The Strange Concept of the Legal Retaining Fee
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Legal retaining fees, according to conventional theory, fall into two categories, general retainers and special retainers. General retainers, so it is said, are fees paid to cover a range of legal services that an attorney may be called upon to render over a given period of time, and special retainers are fees paid to an attorney upon his agreement to undertake representation in a particular cause.¹ The terms are freely tossed about in legal writing, and one could easily get the impression that they reflected some wholly noncontroversial concept. Not so. Precisely what the retainer is and when the right to it arises has been a matter of considerable controversy in the law. Delving into the cases one soon discovers that the entire discussion of retainers rests on rather shaky conceptual foundations. This article surveys the “common law,” such as it is, of legal retainers, discusses the inconsistencies and contradictions in the cases, and suggests that the theory of the legal retainer which seems to be most widely accepted at present is in considerable need of overhaul.

I

The custom of soliciting retaining fees upon agreeing to provide legal representation is of ancient vintage in the American legal profession. Thus perhaps the most widely consulted legal lexicon of the nineteenth century, John Bouvier's Law Dictionary, first published in 1839, gave the following definition of "retain": "practi-
tice, to engage the services of an attorney or counselor to manage a cause, when it is usual to give him a fee, called the retaining fee."² Eleven years later, in his Institutes of American Law, Bouvier noted that the purpose of paying the retainer was to insure the services of the attorney.³ Neither publication cited any case au-

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The judicial theory of the legal retainer was forged in a series of cases decided in the last decades of the nineteenth century and the first decade of the twentieth, and there has been little development of the subject since, which is itself a fact worthy of note. The Michigan Supreme Court was one of the first tribunals to address the question. In the 1877 case of *Eggleston v. Boardman* plaintiffs had brought an action upon the common counts for services rendered as attorneys in several different cases. Among the charges listed was one for a retainer of $500 for one case, in connection with which they had also listed a charge of $750 for actual services rendered. It was argued by the defendants that the plaintiffs could not recover a retainer without a special contract and without specially pleading the right to a retainer in a complaint. The Michigan Supreme Court summarily rejected the contentions, saying "Retainers are uniformly and universally charged, and the same may be recovered under the common counts." No authority was cited for the proposition; nor was any analysis of the concept of retaining fees offered.

Perhaps the first case to offer some analysis of the concept of the legal retainer was *Agnew v. Walden*, an Alabama case decided in 1887. The facts were, to say the least, unusual. There a defendant had enlisted the services of an attorney in connection with a murder charge pending against him. The attorney requested, and was given, a $500 promissory note—according to its terms—as a retainer fee. Before trial could be had, or indeed before any substantial services could be rendered by the lawyer, the client met an untimely end at the hands of a mob. The attorney filed a claim for his fee against the decedent's estate but was refused payment on the grounds, among others, of "failure of consideration." The contract, it was argued, contemplated that the attorney would defend the decedent on his trial for murder. Through no fault of the decedent, counsel had not been able to perform his side of the bargain, and so the note did not have to be honored.

The court rejected this line of argument, noting that the assumption of the range of obligations which the acceptance of a re-

5. Id.
6. 84 Ala. 502 (1877).
tainer implied cut off the defense of total failure of consideration. The attorney who accepted a retainer, said the court:

must accept no retainer from the opposite side, must give counsel whenever needed or called for, must acquaint himself with the case and its wants, must render all needed professional aid in the preparation of the defense, and must give his earnest unflagging attention and services to the trial when it comes . . . And in these several duties he must not relax in zeal, until there is a judgment in the trial court, or other termination of the prosecution.7

It did, however, rule that the trial court had erred in refusing to accept testimony tending to show partial failure of consideration. On the question of what measure of compensation the attorney might be entitled to, the court offered the following significant comment:

Compensation in this case should not be scaled down to a mere equivalent for the actual services shown to have been rendered. The fact that the plaintiffs disabled themselves to accept a retainer on the opposite side is itself a consideration. The magnitude of the issue, and the responsibilities attendant upon such service, should be considered. And the consultation and counsel presumed to have been had and given at the time of the retainer, and possibly other things, must enter into the estimate.8

It offered little guidance as to how much these factors should affect the reckoning.

The Kansas Supreme Court pursued a similar line of analysis in a case decided the following year, Blackman v. Webb,9 though the issue here was slightly different since there was no express contract for a retainer fee but rather only a general agreement to represent a client in a series of lawsuits. The court there held that an attorney could recover a retainer fee even without an express contract since the right to such a fee arose by implication whenever an attorney took on the representation of a client. In the court's words:

When an attorney is engaged to prosecute or defend in an ac-

7. Id. at 505.
8. Id. at 507.
tion, his entire services in that action are engaged for his client, and he cannot perform service for the adverse party. He is retained by his client for that entire action; and whether his client may ever call upon him to perform services or not, he cannot perform services in that action for the adverse party, nor can he receive any fee or compensation from the adverse party. All his skill and ability for that case is at the command of his client. A retainer of an attorney at law is presumably worth something to the client; and presumably a loss to the attorney; and whether the attorney is ever called upon to perform any services or not in that case, he may, when the case is terminated, recover for whatever the evidence shows the retainer was worth.10

The court did make clear that the only issue it was deciding was "whether an attorney at law is entitled to recover a retaining fee and not for services . . . where no express or specific contract has been made for a retaining fee . . ."11 It stressed that it was not deciding "whether [an attorney] may in any case recover a retaining fee and also an additional amount for services [my emphasis]."12

That issue was squarely addressed some years later in a pair of decisions rendered respectively in Massachusetts and Delaware. In *Blair v. Columbian Fireproofing Co.*13 the plaintiff-attorney had been employed by the defendant to represent it in five separate actions. The defendant had paid over to the attorney $1050 in connection with these representations, but the attorney had credited all of this amount as payment of retainers in the separate actions and none of it as fees for services rendered. He claimed he was owed an additional $1300 for services and won a judgment for the full amount at the trial.

Though on appeal the payments in question were held to be compensation for services and the attorney’s characterization of all of them as retainers was disallowed, the Massachusetts Supreme Court left no doubt about the legitimacy of separate charges for legal retainers. Its analysis of retainers was at the same time interesting and curious. Echoing the *Agnew* court, it noted that “the principles of law applicable to claims of attorneys for services are

10. *Id.* at 669.
11. *Id.* at 668.
12. *Id.* at 669-670.
not different from those applicable to claims of surveyors, or mechanics, or farmers. The claimants are to receive a reasonable compensation for that which they do or furnish under their contract.”14 No sooner had it said as much, however, than it went on to show how the principles governing the claims of attorneys for services were quite different from those applicable to surveyors, mechanics, etc. — at least when it came to legal retaining fees.

The rule as to retainers, as distinguished from specific services of attorneys at law, is that, upon making an engagement for services, the attorney is to be paid a reasonable compensation for being so bound. In determining what sum is reasonable, the interests of the attorney and those of the client should be considered. The attorney, by his engagement, gives up the possibility of being employed by the adverse party in the very matter to which the retainer relates and the matter may be of such a kind that he gives up the possibility of being employed by others in other kindred matters in which employment would be adverse to the interest in which he is retained. But this disadvantage, for which he must be compensated carries with it the advantage, if his retainer is for active service, of having employment, and being paid for what he does. Viewed from the side of the client, the benefit for which he should pay the retainer is the assurance that he will have the services of the man of his choice, and will prevent his adversary from having his services, to the end of the proceedings to which the retainer relates. But this advantage is to be considered in connection with the fact that he will be obliged to pay at a reasonable rate for the service that is rendered.16

The court then listed the factors to be consulted in determining what might be a reasonable sum to charge as a retainer. These included: the ability and reputation of the attorney, the extent of the demand for his services, the probability of the retainer’s interfering with his professional relations with others who might become his clients, and the magnitude of the business for which he was retained.16 Finally, it noted that in the Commonwealth of Massachusetts, unlike some other American jurisdictions, “the right of attorneys to charge a retaining fee, in addition to charges for ordinary services, [my emphasis] is not limited to cases of express stip-
ulation for such a payment . . . "17

Saulsbury v. American Vulcanized Fibre Co.,18 a Delaware case, presented the novel question whether the right to a retainer could be combined with the right to recover on a contingent fee contract. The Board of Directors of the defendant corporation had passed a resolution to engage the plaintiff law firm for some contemplated negotiation and litigation. It stipulated a retainer of $3000. In another resolution the Board agreed to pay the law firm a contingent fee based on the amount recovered. The firm was successful in recovering the full amount sought and demanded payment of approximately $20,000 pursuant to the contingent fee agreement. Defendants did not deny that $20,000 was due under the formula agreed upon, but claimed that the $3000 it had paid to the law firm as a retainer was in fact part payment for services to be performed and ought to be credited against the larger sum due and owing. The court rejected this contention, holding instead that there were two contracts between the parties, one for a retainer, completed by the payment of the $3000 and another for services, in which the law firm was entitled to recover its percentage without deduction of the amount paid as retainer.19 The court treated the retainer strictly as an engagement fee, purchasing nothing in effect but the attorney's promise to hold himself ready to act for the client in the matter at hand:

When a retainer is asked and paid, its purpose and its relation to payment for services subsequently rendered have a clear and certain meaning in the law . . . . Unless there is an agreement or understanding between the attorney and the client at the time the retainer is demanded and paid that varies the purpose of the retainer, by stipulating that it shall be paid . . . for some other . . . purpose, — as . . . that it shall not only bind the attorney to render the service, but it shall also be accepted by him in part payment for the same when rendered, — the payment of a retainer has no relation to the obligation of the client to pay his attorney for . . . services [emphasis mine].20

17. Id. at 337.
18. 5 Boyce (Del.) 182, 91 A. 536 (1914).
19. Id. at 196.
20. Id. at 195. As another court put it "The attorney must hold himself in readiness to represent the client according to the scope of employment for which he is retained. He cannot take a fee on the other side. The retainer is for the purpose of obligating the attorney to represent the client as well as to prevent
It had no difficulty in finding all the elements of an equal contractual exchange in the retainer agreement:

A client gives money to insure the services of the attorney of his choice, and the attorney by accepting the retainer binds himself . . . and foregoes the opportunity of employment by the opposite side. This is the contract and these are the detriments which form the consideration.\textsuperscript{21}

II

Most courts which have considered the issue of retainers have taken a rather expansive view of the attorney's right to demand such fees from his clients. A few courts, however, have approached lawyers' claims with a much more skeptical eye.

One of the earliest such cases was \textit{McLellan v. Hayford}.\textsuperscript{22} There the Maine Supreme Court held that it was error for a trial court to have instructed a jury, without proof of any express contract or of a custom or usage among lawyers to charge retainer fees to their clients, that a lawyer could recover such a fee for each legal matter he had handled in addition to fees for services actually rendered. The court indicated that it was aware of no general custom in the state of Maine that would authorize the presiding judge to say that the plaintiff was entitled to recover retainers "from the mere fact that he was employed by the defendant to render service."\textsuperscript{22a} Moreover, it added:

\ldots Had there been proof of a usage to charge retainer fees, in addition to liberal specific charges for all services rendered and all expenses incurred in cases where the counselor was not merely retained, but was actually employed in the case throughout, we think it would have been the duty of the presiding judge to declare such a usage to be against natural reason and justice and not binding upon the defendant.\textsuperscript{24}

The court in \textit{Severance v. Bizallion},\textsuperscript{25} an early New York case, saw the retainer as something other than remuneration to counsel

\begin{thebibliography}{9}
\bibitem{21} Id.
\bibitem{22} 72 Me. 410 (1881).
\bibitem{23} \textit{Id.} at 413-414.
\bibitem{24} \textit{Id.} at 414.
\bibitem{25} 67 Misc. 103, 121 N.Y.S. 627 (1910).
\end{thebibliography}
for, as the traditional theory had it, agreeing not to work for the other side. In this action the plaintiff relied on the traditional theory to collect a fee that had been promised at the beginning of an action even though no legal services were actually performed. Such a fee, said the New York court, "is the so-called 'retainer out.' The ordinary present definition of a 'retaining fee' or 'retainer' is different. It is a payment in advance to cover future services and disbursement until further provision is made." If it was not paid, and no services were rendered, the court did not see any basis upon which the retainer could be sued for. In the Severance court's eyes, the retainer was tantamount to a refundable deposit, and nothing more.

In Pickens v. Thomas, a 1922 Georgia case, the court was called upon to determine among other questions, whether an attorney employed by a corporation as its general counsel for one year had an implied right at the end of the year to demand a retaining fee over and above the fees he had been paid for services actually performed. While the court felt that an attorney who had been engaged to represent a company but who had not been called upon to render any particular services would be entitled, even absent an explicit agreement, to some sort of retaining fee, it did not think such a fee was warranted if a range of contracted-for services were actually performed and paid for.

We think, however, that, when an attorney is generally retained and is employed by the client in all his cases, and is paid in full for services rendered in such cases, he gets all that he is entitled to under such general retainer, and should not be permitted to recover, in addition to the sums so paid for such services, an additional amount as a retaining fee.

In the court's view: "[t]he scope of the right to charge retainer is to remunerate counsel for being deprived, on account of being retained by one party, of the opportunity of rendering services for and receiving pay from the other, and not to swell the amount of the bill which accrues for services rendered in pursuance of the employment."
McLellan and Pickens involved claims of implied rights to retainers. Jersey Land and Development Co. v. U.S., one of the very few contemporary cases on the subject of retainers, involved an express agreement to pay a retainer fee. This was an action for an income tax refund in which the attorney representing the taxpayer withdrew from the case at the client’s insistence but refused to relinquish his files on the grounds that he was still owed legal fees. The client denied that he owed his lawyer any money. The dispute centered around the meaning of an attorney-client contract which referred to a retainer of $5000 and which included as well a schedule of hourly charges. The client argued that the $5000 should be seen as a deposit to be applied against hourly billings. The attorney, however, contended that the contract meant that the client was obliged to pay $5000 in addition to hourly charges. He claimed, not without justification it should be said, that as a matter of general usage and common understanding the word “retainer” imported a consideration only that the attorney hold himself available to serve the client. The federal district court for New Jersey gave short shrift to this argument and adopted the client’s interpretation. “Judged in the light of the common experience of mankind in this area of attorneys fees, it is most improbable that plaintiff agreed to pay . . . $5000 merely to assure availability of future legal services. An absence of intent to do this is more in keeping with the probability.”

III

Among all jurisdictions, probably California has gone farthest in asserting the right of an attorney to a retainer fee. In a series of decisions dating back to the nineteenth century, California courts have taken the position that the retaining fee is nothing more than payment for a commitment to perform services, that it is distinguishable from the payment that is due for services actually rendered and that the right to receive it is present by implication in every lawyer-client agreement. The leading case on the subject is

31. Id. at 53.
32. Id. at 54.
Knights v. Russ, 33 decided in 1888. The plaintiff in Knight was an attorney who had represented a decedent in criminal proceedings that had occurred before his death. A claim for $1500 was presented to the decedent's estate and denied. At trial plaintiff introduced evidence of the services he had rendered. He also called witnesses to prove the value of a retainer. The decedent's estate objected on the grounds that the action was for the value of services rendered and that alone. The California Supreme Court held that this objection had been correctly overruled since "when an action is brought to recover the value of an attorney's services, the retainer, it not having been paid, constitutes a part of the plaintiff's cause of action." 34 Quoting liberally from Blackman v. Webb, it adopted in its entirety the Kansas tribunal's view of the retainer but unlike the Kansas court, did not suggest there was any doubt about a lawyer's right to recover a retaining fee in addition to a fee for services performed.

The principles set forth in Knight were reaffirmed and expanded in later cases. In Roche v. Baldwin, 35 an action by the assignee of an attorney against a client for the reasonable value of services performed, the court held that it was proper at the trial for an expert witness to be asked what in his opinion was the reasonable value, "including a reasonable retaining fee, of the professional services performed." "In estimating the value of an attorney's services it is proper to include in the consideration a reasonable retaining fee." 36

Ayeldotte v. Bloom, 37 like Roche, was an action by a lawyer for the reasonable value of services rendered. When at trial one of plaintiff's witnesses sought to testify as to the worth of a retainer, defendant objected on the grounds that plaintiff had not mentioned a retainer in the complaint. The appellate court found the objection to be groundless, citing the Knight principle that every cause of action for the reasonable value of legal services includes as a necessary part the right of a retainer and that this need not be separately pleaded. 38 This has been the announced rule in Califor-

33. 77 Cal. 410 (1888).
34. Id. at 413. See also 7 Cal. Jur. 3d 243.
35. 143 Cal. 186 (1904).
36. Id. at 192.
38. Id. at 58. See also Campbell v. Hanford, 67 Cal. App. 155 (1924) and Warner v. Warner, 34 Cal. 2d 838, 215 P.2d 20 (1959) which characterized the
nia ever since.

IV

The theory of the legal retainer that has been adopted by the courts of California and of other like-minded jurisdictions holds that the lawyer's promise to provide services is worth something in its own right and that this entitlement, which arises by implication whenever an attorney agrees to provide services, is to be considered without regard to the compensation which counsel may demand for services actually performed.

One of the first things to be noticed about this theory is that it runs counter to the announced ethical standards of the profession in the area of attorney-client relations. The American Bar Association Code of Professional Responsibility does not specifically address the issue of legal retainers, but it does prohibit the charging of excessive fees, points up the unfamiliarity of many lay persons with the fee customs of lawyers, and stresses the necessity of fully explaining to prospective clients the structure and rationale of any fee arrangements that are contemplated.39 Canon 44 of the CPR's predecessor, the Canons of Professional Ethics, stated that "Upon withdrawing from a case after a retainer has been paid, the attorney should refund such part of the retainer as has not been clearly earned,"40 thus evidencing a belief that there is a close connection between retainer fees and fees for services performed. Finally, the ABA's Committee on Ethics and Professional Responsibility rendered an ethics opinion in 1967 which bears directly on the question. A law firm had solicited the committee's judgment on a proposed set of office procedures on the handling of prospective new clients. One procedure, purporting to explain the fee arrangements of the firm, noted that a "retainer" was different from a "fee", the latter being the price charged for actually handling the case. And while it noted that the retainer might be applied against the fee, it implied that it might not as well. The committee expressed strong disapproval of the proposed procedure. It observed that a retainer as "a payment for undertaking the responsibility of the representation bearing no relation to the value of the services that can be anticipated and payable even though no services are actually rendered." at 841.

40. Id. Canon 44.
is "an advance payment in connection with fees and not a payment unrelated to fees" and held further that it would be improper for a lawyer to require a client to agree that a lawyer should keep the retainer "under all circumstances and regardless of services performed."\[41\]

One may also question the inner logic and equitableness of the majority view of the retainer. It is a theory sounding in quasi-contract, saying in effect that the lawyer gives up something of value when he agrees to represent the other side — and that not to recognize a right to compensation for the yielding of this right would result in unfairness. But is the lawyer's situation so different from that of other vendors of professional services? Does not the architect, for example, who agrees to design a house for client A, limit his freedom — for the amount of time necessary to complete the job — to make commitments to other clients? Yet we would recoil at the notion that the architect had an implied right to compensation for his mere promise to render services. But, it may be countered, the architect who enters into a contract to build for client A does not by that fact alone disable himself from building for client B. In the first place, it is hard to maintain that the agreement to provide legal representation always involves the yielding of the right to represent the other side. Has the criminal defense lawyer, for example, in any meaningful sense, given up a right to represent the state when he agrees to defend the accused? Furthermore, it is of the very essence of representation in an adversary system that retention by one side prevents one's acting for the other as well. There would seem to be no general principle of justice or fairness requiring that one be compensated for, in a sense, only doing what is ethically required.

The questionableness of the theory is thrown into clearer focus when it is considered at its outer boundary. It will be remembered that the right to a retainer is said by the courts to be completely independent of the right to compensation for services performed. Thus, an attorney who had received his full hourly charges for all services rendered might, on this view, be entitled to demand a retainer fee in addition. Surely it is an affront to common sense to contend that either logic or equity require this

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41. ABA Committee on Ethics and Professional Responsibility, Informal Opinion 998 (1967). For a more recent opinion seeming (albeit in rather opaque language) to reaffirm this position see Informal Opinion 1389 (1977).
outcome.

Notwithstanding the jurisdiction's settled case law, it is the writer's distinct impression, based on contact both with bar associations and a fair sample of practitioners that California lawyers are not in the habit of demanding separate retainers in addition to fees for services actually performed. Rather, if retainers are solicited, they seem to be received, at most, as non-refundable deposits or as minimum fees. The concept of the retainer as a minimum fee, due even if the matter for which representation is sought turns out to require little expenditure of time, but fully creditable if charges in excess of the amount advanced are incurred, has the force of some logic behind it. As the cases correctly make clear, by agreeing to assume the burden of representing a particular client the lawyer does make himself unavailable to others and thereby incurs certain opportunity costs. It seems reasonable that he should be able to assure himself that at least a portion of these opportunity costs will be covered if the representation ends sooner than expected. An arrangement of this sort would not seem to raise any particular ethical problems so long as 1) the advance payment demanded is not an excessive fraction of the anticipated total costs of the representation, and 2) the attorney has made crystal clear to the client that the advance payment is a minimum fee and will be kept even if the need for representation comes to an end sooner than anticipated. If this latter condition has not been satisfied, it would seem incumbent on courts to resolve any doubts in favor of the client and to require a refund of part of the fee. Certainly the most disturbing thing about reading the cases on retainers is to find courts constantly construing ambiguous language in fee agreements in favor of attorneys or basing rights to fees on customs as if these customs embraced the client as well as the attorney community.

42. The paucity of recent cases, either in California or in other states that have adopted the "pure" theory of the legal retainer provides some evidence on this score. The fee arrangement sanctioned by this theory seems one almost calculated to lead to disputes. It seems unlikely that there would be so little litigation if it were widely employed.

43. The fee right of attorneys who withdraw or who are discharged before the completion of representation are governed by a different set of principles and are not within the scope of this article.

44. One may legitimately ask how an agreement should be approached which, in connection with representation in a particular cause, expressly called both for the payment of a lump sum in advance and payment of hourly charges for services actually performed. Bearing in mind the basic principles which we have sug-
What we have just been saying applies primarily to special retainers. When we come to general retainers, we find ourselves on somewhat similar terrain. The typical general retainer agreement involves the advance payment of a substantial sum of money to cover the performance of a range of anticipated legal service, usually set forth in the contract, over a given period of time. The fee is due even if few of the anticipated services are needed. The agreements usually contemplate extra payments if the need for extraordinary services arises during the term of the contract. Such arrangements seem entirely unexceptionable. One can, moreover, imagine circumstances where it would be justifiable to charge a general retainer fee in addition to fees for services actually performed. A client, for example, might not anticipate needing any particular legal services in the immediate future but might nonetheless want to insure that a certain attorney would be immediately available to assist him over a given period of time in any contingency that might arise. The client would in effect be purchasing the right to go to the head of the queue anytime he needed to. Such availability is worth something in its own right, and an attorney might in fairness demand separate compensation for making a promise to be willing to put everything aside and give priority to a particular client’s needs whenever that client should call on him.

45. For a typical general retainer agreement see 1 S. SPEISER, ATTORNEY FEES. 1.7 (1973). For an interesting case regarding the right to extra compensation under a general retainer agreement see Roberts v. Veterans Cooperative Housing Association, 88 A. 324 (D.C. Mun. Ct.).

46. There is some evidence that in the securities regulation field general retainers are being employed not only for this purpose but for the purpose of rendering certain leading securities lawyers unavailable to potential adversaries over indefinite periods. See Los Angeles Times, Jan. 10, 1982, pt. 4, p.1. This practice of course, raises a whole set of issues of its own, but they are beyond the scope of this paper.
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over a given period of time. Here too, however, the right to such a fee should only come about as the result of express agreement, and the cases which have found such rights accruing by implication ought to be rejected.

The rules regarding legal retainers were established in the dim and distant past, and it may be wondered whether a contemporary California court, called upon to address the issue, would find it possible to endorse the principles laid down by Knight and its progeny. One may ask the same question of other states which long ago adopted an expansive view of the legal retainer and have not had occasion since to reflect on the matter. This may be but another instance of the wide gulf that often separates the law in the books from the law in action. Nonetheless, the law is on the books, and its continued presence has the potential of contributing yet another irritant to the already strained relations between the legal profession and the public at large.

47. In a footnote to a recent opinion the California Supreme Court suggested that the only advance fee payments that were earned on receipt, without regard to services actually performed were those sums of money which were paid to secure an attorney's availability over a given period of time, i.e. what are usually designated “general retainer fees.” Baranowski v. State Bar, 24 Cal. 3d 153, 164 n.4, 593 P.2d 613, —, 154 Cal. Rptr. 752 (1979). The question of entitlement to retainer fees was not really an issue in the case, however, and it contains no discussion at all of the line of previous California decisions on the subject. On how “advance fee payments” should be treated in California see also J. Shank, Are Advance Fee Payments Clients' Funds? 55 CAL. ST. B. J. 370 (1980). The article does not deal with the concept of “retainers” as such but does urge that moneys paid in advance by a client to cover the performance of legal services in connection with a particular case should be treated as client's funds and deposited in a trust account. The article does not discuss the leading California cases on the subject of retainers. For a different view of how advance fee payments should be treated see Demetriou, Should Prepaid Fees Be Put in a Trust Account, 3 CAL. LAW 20 (1983).