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Introduction

Let’s face it: Lawyers will probably always need to bill hourly at times. However, many more clients are demanding alternative fee arrangements (AFAs) these days. Why? They simply want efficiency, transparency, and predictable costs for legal services. Law firms often comply and offer AFAs...or they risk losing the business.

The good news is there are many AFAs, so you can find the one or ones right for your firm. In this e-book, we'll discuss everything from flat fees and contingency fees to payment plans and recurring billing. We'll also discuss popular hybrid fees and how practice management software and payment processing can make using AFAs even easier.

A firm can have as many different types of arrangements as they have clients. They can be firm-wide or client or matter-specific. However, it helps to have a few core AFAs to work with so you and your clients don’t feel overwhelmed with too many choices. This book will get you started.

Just remember, with any fee arrangement, it's important to set expectations up-front in a fee agreement or engagement letter. Clients should know where their funds will be held and when they will be deemed "earned." They should also know how any applicable fees are calculated, as well as when and how they should expect to be charged. Setting clear expectations reduces the odds of any fee disputes or other issues in the future.
Fixed Fees and Flat Fees

With fixed fees and flat fees, a firm and their client negotiate an agreed-upon cost for a set amount of work, such as handling a particular matter or a distinct part of a matter. (Fixed fees cover a set of matters, while flat fees cover only one.) This is generally pretty simple, making these among the most popular AFAs as they provide predictability in budgeting. In fact, fixed and flat fees are gaining traction in firms of all sizes and in diverse practice areas.

Here’s how it works: Through an interview with the client, the firm determines the complexity of the project and the amount of time it would take to complete the matter. The firm and client then negotiate an appropriate fee for the duration of the engagement. The fee can be paid up front, when the work is completed, in installments tied to stages of a matter, or in periodic installments such as monthly or quarterly.

What about unexpected costs? While these arrangements are most useful for routine legal services with little or no risk for complication, firms can take steps to avoid underpricing their services. For instance, you can set a fixed fee for each stage of the engagement or you can add a provision to your contract that you’ll reassess and renegotiate it based on factors that may influence the length and breadth of the engagement.
The contingency fee arrangement might seem like a simple concept: If the lawyer does his or her job and wins the case, everybody gets paid. Sounds like a win-win, right? In a perfect world, this arrangement certainly could be. However, contingency fees can also be very risky for you and your firm. Let’s break down the specifics of contingency fees so you can determine whether or not they’re a good fit for you and your clients. (However, first check with your state bar’s ethics rules on the types of cases that may or may not be appropriate for contingency arrangements.)

Through contingency fees, lawyers accept a fixed percentage (usually one-third) of the funds that are successfully recovered for the client. Typically, more complex and time-consuming cases will require higher fees due to the increased risk to the firm as well as overall cost expenditure. Regardless of the outcome of the case, clients generally pay for court filing fees and out-of-pocket expenses related to the case. (Just make sure you discuss that with them upfront.)

Contingency fees can only be used in cases where money is being claimed. For example, here are some cases where contingency fees might make sense:

- Car accidents, boat accidents, work accidents, and other personal injuries
- Fair Debt Collection Practices Act violations
- Defective products that cause injury
- Large debt collection
- Employment law and hourly wage issues
Clients will normally hire a lawyer on contingency when they can’t afford to pay the lawyer’s hourly rates. Though there is little investment for the client, there is always the risk that the firm will get paid nothing if the case is lost. There is also the risk that the payment will be delayed until it is collected from the opposing party.

Bottom line: As an attorney, you must make sure that you do not take on a contingency case if it’s a bad deal. For example, avoid this type of fee arrangement for small financial cases, complex cases, and very time-consuming cases. On the other hand, contingency fees are perfect for simple cases that have the potential to win a lot of money. As long as you are highly selective about the contingency cases that you work on, both you and your client can reap the benefits of this fee arrangement.
Reverse Contingency Fees

The reverse contingency fee may also help add to your firm’s revenue potential. It’s basically a percentage of the difference between the amount a third-party originally demands from your client and the amount that the client must ultimately pay the third-party after the settlement or judgment. Assuming that you can reasonably determine the amount in dispute and that the case has a probability of success, a percentage-based fee like this might make sense for your firm.

For example, let’s say your firm agrees to a reverse contingency arrangement with a client who is potentially exposed to a $1 million liability from a trademark infringement case. Your firm offers to take 30% of the difference between that and whatever lower amount the case actually settles for. If that amount works out to be $300,000 instead of $1 million, then the firm’s fee would simply be the difference between those two figures times 30%. So since the difference is $700,000, 30% of that is $210,000—and that’s what your firm would make in this specific example.

At first glance, the reverse contingency fee seems perfect for an experienced attorney who has navigated this type of case before. The catch lies in arriving at an accurate assessment of the potential settlement or verdict in question: Too high and you’ve made the fee unreasonable. Too low and you may be working for far less than you deserve. However, if you are confident that you can come up with a fair estimate, then you might want to consider the reverse contingency fee arrangement.
Success Fees

A success fee arrangement focuses on value efficiency, rather than hours worked. The client and the firm first must define what results will constitute “success.” The firm agrees to a reduced hourly rate for the duration of the case, with an additional fee due only if the outcome of the case falls into the agreed metrics for success.

Both the client and the law firm stand to benefit from the success fee arrangement. On the client’s end, case expense is reduced if there is no successful outcome. On the other hand, the law firm stands to make premium returns if they deliver a win for their client.

This is a classic risk-sharing scenario. The firm shares in the downside (the reduced-base fee) and the upside (an additional fee for a successful outcome). In the event that a case is not resolved successfully, the firm may forfeit a percentage of the fees that they had previously collected. This further encourages the counsel to work diligently toward a favorable outcome for their clients.

Success fee arrangements require significant thought and communication at the onset of each case. The client’s objectives must be clearly defined so that both parties specifically understand what constitutes each marker of success.

Success fees are often used in defense cases or in other situations where the client is not only seeking monetary compensation. For example, they would work well for patent cases, but not for personal injury cases where the client is seeking a monetary settlement.
Retainer Fees

Retainer fees are a down payment for work to be done. If positioned properly, your client will feel comfortable that the firm’s work will begin as promised and continue without interruption as long as fees are paid in a timely manner. Leveraging retainer fees can be an important part of establishing better short-term and long-term client relationships, and they can go a long way in building trust.

There are basically four types of retainer fees your firm can employ:

**A security retainer** is most likely what you think of when you think of a retainer—a client retains interest in those monies until services are actually rendered. The firm is basically holding the funds in escrow for the client. The fees should reside in the firm's trust account, as directed by states’ ethics rules. The account gets reduced gradually as fees are earned.

**A classic retainer**, in spite of its name, is an innovative fee structure. It is one that is earned in its entirety by the firm upon receipt. An example of a classic retainer might be an upfront fee to ensure a lawyer's availability during a specific time period. It may also repeat over time. This type of retainer fee is usually designed to kick-start the relationship, but may, in some cases, encompass the entire engagement.

**An advance payment retainer** allows the lawyer to retain ownership immediately, as with the classic retainer. However, there’s one important difference: If the engagement ends before the depletion of the funds, the balance is refunded to the client. Like classic retainers, the initial deposit typically goes into the firm's own account.
An evergreen retainer is one that requires automatic replenishment when the trust balance reaches a certain balance. The firm and client agree to the minimum replenishment level, and work will typically cease when the balance dips below the agreed-upon minimum until it is replenished. An evergreen retainer ensures that there are always funds available throughout the case, no matter the stage.

Retainer fees can apply across the board (especially in evergreen format), or they can be part of a mixed-fee arrangement that utilizes an initial retainer and then converts to hourly or flat fee work when initial funds are depleted.

Retainer fees can also help facilitate a more professional relationship with clients who want to be able to pick up the phone and talk to someone at your firm when a need arises. In addition, because they’re collecting the funds up front, many firms using retainer fees are able to offer a discount off standard billing rates. Of course, attorneys need to do their due diligence and make sure they check with applicable state guidelines.
Payment Plans and Recurring Billing

Two of the most popular AFAs are payment plans and recurring billing. They allow you to balance your client’s interests and needs with the demands of running a law practice. They keep your clients happy and your cash flow consistent and predictable. This lessens the operational burden of collections and increases the likelihood of getting paid. Here’s a breakdown:

Payment Plans
A payment plan is one of the best ways to collect revenues. With payment plans, lawyers can set an amount for an invoice and charge clients on a monthly basis until the balance is paid off.

This arrangement is perfect for times when a client cannot pay large bills upfront but can pay in increments, which is commonly the case with Immigration attorneys, Criminal Defense attorneys, or any litigators who generate large bills.

Also, payment plans are great for when a client has an overdue balance. Instead of getting a collection agency involved, you can work with your client to determine a schedule for them to pay what they owe.

Recurring Billing
One of the most promising developments for law firm profitability is subscription pricing (also known as recurring billing.) Consider this: You provide regular counsel or a service to a client. The client could be, for example, a business that needs access to legal advice or an individual who needs estate management. They pay you a set amount of money per month to handle normal legal interactions.
Recurring billing is great for customers because they have a predictable line item on their P&L, while it’s great for firms because it helps you get paid on a regular basis.

Your firm might not have a service which demands a $2500 per month payment, but even if you can figure out recurring revenue of $50 or $100, you’re off to a good start.

Payment plans and recurring billing are great options for both you and your client. Even better, Rocket Matter completely automates both for you making it more likely you’ll get paid quickly. More on that on page 13.
Any combination of fees is considered a hybrid-fee arrangement. Hybrid fees are risk-sharing solutions that appeal to cost-conscious clients while allowing the firm to maintain a positive cash flow. Hybrid arrangements that firms negotiate with clients are based on each client’s and each matter’s unique situation and limited only by the imagination of both parties.

Here are some of the more popular ones:

### Hybrid-Contingency Fee
While firms may offer a contingency fee or a reverse contingency fee arrangement to clients, sometimes an even better solution may be a hybrid-contingency fee. In this arrangement, the firm offers a discounted hourly billing rate while they have the promise of a bonus in the event of a successful outcome.

### Alternative Hourly Rates
A blended hourly rate is where one agreed-upon rate is charged for all matters regardless of whether the work is done by a senior or junior attorney.

Another alternative hourly rate is volume discount where the billable rate is reduced after the volume of work reaches a certain level during a defined period.

### Hybrid-Fixed Fee
Some engagements involve complex issues or situations that cannot be easily defined. In these cases, a blend of fixed and hourly fees allow the firm and client the flexibility to get the best result while keeping costs under control and more predictable. For
instance, a portion of the matter, projects within a case, or standard procedures may be charged on a fixed or flat fee basis, while less defined engagements such as meetings which may run a few minutes to many hours are based on an hourly fee.

**Hybrid-Success Fee**

With a success fee arrangement, the firm charges the client a reduced base fee up front, with an additional fee due if the outcome of the case is successful. In a hybrid model, the adjusted base fee is a reduced hourly rate.
Managing Your AFAs with Rocket Matter

It’s one thing to offer clients AFAs, but how do you implement them into your practice and keep track of payments without a deluge of paperwork and administrative headaches?

Well, the good news is that legal practice management software such as Rocket Matter does all of that for you. You don’t have to do a thing.

Here are some ways Rocket Matter makes using AFAs much easier:

- Rocket Matter supports the automatic tracking of evergreen retainers. When your client's trust balance dips below the minimum balance allowed, your invoice will automatically reflect any additional monies your client must pay to replenish the retainer.

- Rocket Matter automates recurring billing, removing any implementation work for your firm for those kind of AFAs. You set a dollar amount and a duration, and Rocket Matter will automatically bill your clients on a monthly basis. (This requires Rocket Matter Payments and a payment processing account with LexCharge.)

- Rocket Matter supports automated payment plans so that you can arrange for your client to pay off a balance over time. As with recurring billing, the payment plans take no work other than the initial setup. You specify a total dollar amount and the terms of the payment plan, and billing is automated for you. (Again, this requires Rocket Matter Payments and a payment processing account with LexCharge.)
• Rocket Matter also allows you to designate your matter as a “contingency” or “flat fee” or whatever billing arrangement you negotiated with your client. However, you can still track the time you spend on these matters to determine the profitability of the case.

• Do you bill your hourly clients on a monthly basis but bill your contingency and flat fee matters on an as-needed basis? Rocket Matter allows you to distinguish between matters with different payment structures. You can still batch bill your hourly clients, while excluding contingency and flat fee matters so you can invoice them separately.

• Rocket Matter enables you to organize, sort, and run specialized reports based on billing type, giving you the ability to view and check the progress of matters with different fee structures. This makes it a lot easier to keep track of all the different payment structures you’ve arranged for your clients.

• If a client is late paying an invoice, you should be able to charge interest if your state's ethics rules allow it. With Rocket Matter, law firms can automatically charge interest for late payments and set the number of days at which the additional charges kick in. Interest can be compounded if you desire. Law firms are able to set up multiple interest rules for different matters.

• Because some law firms charge a blanket percentage (usually 2-4%) to cover such incidentals as copies, mileage, and faxes, Rocket Matter allows you to add convenience fees to an invoice. Another use case for convenience fees is to recoup any fees related to payment processing. Rocket Matter, for instance, provides firms the ability to collect credit card payments online via LexCharge (see next chapter). Since credit card fees absorb 2-3% of the transaction, charging a convenience fee replaces that lost revenue. Be careful though: Convenience fees aren’t permitted in every single state, so make sure you know the policy in your state before you charge convenience fees for payment processing.
Why Law Firms Benefit from Combining AFAs with Electronic Payment Processing

AFAs are a great alternative to traditional legal billing. However, if you’re ultimately collecting money inefficiently, all of your good intentions can fall flat.

Consider what most firms do, regardless of billing structure: They print bills. Fold them. Label envelopes. Stuff the invoices into envelopes. Buy stamps. Stamp the envelopes. Send the invoices.

Then they wait…and wait. Eventually a paper check arrives in the mail, which someone deposits into a bank account along with all the corresponding ledger entries.

Imagine if this was all automated. And imagine if you kept clients’ credit card or bank account information securely on file. Not only would most of your clients prefer to pay without a paper check, but processing payments would be so much easier.

If you’re in the mindset that you need to update your billing practices anyhow, now’s a good time to think about getting your collections side right. Most law firms really lose out on efficiency here.

In terms of bringing more money into your firm, it’s not just the shift away from billable time that matters—it’s getting more money in the door earlier that will really make a difference to your bottom line and your cash flow.
Electronic billing eliminates most of this waste. Instead of printing and sending paper invoices, you send your bills over email. Online payment allows your clients to type in credit card or bank account information, ensuring quick payment for you. Not only are you eliminating a ton of busy work that is error prone and gobbles up tons of time, but you’re also shortening your cash collection cycle.

Electronic billing can take several forms, the most basic of which is sending an invoice with a link to a payment page. More sophisticated options, like LexCharge, allow you to support AFAs through payment plans or recurring billing.

Bottom Line: If you’re exploring implementing changes to your billing practices, including AFAs, make sure you know how you’re going to bill and collect for them as part of your due diligence.
Rocket Matter helps law firms offer better client service and also increase revenues by more than 20%. Founded in 2008 as the first cloud-based product on the market, Rocket Matter offers an all-in-one legal practice management platform with the most powerful, easy-to-use time and billing software in the industry.

When law firms want to make more money, go paperless, or increase confidence in their trust accounting, Rocket Matter helps them achieve those goals. With award-winning customer service based in the United States, it’s no wonder thousands of law firms swear by Rocket Matter.

Enjoy this guide and become part of our cutting-edge community on Facebook, Twitter, and our Legal Productivity blog.