

## [Fixed or Flat Fee Arrangements?: Some Historical Perspective](#)

Posted on February 6, 2009 by [John "Jack" S. Pierce](#)

**"Flat Fee" Arrangements and "Non-Refundable" Legal Fees:** With the billable hour coming under closer scrutiny, flat fee arrangements are again being explored by corporate general counsel. Currently the ethics of such arrangements are being questioned. A review of a 1999 Arizona State Bar Ethics Opinion allowing flat and non-refundable fees may provide some insight into the answers to those ethical questions. [See **Arizona Ethics Opinion #99-02: Fees; Retainer Fees; Fee Agreements; Retainer Agreements**]

The opinion is significant in that it contains an historical review of similar such fees and principles which also might be applicable to an analysis of today's more popular "fixed fee" arrangements. It also explores the basis of a disapproval of these fees by state courts in other jurisdictions starting with the New York case of *In Re Cooperman* 83 N.Y.2d at 476, 633 N.E.2d at 1079 in which the New York Court of Appeals imposed an absolute ban on such arrangements.

The arguments set forth in this Arizona ethical opinion also provide a persuasive legal analysis of why the Fixed or Flat fee arrangements might also be prohibited by an outright ban on non-refundable legal fees.

More frequently, today's sophisticated clients are demanding that their attorneys consider fixed or flat fee arrangements. Because of the popularity with such fixed fee arrangements with more institutional clients, it would be problematic to ban such fixed fee arrangements. As noted in the opinion, many states and the federal courts allow non-refundable fees, so long as they are not either "unconscionable" or "excessive".