

# Popular Threads on Solosez

## Billing Extra for Extra Work

I was hired by a corporation to do a buy-sell agreement. At first it appeared to be a standard buy-sell and I quoted a VERY reasonable flat fee. Now it has been over 6 months and I have had to make about 6 revisions - major revisions. Now I was just told that the shareholders wanted additional provisions added - much more detailed than the standard agreement. No one said, "I understand if you need to charge more." My dilemma is that I already quoted a price. Is it inappropriate for me to know come back and say that I need to charge more money because of all the extra work, or would it just be assumed that any work on the agreement is part of the initial quoted flat fee? I know they can afford to pay me, but I don't know how to go about dealing with this. I feel very uncomfortable requesting more money, but this is taking so much time and work.

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Great question. I'm encountering the same situation myself. Any thoughts from the more experienced & wiser members?

Gahram Kang

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Well my advice from being self-employed (not as a lawyer though) is to suck it up and stay with your flat fee. Learn from the experience by qualifying your future flat fees to specific benchmarks or else raise your prices on flat fees next time.

They signed with you because of the fee quoted.

Steven B. Pollack

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I don't know if I'm more experienced or wiser than either of you, but I always include an hourly rate in my flat fee agreements. Something to the effect that the flat fee covers up to \_\_\_ hours of work (usually at a discount, i.e., \$150/hour, 2.5 hours, \$300 flat fee), and anything over that will be billed at my normal rate. If you make the flat fee high enough you'll seldom have to worry about going over the hours you set, but if you do you're still covered.

I have done this a few times on cases where I had little experience, and wanted to learn the law and get paid for it. So I kept track of my time and heavily discounted it when it came time to send the bill. The client paid the flat fee, I learned how to do the work and got paid at the same time.

Russ Gray

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It will not hurt you to go to the person you first quoted the fee to and ask for more money. Tell him/her that you anticipated using a somewhat

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standard form that you knew contained most provisions and that you anticipated between X and Y hours to do the work, including Z conferences with W shareholders. You are now significantly past that amount of time and they are still asking for changes. If the balk, you will know that you do not want them as a future client. Chances are that they will continue to hire counsel based on the lowest price rather than the most competent.

Curtis Drew

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Yeah--don't quote flat fees. One of the parties is gonna get screwed. If it's the client, you get to feel guilty. If it's you, you're pissed.

Dick O'Connor

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I would examine whether the revisions that you're experiencing could have been anticipated at the outset. For example, did you ask the right questions about the project? Was the corporation not forthcoming in what it wanted? If the latter is true, you are justified in asking for a fee.

If you should have known that the job would take longer but you offered the flat fee, then I think you ought to eat it, learn your lesson and move on. I don't use flat fees on all matters, and where I don't I do cap my estimates and give high and low end prices to limit client's exposure. If I exceed my high end estimate, I absorb the cost.

Right now, I am having issues with an expert witness who was willing to give me a flat rate on a report. The report has taken much longer than the amount of the flat fee and he has started asking for more money. Initially, I paid a little more (because I too know what it's like to underbid a project), but he continued to ask for more pay without delivering the product. My feeling is that he should have known what was involved in the task and not agreed to it unless he was willing to finish the job. It's his problem that he made a bad deal, not mine. I now regard him as highly unprofessional because he failed to follow through on what he promised.

Carolyn Elefant

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I was in a similar situation recently. The client said that they were a bit surprised that I had not asked them earlier because they too realized that something relatively simple morphed into a behemoth. Clients that can pay and know they need you don't want you to resent them either. Though, as another poster pointed out, the upfront estimate should be as realistic as possible. Jonathan B. Schloss, Airmont, New York

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It is not at all inappropriate to ask for a higher fee to cover the additional work. But don't be surprised if the client declines to pay a higher price.

We've run into similar situations, in both flat fee and capped fee situations, with corporate clients (investment banks) that could easily afford the higher price. Clients simply don't want to play nice all the time.

If the client agrees to a higher fee, count your blessings and do a great job for them. If the client refuses, here's what you do:

1. Learn the lesson. Next time, make sure to stipulate in your contract exactly what a flat fee covers -- for example, a first draft contract and one round of revisions. Additional work to be billed at your usual hourly rate.
2. Graciously accept the client's decision as final.
3. Do the work, and in your invoice, indicate the full value of the work you performed, including the discount you are giving the client to arrive at the flat fee price. The idea is that even if you have to eat the loss, you want to at least get brownie points for it. Make sure the client knows what a favor you are doing for them.
4. Keep in mind that this client may give you repeat business, and console yourself over the loss with that possibility. But when the repeat business arrives, remember: "Fool me once..."

Rich Smith

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I try to reduce this risk by limiting the number of meetings and rewrites that are included in the flat fee proposal: e.g. two meetings, one before and one after first draft, then one revision. Sometimes the future owners haven't thought things through so that the first draft after the first meeting can properly reflect what they said they wanted, but they change their mind (and again and again.....). However, don't be bashful about asking for more. If he/she says no, you've learned a lesson, but at least use it as a reason for drawing a line in the sand for how much more work you will do.

Paul Hogan, Sunnyvale, California

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Ask for more and explain why. Some clients will fight it, others will agree that the job has changed and you're entitled to more.

I once had a case that I took on a reduced contingency fee. It involved the foreclosure of a fractional share of a mortgage, and we all agreed that, since the money was owed, and there was equity in the property, the money would be collected fairly easily. Well, the case turned out to be a bear (particularly when the owners of the rest of the mortgage sided with the debtor). So I asked to increase my percentage about 1/2 through the action. I didn't demand, because we clearly had a written agreement. But client recognized the situation and we negotiated a new fee.

Not all clients will be this reasonable. Also, not all attorneys have, shall we say, cordial relationships with their clients, making it less likely that clients will be considerate.

Before you raise it, though, you should consider whether the work you've done falls within the letter of your flat fee agreement (even if not the spirit). If it does, then I'd ask for more, but perhaps acknowledge that

you'll stick to your agreement if client insists. If, OTOH, the scope of the work has exceeded the letter of your agreement, you can be more demanding if you chose to be.

This is a good reason to be specific when quoting a flat fee, and perhaps to include a provision that there will be an increased fee if the scope of work exceeds what is typical for this type of transaction.

Patrick W. Begos, Westport, Connecticut

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Personally, I hate flat fee quotes. Maybe it's because of the type of cases I handle (aviation). There is really too much variation from case to case, too many things that can come up, I've never been willing to do it--for my benefit as well as the client's. I guess flat fees would be OK if there is an overall similarity to the cases you normally handle, so that you can see, going in, that the fee will probably fall within a certain general area. Nevertheless, I would want an employment contract to spell out that under certain unexpected circumstances the flat fee would either be re-negotiated or the extra work required would be subject to an additional fee on an hourly basis.

Dick O'Connor

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Contractors have a name for it, it is called a "Change Order."

Marc Stern

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Oh Marc, I absolutely love your domain name ... and how coincidental ... some would view going back for more money just that. In my opinion, however, the client has substantially changed the scope of work. Given that the changes were requested by stockholders - who were probably not considered in the original scope of work (Tracy probably agreed to prepare work for 1 side, e.g., the officers/directors), I would have no hesitation of explaining to the client that the request was a "change order."

Peter Clark

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I have both the flat and hourly fees together in my agreement, but I like Richard Smith's advice to be specific in what is covered, even detailing the number of meetings and such - that is VERY good advice which I intend to take, hopefully to the bank!

Arthur B. Macomber, Coeur d'Alene, Idaho

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You know what problem I have often is at my initial client meeting and after a few hours of fact finding, etc. etc., is I'm often not sure how to raise the fee issue. I've never gotten really comfortable at this. I've just spent a few hours cementing our relationship, and now have to bring up this "adversarial" topic. How do you do it, Russell?

And, half the time the clients will say something like "I didn't think it would cost that much," or "I'll get back to you," or something, meaning I've spent 3 hours with the client, may have traveled to his office to do so, and it turns out the guy (maybe) doesn't feel so strongly about getting the legal work done when he realizes he has to pay for it.

How do others handle this?

Chris Fasano

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I'm constantly amazed at how many lawyers are the first to perceive their services as fungible, thereby getting sucked into the "lowest bidder/car dealer" mentality and throwing themselves under the marketing bus.

If you don't think your services are worth the money, why should the client?

As others have already said, the "flat-fee" trap is just that.

The only time I agree to a flat fee is for the initial consultation [which is NEVER free]. And, in many years of practice, I have NEVER once agreed to a flat fee. Note : although I don't do house closings or wills, if I did, I would ALWAYS build in an hourly rate for the inevitable "change orders".

Charles Abut

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I disagree with Charlie about never using flat fees. I think billing hourly is the type of billing to avoid. That being said, you must be careful if you're going to bill on a flat or modified flat or value billing basis. Your fee agreement needs to specifically state what the fee covers. I always recommend that my clients also consider the factors that will potentially increase the fee and that they discuss them with the client. In Tracy's situation, that means talking about revisions or substantial changes made to the original agreement.

Change orders should always be contemplated (and discussed with the client up front). Sometimes the change order is necessitated by unforeseen circumstances that arise that weren't contemplated by the original agreement. Sometimes they arise because the client asks for additional services (like adding provisions not contemplated by the original agreement). Of course, if the revisions that were done were the fault of the lawyer, the lawyer should eat the fee. Otherwise, you're entitled to get paid for your work. I think most clients understand the idea of the change order - if the contractor quotes a fee for doing work in your house and something else comes up (i.e. termites are found) which creates additional work, most people understand that means an additional fee. The same goes when the client themselves increases the scope of the work - (I originally just wanted to redo the countertops, but now I need new floors, new cabinets, new moldings, etc.)

There's no harm in quoting the client an additional fee for the provisions they want to add now. But be careful when quoting the fee for those

additional provisions - don't make the same mistake twice. Make sure you explain in detail what the fee covers, why it's necessary, and what they're requesting entails. Explain that these provisions are much more detailed and complicated than the original buy-sell agreement that was discussed. If the client is reasonable, chances are that they will understand.

Allison C. Shields

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I try not to spend a lot of time with potential clients until they've brought in a payment. I will spend about an hour combined on the phone and in an initial consultation (always free), but after that if they want me involved I need to be paid.

I don't see fees as "adversarial" but as the client's half of the agreement. I agree to work for them, to solve (or attempt to solve) their problem, and they agree to cooperate and to pay for my work. Most of what I do is litigation, so I make sure to tell them that they can represent themselves, and many people do represent themselves, but if you want it done right you should hire a professional. You wouldn't let an auto mechanic fix your plumbing, and you shouldn't let a plumber handle your legal issues.

I make sure the client knows up front that I expect them to pay. I bring it up somewhere between 15 and 45 minutes into the first conversation. If they get up and leave, that's fine. I've had people get up and leave, telling me I was waaaay overpriced, and then come back a week later. One found an attorney at a lower rate, but came back to me anyway.

I also try to make the potential client come to my office. Home turf, and all that. Once they've signed up and paid a retainer I'll do whatever they need. I try to act like I don't need the work, even though I do.

Finally, I won't budge on fees or retainer. I've been told that my rates are too high, or my retainer is too high, or that all attorneys are just obsessed with money. I think (hope) that once clients see my bills and see the results they will be happy with my work.

Russ Gray

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I read through most people's responses, and all have given great advice. One thing I see missing (remember I didn't read all replies) is an answer to the specific question about how to go about in asking for more compensation. Although I am extremely new, I have encountered this problem already. I learned quickly from my first flounder, to explain and define what the flat fee includes and that if it should go over, I would have to charge more. The best way I can suggest to approach the situation is to be humble in that you appreciate the business, yet confident in that you are providing a great service for your client. What you need to do is sit down and have an honest conversation about the initial direction this project was going and how long both parties anticipated this was going to take. I'm sure the client will realize that multiple revisions, major changes from initial intent, and 6 months later worth of time and expertise was not initially anticipated and would agree that you deserve to be compensated more. You simply need to tell your client that at the outset this project was

estimated to be \_\_\_\_ and it is now become more than that.... Let your client possibly take the hint and offer you more compensation, if not just ask for it....but be willing to adjust. Your client may not have budgeted the actual cost now accrued for your work, so you have to probably offer some kind of discount. Hope that helps!

Danielle Bilotto, Des Plaines, Illinois

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I have not read all the posts, so maybe someone has already made this comment. As a former in-house attorney, I found that some GCs and AGCs consider the fee quoted as a done deal, regardless of the amount of extra, unanticipated work involved. They base their budgets for certain matters on these amounts and outside counsel are expected to honor the deal. Some outside counsel will low-ball their fee estimates in an effort to obtain more lucrative, continuing business (I know that's not what you did). And, depending upon the size of the organization, complaining to your contact person, who may not be the decisionmaker, can come across as whining. That said, you should certainly take all the advice you have received from listmates about asking for an increased fee; it sounds justified. However, before you do, try to understand exactly who the decisionmaker is and how they feel about this type of request. And then, tailor your pitch according. Good luck!

Elizabeth Eagleston

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Interesting discussion.

three points:

1) If it is in the nature of a change order, document it, and submit it to the client. ie. "you asked me to put together a buy-sell agreement to these terms. I did for the fee we agreed to. Now, due to negotiations that I was told were concluded we have made X changes, and now you want to make more. That changes the basis of our fee agreement, and we need to change the fee agreement as such: ....

Plan for that next time - remember a contractor only gets a change order paid if it is signed by the owner, and a smart contractor gets it signed while the owner still wants to do the work, not after she sees the work done.

2) Learn from this lesson. The lesson is not to never do flat fees - or to only do flat fees. It is to create a partnership with the client, based on the project to get done. An AP story out this week talks about ala carte law, doing what is needed, charging for it and then doing the next thing that is needed. Do not make the fee a "to the end of the matter" fee. 25 years ago, doing family law we were told to be fair to the client with a flat fee. So many of us did that. But the clients refused to stop fighting, and got subsidized custody fights etc. Remember to cast your relationship with the client as partners, and the increasing time and expense is coming from the other side, in a fight or a negotiation. The legal costs of closing a transaction is part of the cost of the transaction, and a legitimate part.

3) Until you have lots of experience, and you document and study the

results, you must do three estimates before you quote a flat fee. First calculate the expected time the way we always do - everything will go easy and I can do this at no trouble to the client. Make that 1X. Add to that the expenses and costs that you will front for the client. That is 1Y. Then triple the time you have guessed will work, because that is more likely to be the result. = 3x. Double the expenses you estimate = 2Y. Quote 3X+2Y and you will come out about right most of the time. ( I once quoted a retainer - not a flat fee - at \$1200. 4 years, 12 trial days and two trips to the state Supreme Court later we got done.)

Ted A. Waggoner, Rochester, Indiana

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I came in on this late but I think I have something valuable to add.

I do flat-fee work. Mostly for preparation of routine standard-form contracts and filing of things like copyright registrations, where I have done umpteen of the transactions and I have a very good feel for the cost and time involved. Also, if I have a really great form I'm customizing for the client...wouldn't be fair to let them have all that work and experience for the half hour I might actually spend. I should get rewarded for my experience and efficiency, not them, and that's the curse of the billable hour method.

HOWEVER--let's say you A. inform them the matter has morphed substantially and you think you should bill extra and B. they respectfully decline, feign outrage, or whatever. This is what I then do: I go ahead and bill all of the time involved in the extra work, and "no charge" every single slip. Let the client SEE that you have put in the time, and what it would have cost. That way, YOU know what time you actually spent, and the CLIENT knows what a good deal they got. Then if they come back for another matter (and they should) you have justification for quoting more expensively.

Carol Shepherd

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