

Understanding Attorney Fees:

*So You Can
Keep Legal
Costs Down*

CITIZENS
LEGAL GUIDE

HALT
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Understanding Attorney Fees: So You Can Keep Legal Costs Down

Consumers spend billions of dollars each year on legal fees. While some are satisfied customers who are getting competent legal help at affordable prices, many others believe legal fees are way too high and would rather leave a legal problem unresolved than pay for services they cannot afford. If you find yourself with a legal question, you should explore all of the options available to you and become educated about your legal question. You may actually find that you do not need to hire an attorney.

Today's consumers often turn to lower cost alternatives to meet their legal needs. Some use do-it-yourself books and software programs, while others hire experienced independent paralegals or legal document preparers. For those who choose to represent themselves in court, there's help online through court Web sites and other Internet resources, courthouse self-help centers and hardcopy guides to many legal issues.

However, if your legal matter is complex, substantial money is at stake, you're charged with a crime, or you're simply uncomfortable handling legal matters on your own, you'll probably need to hire a lawyer. The good news is that some lawyers and law firms are answering the call for more affordable legal services by using alternative billing practices, agreeing to coach *pro se* litigants on an hourly basis, providing innovative services through the Internet and offering task-specific legal services instead of full representation.

This guide explains the most common billing arrangements used by lawyers, some new billing arrangements lawyers are using and specific ways you can lower your legal costs.

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How Lawyers Charge

How much lawyers charge depends on where they do business, whether they are self-employed or working for a firm, how complex the case is and, in some circumstances, what you can pay. The market rate for any given legal service, then, is really a range of fees that often varies. In addition to their fees, lawyers will also charge you for out-of-pocket expenses they incur while handling your case (such as transportation costs, deposition and court transcript

expenses, expert witness fees and copy or fax costs). Lawyers generally use one of four fee arrangements:

- hourly fee,
- flat fee,
- contingent fee, or
- retainer.

The type of arrangement you enter into can have a huge impact on the amount of fees you'll pay, so it's important to understand how each works and the incentives lawyers have for using them.

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Under an hourly-fee arrangement, the more hours worked, the bigger the bill. This rewards the lawyer who puts in more hours on your case, whether or not it needs that much time.

If you agree to an hourly rate, make sure your agreement specifies the hourly rate for your attorney as well as what you'll pay for junior level professionals or support staff. You should not be paying the attorney's hourly rate for work being done by administrative staff. You should also ask that your hourly fee agreement include a fee cap—an amount that cannot be exceeded without your prior approval.

Some lawyers are willing to coach *pro se* litigants (those who are representing themselves in court) on an hourly fee basis. Instead of handling the litigant's case from start to finish, they advise, coach, direct and charge for these services by the hour.

Flat fees. Many lawyers and legal clinics offer flat fees for routine legal matters, such as for uncontested divorces, will preparation, business incorporation, lease preparation and some probate work—basically uncomplicated legal matters that involve filling out forms. A flat fee means that you will be charged a specified total for work performed on your case, regardless of the time it takes to complete. For example, a lawyer might offer to prepare your will for \$200, regardless of how long it takes. Often an agreement with a flat rate will require that the client also pay such “extras” as filing fees, photocopying and other out-of-pocket or unanticipated expenses.

Flat fees are charged when lawyers can accurately predict the average amount of time a case will take. Such work is just completing standard forms or is almost identical to numerous other cases handled by the office. Recognize, however, that a flat fee often reflects an hourly rate, so ask how much time the work will take, include this estimate in your agreement and choose an hourly figure if the math is in your favor. Usually, however, flat fees turn out to be bargains because when the work is repetitive and time-saving forms are used, the savings are passed on to clients.

Flat fees allow you to shop around among lawyers if you have a routine matter. Ask what specifics the flat fee covers in each case to be sure the various attorneys are offering the same services for the quoted price. In other words, if one lawyer's flat fee includes copying costs and another identical fee does not, the first lawyer is more economical. If you agree to a flat fee, make sure your agreement specifies exactly what the fee covers as well as any costs not included.

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Contingency fees. In this type of fee agreement (used mostly in personal injury or collections cases in which the client can't afford to pay if the case is lost), the attorney receives payment only if she wins the case, although the client usually must still pay any expenses an attorney incurs because of pursuing the case.

This is an all-or-nothing proposition—either the client wins and the attorney is paid, or the client loses and the attorney walks away unpaid. The theory behind contingency fees is simple. The attorney takes the risk of losing; the greater the risk of losing, the bigger the percentage. If you win, the attorney is highly compensated on the theory that he must also absorb losses on contingency fee cases that didn't succeed.

The customary contingency fee is 33 percent of the settlement, although fees range from 15 to 50 percent. Some lawyers offer a sliding scale in which the percentage changes depending on the stage at which

the case is settled. For example, the lawyer may collect 25 percent if you settle before trial, 30 percent if there is a trial and 40 percent if there is an appeal.

More reasonable contingency fee levels are enforced in cases brought before the Veteran's Administration, the Social Security Administration and under the Federal Tort Claims Act. A lawyer's contingency fee cannot exceed 25 percent for claims brought before the Social Security Administration (or \$5,300, whichever is less) or 20 percent for cases brought before the Veterans Administration. Under the Federal Tort Claims Act—which allows you to sue the government for personal injury, wrongful death or property damage caused by the negligence of a government employee—a lawyer may only collect 20 percent if the case settles before it's filed in federal court, and not more than 25 percent if the case settles after it's filed or if the case ends in a judgment after trial.

A contingency fee is paid to the attorney only if she wins the case, although the client usually must still pay any expenses an attorney incurs because of pursuing the case.

If a contingency fee is typically charged for your type of case, make sure you ask that the attorney's percentage be calculated after expenses have been subtracted from the award. This can result in significant savings for you.

Contingency Fee First

Expenses First

Total Award	\$90,000
Lawyer's Fee (1/3)	-\$30,000
Remainder	\$60,000
Less Expenses	-\$12,000

Total Award	\$90,000
Less Expenses	-\$12,000
Remainder	\$78,000
Lawyer's Fee	-\$26,000

Net to You \$48,000

Net to You \$52,000

Retainers

The term “retainer” means money paid in advance at the time you hire a lawyer. The term is often used imprecisely and can be a source of confusion, particularly as to whether it is refundable or not, which varies according to your agreement with the lawyer. If you agree to any type of retainer, be careful that your agreement specifies what is meant.

Pure retainers. These are fees paid to law firms to assure that a particular lawyer or firm will do all the client’s work over a fixed period of time, typically a year. They are often used by businesses to secure the services of a particular lawyer or firm thought to be an expert in a given field and to keep that lawyer or firm from representing competitors. Fees for work actually done are paid in addition to the retainer. The retainer generally is not refundable.

Case retainers. These fees are paid to retain the services of an attorney at the beginning of a case. This is the kind of retainer most often paid by the typical legal consumer. It may represent all of the fee, none of the fee, or a portion of it. It may be refunded or not, depending on your agreement. For example, a lawyer may charge you a flat fee of \$800 for an uncontested divorce and ask you to pay a retainer of one-quarter—\$200—up front. This money may also be used to pay expenses associated with the case, such as filing fees. The important thing to make clear at the outset is whether the retainer is an advance on expenses, fees or both, and whether any unused part of it will be refunded.

General representation retainers. These retainers are used to cover a predictable level of legal work needed on a regular basis. They give businesses ready access to legal advice and routine services. The retainers are billed periodically and ensure that the law firm is available for telephone consultations, review of documents or other routine legal work. Usually, such a retainer will not cover extraordinary legal projects like complex litigation and is not refundable.

Estimating Expenses - In addition to their legal fee, lawyers will charge for any *expenses* incurred while handling your case—for example, for filing, faxing and copying your documents—or for costs associated with litigation, such as fees for expert witnesses or printed transcripts. Your fee agreement should include an estimate of how much expenses will be and a requirement that your lawyer get prior written authorization before exceeding that estimate.

Other Fee Arrangements

While the hourly, flat, contingent fee and retainer billing systems are still the most common, a growing number of lawyers and law firms are experimenting with new billing systems as a way to make their legal services more affordable.

Unbundled legal fees. In a growing number of states, you can hire a lawyer for very specific legal tasks like writing a letter, reviewing a document or conducting legal research. Unlike full representation, in which a lawyer gives advice, conducts legal research, gathers facts, drafts all letters and documents and attends every court appearance, “unbundled” or “limited representation” legal services permit a lawyer to rely on the client’s knowledge of the case and provide targeted assistance. The savings to consumers who only need help with a specific legal task can be substantial.

Competitive flat fees. Consumer advocates believe we will soon see national flat fee rates for certain legal services, such as writing a will, filing for bankruptcy, getting an uncontested divorce, or incorporating a business. Presently, the amount you pay under a flat fee arrangement varies depending on where you live. Lawyers in Boston, for example, will charge a higher flat fee than lawyers in Lincoln, Nebraska because their overhead is higher.

The Internet is changing that. Today, consumers can find a multitude of Web sites that offer both legal information and direct legal services no matter where they live. Most of these Web sites help consumers with routine matters like estate planning, bankruptcy and uncontested divorce. Some estimate that major Web sites such as *LegalZoom.com*, *completecase.com*, *selfdivorce.com* and *mylawyer.com* have, in recent years, already processed more than 50,000 online uncontested divorces. To stay competitive, divorce lawyers and other lawyers need to start matching the affordable rates consumers are receiving elsewhere. In fact, there is no reason why local lawyers can't match what online lawyers are charging, and they may be more willing to do so as rates become more competitive.

Alternative billing. While not as common, some lawyers will use an alternative billing arrangement—for example, a lawyer working with a small business owner might offer a steep hourly or percent discount as a way to increase the volume of work he or she gets from that client.

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Lowering Legal Fees

Recent studies conducted by state bar association Access to Justice Commissions across the country show that millions of low and moderate income American households simply cannot afford to hire a lawyer. With legal fees costing \$100 per hour or more, hiring a lawyer is an expensive proposition. Yet, there are specific things you can do before and after you hire a lawyer to help keep legal costs down.

Shop carefully. One of the best ways to ensure you won't pay more for legal services than you should is by hiring the right attorney at the start. To do that, you need to shop carefully—much as you would for any big purchase. Lawyers develop expertise in different areas of the law so you shouldn't hire a divorce lawyer to assist you with a real estate transaction. Comparative shopping for a lawyer helps you to understand the range of services and prices available, compare differing views on your legal problem and select a lawyer who is likely to handle your case as you expect and at a price you can afford. You can often get reliable attorney referrals from relatives, friends and business associates, and you can also find lawyers through their advertisements in local newspapers and phone books and through online Web sites such as *nolo.com*, *avvo.com*, *findlaw.com* and *lawyers.com*. Nolo and Avvo provide attorney ratings and profiles to help you make your decision.

Explore alternative working arrangements. Instead of hiring a full-representation lawyer, consider hiring someone to help you on an hourly fee basis. This type of arrangement lets you consult with an attorney as needed, for example to write letters, review documents, research legal questions or offer legal opinions. Because you handle most of the legal task yourself (say, creating a living trust) and only ask for the lawyer's help when needed (reviewing the tax implications of your trust), you can save substantial amounts of money and rest assured you're on the right track.

Stay involved. You cannot simply hand over your problem to a lawyer and wait for results—unless you don't care about the results or the cost. Remember,

your lawyer works for you, not vice-versa. Insist at the outset that you want to stay involved and be kept informed of any new developments in your case. You can minimize costs by determining what needs to be taken care of and then doing some of those tasks yourself. You can gather information and contact numbers, line up witnesses, prepare documents and run errands. Reducing tasks for your lawyer should result in a fee reduction for you.

Review billing statements. When you receive your lawyer's bill, make sure you understand what you are being charged for—don't be afraid to question discrepancies or to ask about charges you don't understand. Reviewing your bills lets your lawyer know you are on top of things and that you do not expect to be charged more than you should be.

Explore Low-Cost Options

In some cases it may be possible to avoid hiring an attorney altogether. Many routine legal tasks do not require a lawyer's specialized knowledge, and there are plenty of inexpensive options for getting routine legal tasks accomplished. Whether you need to write a simple will or want somebody to guide you through an uncontested divorce, these options can substantially reduce your legal costs.

Do-it-yourself. If your legal matter is straightforward and uncontested, you can save thousands of dollars in legal fees by handling the matter yourself. Many legal consumers write their own wills and trusts, file for divorce, buy and sell homes, enter into sales contracts, lease property and start small businesses with the aid of do-it-yourself legal products. You will find resources ranging from form kits with boilerplate promissory notes to highly sophisticated interactive software that is capable of generating customized, state-specific legal forms.

Get help online. Myriad Web sites offer legal information, legal forms and direct legal services, at a fraction of the fee a lawyer would charge. Some Web sites offer an extensive array of legal forms with

little or no instruction. Others, like *www.legalzoom.com* and *www.completecase.com*, offer customized forms, especially for uncontested legal matters like writing a will or trust, getting an uncontested divorce, or filing for bankruptcy. While service models vary, you will typically answer a series of questions online that are pertinent to your legal matter and that information will be used to create a customized legal document for you.

Use nonlawyer legal service providers. Depending on where you live, you can save a substantial amount of money by using a nonlawyer legal service provider (sometimes called an independent paralegal or legal document preparer). Popular in states like Arizona, California and Utah, these nonlawyer professionals advertise their services in local newspapers and telephone books and offer assistance with routine, uncontested legal matters such as filing for bankruptcy, getting a divorce and writing a will. Some businesses, such as We the People (*www.wethepeopleusa.com*), have franchises in many states and use nonlawyer professionals to help keep consumers' costs down. Nonlawyer legal service providers are being considered by more and more states as a viable alternative to full attorney representation.

Call a legal hotline. If you are 60 years of age or older, you may qualify for free legal assistance over the telephone. A growing number of states now sponsor "legal hotlines," which are designed to expand or improve the delivery of legal assistance to older individuals with social or economic needs. Attorneys staffing the hotlines answer legal questions and give legal advice. Service is limited to phone advice, but some hotlines will agree to provide additional brief services such as reviewing a document or writing a letter, though a fee may be charged for such service.

Join a legal service plan. Check to see if you belong to a group legal service plan through your employer, union or trade association. Group plans offer services such as telephone counseling, legal document review, and follow-up letters and phone calls. Such plans may be offered as a free employee benefit or might require a very small contribution on your part.

If you don't belong to a group plan, you can look into joining a prepaid legal service plan. Offered to private

individuals, these plans offer the same kind of services and typically require an annual membership fee of \$25 or less. However, if you need legal assistance, it's important to explore your options. You can often find help just as cheaply, and sometimes more competently, outside of a plan.

For more information on practical ways to keep legal costs down whether you decide to work on your own or with a lawyer, see HALT's **Everyday Law Series** article *Lowering Legal Costs*.

Conclusion

For many people, hiring a lawyer can be a stressful event, regardless of whether the legal need is exciting (purchasing a new home) or depressing (being injured in an accident or accused of a crime). Whatever the reason, knowing how lawyers charge for their services and what you can personally do to help keep legal costs down will help you maintain control over the attorney-client relationship and keep your legal bills in check. Exploring low-cost options when the help of a traditional lawyer is not necessary or desired can literally save you hundreds, if not thousands, of dollars.

Glossary of Terms

Contingency fee: Attorney's fee based on a percentage of the amount awarded to the client. If no amount is awarded, no fee must be paid, although the client will be required to pay legal expenses.

Flat fee: Lawyer's fee based on a fixed amount for handling a legal matter regardless of the time spent or the difficulty of the tasks involved. Legal clinics and some lawyers change flat rates for routine, uncontested matters such as name changes, simple wills and uncontested divorces.

Expenses: Charges for a lawyer's work other than fees, typically including long distance telephone charges, photocopying, court filing fees and expert witness fees.

Hourly fee: Lawyer's fee based on the amount of time worked on a case. The fee is the hourly rate multiplied by the number of hours worked.

Prepaid legal services: Plan that provides legal services to members for a fixed monthly fee.

Pro se: Representing yourself in court without the help of an attorney.

Retainer: Money asked by the lawyer before beginning work on a case, often considered a deposit for a portion of the work to be done. The money may be used to cover expenses or the lawyer's fee or simply to reserve the lawyer's services for a specified time period or a lawsuit. The unused portion may or may not be refundable.

Join Our Fight For Reform

Since 1978, HALT has provided a powerful voice working on your behalf in Washington and across the nation to help Americans navigate the legal system with or without a lawyer. We need your help. Join HALT to help us allow more people to settle their legal affairs simply and affordably.

Where to Find More Information

More information about the attorney-client relationship is available on HALT's Web site, www.halt.org, in HALT's *Everyday Law Series* and in HALT's *Citizens Legal Guides I Have a Problem with My Lawyer* and *Where Do I Go for Legal Help?*

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Phone: 1-888-FOR-HALT ● (202) 887-8255 ● Fax: (202) 887-9699
Email: HALT@HALT.org ● Website: www.halt.org
1612 K Street, NW Suite 510 ● Washington, DC 20006