

## Increase Your Clientele with Alternative Fees

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A quick way to distinguish yourself from the pack is to be a lawyer who offers is familiar with alternative fees. There is mounting pressure from clients – led by the American Corporate Counsel Association – to get law firms off the billable hour, and it's an opportunity for young lawyers.

Early adopters are reaping the benefits of alternative fees, including firms large and small: Valorem Law Group; Summit Law Group; Shepherd Law Group; Bartlit & Beck; Exemplar Law Partners; Chinn and Associates; Waite, Schneider, Bayless & Chesley; and Raymond & Bennett. Some large firms have also begun to publicize their work in this area, including Seyfarth Shaw; Cravath; Howrey; Morgan Lewis; and Fenwick & West.

Particularly during challenging times, clients want to pay for results, not time. They want predictable fees, not surprises. This has never been more important than today, when every dollar counts, and requires justification.

### **Clients want predictability**

The primary benefit that you can offer that clients want is *predictability*. Clients see the billable hour method as a bottomless pit of costs that encourages inefficiency by lawyers. An over-budget legal fee wreaks havoc with corporate executives, whose compensation is tied to meeting their budgets.

A distinct advantage to lawyers offering alternative fees is the elimination of increasing overhead devoted to the billing process, clients flyspecking bills and demanding after-the-fact discounts, and delays in payments and falling realization rates.

Fully 88% of all law firms offer some kind of alternative fee. The most popular alternative billing methods, according to Incisive Legal Intelligence in its 2009 Billing Rates and Practices Survey, are:

- Contingency fees: 65.8% of all law firms
- Fixed or flat fees: 65.8%
- Discounted hourly billing: 64%
- Blended hourly rates: 55% (averaging your rate with a partner's)
- Hybrid fees: 51.4%
- Retainer arrangement: 51.4%
- Capped fee: 34.2%
- Capped hourly rates: 28.8%
- Task-based fees: 28.8%
- Annual fixed fee: 27%

“Generally, larger firms are more likely to offer alternative billing methods than smaller firms. Specifically, the majority of firms with 2 to 8 lawyers report offering billing alternatives (78.3%), while all firms with over 150 lawyers offer alternative billing methods (100%),” the report continues.

### **Fixed fees are the favorite**

Historical data should provide the starting point for setting the fixed fee. Following is an approach recommended by William F. Lee is co-managing partner of Wilmer Cutler Pickering Hale and Dorr and Ben W. Heineman Jr., former General Electric Co. senior vice president-general counsel”

Historical data should provide the starting point for setting the fixed fee. Both firms and corporations have detailed information on the past cost of different kinds of matters. They can use data-mining techniques to determine reasonable ranges of cost for a wide variety of legal services. These services range, obviously, from the simple to the complex:

- **A single project involving expertise and judgment, but not much risk**, such as writing a handbook, creating form contracts, developing a compliance training program, and monitoring developments in evolving areas of law.
- **A repeating, routine book of business, which involves expertise and judgment, but not much risk**, such as filing a certain type of patent or trademark application, monitoring compliance with environmental permits, and handling routine labor matters in arbitration (as opposed to court).
- **A repeating, but more complex book of business that involves judgment, expertise, and risk**, such as annual securities reporting, a line of product liability cases, a series of venture capital financings, or more complex multiparty contracts for capital equipment sales.
- **A one-off, highly complex, high-risk matter**. Some may have historical antecedents: the bet-the-company litigation for the pharmaceutical company; the companywide bribery scandal being pursued by enforcers in multiple jurisdictions; the transaction to double the company's size with a target in similar lines of business. Other high-risk matters may arise on new frontiers: a patent-defense action in China; novel product litigation; the huge acquisition of a company in a different line of business.

In complex, risky matters, the fixed fee can be split into segments. For example, one flat fee for a litigation evaluation period, and then a second fixed fee for completion -- depending on joint expectations of the likely process (early settlement; reasonable discovery/settlement; full, contested discovery and trial). But whatever the type of matter, arriving at the fixed fee will depend on the motivation of both in-house and outside counsel to work toward a future result that is fair to both parties.