

When to State Fees

So, I was watching "The Greatest Movie Ever Sold" the other day, and the attorney who appeared in the pic proudly stated his fee is \$750 (ish) an hour. I was at a CLE where a former judge proudly stated his fee was \$500 an hour. Others would rather not state their fee until they've actually spoken to a prospective client, for various reasons.

Pros? Cons? Preferences? (This is not a hypothetical question - I'm trying to use the information to make a decision as I've gotten the fee question upfront twice already.) Thanks!!!!

Depending on when I took on a client they pay different rates. Then there are the modest means clients. They pay even less.

I try not to broadcast my fees. For one thing if you mention fees in ad or on your website you may be required to honor them.

John Davidson, Pennsylvania

I was thinking of an analogy the other day....

When people are choosing where to have dinner, does anyone randomly call restaurants and ask (a) what the most-popular entree on the menu is, and (b) how much it costs? Yet isn't that the way some potential clients seem to choose lawyers?

Have we (as a profession) done such a poor job of explaining what we do that clients think that all they need to do is find the cheapest lawyer who knows (at least marginally) how to do whatever it is that the client is seeking? So if the potential client thinks that what they need is (for instance) a living trust, they just call around until they find a lawyer who does lots of them and is cheap, and away they go — instead of trying to find a lawyer who understands what the client's needs are and how to achieve those needs.

This problem may be more widespread than something any individual lawyer (or small group of lawyers) can address. So many people have watched TV shows or read articles in newspapers or magazines that say that the solution to a particular problem is "X," so now all they need to do is find a lawyer who can do "X" cheaply — after all, there can't be any heavy-duty thinking required now that the client has informed the lawyer that "X" is what is needed.

Brian H. Cole, California

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I usually quote fees only in person. If on the phone, I'll give a ballpark idea. I practice criminal law and charge almost exclusively flat fees. I don't charge a consultation fee, but spend enough time with the PC to see how complicated the case is, how many prior felonies, and a litany of other information, etc.

Eric C.Davis, Alabama

To John's point: I posted about charging people different fees a while back (though it was mainly in the context of business v. individual) and most responses suggested that only having one fee (or some sort of sliding scale) is the norm, at least in the group. But I do understand that I may end up charging my older clients less than my newer clients as time goes on. With that in mind, you're saying that you don't mind potentially losing a client who's afraid of a sales pitch or is just shopping for the lowest rate? Would that be for the same reasons that Frederick stated - that they probably won't pay anyway?

To Brian's point: I think you're correct. Most people have no idea what the lawyer is doing, and thus what they're paying for. They think they're paying for the result, not the work that's put into getting the result.

Sincerely,

Dwayne Allen Thomas, New York

Brian makes a great point about lack of popular understanding of how law works. But as his hypo plays out I find myself sympathizing with the customers, not lawyers. The restaurants analogy is perfect, because people DO check on prices and products before deciding where to dine out. They don't have to randomly call, as they do with lawyers. Probably you don't notice yourself doing it because restaurants have menus, usually posted out front, so that people can check the products and prices. If you order a \$50 steak, you pay \$50 and you get a steak. The customer doesn't want to care about the process that goes into cooking it. From the customer's perspective, hiring a lawyer must be like going into McDonalds wanting a \$5 burger, and coming out with a \$1,000 green salad and a 6-month training regimen.

So, IMO, tell people your fee as soon as they ask, in every event before assuming representation, and if possible have a few possible options for them (e.g. flat fee, unbundled, referral). If you want their business, that is. If you can make a living only serving people who don't have to worry about price, more power to you, but "I had to tell the poor person they can't afford me" is an absurd complaint.

Gabriel W. Scott, Arkansas

The reason I charge different fees because over time I've raised my fees. Some cases just hang around longer. The joy of family law.

John Davidson

It's probably dangerous to try to stretch an analogy too far, but I think one of the key comments that you make is that "restaurants have menus, usually posted out front, so that people can check the products and prices." But even a look at the menu doesn't answer all of the questions I would have. After all, why are there both high-end steakhouses (for example, Ruth's Chris) and budget steakhouses (such as such as Golden Corral) if both of them serve T-bone steaks and baked potatoes. Why is one so much more expensive than the other?

In the case of restaurants, most customers understand (at least on a conceptual basis) that there is some sort of difference between a budget restaurant and a fine-dining restaurant. The steak may be a better cut of meat, it might have been aged longer, and it might be larger. Further, the atmosphere of the restaurants might be different (nicer furnishings, etc.), one might have waiters while the other has counter service, and other differences.

In other words, I don't think people picking restaurants focus solely on price. But they seem to do that when they buy legal services.

Of course, for some things, price may be the only differentiating factor. If I am going to go to the grocery store, to buy a pound of Oscar Mayer bacon, there is not a lot of difference whether I buy from one grocery store or another except price (and possibly location), since both grocery stores buy the bacon wholesale from the same source.

But I think that we as lawyers undervalue ourselves if we say we are identical to the lawyer down the street.

So how do we get the clients to understand that? It seems to me that making price your primary differentiator is likely to cause clients to see you in exactly that way.

Consider another example. The major hotel chains have been trying to differentiate their brands for several years now. For example, Marriott owns multiple brands (J.W. Marriott, Marriott, Courtyard, Fairfield Inn, etc.). Why is that? They all have beds. Why should a traveler pay more to stay at one than the other? I submit it is because the company has done a good job of explaining that the customer gets something different at one type of hotel than at another. Once that has been established, *then* the hotels can focus on price — if a traveler wants to go to a particular city on a particular day, the company can say it has rooms at the Marriott for \$200, at the Courtyard for \$150, or at the Fairfield for \$100, without the traveling asking why they can't get the room at the Marriott for the price of the room at the Fairfield.

And that is what I think lawyers need to do. Explain that there is a difference between what one lawyer does and what another lawyer does (or what Legal Zoom does). But as long as potential clients think that one lawyer is just like another lawyer, and neither of them is any different from Legal Zoom, then the only thing that clients have a basis of comparison is price.

Brian H. Cole

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Exactly. When the first question is 'how much', you know what you are getting, a likely tire kicker. I say I cannot possibly quote a price until we talk further and I have a better understanding on what is needed and further explain, that to do so would be like asking a mechanic to tell you over the phone what is wrong with a car he hasn't seen and what it would cost to fix it.

We have been commoditized to some degree by the on-line and document companies but we give a lot more in the way of service. I teach and by that education, the clients conclude with a great understanding of what they have, why they have it, when to use it and so on. I hate to equate myself with a high end steak house [though I am huge fan of them generally] but we are in a service business. We do not all offer the same product, a 1 pound of Oscar Meyer bacon. That sets us apart but also does indeed require our further explanation or selling of why that is worth it. One filet mignon at a time...

Eliz. C.A. Johnson, California

Client's answer: "but I don't own a car!"

Rick Bryan, New York

I liken asking how much for a legal service is like asking how much to paint your house sigh tunseen.

John Davidson

I'm not sure if your question directly pertains to listing fees on a website; in the event that it does, here is what we typically suggest to clients in the context of website development:

While most clients are very concerned about fees, many law firm websites (other than personal injury firms) often omit any discussion about fees. While we don't usually suggest listing hourly rates, there is a lot of useful fee-related information and messages that can be conveyed, such as:

- I understand your concern about legal fees.
- I will work diligently to control fees and costs for your case to the extent possible consistent with your objectives.
- I will keep you updated when a major expenditure of fees or costs may be necessary that we have not previously discussed.
- A retainer is typically required at the outset of a case, which is kept in a segregated account. Our fee agreement will discuss how money will be transferred from the retainer account as fees are earned.
- We accept credit card payments.

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- We offer a 30 minute free consultation (or we offer a 30 minute consultation at a discounted rate of \$xxx).
- If you have any questions about our fees or costs as your matter progresses, please ask me. We want you to understand all aspects of your matter.
- Once I know more about your matter, I will be in a better position to discuss with you the required retainer and like fee range for your case.

At least for website purposes I think the primary objective is to let potential clients know that the attorney fully appreciates their concern about fees. It seems to me that not discussing fees can leave the unintended message that the attorney does not care about the client's fee concerns.

Jeff Lantz

I talk fees when the person is in for a consult. If they call, I give a ballpark always with the caveat that it could be more--I do family law.

When they come in and we talk fees, I always explain what they are getting for their money. I talk about how they have access to me nearly 7 days a week via email, text, and phone; I talk about drafting documents and how we tailor those documents to their particular situation; going to hearing; signing; etc. I try to cover everything. By the time I finish, they feel like they are getting a deal. Which, in reality, they are because I'm the worst time keeper ever!

Thank you,

Letisha Luecking Orlet, Illinois

A couple of thoughts on fees. These probably should be repeated every time the subject comes up.

1. If you use value pricing or flat fees, the issue of hourly billing is irrelevant.
2. Large firms, contrary to what solos apparently believe, charge different hourly fees to different clients. That has always been the case.

Those who have one hourly fee for all clients either are not being creative or are not up on common practices.

Norm Solberg, Japan

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Do you have any insight into how BigLaw determines what rate to charge a particular client?

Ryan Phillips

The same ways that all lawyers do: size of client, whether a favored client, aggravation, what the traffic will bear, degree of complexity or inconvenience, etc.

Norm Solberg

I'm actually familiar with the practice of a firm with multiple associates billing more for the more experienced associate's time than they do for the less experienced associate's time. But if both work on a case, you see two different hourly rates on the bill.

Sincerely,

Dwayne Allen Thomas

I don't really think that's so. In New York the court has the final say over the reasonableness of legal fees. That's part of what you agreed to when you signed the roll; it just is. So if in a flat fee arrangement the sh!t hits the fan and the amount of the fee is ever in dispute, the court has 8 or 10 different factors developed over fifty years of jurisprudence to weigh the reasonableness of the fee. You've got to be able to document the time you've put into a matter. For better or worse, and I take note of these decisions because I'm concerned about this, most of the time it comes down to what the judge thinks the time sheets should say based on their experience, times an hourly rate which the judge thinks is appropriate.

[All while the judge is cloaked in the unreality of their salaried and tenured position and thinks law firm operations are today as they remember from decades ago]. If you don't have time sheets, you're in a very bad position.

I keep time records on all matters although almost all estate planning work is done on a flat fee basis. I wouldn't go so far as to say it's 'required' of NY practitioners, I guess especially of the contingency fee folks, but otherwise my sense is, without actually knowing for certain, that most cautious folks would say you've got to keep time sheets even on flat fee matters.

Hopefully someone else will opine on this too.

Richard Bryan

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What is not being discussed is the other side of the equation. Once the fee is stated to the client there is also the decision of the amount of retainer required. Although the retainer can be standardized by the work to be performed (e.g., divorce verses modification of child support) it ultimately is security for payment. The variable listed below (and more) can be applied to setting the retainer amount.

William M. Driscoll, Massachusetts

This is a true story from my biglaw days. Client X came to firm with an emergency matter that is about to go to litigation. Partner in charge of Client is on vacation in Phoenix, cannot get flight back to the office in time, so charters a private jet and charges it to his Am Ex card (charged to client of course). Client is defendant, we resolve the matter entirely on a 12(b)(6) motion.

Takes a lot of research, and we do it all in about 3 days, working pretty much around the clock, but come on, its a 12(b)(6) motion, 3 lawyers, 3 days, how much can it possibly cost? I think at the combined hourly rate, the bill would have been around \$33,000.

We bill client \$1,000,000 and client pays it -- no questions asked, no whining.

Yes, there are some things I miss about BigLaw!

And yes, some clients got charged \$X per hour for my time, and some got charged X + 10% and some got charged X + 25%, etc. Depending on all those factors others have mentioned.

I still have my most favored client and difficult client rates.

Nanci Bockelie, Utah

That is certainly one good reason to track time on a flat-fee matter. I can think of at least two others:

- When I do matters on a flat fee, I track my time to be able to say whether I am (on average) setting my fees appropriately. For example, if I generally set a flat fee for a project equal to 5 hours of my normal rate, I like to know if (on average) I spend 5 hours, 10 hours, or 20 hours doing that project. Depending on the answer, I may want to adjust my flat fee in the future.

- If a client terminates a project part-way through, I refund the "unused" part of the fee. Sometimes, my flat fee engagements have various milestones (___% is earned when "X" is accomplished), and that makes a calculation easy. Otherwise, I need a record of hours worked to be able to calculate a refund. (Note: in the type of work I do, I don't think it is proper to say that the entire flat fee is "earned" the moment I am retained; the work done by other people may yield a different answer.)

Brian H. Cole
