

Cautions for Fixed Fee billing?

By: [Richard L. Wood, CLM](#)

I love how much is being discussed in regard to “Alternative Billing” in the legal community right now. However, for most folks “Alternative Billing” just means Fixed Fee or Flat Fee Project billing. There ARE alternatives to these “alternatives”!

First off, I know there are very complex fixed fee arrangements that exist for litigation. Usually involving fixed fees for different stages of the litigation process. But for some lawyers, evaluating the fixed fee process for the first time it seems very simple: Project one = \$5,000. Not so fast! Be careful when proposing fixed fee arrangements. Use this cautionary hypothetical tale to keep you in check!

So, you’re getting pressure from your client (or Customer as Summit Law Group refers to folks who buy legal services from us) and your colleagues to come up with Fixed Fees for a litigation matter. As is the case with 80% of litigation matters there are a MILLION possible directions the case could go! And a multitude of complications within each of those directions! When bidding on a fixed fee litigation project, remain calm, don’t let your mind and anxiety drive you too far. “So many things could go wrong!”

Your #1 objective for proposing alternative fee arrangement is: Risk Sharing with your client. Of course anything could go wrong! Imagine the fear of “anything could go wrong” from your client’s perspective! If they are contacting you for litigation assistance, it likely already has gone wrong!

So, the real point of this entry was going to be about “Cautions for Fixed Fee billing”.

Caution #1: Think about pricing from your client’s standpoint. Is this flat fee sufficient to get the work done efficiently and fairly while saving your client money and giving them confidence in a job well done?

Caution #2: Don’t under bid! If you’re well known for using alternative fee structures by other firms it’s likely they will try very hard to bust your flat fee structure into pieces by dragging out the case. If you end up under bidding on the flat fee you put yourself in a tough spot. If this DOES happen to you, remember this IS part of the “risk sharing”. Your part of the risk was estimating the efficiency. You’re not efficient? Your problem!

Caution #3: No padding! Don’t just take your hourly rate and count on your fingers how many hours this will take you, then add 30% “just in case”. The “just in case” part is your risk. Think about the scope of the case at hand and what would be a reasonable fee for your team. If you’re new to the litigation game, then you likely have NO clue how to judge reasonableness.

What are your thoughts?