

Clearing the Bubble—The Transition To Fixed Fees

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In the past, I have emphasized and reemphasized the advantages of utilizing a fixed fee structure rather than an hourly billing system. Here's just a few of the main advantages for a fixed fee structure:

1. Fixed fees avoid the need to maintain hourly records and keep track of every moment of your time.
2. Fixed fees avoid having to go through the effort of preparing, reviewing and sending out billings.
3. Fixed fees avoid you having to be a bill collector, as typically they are structured so that half is paid at the beginning of an engagement and the other half at the engagement completion.
4. Fixed fees allow you to create a more predictable and steady cash flow stream.
5. Fixed fees will push you and your staff to become more efficient.
6. Last, but not least, a hidden benefit is the certainty that you have when sitting before a client and quoting a fee. Clients can pick up subconsciously when your mind is searching for an appropriate fee to quote (or estimate of hours to be billed). This uncertainty often winds up with the client thinking you just picked the fee out of the air and often prompts negotiation. By having a fixed fee schedule, you can clearly show the client "here's our fee for this service". It's certain and not open to negotiation. Plus, clients hate to give you a "blank check", which is what you're asking for with hourly fees. Fixed fees will result in you actually closing more engagements!

The problem that many fellow practitioners have brought to my attention is the process of converting from what was an hourly fee structure to a fixed fee structure. I have also been asked



how you can go about establishing fixed fees for certain tasks that may wind up involving far more work once you get into them, such as advanced level estate tax planning, estate and trust administration and Medicaid planning. Unlike basic revocable living trust planning, the amount of work involved on these types of individual cases may vary greatly. Let me address both of these issues.

STEP #1: "CLEAR THE BUBBLE"

With respect to the conversion from hourly to fixed fees, there are two critical steps. The first is to do what I call "clear the bubble", by billing out all your hourly work in process, completing those cases and getting paid. Motivate your associates and/or staff involved in getting this work out the door by first explaining the big picture and then the process. The big picture is that unbilled matters not only affect the business' current cash flow, but delays in sending billings will often result in bills not being paid which means, bottom line, lost profits for the firm. The way you'll get this hourly fee work in process billing out the door is literally to close shop for a day or two or three with the primary and only focus being on getting these bills done and mailed out.

In some cases, this may mean completing a job so that the final billing can go out the door. You need to look at your current work in process and current backlogged billings to determine what time frame will be necessary. Typically, I would not block more than three to five work days. These should be consecutive so the focus of everyone is entirely on “clearing the bubble” for a sufficient enough time to get the job completed.

During this period of time, your office will remain open but you will not take appointments or phone calls. Your receptionist will still take inbound calls, but people will be told that any matters that are not both urgent and important will be deferred until after the blocked time. Clients and prospects will be explained that your firm’s primary objective is to make sure that you give appropriate attention and quality of work to each and every one of your clients and that currently your firm is utilizing this time to complete matters for existing clients, but once this time is completed then your firm will be able to give the caller the same attention, focus and quality work which he or she deserves. The receptionist will immediately book an appointment for a phone call or meeting for a time right after the “shutdown” so that the caller will not immediately contact another law firm if they feel they need to attend to their matter quickly. The caller will like the certainty that you will get to them and will give them the proper focus and quality work they deserve. You won’t lose potential client work!

STEP #2: TRANSITION TO A FIXED FEE STRUCTURE

The second critical step of clearing the bubble is to make sure that you, your associates and staff know that you will soon thereafter be moving to a fixed fee structure where this type of accounting for time, billing, and collecting will no longer be required. This will give them a great sense of relief and motivation to finish the outstanding billing matters as soon as possible.

Now, let’s address the other issue raised regarding fixed fees -- complex or unpredictable work matters that you believe may not easily be reduced to a specific fixed fee. You may have to change your belief system here, because even these matters can be quoted as fixed fees! Here’s how.

First, you may have some track record or history of the hourly fees you billed for similar cases you’ve done in the past, which you can then use to fashion a fixed fee quote. If you don’t have this history, you may be able to learn other colleagues’ history of hourly fees for such matters or their current fixed fees schedules. Or, you can make a “SWAG” (super wild-a**ed guess!). By the way, you’ll only use a SWAG the first time since, after that, you’ll have a history to assist you with your quote.

Second, you can place provisions in your engagement letter that,

if certain individual tasks within the engagement may exceed a certain amount of your time (or the entire engagement does), then this extra time will be billed separately according to another fixed fee quote that will be provided to the client and agreed upon in advance of that additional work being done. The more specifically you can explain this, the better for both you and the client. For example, if in an estate administration you may exceed a certain number of hours collecting information or in phone calls or meetings with the executor/trustee, beneficiaries or their counsel, additional fees may be incurred. You don’t need to maintain a detailed billing system, just keep notes of time in the individual file. Clients will not only understand this approach, but will often become much more helpful and compliant with your process and requests because they don’t want to incur additional fees (the possibility of which you will remind them of when they become a time problem)! Over time, these excess fees will disappear because you will get a better grasp of your average historical fees and be able to build that into your initial fixed fee quote.

Yes, when you move to fixed fees you will “win” on some matters and “lose” on some others, but in the long-run, they will more than even out in your favor -- and you will enjoy all the benefits, compared to hourly billing, that I recited earlier. I can assure you, based on my own experience, that these methodologies for transitioning to fixed fees do work. It’s just a matter of suspending your disbelief for a little while and actually implementing them!

ABOUT THE AUTHOR

Attorney Philip J. Kavesh is the principal of one of the largest estate planning firms in California -- Kavesh, Minor and Otis -- now in its 34th year of business. He is also the President of The Ultimate Estate Planner, Inc., which provides a variety of training, marketing and practice-building products and services for estate planning professionals. If you would like more information or have a question for him, he can be reached at phil@ultimateestateplanner.com or by phone at 1-866-754-6477.



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