

Popular Threads on Solosez

Flat Fees

Forgive me if this issue has already come up in this thread, but it is common around here to charge a flat fee for real estate closings that I think is a mistake. I did a closing last year for roughly the going rate and it did not compensate me for my time at all. In addition, other actors in the real estate community seem to be telling clients that this should be a cheap service while charging significant fees for their roles in the transaction.

I am starting to reconsider whether it really pays to do this work at all if we are stuck with this rate that is much too low. This is especially true given the chaos and bad behavior in the real estate market over the last few years, which, I think, should subject almost any transaction to heightened scrutiny. But for the fact that you usually have to quote a rate before you see how complicated it is, I would consider doing it hourly through the title search and then quoting the rate thereafter.

My plan going forward is to educate the clients as to the realities of this market and quote a rate that is fair to me and see if that works.

Why is it so rare to see flat fees anywhere? I was thinking of posting flat fees on my website but noticed no one does this. Is it because the case may become more complicated and I would be stuck with the little flat fee? Is it also because the client may request a flat fee as advertised for a more complex case of the same issue? Is there some other reasons? Any one have bad experience with this? Thank you, keep up the great work.

Radi Rashid

If you painted houses for a living, wouldn't you want to see the house before you gave a quote? Wouldn't you give a higher quote for a mansion than, say, a small, one-bedroom house? In any given case, you cannot know what a fair rate is until you know how much work is involved in the matter. Likewise, you cannot know how much work is involved in any given matter until you've had some time to investigate it. And until this investigation is complete, I think it is generally a bad idea to give clients a "one size fits all" rate for your services. Yes, you would run the risk of taking on a complicated matter for a fee that should be higher.

Brandon Zurvalec, Pennsylvania

I work on flat fees as well. I decided against posting the fees on my website because I wanted to be able to adjust them periodically without hearing "your website said you charge X" and be accused of the bait and switch.

When I meet with people, I bring my flat fee schedule with me, so they see I'm not pulling my fees out of thin air. And if people opt for an ongoing general counsel relationship, I give them a copy of my fee schedule so there's no mystery and little to no negotiation. They keep a couple thousand in my trust account, they can see how much I charge for X, they decide if they want to spend the money, they call me, I do the work and transfer the money. When I provide my fee schedule, I put a "good thru" date at the top, so even if I have an ongoing client relationship, I have the option of changing the rates every six months.

When you charge flat fees, you run the risk of doing more work than you're being paid for but there will also

be times you can crank something out quickly and you earn the entire fee. Over time, it's a wash. The newer you are to practice, though, the more often you'll find yourself on the losing end of the deal. Trust me on that one. 😊 But I think it's worth it not to have to keep track of hours and to be up-front with your clients. They really appreciate it. I've discovered many clients are nervous about asking what it costs. When I tell them "I'll write the letter for X" they're pleasantly surprised and rarely try to negotiate.

One more thing, when you finish whatever project you've charged a flat fee for, make sure you send the client a letter saying "this concludes this matter" so they don't think you're on the hook forever. I wrote a demand letter for a local nail salon to try to get their lease renegotiated. When I sent a copy of the letter to the client, I enclosed a note from me reiterating that they've paid for this letter and nothing more, but that I'd let them know if and when I heard back from the landlord. Even though that information is in my fee agreement, no one reads those, so it's better to say it again to minimize confusion.

Now I'm just rambling to avoid work so I hope that helps. 😊

Gina Madsen, Nevada

I'm still working on my website, but I do tell PCs what my flat fee is for trademark applications/equine-related matters, what's included in that fee, what's not included, etc. I agree with Gina that you need to say over and over and OVER when the matter is concluded and if they want more, then it will cost more. I also make sure that it is crystal clear that they are paying me for X and if they want to talk about Y, then I charge extra for that (I usually say something like "tell me about it and then I can tell you what it will cost or if I will need to send you to someone else").

Clients LOVE flat fees. The only time I wouldn't do it is for litigation - I charge a flat fee for a demand letter and certain other "pre-litigation" matters but if something were to go to litigation then I would charge hourly.

Laura McFarland-Taylor, Illinois

I am currently reading a book called *The Professional's Guide to Value Pricing* and it discusses how to bill clients based on the value you are providing. The author, Ronald Baker, does not think you should post flat fees because each client should be billed according to their individual issue. He argues that there will be instances where you can price "on the margin" and collect a higher fee than you might otherwise because of the value to the client.

I plan to switch as much of my billing to "flat fees" as I can, because I believe that that will greatly improve my collection rate and make clients much happier about paying my bills. It will also engage them in the process and make them more committed to paying my fee.

Andrea Goldman, Massachusetts

I have been doing work almost all on a flat fee for a few years now. Not only is it a time save, but there are also psychological benefits. When I used to bill hourly and started spending more time on a matter, I felt so much anxiety about how will I tell the client, will the client pay, etc....and if client didn't pay, I'd feel resentful. Now, if I say a matter is \$5000, that's what I get. If I finish quickly, great but even if it takes more time, I just tell myself "that's the deal that I made" and spend whatever time is required to finish without feeling resentful (after all, I set the fee!)

ARE you enjoying the book? I have to confess that based on Baker's blog, I am not a fan, but he is very

popular and well respected.

Carolyn Elefant, District of Columbia

I agree with carolyn. My life is so much easier now that I do flat fees. Now I just do a calculation in my brain about how much time something will take and quote a flat fee and tell the client what is included and what is not. I even offer for them to pay over time if they secure it with a credit card or electronic check. I have an automated system in the works that will automatically notify the client via email of the amount to be drafted 10 days before its drafted and then auto drafts it if I do not stop it.

I just took my first major litigation defense case on a flat fee basis and I think it will turn out great because I will not have the client questioning all my 0.1 entries. They are being billed at a flat fee per stage (investigation, discovery, etc.) and they loved the fact they could budget an amount that will become due in 4 months. They also liked the idea that my fee is also based on performance. I get a bonus if I achieve certain results.

I think it will work out great.

Robert M. Louque, Jr., Louisiana

Changing the direction of the thread slightly, I just wanted to give a word of warning regarding flat fees to those new (or newer than me, anyway) to being on their own.

I started out charging a flat fee for divorce cases. I was losing my shirt on it because the going rate (which is a flat rate) in this area is, in my opinion, so cheap, that if you are new to that type of practice, you will actually have at least 100% more time in the case than what you have charged. I have one case where I charged \$750 (like I said, going rate in this community), and, keeping track of my time at my normal rate, the amount I would have billed is over \$2,000.

That leads me to another question, but it's for another subject.

Tim Evans, Mississippi

I actually think that is part of the appeal of using flat fees for new attorneys. It avoids overcharging the client for your own inexperience. Yes, we are probably working at a discount at first but I look at it as a built in discount for obtaining the experience to eventually be able to work on a matter at a much more efficient rate. It also avoids client's arguing with you over a bill or not paying their bill. I don't know about anyone else, but for me just starting out I want to get everything I can up front to keep in the black and don't want to expend any energy starting out on soothing clients surprised by an hourly bill. My two cents.

Joshua G. Jones, Texas

The book is pretty good so far. It's a little dry, but interesting. I will let you know what I conclude when I finish it. I really want to stop billing by the hour. It's just really hard to figure out when it comes to litigation.

Andrea Goldman

P.S. Folks, the point of flat fees is not to cheat yourself. It's to come up with a price that is commensurate with the value that you are providing to the client. The idea is to get the most you can for the work; not cut

your rate.

I think in areas of law where you can predict where and when you will go down the proverbial rathole (or can at least anticipate most of the rat holes), flat fees work. You at least need to talk to the client to see what the work entails. For instance, if Bill Gates walked in and said "I need a Chapter 7 bankruptcy filed". you would not do well charging him the same fee as a standard no-asset Chapter 7.

One approach I've taken is to tell clients that I charge X to do the initial work. If there is extra I charge "y/hr" but will tell them how many billable hours max I think this will be, so it's essentially piecemeal flat rate.

Michael Toback, California

In General,

Flat Fees are two of the four "F" words. The other two "F" words are Fixed Fees.

Flat fees are great and benefit both the lawyer and the client if two things are present:

1. The lawyer knows the law and the practice well enough to set a flat fee.

and

2. Nothing goes sour in the attorney client relationship.

Assuming a client agrees to a flat fee of \$5,000. Walking out the lawyers' door immediately thereafter, the client changes his or her mind and turns and says: " I have changed my mind. I will use lawyer Jones instead. I demand you refund anything you have not earned" so I may pay lawyer Jones.. I do not care what any "expert pundits" claim, the client is going to get back most if not all of the fee or the fee would be "unconscionable". This is one of the reasons that law is a profession not a business. Lawyers may not charge unconscionable fees, **LOOKING BACKWARDS AT THE WORK DONE** by the lawyer to earn the fee claimed. Businesses can charge whatever the customer agrees to pay without regard to how much, if any, work was actually done

I welcome opposing discussion in this developing area.

Jay Foonberg, California

Well, Jay, it depends on your bar rules.

In Florida, our bar rules do not address "flat" or "Fixed" fees. Our bar rules address "non refundable minimum retainers". A lot of people get those confused with flat/fixed fees, and for many purposes they're the same, but there're some differences.

First, this is VERY state law dependent; some state bars allow; others prohibit non refundable minimums. So, I'm STRICTLY addressing Florida: YMMV.

Second, Florida DOES allow non refundable minimum retainers; such retainers are considered "earned upon receipt" and are to be deposited into the operating/business account, not the trust account. That's good. However, it is clear under our rules that, under some circumstances, in spite of being called "non refundable" the lawyer may have to refund all or part of the fee; the exact circumstances you describe (client pays fee, walks out, contacts lawyer almost immediately prior to lawyer doing any work, is entitled to refund of entire fee). Long story short, test seems to be whether or not the lawyer did ANY work on the case, and whether the lawyer accomplished the goal. If I take a minimum nonrefundable retainer, make a phone call, and settle the case or get a dismissal of an indictment based on that phone call and my reputation, then I accomplished the

job. If, on the other hand, I don't accomplish the job, then I have to refund all or part of the fee.

Also, note that the test in Florida is NOT whether the fee is "unconscionable" but whether it is 'excessive'; in fact, the test is whether it is 'clearly excessive'.

See Fla. Bar Opinion 93-2, portion of which is excerpted below: As to prepaid fees, the key issue can be stated thusly: Is the money earned at the time it is received by the attorney? For example, a fee paid for the right to employ an attorney to perform future services (the "true retainer" situation) is earned by the attorney upon receipt and should not go in the trust account. A prepaid fee which the attorney and client have expressly agreed is nonrefundable is likewise earned upon receipt and so should not be held in trust but should be deposited into the attorney's general account. Nevertheless, the lawyer may later be obligated to refund part, or possibly all of it, if the legal services are not performed, in which case the fee may be found to be excessive, but the money is the lawyer's upon receipt of it.

On the other hand, the prepaid fee may be given to the attorney with the understanding that it is a deposit securing a fee that is yet to be earned. Such money does not belong to the lawyer, and should be held in trust until it has been earned by performance of the agreed-upon services. The Committee believes that there should exist a presumption that prepaid fees are an advance deposit against fees for work that is yet to be performed. Certainly, this is the assumption that the typical client would make. The attorney should bear the burden of rebutting this presumption.

Question 3. Must a fee that lawyer and client have agreed is a "nonrefundable fee" go in the trust account? Again, the issue is whether the funds in question are earned upon their receipt by the attorney. A fee that lawyer and client have clearly agreed (preferably in writing) is nonrefundable should be considered earned by the attorney upon receipt, even though the attorney might not yet have performed all of the contemplated services.

Question 4. If an attorney-client employment contract provides for the advance payment of a "nonrefundable fee" that will be applied to the total fee finally billed to the client, is this "nonrefundable fee" to be deposited in the trust account?

No. Because the payment is described as a nonrefundable fee, it appears that client and lawyer intend that the money is to be the lawyer's regardless of what happens thereafter, even though it is anticipated that the money would ultimately be applied to the complete fee for legal services. Such a payment is not subject to refund whether or not the lawyer actually has to perform the legal services contemplated.

Question 5. If a substantial nonrefundable fee is paid to the attorney and, before any services are performed by the attorney, the client dies, or discharges the attorney, or the services called for by the attorney-client employment agreement are no longer needed for some other reason, could the attorney be subject to discipline for charging a clearly excessive fee in violation of Rule 4-1.5(a) in the event of a refusal to refund any of the "nonrefundable fee?"

As we stated in Opinion 76-27 [since withdrawn], the lawyer might but would not necessarily be guilty of charging an excessive fee. Again, we get into definitions of terms. We interpret the question as referring to a payment by a client to a lawyer of a sum of money designated as "nonrefundable fee," part of which is intended to compensate the lawyer for being available but not for specific services, and part of which is intended as a present payment for legal services to be performed in the future. If the lawyer performs no legal services, obtains no benefits for the client, and has not lost other employment opportunities as a result of agreeing to represent the client, we believe the lawyer might well be guilty of charging an excessive fee if no part of it was refunded. Dealing with an abstract situation, we cannot be more precise.

On the other hand, an attorney of towering reputation just by agreeing to represent a client may cause a threatened lawsuit to vanish and thereby obtain a substantial benefit for the client and be entitled to keep the

entire amount paid, particularly if other employment had been lost or declined in order to represent that particular client.

The Committee does not believe that, by designating a retainer as nonrefundable, a lawyer is automatically insulated from a claim that the fee is excessive. Whether or not the fee is excessive under the circumstances is governed by Rule 4-1.5 rather than use of the description "nonrefundable."

Ronald Jones, Florida

I would argue that when lawyers charge flat fees, things are less likely to go sour in the attorney client relationship. That is because clients know what they are paying up front and will set that money aside. Because of the certainty, I think that they are more likely to accept a higher fee.

In a recent talk that I gave in Toronto, I analogized between the flat fee and cab fare. When I arrived in Toronto, I was short on cash and didn't really have a good sense of the exchange rate. So when a cab driver offered to take me from the airport to downtown for a flat \$X, I agreed, knowing that I had enough money to pay the fare. In the absence of the flat fee, I would have been nervous throughout the drive, watching the meter and wondering if I could pay the bill. Even if the metered fare had been less than the flat fee, it would not have been worth it to me for all of the stress.

So think of clients - not knowing how much their phone calls are costing and how the bill is running up. A flat fee gives peace of mind.

Carolyn Elefant

Law is a business. And once you stop looking at it like a business, you stop being able to support your family. If it wasn't a business, the big fancy firms would not have CEOs, CMOs, CTOs, CFOs and all of those other business Os.

Jonathan G. Stein, California

I agree. In D.C., there is no such thing as a 'non-refundable fee', even when it is paid for 'availability' in a criminal case. See: In Re Robert Mance, D.C. Court of Appeals/Board on Professional Responsibility, Bar Docket 241-04, July 28, 2006, at: http://www.dcbbar.org/for_lawyers/ethics/discipline/discipline02.cfm

See also: D.C. Rule of Professional Responsibility 1.16(d).

Daniel M. Mills, District of Columbia

You are correct in that there are variances in describing what is or is not "reasonable" Reasonable, not unreasonable, unconscionable, (I have never seen "conscionable") are some of the more common words.

As you properly indicate, whether the funds receipt must or must not go into the trust account is an entirely separate issue from whether the attorney has to refund "unearned" fees.

I think the critical point is that the amount of what the attorney can or cannot keep will always include hindsight after the relationship is over and the client more often than not is not happy.

The minimum, non refundable, flat fee is like the Holy Roman Empire. It wasn't Holy. It wasn't Roman and it wasn't an empire. The minimum, non refundable flat fee isn't always a minimum fee. It isn't always non

refundable and it isn't always fixed.

I'm afraid the bottom line is that we lawyers will always have to, in some degree, in fact earn the fees clients pay us. Cf business which can get and keep money from customers any way they can get away with it without peer review.

It's good to know that so many solo sezzers are aware of the ethical rules that apply to our profession.

Jay Foonberg

I wouldn't argue with you, I would agree with you. I whole heartedly believe in fixed fees, but there will always be the two conditions I set out. The lawyer must know what he or she is doing when the fee is set an the client must be happy with the outcome. Failing these two conditions, the lawyer will always be judged with hind sight after the fact, not on best guessing before the fact., based on the maximum the client can be gouged for.

We are a profession, not a business where gouging might be perfectly permissible so long as the client signed a piece of paper..

Thank you for you boosting of the flat fee. Properly used and understood, it can be the salvation of our profession, especially for the solo who often deals with unsophisticated clients who need the protection afforded by our Professional Rules..

Jay Foonberg