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Solo Attorneys: Should You Charge a Retainer, Flat Fee or Hourly?

The perennial fee question: What are the best practices for solo attorneys to determine the amount and form of their fees?

By **Janet Falk** December 17, 2020 at 01:00 PM

Attorneys are compensated by fees, which may be charged on an hourly basis, a retainer, a fixed fee or a contingency basis. The Rules of Professional Conduct state that fees may not be *excessive* (Rule 1.5 (a)). Of course, a lawyer informs the potential client the basis for the fee and related expenses, according to the scope of representation. What are the best practices for a solo attorney to determine the amount of the fee?

Given that some attorneys handle transactional matters, while others negotiate contracts and some litigate, it makes sense that solo attorneys structure their fees in accordance with what they anticipate will be the predictable and unpredictable nature of the matter.

As you plan for the new year, you may review your receipts for 2020 and evaluate your fee structure. In this process, consider how your peers view the perennial fee question.

Kimberly Yonta of [Yonta Law](#) in New Brunswick has a straightforward approach. “As a criminal defense attorney, I use a flat fee package with incremental steps for pre-indictment, post-indictment up to trial, and then a flat fee for trial. This fee format ensures that I am being paid for my time and effort at the time that I am doing the work and the client understands the expectations of time at each level of representation. It is

a type of payment plan, since the client understands ahead of time how much the entire proceeding will be from beginning to end.”

Rajeh Saadeh also uses a fixed fee for “residential real estate transactions, because the amount of work involved is largely predictable and we have the systems, processes, and people to perform the services effectively and efficiently.” His matrimonial and real estate law practice, [Law Office of Rajeh A. Saadeh](#), is in Somerville

Judie Saunders uses technology “to track billable hours and as a measurement to help set flat rate fees. In moving my practice to a flat rate fee model, I reviewed the hours and tasks that I had tracked for several months to arrive at fees that made sense to the client and my firm. Flat rate fees are more manageable for both the client and the firm.”

At [The Law Offices of Judie Saunders](#), she focuses on civil and criminal litigation with offices in Red Bank and New York City.

On the other hand, matrimonial attorney Lawrence Bloom believes that “Flat fees don’t work. The client has no incentive to come to a prompt resolution.” Bloom charges an hourly rate at his practice [Law Offices of Lawrence H. Bloom](#), with offices in Fort Lee and New York City.

Saadeh agrees that in family law cases “Flat fees are often unfair for the attorney as well as the client. We cannot predict the amount of time that will be invested, as it depends not only on the issues, but the other party, their lawyer, the judge and even the client themselves. In those kinds of cases, we charge by the hour” against an initial retainer.

William Denver at [The Denver Law Firm](#), has a practice in litigation and insurance recovery in Red Bank and agrees. “Typically, I bill on an hourly basis with a set upfront initial retainer fee. The amount of the initial retainer fee depends upon the scope of work; non-litigation matters have a lower initial retainer fee than a litigation matter.” On occasion, “Work might be done through a flat fee arrangement that also includes a

maximum number of hours of work. If those hours are exceeded the client will pay the current hourly rate.”

Some attorneys have changed their approach to fees over time. Saunders found that billing against a retainer “produced more work and record-keeping as a small business,” hence her shift to the flat fee basis.

Denver modified his contingency fee structure. He now offers “partial contingency fee arrangements: a discounted hourly rate. Clients are able to lower their out of pocket cost and pay the reduced contingent fee upon resolution of the case.”

Ayesha Hamilton, with a practice in business and employment law, notes, “In litigation cases, I used to take a much lower flat fee in combination with the contingency retainer. I have found that, given the amount of time expended, my estimate justifies a higher flat fee portion, and I have held firm on that figure.” The [Hamilton Law Firm](#) is based in Princeton

Speaking of an increase in rates, Saadeh found he could easily implement a raise. “Initially, I billed a relatively low rate to try to attract clients. Oddly enough, once I raised my rate to be more commensurate with the market, clients began to hire me. It was a very fascinating learning experience, but right or wrong, prospective clients retain based on their perception of the lawyer, and nobody wants a cheap attorney.” He also takes into account rates charged by other attorneys in his market; “I always want to be competitive, while not appearing as ultra-exclusive or uber-available.”

Bloom considers changing rates “an art, not a science. I always consider rate changes at the beginning of the year.”

On the other hand, Hamilton says, “I have only recently raised by rates after being a solo for 15 years. This decision is based upon my experience in the field, my profile, client feedback on my services and my business model.”

As in other areas of the law, the COVID-19 pandemic is having an effect on fees. Here's how Bloom adapted to the new environment. "Although there were more inquiries, most people had less money. This led me to a reduced retainer, but not a reduced hourly rate. One reason is that there is extremely little in the way of in-court litigation and more in the way of conference call and virtual video appearances. That saves time in terms of travel and in terms of sitting in court waiting for the case to be called."

Hamilton notes, "While I have not changed my rates, I am more likely to do some limited pro bono work when an employee is experiencing an injustice at the hands of their employer" during the pandemic.

Pulling these insights on fees and increased rates all together, here are some closing words of advice. "Be careful when granting too much of a discount to friends, family, or referrals," cautions Saadeh. "The last thing you want to do is disincentivize yourself from performing work on a particular matter because you are getting paid meaningfully less than on your other cases. Not only will that build resentment between you and the client, but it puts you at risk of committing malpractice or violating the Rules of Professional Conduct."

Hamilton reminds colleagues, "Above all, always use a written retainer agreement and make it clear that you cannot begin work until the retainer has been signed and the fee has been paid."

Good luck to the solo attorneys as you evaluate your fee structure and plan for a prosperous 2021.

Janet Falk is the head of *Falk Communications and Research* in New York. She provides media relations and marketing communications services to law firms and consultants. This is her final column in the series.

<https://www.law.com/njlawjournal/2020/12/17/solo-attorneys-should-you-charge-a-retainer-flat-fee-or-hourly>

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