

Popular Threads on Solosez

How to Tell a Client You Can't Just "Edit" a Sample Contract for a Cheaper Fee?

Firm,

We have a client who we've done other work for that would like us to draft a contract. We quoted a price and the client came back and asked if we would, for a lower price, just review a sample contract they have (not one the business has been using, but a sample they got from another company) instead of creating a new one. I think the answer is "no" but I'm not sure how to articulate it. I don't want to be a jerk or unreasonable because I serve on a board with this client plus they could be a continuing source of business. Am I being unreasonable? How do I tell this to the client?

Thanks as always.

"Sure thing. But you realize it takes longer to fix somebody else's mistakes than to do it right the first time out don't you?"

David Kaufman, Virginia

I get that question all the time because I have a "Document Review" line item on my fee schedule. Though this has come in handy for my clients who need a 75-page commercial lease reviewed, it has bitten me too. Rather than pay me to write the whole thing, some clients would rather take a stab at it and have me fix it. I'm interested in the responses to your question because I haven't quite figured it out myself. I do ask where they got the contract and before they answer I say "please don't tell me you pulled this from the internet." After they grin sheepishly, I tell them it's often cheaper for me to write one from scratch, customized to their circumstances. If they don't go for it, I find it's pretty effective to go through with a red pen and mark the hell out of it, explaining without apology (and without pausing to translate) why the contract is deficient. Then, after you've shown them you know what you're talking about and they ask you to fix the one they have, you can tell them you'll bill hourly, and it will take twice as long as it would to just write a new one. I actually had a consultation with a caterer whose contracts, or lack thereof, left her open to some serious liability. When I told her she really needed new documents, she asked me for the notes I'd taken on her existing contracts, so she could write them herself. I was so flabbergasted that I tore off the last 1/3 of my legal pad where I'd scribbled my notes, figuring there's no way she'd even be able to read them, much less use them. I had to gather my chin from the floor before I left.

Gina Madsen, Nevada

My prices for drafting a contract are already based on the fact that I have a variety of personalized form contracts and contract clauses with which I am intimately familiar. Similarly, my methods of acquiring client information for use in my contracts are based on the information I know that I will and will not need in order to complete the deal.

etc., etc.

Erik Hammarlund, Massachusetts

Here is an approach I have successfully used before making a commitment or quoting a price (or price range) in a situation like this:

- 1) Ask the client to go through the sample contract highlighting what terms are consistent with their goals and why; what terms are inconsistent with their goals and why; and what concerns they have which are not addressed at all.
- 2) Review their comments. If they have done a thorough job, you should have a pretty good idea of what the final product needs to contain and how close the sample is to what they really need.
- 3) Give them a realistic price (or price range) for what it would take to transform the sample into a document which achieves their objectives and protects their interests. It may be more or less than what it would have taken you to start from scratch.

The key is to be objective. Drafting is both an art and a science and sometimes we get caught up in the artistic approach assuming that no one else can draft a document (or portions of a document) appropriate to the need at hand.

Your client will get what they need and they will appreciate your effort to accommodate their request. In the end they may still end up paying you your normal rate, but they will feel better about it.

Just my approach - hope it is helpful.

Kevin Nelson, Tennessee

Kevin,

I don't post a lot, but I must say that posts like yours make me glad I am on this listserv. Very solid.

Michael McKinney, Tennessee

Yesterday, I had a client ask me to 'review' something 'to make sure it is OK' for a 'reduced fee'.

With a smile, I told them I charge exactly double the amount that I would have charged if I wrote the document from the start. I went on to explain that they were asking me to 'review' it and, essentially, take full responsibility and full liability for the contents of the document.

I also told them that I tend to be very efficient in writing my own documents and I stand behind what I write, but I cannot do that with someone else's work product, especially a layperson's, without taking an inordinate amount of time.

Russ Krajec, Colorado

I get that a lot from people that have either written their own patent or worked with one of those inventor-raping companies and have something from them. The first hear that I'll do it, for twice my normal fee because that fee is a reflection of a discount to established clients and since I'd be going in cold and will have to familiarize myself with the subject matter. The second group hear that those companies generally turn out crap and it would be easier and cheaper for me to start over.

Steven O'Donnell, Pennsylvania

I get requests like this quite frequently. I don't mind working from other people's drafts and sometimes I even encourage a client to take the first attempt at putting a draft contract together because doing so often gives me insight into the client's business practices that I would not have if I drafted the contract from scratch. However, I truthfully tell clients that working from such materials generally does not result in the magnitude of savings that they might expect and frequently results in no savings at all. One reason is that contracts amalgamated from bits and pieces (such as off the Internet) have to be carefully reviewed because they sometimes have provisions that operate contrary to each other or are simply bad.

Also, it has been my experience that most clients want contracts with provisions that are free and reasonable to both parties and therefore don't really want the kind of one-sided and oppressive provisions I often see in drafts. In fact, clients have sometimes spent more money by having to come to me for advice when negotiations over an attractive deal encounter a snag because of confusing or unreasonable provisions. I have also had the pleasure(?) of explaining to clients that the "stock" arbitration or forum provision they used without my input would have worked nicely for a multimillion dollar deal in Turkestan but has made enforcement more cumbersome for the local \$5000 deal where he could have used small claims court with quicker results and far less cost.

My suggestion would be use your best judgment. Working from a prior draft is not necessarily a bad thing but let the client know that from a practical perspective, the work required to review and revise a contract you are not familiar with will likely cost about the same as creating one from your materials. You might want to consider giving the client the option.

Bert Krages, Oregon

They could also ask their dentist to fill a cavity with the melted silver of a Mercury dime they happen to have lying around.

Richard Kuslan, Connecticut

Ah, you see, there's a benefit to having illegible handwriting with the shelf-life of cocktail shrimp in the sun!

I actually asked an attorney in court yesterday, as he was taking notes, "I'm just curious, is that just your personal system of notation, or is it a formal shorthand system?" He laughed. "Bad handwriting is all. I can usually figure out what most of it means."

In college, there was a guy who sat next to me in a literature class, and never paid attention to the professor. He was always making lists of things to do, writing letters, etc. Every now and then, he'd look over at my notes, scan for things that seemed relevant (bullet points and such, I guess), copy them, and go back to his business.

Now, I'm generous to a fault, and I'll give 'til it hurts if you ask. But if you *presume* and just take, well....

So I fixed him. I began taking my notes in French. And, just in case he actually understood French, I commenced to taking my notes in French, but spelling all of the words phonetically in Cyrillic script. (My Russian was never good enough to actually take notes, but hey, I could pronounce the words, even if I didn't know what they meant.) He moved to sit next to (and sponge off of) someone else within two class periods.

As a more practical matter, if I think a client might try to use something I'm writing (e.g., notes on a contract they've given me), I'll tend to use very cryptic flags to alert myself on review of the "issue" there: Assignment of (L)iability perhaps, failure to address (B)reach in advance, and so forth, using some of that law school

shorthand, like "K" for contract, "Jdn" for jurisdiction, etc. Perhaps this was the reason for retaining so much Latin and Middle English in the law? Our version of a secret handshake?

It's not that I won't give a client their notes or work product, but I don't want to create a situation where they *think* they got something from me, and accordingly try to hold me liable for their presumptions about what my notes meant, etc. (Especially if they hope to do it without paying for it.)

Richard J. Rutledge, Jr., North Carolina

Kevin just wrote the hornbook. I'm studying it for my next 'review' call.

I'm okay with reviewing a document, taking notes on my photocopy, and talking it over with the new short-term client. However, I caveat all over the place that it has big holes, leaves out some frequent problem spots in co-parenting, and that I don't know the background behind the document because I have not reviewed the entire file or been part of the matter.

Asking for my notes, though? Not a chance. You get the formal letter riddled with caveats, but not my notes.

CJ Stevens, Montana

I have a client who wanted me make five changes to her "simple" will that she purchased from Suzi Orman's "kit". She continued to ask me to just do a simple re-write. The more I read, the more I realized there was no way that it would as it was written, meet her needs. I had her come in and we went through the will and I asked her the what ifs's. She then said, "Well this was a waste of money. It doesn't fit MY needs" My reply was that it generally does not....

I like to find a way to let the client see how it won't work if they continue to press for the simple.

Victoria Heyliger, Washington, D.C.

When it comes to wills (tho now that I think of it the same holds true for any type of form contract sold as "easy to fill out") I always rely on the term I learned from folks on this list a few years ago. I tell the client that in my business, we call form wills "pay me now or pay me later" documents. Most of them get the point right away; most of the rest get it after I briefly explain. The ones who never get it...well, they'll never get it. But their families will get stuck with the bill someday.

Meg Tebo, Illinois

The client is assuming that the difficult part of drafting a contract is the typing. It's not. It's the thought that goes into what the contract should say. Once you've done that, the typing is easy.

Besides, you can tell the client that you already have sample contracts in your file cabinet as well, and that your fee assumes that you will be working from a sample document - one you are familiar with, rather than one you've never see before.

Finally, the danger in copying someone else's work is that you don't know what they left out. It's very difficult to review a document to see what it doesn't say.

It's sort of like handing a chef a recipe for minestrone soup and asking him to find the missing ingredients. The only way he can do that is by going through every ingredient, one by one, and checking whether it is in the

"copy" recipe. That's more work than simply following the recipe he already knows well.

David Hiersekorn, California

What a great question! I will look at someone's contract and make comments and suggestions, but I will not stand behind someone else's contract or give them exact clauses to insert themselves. As I think about it, I have worked from client's contracts, but If I thought that it was so deficient that I would need to completely re-write it, then I would suggest that I write the contract "from scratch."

The way I get around the issue is doing contracts for a flat fee. I can evaluate the fee once I see the contract they have been using.

Andrea Goldman, Massachusetts

Meg, I thought it was "pay me a little now or pay me a lot later"

Deborah Matthews, Virginia

You might remind your clients and potential clients that you are paid for counseling and the that the documents are at no additional cost. You don't sell documents, edited or otherwise.

John Del Gaudio