



## Virginia Business Lawyers

# How Can I Talk to My Lawyer about Alternative Fees

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The resolving recession may have some permanent effects. One good thing is the willingness of more law firms to negotiate fee arrangements that do not focus on the billable hour, frequently referred to as [Alternative Fee Arrangements](#), or “AFAs.” AFAs can take the form of fixed fees for defined projects, success fees, [contingent fees](#), so-called “[Retainer Fees](#)” [\[1\]](#) and variations on all of them.

Most lawyers who practice business law have relatively little experience in pricing their services. They are used to billing by the hour, because that’s what they were trained to do. Nonetheless, you can use the new openness in your favor by agreeing to your legal fees in advance, signing an agreement, and gaining more control over the value of your legal expenditures.

How do you raise the topic? It’s easy. Just say “I’d like to consider paying you for your services in a way that does not depend on the hours you expend.” If it’s just a contract that you need drafted, a single [flat fee](#) is usually appropriate. If it’s a negotiation over a contract, you can still agree to a flat fee, but you should expect it to be higher than the fee for the drafting alone. If you are entering into a complex legal situation, you may need to propose that the attorney give you fixed fees for specific stages or portions of that project. Don’t be shy. If your attorney does not readily propose a fee in response to your request, there’s nothing stopping you from proposing one to the attorney. They can either accept it or reject it. It’s a simple matter of doing business and agreeing to a price.

Here are some of objections you might hear, along with some suggested responses:

1. Lawyer says, “I’d like to do that but I don’t know how long it will take.” You can simply respond: “Well, I assume you’ve done many of these projects before, and you must have some idea, even if it’s just an educated guess. I’m willing to agree to a reasonable number, and you, as a professional, should have some idea of what your services are worth.” You, as the client, have every

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right to your opinion on the value of the services that you require. There is nothing so unique about the practice of law that mandates billable hour arrangements.

2. Lawyer says, "I'd like to do that, but our firm is not set up to do business that way." You can say: "Well, here's an opportunity to try something new. You and your firm might find it very beneficial. And my company and I like to do business with attorneys who think in terms of solutions, rather than activities."

3. Lawyer says, "I can give you an estimate, but every case is different and I might lose money if I commit to a fee that turns out to be too low. On the other hand, if I estimate too high, you might pay more than you would on hourly basis." Your response: "I don't want an estimate, I want an agreement. I'm willing to accept the fact that it may be higher than what I might pay based on your hours, but that's okay, because I want the certainty. This way we share the risk, and you have the same incentives I do, namely, to handle this in the most expeditious way that is consistent with my objectives."

Another way to get an attorney's attention and interest them in a flat fee is to offer to pay a significant portion of the fee in advance. You can agree to pay the balance on the project is complete. Of course you have to define "completion", but that's a good practice anyway, ensuring your attorney is clear on your objective. It's possible that you may find that the larger the firm, the less willing your attorney may be to consider an AFA. That may simply be a reflection of the fact that the attorney is managed and rewarded based on the billable hour system. He or she may not have the authority to make such an arrangement or the incentive to ask for permission. Still, it never hurts to ask, and if you tell the attorney that you really would like to do business with their firm, you can certainly ask them to take it up with their management.

You could also direct your attorney to the many resources now available on the topic of AFAs. Two good places to start are [www.verasage.com](http://www.verasage.com), and [www.clientrevolution.com](http://www.clientrevolution.com). Finally, if your attorney is still unwilling to propose or consider AFAs, talk to some other [Virginia business lawyers](#). I have written and commented extensively on the topic as well, and I would be happy to direct you (or your attorney) to the blogs where you can find my comments and the articles I've written.

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[1] The term Retainer Fee is sometimes used to refer to an arrangement where the client pays the attorney an agreed amount for a specific range of services for a specified length of time. It's not a true retainer, because the fees charged are earned regardless of the services required by the client. These arrangements are sometimes referred to as "all-you-can-eat" plans or "ear for a year." Technically, a retainer is an amount that an attorney holds in escrow, and deducts fees incurred as they are earned, typically based on hourly charges.

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