Structured Attorney Fees

An attorney can insulate their practice from the normal income peaks and valleys, and smooth out the cash flow, allowing them peace of mind and opportunities to plan future expenditures and retirement.

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Structuring Attorney Fees

Structured attorney fees are a tax-deferred alternative to receiving a lump-sum fee payment. By structuring fees, the attorney can receive the fee payments over time on a tax-deferred basis. The attorney pays taxes on the fees in the year(s) that payment is made.

In a personal injury suit, the plaintiff, i.e. the injured party can opt for a structured settlement. A Structured Settlement is a means of settling a personal physical injury claim with a plan designed to meet the unique needs of the injured party. Instead of accepting a cash settlement in a single lump sum, the injured party will receive future periodic payments made through a Structured Settlement annuity.

Any settlement in a personal injury suit will involve attorney fees. The attorney can opt to structure the payment of the attorney fees. The attorney can structure the fees even if the client chooses not to structure his settlement. If the attorney chooses to structure the fees, it must be done prior to or concurrent with the client's original settlement.

Attorney fee structuring can also be done for fees from cases based on claims of discrimination, sexual harassment, employment litigation, defamation, wrongful imprisonment, wrongful termination, other non-physical personal injuries including emotional distress, punitive damages, bad faith, breach of contract and construction defects, to name several.

The plaintiff's attorney fees, which are most often contingent on the outcome of the case, are generally paid to the attorney in a lump sum if the attorney obtains a recovery for the plaintiff. The use of a structured settlement for a plaintiff creates the opportunity to structure the attorney's fees as well. The attorney then receives the fee in installments over time, just like the plaintiff.

There are two options available for attorneys who are considering structuring all or a portion of their fee. The most widely used option is to establish a deferred compensation agreement. This agreement essentially recognizes an individual attorney's work on a specific case, and directs that the fee be paid at specific dates in the future directly to the attorney by the third party assignment company. This option is more suitable for attorneys who work in a large law firm.

The other option is for sole practitioners. Using this option, the attorney can have the future periodic payments made payable to the attorney's law firm (while the attorney is still working), with the attorney named as the beneficiary. Then, upon dissolution of the firm (presumably coinciding with the retirement of the sole owner attorney) the payments would continue to the attorney individually, as beneficiary.

The contingency fee agreement must be modified to incorporate the possibility of structuring attorney fees.

When the attorney fees are structured, the payments are set and cannot be subsequently altered. Very specific documentation with specific wording is required for structuring attorney fees. Structured settlement companies generally require that their own hold harmless agreement be filled out. Most companies may require a separate annuity application even though payments are part of the original settlement.

Generally an attorney can structure a portion (or all) of the fee when:

1. The contingency fee agreement permits the structuring of all or a part of attorney's fees.

2. The attorney does not have constructive receipt of the funds

3. The guidelines set forth in the Childs case are followed

4. The requirements and/or guidelines of the issuer of the structured attorney fee annuity contract are followed.

Attorneys may want to structure their fees as part of their own income tax planning, financial planning, and estate planning, and even succession planning within their firms. Structured fees can protect the attorney from himself. Some people have a hard time managing money, or saying no to friends and family wanting to "share the wealth." Receiving money in installment can make it last longer.

Some companies will write annuities for structured attorney fees when the attorney is the only one structuring payments– the attorney can structure attorney fees when the client does not accept a structured settlement. In other words, even if the client chooses to take all of his money in cash, the attorney can still structure the attorney fees. Other companies will write structures for attorneys only when the client is also structuring his recovery.

Structured settlement companies now allow attorneys to get a higher payment on lifetime payments if the attorney's medical history shows something that can reduce his life span. It does not have to be a terminal illness or injury; something like smoking or high blood pressure will increase the payments one will receive.

Attorneys can now structure their fees to have it paid out over a lifetime, no matter how long the lifespan.

Companies now allow structured attorney fees to be commuted at death allowing for an estate to have extra money for estate taxes. Some companies even offer the ability to take remaining structured settlement payments in a lump sum in the event of an emergency.

There are three main reasons why attorneys structure their fees:

i. To avoid a large tax liability in a single year.
ii. To spread payments over several years to assure that office expenses and payroll are covered.
iii. To use the structure as a retirement planning vehicle.

Deferring income for just a few years, allows the attorney to take advantage of more itemized deductions and to pay the maximum allowed into a retirement plan.

The fees can be structured to provide a guaranteed stable stream of income. The income stream can be tailored to meet the individual requirements of the attorney. The attorney can get assured monthly income or to make sure there is extra money when taxes are due in April. This alleviates some of the stress of worrying about cash flow.

Unlike other retirement concepts or plans, in a structured settlement, allocations do not have to be made for employees or co-workers. The attorney does not have to make contributions for employees or follow any restrictive allocation rules.

By structuring fees, the attorney has the opportunity:

i. to design the right income stream for the practice;
ii. to create additional retirement income; or
iii. to accommodate future needs

It also eliminates the requirement for regular monitoring and reinvestment of income.

By structuring fees, an attorney can receive a stream of tax benefits. Since the attorney only has to pay tax on the fee income as it is received, the tax on the fee income is deferred. Depending on the attorney's other income and the length of the structure it is possible that some or all of the proceeds may be taxed at lower marginal tax rates.

There is a deferral of income tax on the investment income portion of the structure as the attorney would have to earn investment income on a lump sum distribution to match the total value of benefits received in a structure.

To be eligible to defer reporting income, the following requirements must be met:
(1) under the terms of the annuity, the attorney has no greater right against the owner of the annuity than the right of a general creditor;
(2) the attorney does not own the annuity contract;
(3) the owner of the annuity contract retains the right to change the annuitant or the beneficiary; and
(4) the attorney does not have the right to accelerate, defer, increase or decrease the periodic annuity payments.

If the above four requirements are met, the attorney will likely be entitled to defer reporting income from the fee structure until the years in which payments are actually received.

Besides the tax benefits, attorney fee structures provide many other benefits, including:

- Financial Security: A structured fee can provide long-term financial security to the attorney through a stream of tax-free payments tailored to their needs.

- Asset protection: Assets in structured settlement annuities are often not recoverable assets in litigation.

- Medical underwriting: By structuring fees, attorneys with health issues such as high blood pressure, diabetes, high cholesterol, overweight, smoker, or other medical impairments can receive higher benefits on lifetime annuities.

- Guaranteed income: Structuring fees assures guaranteed flow of income. The future payments are guaranteed. The very nature of structured fees provides the assurance that the attorney's future needs will be secured over a specific period or a lifetime

- Flexibility: Structured fees can be designed to meet the attorney's unique needs -. lump sums, monthly income, stacked income, income with cost of living adjustments, deferred income, planning for their children or grandchildren's college, retirement, and future nest egg. The options are flexible and nearly unlimited. Structured fees can be modified in a number of different ways, depending upon the attorney's situation.

- No restrictions: There are no restrictions or limits on the amount deferred through a structured fee in a given calendar year.

- Distributions can start at any age: Distributions in a structured fee can start at any age. There is no need to wait until age 59.5 to start receiving benefits and no penalty for this early benefit.

- Case by case: The fees for each case can be structured separately.

- Minimal risk - Structured fees are funded through multi-billion dollar life insurance companies.

- No fees - Unlike typical investments, structured fees contain no management fees.

- Lifetime payments: By structuring fees, the attorney can ensure a fixed amount for the rest of his or her life without the concern of administration fees and stress of typical pension plans.

- Sell future payments: The future payments can be sold for a lump sum at anytime. This is good if unexpected expenses come up in the future, or the attorney needs and makes a major purchase that he didn't anticipate, and couldn't make on a fixed monthly income.

- More money: The amount of money the attorneys receives may be greater than a lump sum payment, particularly if the payments are for life and the attorney the good fortune to live a long time.

By structuring fees, the attorney can insulate the practice from the normal income peaks and valleys, and smooth out the cash flow, allowing them peace of mind and opportunities to plan the expenditures.

When structuring the fees, the attorney must also take into consideration a few things. A structured fee cannot be changed. Generally, once the attorney agrees to accept an annuity, the attorney cannot trade the annuity back for a lump sum payment. Structured fees have special tax considerations. Once such an agreement is reached, the attorney stuck with it, for better or worse.

Structured fees do not pay interest. The interest is built in to the payments.

The long term payments may not be used as collateral for a loan. Placing the payments as collateral would place the financial agreement at risk, and that is not something for which they were designed.