Fee Conundrum

A Client hires me to review/revise a contract between the Client and its potential customer. The contract is 15 pages and went through 2 rounds of language negotiation. The client does not tell me how much the Client stands to gain from the deal, and the agreement just has a blank space for the pricing.

Meanwhile, I charge hourly, and the Client is well aware of my rate. Neither I nor the Client know how much it's going to take to complete the requested work.

The invoice for my fees comes out to the same or higher than the Client stood to make from the deal with its potential customer. These are not huge amounts we're talking about (<think> $1800 invoice vs. $1500 client transaction), but the client was understandably frustrated.

I've run into similar issues twice in the last three months now. How do I address this in the future?

P.S. - I've been burned almost every time I've tried to do or even quote a flat fee. Thoughts?

LAST PARAGRAPH OF FEE PROPOSAL

The above is my fee proposal for this matter. It is based upon an hourly rate. I do not know how many hours the matter may require. Much of that depends upon the other party and other party's attorney. My time is my only asset, and every hour I spend on a transaction that involves thousands of dollars is the same, for me, as a transaction that involves hundreds of thousands of dollars or more. That is to say, however many hours this matter requires of my time, I have to bill for that amount of time, no matter the size of this transaction. This is something for you to keep in mind as we go forward.

Roger Rosen, California

This one was the client's fault. They shouldn't be asking you to review a

15 page contract for a $1500 deal. But it could have been *MUCH *worse!

Imagine if you had just taken on liability for a multi-million contract!

You got off very lucky here.

The mistake was on you; you didn't know the deal. If you don't know the deal, don't do the work. Your duty to the client requires that you match your work to their needs. You'll have an easier time if you're up front about it. It's business; they're business people; you can be businesslike.

Take business sales. In the last year or so alone, I've done tiny deals which were akin to a formalized handshake and only billed a couple of hours of time; I've done business sales in the six figures with four-figure legal fees; and I've done complex multi-party sales in the millions with five-figure legal fees. Each required a completely different approach.

Use something like this:

"No contract is perfect. As a rule, the level of work on a contract should scale with the risk and benefit involved. Before I start work, I need to understand the deal."

(On that note: If the contract value is high and the work required is low, charge for value and not for time. Or just walk away. I don't care if it is the simplest contract in existence and I don't care if it only takes me an hour to review: I'm not taking on millions of dollars of malpractice liability for an hour of billable time. I am quite blunt about that, and I've never had anyone disagree.)

Erik Hammarlund, Massachusetts

I would also add that with flat fee, at least for me, I come out ahead in the aggregate. Sometimes I lose, but I win more.

Dan X. Nguyen, California

Roger's approach in the fee agreement is a good one, but I think the first thing you need to do is find out how much the proposed deal is worth to your client. A $50,000 deal is generally worth taking more time to review than a $1500 deal. Furthermore, how you approach both your document review and your negotiation position are driven in large part by the size of the deal and its importance to your client--in fact, some very large deals may result in LESS editing if the deal is a must-have and the other side has a superior bargaining position--think a small business purchasing IBM equipment and services.

To go back to your example, if you amass $1800 in fees for a deal worth only $1500 to your client, there was a serious communication issue before you ever got started, and it's that communication issue you need to address first before you start trying to figure out fee estimates or flat fees.

Kevin Grierson, Virginia

One consideration is the value of this client for future work, or as a referral.

1. You must weigh that value against what you deem to be the value you provided, the value to you of collecting the full fee, and the value of good will.

2. Remember your Contract Law: A contract lacking sufficient specificity may be void or voidable. Your Fee Agreement should NEVER have blank spaces. You should, at the very least, replace blank spaces with estimates or disclaimers.

3. A client's budget, their expectation/understanding of what constitutes a "reasonable" fee, or the value of the transaction to the client should ALWAYS be part of your consultation before you start work. This is critical to determining whether you can provide a meaningful service at a "reasonable" fee. Here, at least, "reasonableness" is the keystone of a collectible fee.

3. Once you know the answer to #3, you can determine whether the client will be well-served by a cap, a flat fee, an hourly fee, a contingent fee, or some combination thereof. In each case, you must then determine if YOU will be well-served by a flat fee, an hourly fee with or without a cap, or a contingent fee. Perhaps you're willing to risk your fee, but want to be assured you're not out-of-pocket for costs. Perhaps you're willing to take a loss for the experience, the practice, the client's visibility, the client's referral, or the potential upside on ancillary matters.

4. In the end, it's a judgment call, just like the decision to sue a client for a fee they aren't pay that you believe to have been fair and reasonable, when the work was good and accomplished the client's goals. (E.g., based on your assurance, were they reasonable in expecting a "win" versus "a fair fight"?)

If the client has long-term value, and you don't think you're setting yourself up to be discounted or nickel-and-dimed on every future engagement, sometimes it's just fine to take one for the team and make a good will adjustment. Just make sure that it's reflected as such; don't just write down your fee and pass it off as what should have been expected.

Good luck; we've all been there!

Richard J. Rutledge, Jr., North Carolina

In matters such as these, it is a good idea to discuss the estimated fees in the context of the value of the deal or the project. For example, book contracts are typically complex and specialized, but often the realistic prospects for royalties are fairly low. Similarly, the costs of obtaining a patent, and especially foreign patents, are sufficiently high that it's prudent to discuss with a client whether the possible economic benefits justify the costs. If the client is in a situation where a 15-page contract is used for a $1500 deal, maybe the better route is to draft a simpler contract.

Also keep in mind that one issue to consider is the cost of enforcement if there is a breach. A contract with 15 pages is likely going to cost more to enforce than a two-page contract.

Bert Krages, Oregon

I charge a flat fee of $200 per page (excluding sig page). That ALWAYS generates a conversation about anticipated totals etc.

Agree with Bert's comments and others who recommended discussing up front (and taking a retainer) also.

Susan Burns

I like this language and will add it to my contract, if Roger doesn't mind.

I'd try giving the client an idea of what it might cost. I might even get a retainer up front for all or a portion of that fee estimate. This helps the client to feel invested or scares the client off and probably saves you a dissatisfied client in the long run. If I don't have an idea for an estimate, I have the conversation with the client like you are now having with yourself. I provide a range of possible scenarios and how many hours would be possible in each one. So far, I haven't been stiffed too bad or very often.

Ed Burcham, Kentucky

Well, several points:

First, IF you are drafting a 'standard' contract, one that will be used over and over again (or a 'standard' lease, for instance) then while I certainly wouldn't suggest going nuts on the billing, I do think you can say to client;

this is going to take some time and will cost within a given range and quote what should be an appropriate range.

Second, IF you are doing contract or lease drafting work or such, frequently you are better off simply using and modifying an existing form; I've got my commercial type leases, I'll start off with mine, take a look at what client wants and modify my form appropriately; rather than try to use whatever client has cobbled together and 'fix' it. This helps keep cost down.

Third; If this is a "one off" contract, then you need to know how much is at issue here; and counsel the client appropriately. Client comes to me with a 50 page commercial lease prepared by The Villages, 1) they are likely on the hook for thousands of dollars over the course of the lease; and 2) with a few exceptions, it's pretty much a take it or leave it proposition; The V. is NOT going to engage in extensive revision of their lease. They might change a few things; I had client who wanted to open a "Curves" (women's gym, basically) in the V. master lease provided that there would be no window coverings on the glass; so that people walking by could see into the shop; client pointed out you had women using exercise equipment in rather scanty clothing and that they were reluctant to be 'on view'; the V. was willing to strike that in this case and allow window coverings; but they're not going to rewrite the lease. A couple or three hours going over lease with client; that's fine.

And you need to be realistic with client about the deal; how much money is involved and what is the risk here? Original poster doesn't say what the contract was for but only that it was over $1500: without knowing what the contract involved I can't definitively say but I rather suspect the most client could lose on this would be about $1500; Maybe you tweak a couple of terms but this is sort of not worth heavy negotiation over. I've reviewed contracts with clients and pointed out the pitfalls, potentially; they look at me and say "should I do the deal" and I say I don't know, that's up to you; there's a certain amount of risk, but how likely that is, I don't know and I don't know what your appetite for risk is; and how much money you stand to make.

I handled the sale of a Florist shop, buyer had been working part time there for a couple years, owner was retiring and selling it to her worker; sales price was about $40,000. Leased premises, she gets goodwill and equipment and takes over remainder of lease. She (buyer) originally went to another lawyer and he quoted her estimated legal fees of like $20,000 to handle the sale. I'm sorry, that's stupid; he's talking due diligence, having an accountant pour over the books for the past 5 years. One owner, one employee whos' buying it, leased premises, LL willing to assign lease, buyer knows the business, knows prices; I brought it in for a fraction of that price.

Point is, you need to ask client "what's this deal worth"? Maybe you and the client would have been better off simply sitting down for an hour and going over the proposed contract and pointing out the potential problems; leave it to client whether they want to do the deal after that.

What is the deal worth to you is the first thing you need to ask the client; this helps you, and the client, evaluate the risk and rewards. and what client is willing to spend on your reviewing and revising.

Ronald Jones, Florida

Ronald Jones makes excellent points. You have to match the work to the value to the client. A thousand-dollar risk to client may not be merit your time.

Giving a range of options, having a blunt discussion up front with client, and other approaches are valued. Sometimes you take a pass, where the goal appears to be to have the lawyer protect from the world on a small budget.

Telling a prospective client the dollars for a thorough review and reworking are not well spent is sometimes indicated. Talking about potential improvement or working one or two deal points is sometimes indicated.

Having a stock of prebuilt forms is one way to add value. Sometimes I tell clients it is cheaper to use my form than analyze someone else's form.

Matching work, value and expectations is a challenge. I don't claim to do it perfectly, but I am better at it than I was years ago.

Darrell G. Stewart, Texas

Giving a range of options, having a blunt discussion up front with client, and other approaches are valued. Sometimes you take a pass, where the goal appears to be to have the lawyer protect from the world on a small budget.

And you need to find out what client REALLY wants. I've had a few probates head south. One in particular; Gramps had died, intestate, modest estate, half to his son, half to his daughter, daughter had died prior to receiving proceeds (about $20,000), left two children and a stepdad (i.e, not father of the children). I quote modest fee for ordinary admin, administration; explain that half of estate will go to stepdad and half split between kids; daughter of mom explained that she thought there might be a 'tax refund' so I did full admin instead of summary. Fine. Open estate, get letters, receive proceeds from gramps estate, and then the daughter decides to go to war against Stepdad. Oh, Stepdad got ALL THIS STUFF out of grandfather's estate, a mower, some tools, some furniture; stepdad has been driving moms' truck (didn't mention truck in interview) stepdad wound up wrecking it; and get check from insurance company, and Stepdad had received a tax refund due mom in 2007 (this was in 2014; 7 year old tax refund) and ..... just on and on. This drug on for 4 years; honest to god, every time I tried to close estate there was something else. And she's fighting me for every single dime I try to bill over my original fee. In her opinion, Stepdad wasn't owed anything; she sort of had a point, stepdad did take stuff out of gramps and his wife's estate (stepdad had actually filed a disposition of personal property in the probate court and stated, under oath, he was sole survivor and didn't mention kids of decedent; step dad was slippery scuzzy, but still, there's a limit to what you can recover in these sorts of things). I finally moved to withdraw for non-cooperation (very, very rare for me to do so) and she finally was willing to sign discharge papers; never did get the money she owed me but it was worth it to get off the case; the judge eventually started setting these case management conferences every two months so I had to troop up to East Jibip, Florida, to attend these things. I just wanted my order of discharge.

Or, one case where I dodged the bullet; potential client comes to me, there's a moribund probate case, no activity in a couple of years, she wants to be appointed PR and close it out. Look at the online docket, judge had ordered PR to do something and he hadn't responded, I figure I can get him removed and my client appointed successor fairly easily; judge wants this off the docket and will be happy to see someone moving on it.

So, I quote her modest fee, a bit more than my usual, but I figure it's pretty cut and dried, remove PR, get her appointed, file inventory and pay creditors and cut the pie and close the estate.

THEN she lets on the REAL reason; she wants to be appointed PR because she wants to bring a criminal prosecution against current PR. She's convinced he looted mom's jewelry box and sold these things at some pawn shop, probably in Orange County, Florida (that's Orlando). We're talking 2 years ago, we're talking 'consumer' stuff, i.e. gold chains, diamonds from Zale's, and do you know how many dang pawn shops there are in Orlando? and what if he didn't pawn them in Orlando? This is a fool's errand. What's she going to do, go to every pawn shop in Orlando and have them check their records for the past 2 years? And what if he had his girlfriend do the pawning.

Point is, this wasn't a 'probate' it was scorched earth and she would have been contacting me forever trying to track this crud down. I turned down the case.

But the point is, client had this in mind; she wanted full blown litigation on a cheese and crackers budget.

Ronald Jones