retainer Model" Accessed on January 7, 2026

³² *ibid*

³³ *ibid*

³⁴ (2024) LPELR -62098 (CA)

ii. Acceptance

Acceptance is the final and unqualified expression of assent to the exact terms of an offer. It is the reciprocal action of the offeree to the offeror as conveyed to him by the offeror. To qualify as an acceptance, the expression of assent must be plain, unequivocal and unconditional. In the case of *Nigerian Prison Service & Anor v Rock Consumer Credit*,³⁵ the court of Appeal emphasized that for a contract to exist, an offer must be unconditionally and unqualifiedly accepted. In the case, rather than accepting a new employment offer as made, the claimant expressed reservations about remuneration. This act of modifying the original terms constituted a counter-offer, which destroyed the original offer and prevented a binding contract from forming.

iii. Consideration

Consideration is the price which is paid for the promise of another. It is the contribution of a party to the contract and may be in the form of an act, a promise, forbearance, detriment or benefit. A party who has furnished no consideration in a contract cannot bring an action to enforce the contract. In the case of *Udechukeu v Ngene*,³⁶ the court reaffirmed that consideration (benefit or detriment) is an essential ingredient, without it, a contract doesn't form.

iv. Capacity

Capacity to contract refers to the legal ability of a person to enter into a binding agreement or contract.³⁷ The general rule is that everybody is capable of entering into a contract. However, the law regards certain classes of people as needing protection and made special provision for such classes of persons.

Minors

As a general rule, any contract entered into with a minor is deemed void,³⁸ except for necessities and beneficial contract of service.

Insane or Drunk Persons

Contracts with an insane drunk persons are only valid during lucid moments. Where therefore the other party knows or ought to know the mental state or disability of the person he is contracting with, the contract is void. The case of *Ernest Edubo v Shell Dev. Co. Nigeria Ltd*,³⁹ while not directly about voiding a contract due to insanity at formation, highlighted how mental state is addressed in litigation.

Illiterate Persons

An illiterate cannot enter into a written contract unless an illiterate Jurat is made part of the contract document.⁴⁰ The jurat is a special attestation clause stating that all the contents of the documents had been explained to the illiterate person by a sworn interpreter

v. Mutual consent (consensus ad idem)

There must be a meeting of the minds of the parties as to their intention to enter into a valid contract. In the case of *Engr. Emmanuel Eze v Paul B. Nigeria Plc.*,⁴¹ the National Industrial Court held that evidence showed a clear absence of consensus ad idem because the claimant admitted he did not formally accept the offer of employment as stipulated in the company's rules. This meant no binding contract was formed.

³⁴ (2024) LPELR -62098 (CA)

³⁵ (2024) JELR 12279 (CA)

³⁸ (1992) 8 NWLR (Pt. 261) 565

³⁷ <https://www.clo.com> "Capacity to Contract/Legal Dictionary –Clio" Accessed on January 7, 2026

³⁸ Infants Relief Act 1874. S 1

³⁹ (2022)

⁴⁰ PZ & Co LTD V gusau & Ors (1961) nrrlr 1

⁴¹ (Suit No. NIC/ABJ/31/2021)

vi. Intention to create legal Relation

Parties must have the intention to be bound by the agreement reached and be committed to bear the consequences of the breach before an Agreement can be considered valid. In the case of *Ajaokuta Steel Co v Corporate Insurers Ltd*,⁴² although the case primarily dealt with the illegality in contract, it reiterates the principle that courts will step aside from agreements that lack legal integrity, reinforcing the judiciary's role in enforcing only valid and legally intended obligations.

There are also other vitiating factors that can render an ordinarily valid contract voidable and may be incapable of enforcement. They are:

i. Fraud/Misrepresentation

A misrepresentation is a false statement of fact or law which induces the other party to enter into an Agreement. Where this is the case, the contract/Agreement will be voidable⁴³ In the case of *FBN Ltd v Ogwemoh*,⁴⁴ the court of Appeal reiterated the core elements required to prove fraudulent misrepresentation. A party claiming fraud must establish the following:

- a. The representation was a false statement of an existing fact
- b. The representation was material and unambiguous
- c. The representee acted in reliance on the representation to their detriment
- d. The court also emphasized that particulars of the alleged misrepresentation, including dates and items, must be supplied in the pleadings.

ii. Duress

Where a party enters into a contract not willing but as a result of being subjected to pressure amounting to compulsion, the party would have entered into the Agreement under duress and such contracts will vitiate the contract. The Supreme Court case of *Shell Petroleum Development Company of Nigeria Ltd & 6 Ors v E.N Nwawka*,⁴⁵ the court held that a party alleging duress must provide specific necessary averments in their pleadings and act promptly to repudiate the contract once the coercion ends. The claimant in this case failed because he had benefitted from the new contract for two years before filing a lawsuit, which the court interpreted as ratification of the agreement, thereby defeating the claim of duress.

iii. Undue influence

Where a party was unduly influenced to enter into an Agreement, such an agreement will not be enforced. Undue influence is usually presumed where certain kind of relationship exist. In the case of *Mr. Ubong Ekanem v Water Aid Nigeria & Ors*,⁴⁶ while dealing with fraudulent misrepresentation (CV padding), the court reinforced that misrepresentation makes a contract voidable, showing how deceitful acts undermine contractual validity, similar to undue influence's effect.

iv. Unconscionable provisions

Where the terms of the Agreement are so grossly unfair or one sided, often due to unequal bargaining power that they shock the conscience, the Agreement may not be enforced. In the case *Chukwuma v Peace Mass Transit Ltd*,⁴⁷ here, the court used the FCCPA 2018 to address and potentially nullify exclusion clauses crafted by companies with superior bargaining power, which previously left consumers without remedy. This shows a growing judicial willingness to intervene against one-sided standard form contract.

⁴²(2014) 2 CLRN, (2014) 28 WRN 39 SC

⁴³<https://www.lawteacher.net>,” “ Five Vitiating Factors that Undermine a Contract” Accessed on January 7, 2026

⁴⁴(2023) LPELR-60298 (CA)

⁴⁵(2002) 6 NWLR (Pt. 815) 184

⁴⁶(2025) (NICN/ABJ/134/2023

⁴⁷(Suit No: E/514/2021) (Unreported)

v. Illegality

Public policy dictates that illegal contracts are unenforceable and the courts should not enforce contract entered into for illegal purposes.

Also, where unforeseen event like natural disaster or death make fulfilling the contract impossible, the court will not enforce the contract. In the case of *Ajaokuta Steel Co v Corporate Insurers Ltd*,⁴⁸ the court reaffirmed the strict stance that payments made under an illegal agreement cannot be recovered through legal action. The court emphasized that the integrity of the justice system prevents it from becoming a market place for 'crooked contracts'

7.0 The Law and Practice of Retainership Agreement in Selected Jurisdictions Uk

In UK, Legal retainership contract is a long-term agreement where a client pays a fixed fee for ongoing legal services ensuring predictable costs and priority access to a law firm. This Agreement covers and not limited to general advice, contract work, compliance, and dispute resolution. The Agreement delineates the scope, fees, duration and notice period. The services provided are clearly documented to avoid misunderstanding.⁴⁹

An essential element of this contract is that it secures future availability and commitment of the law firm by paying fees in advance so as to reserve legal expertise. This Agreement must however comply with Solicitors Regulatory Authority (SRA) Rules and avoid issues like disguised referral and ensuring professional independence.⁵⁰

An advance fee payment is different from the general Retainer fee. General retainer are paid solely to secure a lawyer's availability for a specific period, which is earned immediately upon receipt.⁵¹

Solicitors Regulatory Authority (SRA) regulate all solicitors and most law firms in England and Wales. They help protect the public by making sure that solicitors and law firms meet their standards, they take action against a solicitor who don't follow the rules like taking someone's money or acting dishonestly. They ensure people can get their documents and money back if for instance a law firm shuts down. They prosecute solicitors and firms at the independent Solicitors Disciplinary Tribunal who can issue fines or suspend or even strike off solicitors.⁵²

Advance Fees payment Model in UK

These are payments made by a client to a lawyer for legal services that will be rendered in the future. These fees are paid up front, before the lawyer has performed the agreed –upon-work. It could be flat fees for specific scope of work or an initial deposit required to commence representation in an hourly billing arrangement.⁵³ An important feature of advance fee is that they remain the property of the client until the lawyer has earned them by performing the agreed –upon legal services.⁵⁴

Solicitors in UK are generally required by the Solicitors Regulation Authority to place these funds into a designated client Trust Account or “IOLTA” (Interest on Lawyers' Trust Account). This account is separate from the lawyers operating account.⁵⁵

⁴⁸ (2024) 3 CLRN 1

⁴⁹ <https://www.greenageattorneys.com> “How Legal Retainership Keeps your Business Afloat” Accessed on January 7, 2026

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² <https://www.sra.org.uk> “Who we are and what we do – Solicitors Regulation Authority” Accessed on January 7, 2026

⁵³ <https://www.leanlaw.co> “Understanding the Difference Between Advance Fees and Retainers IN Legal Services” Accessed on January 7, 2026

⁵⁴ <https://www.clio.com> “A Guide to Retainer Fees for Lawyers –Clio” Accessed on January 7, 2026

⁵⁵ *ibid*

Unearned advance fees must be held in a client trust account, which is separate from the lawyer's operating or personal funds. The lawyer may only withdraw funds from the trust account as the fees are earned or expenses related to the representation are incurred.⁵⁶ This account can be replenished by the client on depletion. However, if a lawyer fails to perform the agreed-upon legal services or the representation is terminated before completion, the client is entitled to a refund of any unearned portion of an advance fee. The lawyer must promptly return any unearned funds to the client.⁵⁷

Canada

In Canada, a legal retainer contract is a written agreement where clients pay an upfront fee (the retainer) to secure a lawyer's services, held in a trust account drawn down as work is done. This kind of payment arrangement ensures financial clarity, priority access, and commitment with the contract.⁵⁸ The scope of the Agreement includes, rates, scope of work and provisions for replenishment, protecting client funds and lawyer compensation. The contract provides for obligations to protect both parties, trust account management etc. it is regulated by Law Societies.⁵⁹ Law societies govern Canada's legal profession. They ensure lawyers meet professional standards and can help with issues regarding a specific lawyer's conduct.

Payment method in Canada

A retainer is a financial agreement between a client and a lawyer where the client pays upfront amount to secure the services of the legal professional. This upfront fee is deposited into a trust account, governed by the rules and guidelines set by a regulatory body such as the Law Society.⁶⁰ These funds are used to cover costs of legal services over time, as they are rendered and in accordance with these established guidelines.⁶¹

Once a retainer is paid, the funds are deposited into a trust account. These funds are not the property of the legal practitioner, rather, they are held in trust for the client. As professional services are performed, they will bill against the retainer at their agreed rate. This means the money is earned incrementally as the work is performed, and the costs are then deducted from the trust account. Violations are not without consequences⁶²

South Africa

A legal retainership contract in South Africa is a formal agreement for ongoing legal services, offering predictable cost (fixed monthly fees for set hours/services). This is in contradiction to unpredictable billable hours. This fixed monthly fees for set hours/services ensures proactive and continuous support. It makes room for a deeper attorney-client relationship for better risk management and quicker responses.⁶³

The Agreement covers terms like duration, scope of work, fees (monthly retainer, potential extra costs for out-of-scope work), notice period for termination and are subject to law society rules, requiring clarity and avoid disputes.⁶⁴

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ <https://swalm.legal> “ Understanding Retainer Agreements and Trust Account” Accessed on January 7, 2026

⁵⁹ *ibid*

⁶⁰ *ibid*

⁶¹ *ibid*

⁶² *ibid*

⁶³ <https://www.ja-attorney.co.za> “ Understanding the fee Structure for Attorney in South Africa” Accessed on January 6, 2026

⁶⁴ *ibid*

Payment Method in South Africa

Many attorney in South Africa charge for their time in an hourly basis. Hourly rates typically covers consultation, drafting, correspondence etc. A retainer fee in South Africa is an upfront payment made to secure an attorney's services. The layers deduct their fees from the retainer as work progresses.⁶⁵

Summary of Findings

This paper finds that in all the selected jurisdictions, there has been a clear attempt to strengthen legal retainership agreement by introducing advance fee payment pattern which takes care of the challenge of unused hours that ordinarily skewed the agreement in favour of the legal professional.

In advance payments method, payments made by a client to a lawyer for legal services that will be rendered in the future are paid up front, before the lawyer has performed the agreed –upon-work. An important feature of advance fee is that they remain the property of the client until the lawyer has earned them by performing the agreed –upon legal services.

Unearned advance fees must be held in a client Trust account, which is separate from the lawyer's operating or personal funds. The lawyer may only withdraw funds from the trust account as the fees are earned or expenses related to the representation are incurred. This account can be replenished by the client on depletion. Every unused money is remitted back to the client.

This practice is regulated and meets with the need of both the client and the legal professional. The mutually beneficial nature of legal retainership makes it more advantageous to one – off legal engagement especially for those with recurring need for legal services. The legal professional draws on the trust account as soon as he earns it by performance. The client gets to pay for only services provided by the lawyer and the unearned funds are remitted back to him. when the funds depletes on usage, the client funds the account according to the retainership Agreement.

8.0 Conclusion and Recommendations

Legal retainership agreement has the potential to provide an efficient and reliable legal services to both individuals and business in need of continuous legal services on a moderate and realistic costs. The challenge of payment for 'unused hour' that confronted clients in the past has already been surmounted in other jurisdiction through the use of 'Trust account' and repayment of unearned funds. This paper therefore recommends adoption of advance payment method and use of Trust account to house client's funds until they are earned. An Intentional supervisory method by National Judicial Council on the activities of legal professionals as it relates to the use of Clients' Trust account in a Retainership Agreement is recommended.

A sober drafting of the Retainership Agreement to cover all grounds is advocated.

⁶⁵ *ibid*