

Flat Fee or Hourly Rate? A Solo Attorney's Question

For those solo attorneys who previously worked at firms in private practice, the rates for their services were set by firm management, largely based on seniority and experience. Now, as a solo practitioner, it is time to calculate the amount of the fee, the basis for service and any payment accommodation. In her Best Practices for Solo Practices column, Janet Falk explores the options, writing that the fees and payment plan that a solo attorney sets today will likely evolve over time.

By **Janet Falk** August 16, 2019 at 11:00 AM

The series of occasional columns has discussed how attorneys address the issue of selecting an office location ([Size Up an Ideal Office Space](#) (June 19, 2019)) and the role of technology in managing a practice ([Technology Is a Solo Attorney's Silent Partner](#) (July 31, 2019)).

Attorneys earn compensation by setting fees that are not *excessive*, according to the Rules of Professional Conduct. (Rule 1.5 (a)). A lawyer communicates to the client the basis for the fee and expenses, consistent with the scope of representation, of course. It is up to the individual attorney to determine the amount, the nature of the relationship and whether the fee is *fixed* or *contingent*.

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Attorneys have multiple options for fees: hourly, flat fee, retainer, contingency and blended, to name a few. Consider whether the activities you perform re-occur to the degree that you can accurately predict the time it takes to complete them. There will be occasions, unfortunately, when you underestimate the activity required. In anticipation

of that possibility, an attorney may calculate an additional percentage as a cushion; alternatively, the agreement may include a clause to submit an invoice for the additional services and time at the conclusion of the work performed.

One advocate of the flat fee arrangement is Patricia Werschulz. She notes: "I have about 20 different activities which I routinely perform for clients. Each has its own price structure" for her patent and trademark services at [Werschulz Patent Law](#).

Zara Watkins, who writes briefs for appeals and substantive motions in state, federal and immigration cases at [On Point Expertise](#), also prefers flat fees. She estimates the time (one hour per page of the brief) and multiplies it by her usual hourly rate. "If I have to go over my estimate, I send an invoice at the end of the project."

Werschulz and Watkins extoll the freedom to focus on the matter at hand and the legal analysis, and not track their time in small segments of an hour.

Other attorneys dislike flat fee agreements. Craig Wolson, who leads [Wolson Litigation Support Group](#) with a practice focused on securities, lending and other finance, says: "Clients almost always want a fixed fee or cap fee arrangement, which I try to avoid if at all possible." Instead, he works on an hourly fee basis, billed against a retainer, based on his estimate of the time expected to be devoted to the matter that month. Wolson finds that clients do not accurately anticipate the scope of work or the length of time it will take. "Unexpected things often come up during the course of the representation, clients often change their mind as to what they want to do after the project begins, and/or clients often ask for more work to be done than they would if they knew they were paying by the hour." In other words, clients may receive additional services under the flat fee arrangement and the attorney may earn less than if the same work were billed on an hourly basis.

Another perspective on the hourly rate is that it may be more reliable, both for billing and in terms of the prevailing legal environment. Craig Dobson, whose practice is

focused on ethics and immigration at [Dobson Law](#), says “I often bill by the hour when I represent lawyers on ethics matters.” In the past, he charged flat fees for immigration cases, “but I am now considering more hourly billing because of the unpredictability of representing clients during the current administration.”

Even though attorneys may dislike tracking the fractional hour, and corporations are known to complain about it, Andrew Berks says “Larger businesses, businesses with experienced in-house counsel, and large organizations generally prefer hourly billing” for his services at [Berks IP Law](#), which focuses on intellectual property, patents and litigation.

Whether on a flat fee basis or an hourly basis, be prepared to raise your rates as you gather more experience in your solo practice. After logging more than 10 years, both Berks and Werschulz deemed it appropriate to increase their fees, based on their longevity in patent law.

In addition, consider that your own expenses will increase over time and that the market rate of your competitors will also be rising. Wolson notes: “If I see that other lawyers with similar backgrounds are charging more, I will raise my rates.”

Such an increase in fees may cause some clients to stop using your services; indeed, Watkins lost a few accounts when she raised her rate. However, she “was able to replace them with other, higher paying clients and do less work for the same amount of money.”

Nonetheless, attorneys may be flexible when advising a client who has a limited budget, on a case-by-case basis, of course. For example, investigative counsel Charles-Eric Gordon, of the [Law Office of Charles-Eric Gordon](#), comments: “If a prospective or existing client consults me on a price-sensitive matter, which I believe will be extremely interesting, I may accept less of a retainer and an additional amount on contingency. I also try to base my fees somewhat on a sliding scale, when appropriate.”

Patent attorney Werschulz has an alternative solution. “If a client cannot afford my services, I send them to [Volunteer Lawyers for the Arts](#) to apply for pro bono representation. If they truly can’t pay my fees, VLA can make a determination and I will take the case.”

There are attorneys who indicate a degree of transparency in their fee structure. Berks has a tabular fee schedule “with a list of various services and costs. I use this routinely as a starting point when clients request costs in advance. Some people want to see it, especially foreign counsel.”

Payment of fees is yet another issue. Perhaps, like Watkins and Werschulz, an attorney will require full payment up front, which is consistent with a flat fee agreement. Others may offer a payment plan, on a case-by-case basis, of between three and 12 months.

Gordon states: “I always make certain to require a retainer of at least half of what I estimate the final fee and expenses will be.”

In addition to accepting payment via the usual credit card, check and ACH, consider online payment services. Werschulz receives payments through the credit card and e-check services of LawPay. She also notes that she accepts wire transfers from international clients and, perhaps once a year, is paid in cash.

Berks finds that using Quickbooks and hiring a bookkeeper to manage the service is efficient. “I want to make it as easy as possible for clients to pay me. Something nice about Quickbooks is the emails with invoices have a payment link that accepts credit cards and ACH payments.”

All in all, the solo attorney has many choices regarding flat fee, retainer or hourly billing; flexibility and transparency of fees; payment plans and receipt of payments. Based on years of experience, relationships with clients, the legal environment and the

competitive market, the fees and payment plan that a solo attorney sets today will likely evolve over time.

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<https://www.law.com/newyorklawjournal/2019/08/16/flat-fee-or-hourly-rate-a-solo-attorneys-question/>



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