

Flat Monthly Fees / Alternative Fee Arrangements

All,

I have a potential client who's interested in a flat rate for all services arrangement. Write a check once a month for \$X, don't worry about hours at all.

I am fine with this arrangement in principle but have a few concerns.

1. I am not sure how to figure out what a reasonable monthly amount would be. I have some ideas, but I'd like to see what others are doing. Does anyone know of any resources for calculating such a thing? Surveys of rates, formulas based on anticipated hours, anything?
2. I don't want to run afoul of attorney ethics rules about not charging an unreasonable rate. But I don't want to charge less during slow months and eat the costs during busy months. Any ideas about this conundrum?
3. I haven't done this before, so I'm not sure what I'm not thinking of

Anyone have experience with this arrangement and advice about what to do or not to do?

Any thoughts are welcome, on or off list.

You need some limits to make this work. For example, \$x/month buys client up to Y hours of work. After that work would either be charged at a (maybe discounted) hourly rate, or put off until the next month. Even if you charged basically full time money (which client probably wouldn't agree to anyway) you would still have to limit the amount of work to what you had time for.

Shell Bleiweiss, Illinois

I haven't done a monthly flat-fee arrangement before, but I have considered seriously in the hope of diversifying my revenue streams. What I decided for myself was along the lines of what Shell describes -- you have to set a limit on it in some way in terms of either number of hours you provide, the type of work you'll do, etc. You don't want to be dragged in to a highly-complicated case in federal court that goes for years and years, for example. People also have no idea what will befall them in the future so past behavior is not an indication of the future. The college-educated white-collar worker who has never been in trouble with the law, for example, might one day snap and kill someone by accident.

Limiting the work or hours is, i think, going to be the most powerful way you have to make the monthly flat-fee thing work.

Secondarily, in terms of amount to charge, my thought was to go with the logic I have when someone asks for a flat fee on something -- if there is any variability or risk of uncertainty, then I err on the side of charging more than typical. For instance, if someone is asking me to write a letter for them or to fill out forms, there's no uncertainty and I'll do that on a flat fee based on what my experience is in filling out similar forms. I often get the request to do a divorce on a flat fee. The problem there is that because California's divorce problem has so much variation, I don't know how many hours will be required so I always estimate on the high side.

The person asking for the flat fee divorce inevitably also says 'Oh, we agree on everything' or 'This is going to be really easy.'

I can't even begin to count the number of times a supposed agreement between two divorcing spouses fell completely apart.

Andy I. Chen, California

I'm not sure what subject you'd look for in the archives, but this has been discussed extensively a couple times in the past decade.

We had this sort of arrangement in my earlier life as manager of an IT consulting firm in California.

TL;DR?

1. Beware scope creep; if the scope and/or anticipated hours are not crystal clear and reasonably consistent, you will suffer, and you will suffer painfully.
2. In such cases, evergreen "banking" arrangements are much less likely to exploit you into bankruptcy.

Consider some variation of the following:

- Determine a "typical" number of hours of work they expect you to bill in a month.
- Allow that the number of monthly hours may exceed the allotment by x hours or y percent without additional charge.
- Allow that excess hours exceeding x hours or y percent would be billed at your normal hourly rate.
- Allow that notice of anticipated excess hours before the first of the month would allow purchase of "extra" hours that month a reduced fee from your regular hourly rate, but perhaps above their contract rate; they are rewarded for assisting you in planning.
- Allow that underuse of hours in an amount less than x hours or y percent will not reduce the charge.
- Allow that underuse of hours in excess of x hours or y percent will allow z hours to be carried over to the next month ("banked"), unless you are notified before the first of the month that usage will be low, in which case all unused hours may be banked for consumption within n months.

Determination of x, y, z, and n will go to the question of reasonableness, taking into account your ability to work unscheduled hours, find other income for unused hours, and your ability to plan and schedule work ahead.

I may have shared some language from a prior fee agreement in IT that reflected this sort of arrangement, but I regret that I cannot find any saved documents from that far back, so I cannot share an example now. We had plans that allowed for the fact that corporate clients often lacked budget toward the end of the fiscal year, so bought no new equipment and reduced need for our services, so with notice, they could bank their end-of-year hours and use them when the new capital budget was released, and their hardware acquisitions and installations surged temporarily. They could notify us of planned major software upgrades or system migrations in the coming months, and

thus get blocks of time below our "book" rate, but not necessarily as low as their annual contract rate.

Good luck!

Richard J. Rutledge, Jr., North Carolina

What the others said but you can have a minimum and maximum monthly utilization hours number so that if falls below that month (minimum) or exceeds (maximum) that month's payment adjusts accordingly. Once had a similar agreement with an insurer we committed to six months with either party opting out after 6 months and an agreement to try to adjust the monthly payment based on the prior usage etc.

Michael Boli, California

This is a random analogy, but think of when telecom or cell phone companies say "unlimited data". It's not actually unlimited because you know that someone out there will use a bajillion gigabytes of data without thinking about it. There's a limit, but it's just set high enough that most average users won't ever hit it.

The risk of a client overusing a flat-fee arrangement is very real, I think. An alarming number of people have savior mentality when it comes to lawyers. In other words, the client has this big mess that they're in (e.g.

they've been sued, they're on trial for X crime, etc) that they are completely incapable of handling or understanding. They see a lawyer and think "Thank, God, there's someone here to help!" and they will call and pester you about every little freaking thing.

Maybe someone knows the psychological term for this, but it's the same or similar idea to someone who is drowning in water who pushes the rescuer underwater in a desperate bid to keep their own head above water.

Andy Chen

So, I've seen this in a municipal attorney context, but that is usually when it is the attorney's sole or primary gig. Basically, it has to be enough such that if it turns into your full-time job, such that you have to turn away most if not all other clients, you are happy with it. Otherwise, you need hour or some other limit to it.

Cynthia V. Hall, Florida

This list is wonderful! Thank you to everyone who responded, both on- and off-list. A lot of this was along the lines I was already thinking, so it's great to have affirmation that I was not totally off-base.

Kelcey Patrick-Ferree, Iowa

I have done this, but have always carved out certain things that would take a long time or uncertain time (litigation!) It is far easier if you have long experience with the client, so you know what their needs are. If not, you need to put an upper limit on the time involved. I usually set an upper limit that includes a discount from my hourly fee (e.g. if you charge \$500/hour, and the monthly fee is \$2000, the upper limit might be 5 hours).

Nancy Bockelie, Utah
