Is Your Practice Area a Good Match for Flat-Fee Billing?

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The benefits of flat-fee billing arrangements are numerous, from predictability to efficiency to increased client satisfaction. But not all legal matters are appropriate for flat fees.

So, how do you know which practice areas are right for a flat-fee structure? The short answer comes down to two words: predictability and repetition.

Some practice areas involve a consistent pattern of tasks, with minimal variation for most clients. For example, templates are often used to create wills. Lawyers retain the basic language of the document and change only the details specific to each client. Charging a flat fee is possible because, in most situations, the drafting of a will is predictable. It involves repetitive processes, so you can adequately predict the amount of time necessary to conclude the matter.

In comparison, litigation is unpredictable and does not as easily lend itself to flat-fee billing. Though not impossible, it's difficult to make an accurate estimate about necessary preparation. You can't predict what pleadings the other side may file, or the pace of the court's schedule. Unforeseen circumstances add to the uncertainty. Despite this, however, there are growing efforts among firms to create viable flat-fee structures for litigation clients.

The Shift Toward Flat-Fee Billing and AFAs

After years of debate, it seems the tide has shifted from a critical — almost disdainful — view of flat-fee billing to a more willing discussion that even encourages the transition away from hourly billing. According to an article in the Washington Post, the number of law firm leaders who expect non-

hourly billing practices to eventually dominate the legal industry jumped from 28 percent in 2009 to 80 percent in 2013.

Even though litigation is slower to get on board the flat-fee billing train, it seems flat fees and other alternative billing arrangements will eventually become the norm across all practice areas.

Let's look at some practice areas where flat-fee billing is already standard.

- **Estate planning.** Besides standard wills, other estate planning matters meet the predictability and repetitiveness test. Setting up a trust or processing a simple probate matter involves the same general procedure each time, providing the certainty that makes them ideal for fixed-fee arrangements.
- **Transactional law.** Transactional law is all about contracts: writing them, reviewing them, modifying them. You get the picture. Whether you concentrate on real estate matters or corporate law, contracts and agreements are the bread-and-butter of your practice. The efficient transactional lawyer is armed with an arsenal of templates, essential to effective fixed-fee billing.
- **Bankruptcy.** This is an area of law that follows a very limited set of procedures. The process for filing bankruptcy is extremely predictable. Whether you are filing for an individual or a large corporation, federal law clearly defines the procedural requirements.
- **Domestic relations.** Family law attorneys are no strangers to flat-fee arrangements. (Just take a look at the advertisements for set fee specials for uncontested divorces.) The process of ending a marriage is usually pretty consistent, making many divorce and custody cases well suited for flat-fee billing. Not all domestic relations cases fall into this category, though. Highly contested matters, which will likely require extensive litigation, may be best left under the hourly billing umbrella.
- **Tax law.** There are essentially two types of tax law, transactional and controversial. Transactional tax law deals with the preparation and filing of tax documents, while controversial tax matters deal with conflicts that arise between a client and a department of taxation. The latter often involves unpredictable negotiations and legal appearances, but transactional tax law is much more predictable and conducive to flat-fee arrangements.

While not appropriate for all legal matters, flat-fee provides a viable option for a variety of practice areas. Of course, there are many other considerations, but when evaluating whether flat fees are good for you, start with predictability and repetition.

About Erika Winston:

Erika Winston is a Virginia based writer with a passion for all things legal. As a former domestic relations attorney, she understands the challenge of determining the best fee structure for your practice. Erika is a regular contributor to TimeSolv and a variety of other publications.