

Case 2

Alternative Billing in Estate Planning

Location: Los Angeles, California

Size of Firm: Solo Practitioner

Practice Area: Estate planning

A recently retired attorney in Los Angeles shared her thoughts on hourly billing alternatives and value billing. “My sense is that the term value billing is intended to reflect a method of billing centered on capturing the full value to the client of services rendered by a law firm and communicating to the client that value. My experience tells me that effective billing must be bilateral. It must reflect the perspective of the producer, i.e., the attorney, and the perspective of the consumer, i.e., the client. One measurement of effective billing is billing that reflects what the attorney perceives is a fair fee, given the services rendered; results in full payment of the bill within a short period of its receipt; and leaves the client satisfied with the services rendered and with the professionalism of the attorney.”

She had developed and successfully used in her estate planning practice for many years a two-step method of billing—namely, “hourly” fee and “documentation” fee. The hourly rate is used for services rendered in order to arrive at a blueprint, i.e., a plan, which will be used to draft the necessary document. The hourly rate also is used for major document modifications re-

quested by the client after the initial draft of the document has been prepared by the attorney, in accordance with the blueprint. The documentation fee is a flat fee that is charged for producing the individualized (i.e., customized) framework document, which is based on the blueprint.

The documentation fee is a composite of variables, such as complexity of document, uniqueness of document, tax-sensitive nature of document, tax benefit of document, expertise required, priority timing required, risk aspect of document, client attitude, and desire to perform a particular service at a particular time. The documentation fee is not established until the plan framework is worked out in detail. The services for developing the plan are billed on an hourly basis.

The attorney successfully used this two-step billing method in her estate planning practice. The billing method was explained to new clients, in writing, prior to their first appointment. Once the blueprint is arrived at, the estimated fees (both hourly and documentation fees) were discussed with the client prior to the end of the initial meeting and the client is asked to sign a fee agreement and to pay one-half of the documentation fee in advance. By this action, the client is reflecting a commitment to the plan from the beginning. The retainer amount is placed in the attorney's trust account until a draft of the documents is sent to the client, at which time the amount is withdrawn and placed in her business account. The balance of the documentation fee and the hourly fees charged is due at the time of the signing of the estate-planning documents. This fact is reflected in the fee agreement and is confirmed in the cover letter that is sent to the client with the draft documents. Out-of-pocket costs for items such as photocopying are billed at the time of closing as well. If there are costs that are required to be advanced after the signing such as recording costs, postage, etc., those costs are billed when they are incurred—usually within a few days of the signing of the estate planning documents.

The attorney reported that the results of this system have been positive in a number of respects. If a potential client did not feel that her proposed fee for preparing a document was fair, they never get past the initial meeting. If the documents were prepared, the client was highly motivated to complete the project because a significant investment already has been made, i.e., one-half of the documentation fee already has been paid. Because the balance of the payment is due on signing of the documents, her receivables were minimal. She also pointed out that this bifurcated system of billing could be used in any area of practice involving framework documents such as incorporations, deeds, leases, buy-sells, and employment agreements.