

Alternative Fee Arrangements: Are They Right for Your Practice?

by Pete Roberts

Based on the increased traffic on I-5, the full park-and-ride commuter lot in Lynnwood at 7:45 a.m., and the full parking lot at Alderwood Mall every day (Apple store?), one might imagine that our local economy is rebounding at last.

But we know, of course, that many people are suffering during our prolonged economic malaise. And that means clients have much less financial flexibility to pay a lawyer for the essential services that are necessary to meet their legal challenges.

The question is not whether there are potential clients, but how to find clients who are able to pay for legal services. Every lawyer has a duty to provide pro bono publico service. But I want you to prosper first and avoid pro bono publico pecunia nullus. Be careful not to confuse being busy with being productive. If you are not getting paid, you are not being productive.

It takes only 2.5 billable hours a day at a billing rate of \$150 per hour (\$97,500 in gross fees) to yield \$65,000 to a solo practitioner with average organizational and technology skills. But where is the paying legal work?

The American Bar Association published an article in the ABA Journal that describes several areas of paying legal work that may be of interest to young practitioners: <http://tinyurl.com/3se57d9>. Clients are paying for legal work in the following areas: alternative dispute resolution, prepaid legal services, environmental and energy law, consumer protection, debt collection, elder law, and labor law. The article quotes lawyers who practice in these areas and provides insight into why they are doing well.

The Changing Desires of the Legal Consumer

I recently attended the Pacific Legal Technology Conference in Vancouver, B.C. The keynote speaker was Chas Rampenthal, general counsel for LegalZoom (www.legalzoom.com), a company that provides access to basic legal forms for tasks like forming a business, drafting a will, or filing for divorce. Mr. Rampenthal kept the rapt

attention of 225 lawyers for 90 minutes by describing polls that LegalZoom conducts to find out why their customers use their company. Overwhelmingly, the responses describe a respect for lawyers and what a lawyer can do, but also a high level of frustration with the legal system. The type of clients who are attracted to LegalZoom are

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generally middle-class people who know that they need legal help.

That term is the key: “legal help.” Lawyers expect a traditional lawyer-client relationship, but the public is not in the market, according to Rampenthal, for that level of relationship with a lawyer. Instead, people want to pay only for the necessary help to meet their immediate legal needs. The web has empowered people to seek information, do research, draft documents, and only then are they ready to consult with a lawyer. This caused me to consider the ways in which “unbundled” fixed-rate legal services and flat-fee legal services could be part of the solution to every lawyer’s need for legal work. Trends show that even regular consumers of traditional, big-firm legal services are asking about alternative fee arrangements.

Implementing Alternative Fee Arrangements in Your Own Practice

Consider how you might deliver essential legal guidance using fixed-rate legal services and flat-fee pricing models whenever possible. A caution, however: be sure to consult the Civil Rules and the Rules of Professional Conduct. The scope of representation needs to be defined in writing and include the terms when the fee will change if the scope of representation changes.

Prepare careful estimates of the cost for the work using your experience in similar matters and the resources available at www.utbms.com. Then, add a premium to

that amount. Why? Because you may have forgotten a task, underestimated the time, or both. But the most important reason is because you are assuming the financial risk; that is added value for the client.

Finally, measure success “in the aggregate.” To do this, total all of your flat-fee gross fees after six months and divide all

the hours worked into that amount to yield an actual hourly rate realized. This rate will most likely will be higher than your nominal hourly rate. Use a time and billing program such as www.rtgsoftware.com to assist with this calculation.

Yes, each flat-fee matter is a “bet.” But you will have maximum incentive to use technology, be efficient, and win more of these “bets” than you lose. With practice, you will become more precise at estimating a flat fee when the scope of representation is defined. Flat fee with hourly rate fee agreements, known as “blended fee agreements,” are permitted as long as all of the terms are disclosed and the client agrees to the terms.

I hope that some of these ideas in this article yield some benefit for your practice during these difficult times. ♦

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