

Pricing Toolkit

for attorneys seeking to serve
low- and moderate-income clients



Step-by-Step Toolkit for Pricing Legal Services for Low- and Moderate-Income Clients

This toolkit provides a set of considerations for pricing legal services for attorneys who are primarily focused on serving low- and moderate-income clients. Use this toolkit to help guide pricing of legal services utilizing fee arrangements alternative to the billable hour.

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If you have questions about the toolkit or pricing more generally, please contact the CBF's Director of Innovation & Training for the Justice Entrepreneurs Project Jessica Bednarz at jbednarz@chicagobar.org or (312) 554-8022.

Introduction

One of the most fundamental ways lawyers can make their services more accessible to low- and moderate-income clients is by using what are commonly referred to as alternative pricing structures. This is particularly true for lawyers practicing in areas where the billable hour has been the prevalent way of pricing services. Alternative fee arrangements have proven to be very effective in other legal and non-legal settings. Avoiding or doing away with the billable hour in your pricing sets the stage for more affordable, accessible, and transparent services for the client and a more fulfilling and successful practice for the lawyer.

This Pricing Toolkit and the accompanying materials were developed to provide attorneys serving low- and moderate-income clients with a guide to pricing their legal services using fee arrangements other than the billable hour. Attorneys serving clients in higher income brackets can also benefit from using the Pricing Toolkit.

□ **Confirm the Basics of Your Practice**

Pricing legal services requires having some fundamental aspects of your approach to practice already in place. A variety of resources exist on these topics, but we do not address them here. Instead, we make the following assumptions about users of this checklist:

- The users are already familiar with the areas of law in which they have chosen to practice.
- The users have already determined their firm brand and identity, which should be reflected in their value and pricing.
- The users have already identified their target client base.

□ **Understand Why the Billable Hour Presents a Problem for Clients and Why Alternative Fee Arrangements Offer Better Options for Clients**

Clients are used to paying a set price for just about everything in their lives, and just about every other consumer market (including most other professional services) offers transparent pricing. While there may be a menu of prices or the requirement of an estimate to arrive at a price, the client can see a price, determine whether they can afford to pay it, and decide whether they will get commensurate value in exchange for it.

For legal services based on the billable hour, this is not the case. While these services in many cases might actually be affordable for clients, there is no way for the clients to know that until later, because they are typically being asked to make what amounts to an open-ended commitment with no sense of control over what it might ultimately cost. Transparency, however, is just one part of a larger problem with the billable hour. The billable hour also acts as a perverse disincentive to efficiency--a lawyer who uses the latest technology to work more efficiently makes less under that system--and that can subtly discourage lawyers from making strategic decisions regarding the best use of their time and their client's money.

In addition, the billable hour system generally does not align with value to the client or the results the client is seeking to achieve. The billable hour puts the focus on the lawyer's inputs rather than on the resulting value to the client. Clients are not seeking to buy your time; what they want is to buy your services to help them achieve a particular end goal (e.g., a business deal, recovery or protection of funds, peace of mind, etc.). When the lawyer earns money based only on the amount of time spent, and not on the results achieved, those goals are not aligned well. And all of the risk effectively sits with the client if things do not go as planned. A quick chat with clients about the problems associated with the billable hour and its perverse incentives can quickly result in a client who is even more enthusiastic about alternatives than the lawyer—regular folks take this reasoning to heart!

It wasn't always this way, and there is no reason it has to be this way going forward.

While the billable hour may seem to be inextricably embedded into the DNA of our profession, this is not the case. It wasn't until the 1970s that the billable hour became the prevalent form of pricing in our profession, after literally centuries where the profession apparently functioned quite well without it (see Johnson, "[Alternative Fees Aren't So 'Alternative,'](#)" American Lawyer, August 24, 2015"). For many areas of law—including immigration, real estate, DUI and traffic, and minor criminal cases—fixed fees are still the norm today. In addition, for personal injury and many other types of cases, contingent fees are the norm. It is noteworthy that with few exceptions, the consumer markets for these areas of law function significantly better than for other areas where the billable hour remains the norm.

Using fee arrangements other than the billable hour offers the opportunity for increased affordability, transparency, and accessibility for clients by incentivizing client value, innovation, and efficiency. These arrangements are good for you as a lawyer, too, helping you to distinguish yourself in the market, opening up what are now latent client opportunities, and allowing you to focus on providing client value rather than on the amount of time you are billing. This toolkit offers more information and resources for these fee arrangements and how you can use them to develop a successful practice that is a win-win for both you and your clients.

While it may feel like you are swimming against the tide at first by not using the billable hour, keep in mind that:

- There are well-functioning markets for many consumer legal services that don't depend on the billable hour (e.g. personal injury, real estate closings, etc.);

- Companies that offer fixed fee referral options (e.g. Avvo Advisor) or what they describe as legal solutions for fixed prices (e.g. LegalZoom) are growing their market share every day;
- Many larger companies and a growing number of law firms serving them are successfully using fee arrangements other than the billable hour (see the [Association for Corporate Counsel Value Challenge](#) for examples); and
- Other professional services like accounting and consulting have been able to transition away from the billable hour, showing this is not only possible, but also potentially lucrative.

As Evan Chesler, chairman of one of the most successful law firms in the world stated a few years ago in an [op-ed piece](#) in Forbes, lawyers should be able to do what contractors and many others do: “Identify the potential client’s objectives, measure, calculate, build in a contingency, and come back with a price.”

Even without the billable hour, you will still want to understand how much time you are spending on your legal matters for a variety of reasons. First, time is a key ingredient in determining your costs (as there are only so many hours you can work) and efficiency. Second, you may need to document the time you have spent on a matter for a fee petition or to respond to inquiries about the work you have done for a client. Once you leave the billable hour behind, though, you can look at your time in the context of how you can most efficiently use technology, collaboration, and other means to deliver the highest value to your client at a price that allows you to be successful.

□ Understand the Guiding Concepts

Providing value to the client should be the guiding principle in all pricing, and in the following section, we discuss the many ways clients are likely to find the most value in your services. The following fundamental concepts will help you work most efficiently and effectively, guide your approach to selecting mutually beneficial fee arrangements, and assign appropriate pricing to your legal services:

Understanding What Success Means to the Client: “Success” can mean many different things, and it is important that you determine what it means to each potential client so that you can determine what you realistically can help them achieve, and choose an appropriate fee arrangement that aligns with their goals. In some cases, success means a specific outcome, such as being designated as the custodial parent in a custody case or being awarded damages in a breach of contract case. In other cases, success may be more general or intangible, such as minimizing conflict, finding a resolution that is workable for the client, or gaining peace of mind by resolving the matter in a timely fashion.

Providing Choices and Empowering the Client: Attorneys distinguish themselves and build positive relationships with clients by providing choices to clients and empowering them to participate more fully in the resolution of their legal matter. While you should try to limit the options you offer in each case to no more than two or three choices so that it doesn't become overwhelming to the potential client, even giving them two alternatives can be the deciding factor in whether a potential client ultimately decides to retain your services. For example, offering unbundled service options for pricing provides potential clients with choices and more control, which fosters a positive working relationship even when the client chooses a traditional approach. You can also empower clients by pointing them towards information and resources they can use on their own to prepare for and supplement your services, such as a link to www.illinoislegalaid.org for free resources and court forms.

Providing Transparency and Price Certainty: Being transparent with clients about how your pricing works and providing options that offer price certainty will help you attract clients and maintain relationships.

People who need legal help face many challenges finding information about how much legal help will cost and whether the services are a good value. If possible, your website should provide price ranges, explanations about your approaches to pricing, or other information to help a potential client understand whether your services will be affordable and a good value.

People who need legal help can also benefit greatly from knowing exactly how much they are going to pay for legal services. It is generally hard to budget for the unknown, and the unknown can often cause unnecessary anxiety. By offering fee arrangements that whenever possible are transparent and predictable, you are allowing potential clients to make more informed decisions with respect to their procurement of legal services and helping to reduce anxiety associated with the legal process.

Utilizing Project Management and Process Improvement: In order to offer the best value to clients, you should continually analyze and improve how you deliver legal services so that you are working at maximum efficiency. By fully understanding the component parts to a given matter and the various contingencies that may arise, you also can better determine where you are offering the most value to the client, how you might price the matter in phases of the case, and whether you can offer an unbundled approach. One of many advantages of moving away from the billable hour is to fully incentivize efficiency and innovation.

Utilizing the “Guardrails” Concept: Be sure to have a written fee agreement with your client. In order to effectively price a particular matter in whole or in part, it's critical to understand and document the key assumptions that you and your client are making as you enter into an agreement. For example, in a divorce matter, you may understand the situation to be uncontested when you are initially meeting with your client and price it accordingly, but things could turn out very differently later in the case. In that situation, your agreement should contain “guardrails” to ensure that you and your client both understand and agree that your agreement terminates or can be modified at that point, and a new or modified agreement reflecting these materially changed circumstances must be reached if the representation is to continue.

As another example, for more potentially complex litigation, it might not be possible in your initial meeting with a potential client to be able to assess and factor in all of the potential variables to determine what will be the best agreement for that case. In this instance, your agreement may be limited to just the initial assessment phase of the case for an agreed upon fee, with the explicit understanding that after that point you and your client will revisit the agreement and pricing for further representation in the case.

These are just two examples of the many similar situations in which this concept becomes important. Being clear with your client about key assumptions up front, and getting those assumptions down in writing, protects both of you in the event that an unexpected major turn of events in a case materially changes the matter that was the basis for your original agreement.

Incentivizing “Good Behavior” for Both Lawyer and Client: Pricing should align the interests of you and the client. For example, pricing should allow clients to feel like they can contact you without being nicked and dimed, but in a way that does not inadvertently encourage repeated and inefficient calls because there is no “cost” to the client. Similarly, utilizing pricing that reflects the client’s contributions to the process (e.g. providing you with complete and organized documents), can keep costs down for the client and save you time. Including specific provisions about these types of expectations in your legal representation agreement and discussing them clearly with the client helps everyone understand roles and expectations and increases efficiency. Explaining your reasoning for these expectations can also help you build rapport with your clients: by and large, people will understand your motivations and will be respectful of your time.

Experimenting and Adapting: In the end, this may be the most important. There are no silver bullets to determining the proper fee arrangement or pricing for each particular case. The best way to get started is to consider the concepts in this toolkit and start testing out alternative fee arrangements in actual cases. There undoubtedly will be cases where your arrangement turns out both better and worse for you from a business standpoint, and the key is to learn from your experiences and adapt your strategies going forward. Through time and more experience, the fee arrangements and pricing that work best for your practice will become clearer, and both you and your clients will be much happier and better off having left the billable hour behind.

Creating Client Value and Determining What Legal Services You Will Offer

Having reviewed the guiding concepts, it’s time to focus on how you are going to put them to work. The first step in this process is determining the value you will offer to clients and how you will present it to them. The value you are providing should tie together with and be reflected in your firm’s branding and pricing.

□ Determine the Value You Will Offer to Potential Clients

Potential clients are coming to you first and foremost for your legal expertise. As a general matter, there are five ways you can offer value to a potential client in virtually any kind of legal matter. While the amount of value for each potential client will vary based on the circumstances, assessing the value in each situation will help you determine the appropriate pricing for that matter.

Counsel: While potential clients increasingly have access to legal information and resources that enable them to do more tasks on their own, the trained and objective advice of an attorney remains critical. Even in simpler matters where a potential client may be able to access information or forms that would allow them to proceed with a lawsuit or enter a contract, they often do not have the expertise or objectivity to determine whether doing so is the best option for their goals and interests or how best to proceed. Moreover, even if the potential client might be able to proceed prudently on his or her own, an attorney's counsel can provide peace of mind that the potential client is pursuing the proper course of action.

Advocate: A skilled advocate may have even greater value to many potential clients, particularly where the power dynamics in the legal matter leave the potential client on unequal footing. Examples include where the creditor in a consumer debt case or one spouse in a divorce has significantly more resources and is represented by counsel, or where a budding small business is working on an important deal with a much larger company. In these kinds of situations and in many other instances, even when the matter itself isn't complicated, the impact of having a trained advocate on the potential client's side can make a tremendous difference in the outcome and to the potential client's peace of mind.

Navigator: While there are ongoing efforts to make the legal system more user friendly and accessible, in most instances, it is still a very complex system that can be quite intimidating to regular people. Brief advice and coaching to help potential clients navigate the system may provide huge value to a potential client who is unfamiliar with the system but otherwise well positioned to adequately handle their case on their own.

Information Broker: This traditionally was one of the core values a lawyer delivered to a client, but with the growth of online legal information, forms, and resources, it is not as significant in consumer practice today, except in practices that specialize in complex and fast-changing areas of law, such as cybersecurity and regulatory compliance. Unlike consumers in the past, many consumers today expect to find answers to their questions on the internet. Distilling this information into what is most important for the client's situation is one way a lawyer can still provide significant value for them.

Maintaining awareness of where potential clients can get free and reliable information and resources, such as www.illinoislegalaid.org and court websites, and making this information freely available to potential clients, is a great way to build trust and loyalty with them [Baer, Jay, Youtility: Why Smart Marketing is about Help not Hype. New York: Penguin, 2013. Print]. After you have provided your potential clients with this information, you can then focus your time on more significant and income-generating ways you can offer value to your clients as noted above.

Connector: Oftentimes, a client needs other services in addition to the legal assistance you provide in order to fully resolve their problem. Two examples are when a domestic violence victim seeking an order of protection needs help finding safe housing, or when a small business client needs a valuation consultant. By identifying when potential clients might benefit from social or other services and connecting clients with those services to help them achieve their goals, you are offering them value.

In addition to your legal expertise, the average legal consumer is also seeking some or all of the following:

Price Certainty: For some matters, this might be a flat fee, such as in a routine traffic case. In other cases, it might be a range of pricing or contingent fee options that depend on the complexity of the case and the amount at stake, such as in a contested court proceeding. Still in other matters, this might be a relatively modest fixed fee for advice and coaching that can lead to other service arrangements going forward, such as in a debt collection case. Whatever the case, remember to always have a written fee agreement, and the more certainty you can offer the potential client as to what your services will cost, the better. The lack of price certainty has been one of the biggest problems with the billable hour system.

Transparency: A close cousin of price certainty is transparency. Letting potential clients know up front as much as you can about your pricing will help you stand out and be more accessible to potential clients. As noted above, this doesn't need to be in the form of flat fee quotes for the entire matter, and should not be unless the matter is amenable to that arrangement, but most lawyers and firms historically have been very opaque to consumers when it comes to pricing.

Clear and Consistent Communication: This one is pretty straightforward. You might be surprised by how many attorneys don't do this.

Affordable Fees: If potential clients cannot afford your fees, they will not retain you for your legal expertise. Offering reasonable fees that are competitive in the marketplace will help you attract and keep clients.

Collaboration: Working closely with the client builds empowerment and trust, and can reduce the expense for the client as well. If a client is able and willing to handle some parts of a legal matter themselves, offering unbundled options that reduce the overall costs through collaboration with the client can make all the difference. Technology increasingly allows online collaboration as a way for clients to complete forms and other key documents.

Convenience: While working from 9:00 a.m. to 5:00 p.m. Monday through Friday is convenient for you, it might not be convenient for your potential clients. Offering hours that are more convenient for your potential clients can be of great value to them.

Flexibility and a Variety of Potential Fee Arrangements: Offering a variety of fee arrangements allows potential clients to choose the option that works best for their particular situation and shows potential clients that you are working to meet their needs. You should choose no more than two or three potential fee arrangements to offer for a particular matter so as not to overwhelm the potential client.

□ **Select the Fee Arrangements You Will Offer Potential Clients**

After considering the value propositions that you are best positioned to offer your potential clients, identify the fee arrangements that are consistent with those propositions, your practice areas, and your firm brand. Because limited scope representation is central to many fee arrangements, we briefly touch on limited scope representation here before addressing related fee arrangements.

Limited Scope Representation/Unbundling

Limited scope representation, often referred to as “unbundling,” allows attorneys to provide legal services on a portion of a potential client’s legal matter rather than seeing it through from beginning to end, so long as it is reasonable under the circumstances. “The client and attorney agree on the specific discrete tasks to be performed by the client and the attorney. Depending on the nature of the work being performed” and the attorney’s involvement, “the attorney may or may not enter an appearance with the court. The client represents himself or herself in all other aspects of the case.” M. Sue Talia, PLI Program - Expanding Your Practice Using Limited Scope Representation Program, January 30, 2015.

Limited scope representation allows potential clients who cannot afford to pay for full representation to still hire an attorney for what the potential client, with the attorney’s counsel, determines to be the part(s) of the matter for which an attorney is most needed. Limited scope can be used for both discrete tasks, such as drafting pleadings or providing advice and coaching on an issue, and for particular issues in a case, such as custody. Unbundling also allows you to charge a fixed fee by task or phase of a case, creating a win-win for you and your client.

Unbundling is a newer and rapidly growing approach to delivering legal services. A variety of resources exist to help you offer unbundled services, including resources from other states that adopted rules earlier than Illinois.

Fee Arrangements

Alternative fee arrangements are growing in importance and becoming more prevalent by the day as potential clients seek greater value, including by paying less for legal services and having certainty up front about how much they will need to pay. Below are some examples of fee arrangements that have worked for attorneys in various practice areas. Please note that this is by no means an exhaustive list of fee arrangements and not every fee arrangement will work for you or your potential clients. Some fee arrangements require a client with a certain amount of sophistication. This section was compiled with input from several helpful sources, including Patrick Lamb's article, [What Is, And is Not, An Alternative Fee Arrangement](#) that appeared in Law Technology Today on December 10, 2014.

Fixed Fee by Phase or Task: This is where an attorney charges a specified sum for the completion of a certain task or phase associated with the case. Some examples of tasks and phases include: drafting a pleading or motion; completing discovery; defending someone in a deposition; and representing a client at a hearing that is scheduled for a specific date. It should be noted that the terms "fixed fee" and "flat fee" are often used interchangeably.

Fixed Fee by Case: This is where an attorney charges a specified sum for handling the entire case. A common example is charging a set amount for an uncontested divorce. This fee structure works well for cases in a variety of practice areas where the range of potential work involved is relatively predictable. Attorneys offering these arrangements grapple with concern about underbidding the case or potential "windfalls" if the case is resolved quickly, and how to handle the fee if that happens. For this reason and for ethical reasons, all potential outcomes and associated probabilities should be fully explained to the potential client during the initial consultation, and you should settle on a median price that takes into account the uncertainties involved.

Recurring Fixed Fee: There are two types of recurring fixed fee arrangements, and both involve charging a standard fee on a recurring monthly (or other time increment) basis. A non-litigation recurring fixed fee arrangement is typically used in the context of advising clients, such as an on-call general counsel arrangement for a small company. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets, such as paying a set amount for services each quarter that a case is pending.

Recurring fixed fee arrangements should not be confused with retainers. Many attorneys and legal consumers alike use the term "retainer" when either referring to a legal representation agreement that involved fixed fees, or to an advanced payment made to an attorney to perform agreed upon legal services that is then drawn upon and replenished as the attorney incurs fees and works on the case. The latter is subject to specific guidelines under the Illinois Rules of Professional Conduct.

When using a recurring fixed fee arrangement, it is important for ethical reasons that attorneys regularly review the agreement to make sure it makes sense for the potential client. For example, if you agree to a fixed fee that is based on you having to go to court on a monthly basis, but something changes and you now only have to go to court twice a year, you and your client should revisit your agreement and make adjustments accordingly if doing so is in the client's best interest.

Pure Contingency: In a pure contingency fee arrangement, the attorney recovers a specified percentage of the amount recovered. The client typically will be charged all hard costs associated with the case, but the client does not pay a fee unless the case results in a successful recovery. This structure is a way to share the risk between attorney and client, and works well when the amount at stake and the potential for recovery is sufficient for an attorney to incur the risk to handle a case. Sometimes the potential recovery can be quite large, such as in some personal injury cases. Other times, the potential recovery is more modest, such as in smaller breach of contract cases.

Reverse Contingency: Reverse contingency fee arrangements are similar to pure contingency fee arrangements but are based on the percentage of the amount of money saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front and reasonable under the circumstances.

Fee-Shifting: Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case. When available, this type of fee arrangement works particularly well for clients who can afford to pay little or no money for your services and the client's case has potential merit.

Contract Recurring Fee: The attorney charges an initial fee for the creation of a document, such as a sales contract, licenses the document to a client, and earns a licensing fee every time the client uses the document. This fee arrangement works best when an attorney creates a contract or similarly licensable document.

Hybrid: A hybrid fee arrangement uses more than one fee structure. Below are some examples of hybrid fee arrangements.

Flat Fee Plus Contingency: In a flat fee plus contingency fee arrangement, the attorney charges an agreed-upon flat fee in addition to the hard costs associated with the case, and also receives a specified percentage of the amount recovered. This arrangement works best in cases when liability is an issue and the client can benefit from receiving brief advice from counsel and/or having a lawyer as an advocate to negotiate or obtain a better result than the client likely would be able to obtain on his or her own.

Flat Fee Plus Reverse Contingency: In a flat fee plus reverse contingency fee arrangement, the attorney charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. This fee arrangement works well in credit card collection defense cases.

Success Fees: This fee arrangement sets a bonus that the attorney receives in addition to the core fee arrangement if the result meets agreed-upon criteria. Success fees can be a good way to align incentives for the lawyer and client.

Holdback: A holdback fee arrangement specifies that the client will receive back an agreed-upon portion of the total fee unless the attorney obtains a particular result, which is usually tied to client satisfaction. This fee arrangement encourages both the attorney and the client to measure success quantifiably and qualitatively.

Value Adjustment Line: In any fee arrangement, you can include a value adjustment line that gives the client the option of adjusting the fee up or down. The law firm Valorem Law Group has used this strategy very effectively to build trust with clients and underscore the value they are providing: <http://www.valorem.com/value-adjustment-line>.

Taking an Interest in a Client's Company: In exchange for legal services, the client offers the attorney stock options or equity in his or her company. This fee structure only works with clients who own companies. It can be particularly useful when a client, such as a business start-up, cannot afford to pay any money up front for legal services related to the business. Take care to avoid conflicts of interest if you are considering this type of arrangement.

Fee Arrangements Using the Billable Hour: While we do not recommend including the billable hour in any of your regular fee offerings for the reasons explained throughout this toolkit, there may be times when a more sophisticated client may actually request it. In these instances, the following two approaches can help align incentives for the lawyer and client.

Capped Fees with Shared Savings: In a capped fee with shared savings arrangement, an attorney's total fee is capped at a set amount. If the attorney bills lower than the cap, then the client and attorney share in savings (usually on an equal basis). This differs from a standard capped fees arrangement, which incentivizes attorneys to bill as close to the agreed upon cap as possible, but does not allow for the attorney to share in any savings.

Collar Fees: A fee collar is a variation of the capped fees with shared savings fee arrangement. With this fee arrangement, the client and attorney set an amount the attorney is to be paid. If the attorney's hours and fee then come in on target or at an agreed-upon percentage above or below the agreed-upon amount, the fee becomes final. If the hours and fee fall below the agreed-upon percentage, the client and attorney share the savings. If the hours and fee exceed the negotiated amount, the attorney is only paid an agreed-upon percentage of the excess amount billed. For example, if a client and attorney agree upon a \$20,000 fee with a 20 percent up and down collar, this means that the attorney receives \$20,000 if the fee falls between \$16,000 and \$24,000. If the attorney works only \$12,000 in billable time, the \$4,000 difference is split and the client receives a \$2,000 credit, meaning the final bill would be \$18,000. If the attorney works \$28,000 in billed time, the attorney is paid fifty percent of the amount over the \$24,000 collar, meaning the final bill would be \$22,000.

While not covered in this Toolkit, how and when you will get paid by the clients is an important topic that relates to pricing. Payment plans, including ACH payments and other arrangements, may allow clients to pay smaller amounts more consistently. Newer methods of paying for legal services, such as crowdfunding or litigation financing, may help your clients pay for services. Through crowdfunding, for example, a person with a legal issue can raise money from people within their family or community to pay for legal fees. [Funded Justice](#) is an example of a legal crowdfunding website.

[See the Fee Arrangement Matrix](#)

□ **Understand the Steps and Variables Involved in Your Matters and Whether Technology or Other Methods Might Help You Do the Work More Efficiently**

Mapping out and fully understanding the component parts to a given matter and the various contingencies that may arise gives you the means to determine where you are offering the most value to your client and how best to price it. This process will help you create a pricing baseline and “guardrails” – pricing highs and lows for each piece of work that account for the mutual assumptions built into each pricing arrangement. When breaking down matters involving litigation, such as contested divorces, it is important in this exercise to work through all potential outcomes, including unknown variables and worst case scenarios, so that you can generate the most accurate baselines and guardrails possible.

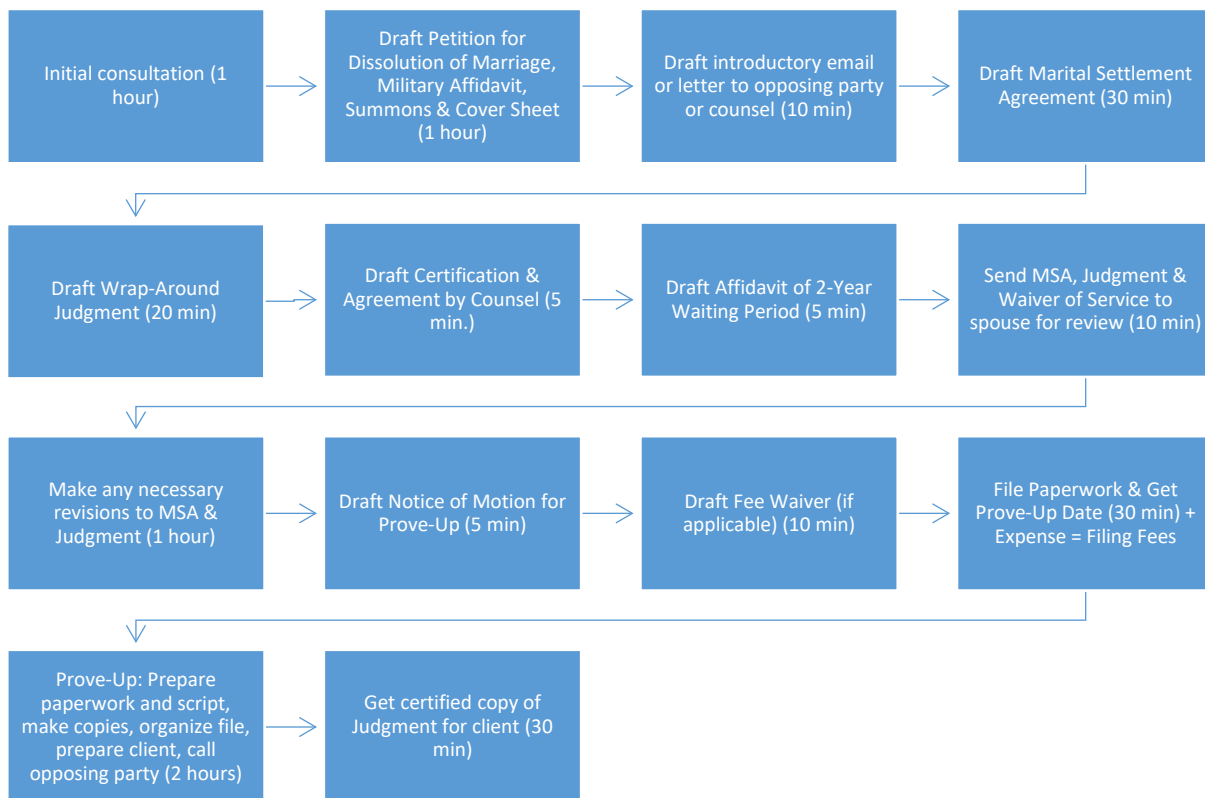
This process, sometimes referred to as “process mapping” or “process improvement,” also helps you identify how you can work more efficiently by forcing you to contemplate what goes into each task and how using technology tools such as document automation and e-filing can help you work faster and oftentimes more competently. In addition, process mapping can help you better understand all of the steps involved in a particular case and identify and eliminate redundancies and inefficiencies in the way you are doing your work. Finally, when you are offering unbundled services or breaking your pricing down by task or phase of the case, process mapping will help you better understand how and when that will work most efficiently and effectively for you and your client.

Below are examples of how process mapping can help you by visually breaking down each matter into discrete tasks with associated units of time. To do this, you will have to start at a baseline. What information do you know about the potential client and potential issues that could arise in this type of matter? What resources (e.g. templates, automated document preparation, past cases that were very similar) do you have to work with?

Uncontested Divorce Case*

Assumptions:

- No kids
- Draft all paperwork prior to filing
- Limited assets
- Using templates as starting points for all drafting
- Filing in person (so no electronic filing fee)
- Postage (if any) will be absorbed into the final fee; try to communicate and exchange documents electronically



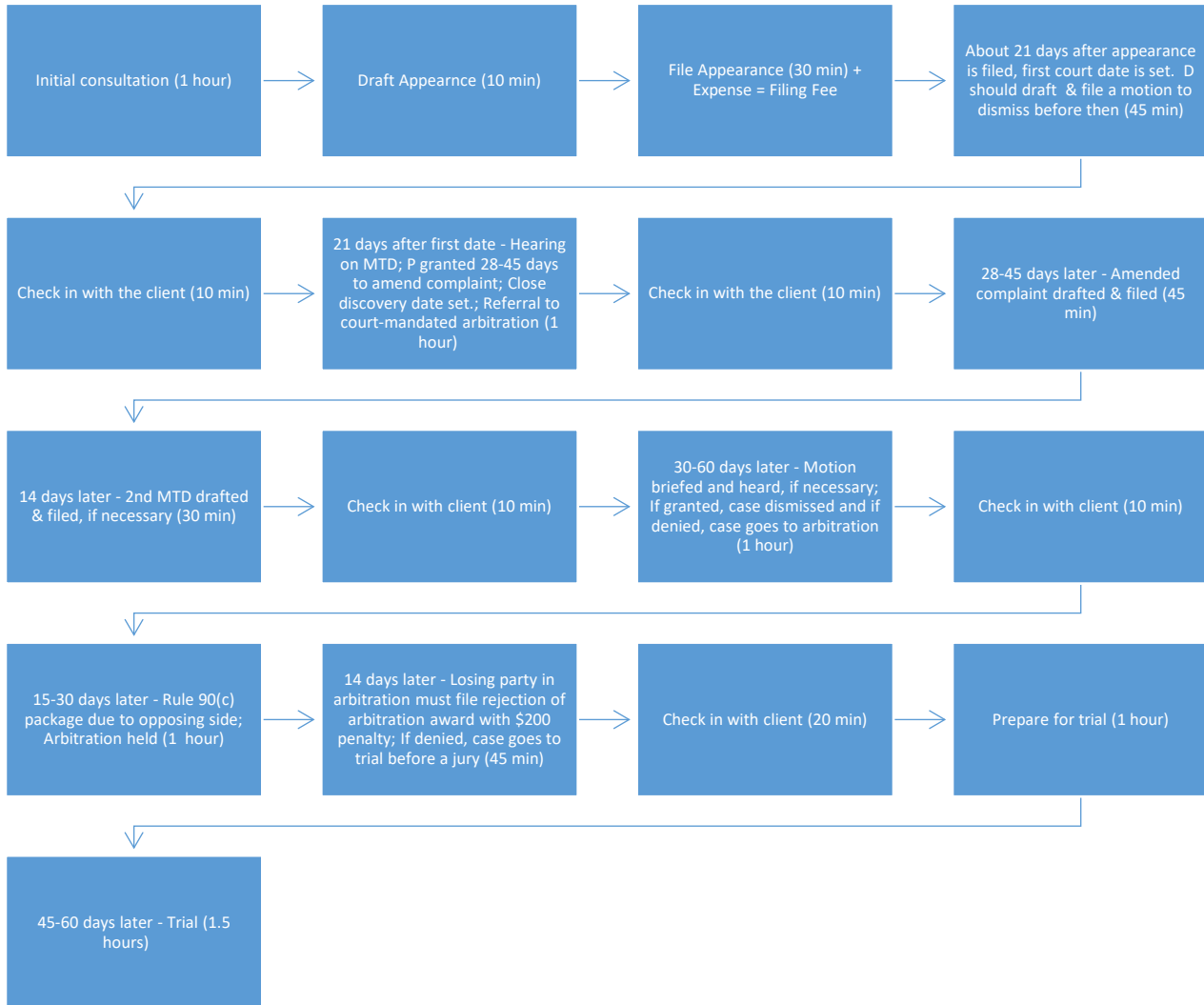
**The time increments used in the example above were arbitrarily selected and are being used for illustration purposes only.*

Credit Card Defense Case Involving Fraud*

Assumptions:

- The motions schedule could change and thus the timing would change
- The court could grant extensions that are not reflected below
- Contested case, over \$10,000 at stake, and a jury demand is filed
- Filing in person (so no electronic filing fee)

- Using templates as starting points for all drafting
- Postage (if any) will be absorbed into the fee; try to communicate and exchange documents electronically



**The time increments, prices and other information used in the example above were arbitrarily selected and are being used for illustration purposes only.*

Calculating your Business Expenses, Minimum Salary, Desired Salary, and Revenue Goals

An important step in evaluating your pricing structure and your approach to delivering client services is understanding three things: how much it costs to run your business; how much money you need to live on; and, given the stage of your practice, how much money you ultimately want to make beyond that.

□ Identify and Calculate Your Monthly Business Expenses

Your business expenses include all costs and expenses associated with running your firm, including office expenses, insurance, software, and other technology expenses; marketing and other professional expenses; and general administration and overhead costs. Taxes (e.g. self-employment taxes, if applicable) should be included as well.

□ Identify and Calculate Your Personal Living Expenses/Minimum Annual Salary

For purposes of this checklist, your annual personal living expenses include all expenses that are necessary to maintain health, safety, well-being, and the ability to earn money. Examples may include costs associated with housing, utilities, food, clothing, and transportation, and various types of insurance, such as health, disability, and automobile. Once you have calculated your annual personal living expenses, add the income taxes that would be paid on your annual personal living expenses in order to calculate your minimum annual salary.

□ Determine Your Desired Annual Salary

Your desired annual salary will take into account your annual personal living expenses and the additional disposable income you want to spend and save each month (e.g. recreational activities, saving for vacations, saving for retirement, etc.), and remembering to also take into account income taxes. Obviously, your desired annual salary needs to be realistic for the stage of your practice. If you have just started your firm, your desired salary realistically may be just above what it takes to meet your expenses, while at later stages, it should be more realistic to aim higher.

By understanding your costs and identifying realistic income goals, you can determine how much per month or per week you need to average in order to meet your goals. If, for example, your business and living costs add up to \$40,000 per year and you hope to make at least \$10,000 beyond that, you need to average \$1,000 per week to achieve your goal (assuming you take off for holidays and some vacation time).

Looking at your expenses and goals in this fashion helps free you from looking at things through the hourly lens, helps inform your pricing strategies, and helps you evaluate how you are doing. Instead of looking at how much you should charge a client for each hour, you can look at what mix of paid services you need to average each week/month/year to meet your revenue goals.

Conduct Market Research

An important step in the pricing process is determining what other attorneys and businesses in your service area are charging for similar services or other types of resources where there is a discernable market for that service, such as Avvo.com or the online legal forms market. What is the going rate for your type of service? How are lawyers or firms in your practice area and community branding and marketing their services? The purpose of this market research is not to encourage a race to the bottom or suggest that your pricing should match what others may be offering, but your competitor's pricing and branding will help you understand the market. Differentiating yourself and explaining the value you offer will help you attract prospective clients and is an essential part of your branding. If your proposed pricing does not appear competitive in the marketplace, you may need to assess whether you can become more efficient or reinvent your processes in order to effectively compete in that space.

For example, a brief Google search showed that in the Chicago area, online divorce forms can be completed through an online service such as LegalZoom for as little as \$299.00. For as little as \$499.00, an attorney will complete the documents and handle the associated court hearing. Potential clients searching for legal services on the internet are unable to assess the quality of these forms and services. The prices associated with these forms and services are what they will see, however, and if price certainty and affordable fees are valuable to them, they are likely to be interested in contacting these attorneys and online services.

Putting it All Together

□ **Assign Pricing to Your Legal Services**

Now that you have determined what value and services you will offer potential clients, understand the steps and variables involved in your matters, know your business expenses and revenue targets, and have conducted market research, it's finally time to use all of the information you have collected and assign pricing to your legal services.

For more predictable matters or tasks (e.g. routine court hearings, counsel, and preparation of simple contracts or other documents), you may be able to establish standard prices for each time you do it based on the consistent value you are offering your clients in those situations. For other matters, it might be a range of prices you offer based on the value you can offer in the particular circumstances involved (e.g. lower end of range if an eviction can be resolved short of trial, higher end of range if a trial is required). Even for matters where you can't have a set price for all situations due to the variables involved, staying away from the billable hour and being transparent with potential clients about the range of prices, and the reasons for that range, is valuable and helps provide some certainty to the potential client.

For other matters, you may have two or three options you can offer the potential client, depending on particular facts involved and the client's ability and willingness to do parts of it on his or her own. For example, in a collection defense case, you might offer the potential client a fixed fee to negotiate and attempt to settle the matter for the client, with three options for what happens next: an additional set amount for a contested hearing or trial, possibly broken into phases depending on the complexity; a reverse contingency arrangement based on how much you are able to save the client in the case regardless of the stage at which you are able to achieve that resolution; or an unbundled arrangement where you provide coaching to the client and the client then proceeds on his or her own for the remainder of the case.

These are just a few examples of how you might look at pricing a particular matter. It's important to understand that there is no silver bullet here or magic formula that can be used to determine optimal pricing for legal services in every situation. Attorneys must do what business owners do in other industries – understand the value they can deliver to their customer, use the information they have available to them to make the most educated decisions possible, and then experiment and adjust based on experience. It is a given that not every arrangement will work out in your favor, but carefully monitoring each matter will help you learn from your experiences and make adjustments to your pricing approaches going forward.

If you have established a relationship with your client based on trust and have identified for your client the key assumptions and variables that were taken into account in your original pricing, you may be able to go back to your client and discuss renegotiating the agreed upon pricing if doing so would be reasonable. Just be sure to include a clause in your Legal Representation Agreement that allows you to have this conversation and to draft and sign a new or modified Legal Representation Agreement if changes to the pricing are in fact made.

Develop Checklists and Templates for Each Matter

Developing checklists and templates for particular types of legal matters and unbundling options is an integral step in streamlining your intake and pricing processes. For example, it is helpful to develop a checklist for your initial consultations. Depending on your practice, it generally is also helpful to develop templates for certain pleadings, agreements, or letters that will increase efficiency and allow you to standardize your approach.

□ Experiment, Track Your Time, and Make Adjustments As You Go

Once you have assigned pricing to your legal services and begin to experiment, it is important to track your time and make adjustments as you go for at least the first year or two. This process will help you create a pricing baseline and guardrails, and will help you to better price your services going forward.

We are not suggesting that you track your time for the purpose of billing by the hour or pricing your services in accordance with it. Instead, we suggest that you track and evaluate how much time you are spending on particular tasks and matters. This allows you to understand if your pricing for particular matters has the potential to match your income goals over time. It may also help you determine efficiencies or better ways of doing the work. And finally, in cases where fee shifting is available or a dispute develops over the work you have done, you will often need to produce time records to substantiate your work. Unfortunately, for fee shifting, the time records may need to be in the dreaded increments from the billable hour world. See Andy Norman's article, [Attorneys' Fees, Maximize Your Recovery in Fee-Shifting Cases](#), which appeared in the Illinois Bar Journal in February 2015, for additional information on how to track time.

Conclusion

Offering a variety of fee arrangements that are not based on the billable hour has tremendous potential for you to attract new clients, to strengthen relationships with your existing clients, and to have a more fulfilling practice that gives you every incentive to innovate and maximize efficiency in how you offer value to your clients. While there is no silver bullet here to determine which arrangement to use and how much to charge in every situation as you get started, you can set yourself up for longer-term success by using the tools and resources recommended in this Toolkit, experimenting with different fee arrangements, tracking your results, and adapting as you learn. In the process, you'll be helping move our profession towards a better future where regular people do not feel priced out of the market for necessary legal services.

Fee Arrangement Matrix

Please note that this is not an exhaustive list of fee structures or the practice areas “ideally suited for” each structure. We hope the examples below will inspire further innovation, and we look forward to adding additional examples to this list as they are identified.

Type	Description	Well-Suited For
Fixed Fee by Task	An attorney charges a specified sum for the completion of a certain task associated with the case or matter (e.g., review of a contract, court appearance, etc).	Most practice areas
Fixed Fee by Phase	An attorney charges a specified sum for the completion of a certain phase associated with the case (e.g., initial case review, discovery, trial, etc.)	Many practice areas, including litigation, landlord/tenant, and domestic relations
Fixed Fee by Case	An attorney charges a specified sum for handling the entire case or matter. This arrangement works best for less complex matters with a higher degree of predictability about the potential range of legal work likely to be involved.	Uncontested divorce, many post-decree domestic relations issues, real estate closings, immigration visas, wills/trusts, less complex estates, landlord/tenant, more modest civil litigation, contract disputes
Recurring Fixed Fee	Recurring fixed fee arrangements can be used both in litigation and transactional settings, and in both instances involve charging a standard fee on a recurring monthly, quarterly, or other time increment basis. Non-litigation recurring fixed fee arrangements are typically used in the context of advising clients. A litigation recurring fixed fee arrangement provides clients with more certainty with respect to their litigation budgets.	Small business (non-litigation), domestic relations (e.g., contested custody cases, contested divorce), condo associations
Contract Recurring Fee	An attorney charges an initial fee for the creation of a document, such as a contract, and earns a fee every time the client uses the document through a licensing agreement or similar arrangement.	Small business (non-litigation)
Pure Contingency	The attorney receives a specified percentage of the amount recovered in the case and either the prospect of recovery and/or the amount that can be recovered is uncertain. The client generally will be charged any hard costs associated with the case, but the attorney does not receive any fee unless the case results in a successful recovery. This structure is a way to share the risk between attorney and client, and works well when the amount at stake and the potential for recovery are sufficient to balance the risk to the lawyer.	Personal injury, breach of contract, debt collection
Reverse Contingency	The attorney receives a percentage of the amount saved for the client. The base amount from which savings are calculated should be agreed upon with the client up front. Reverse contingency fee arrangements work best in cases where liability is an issue but damages are not.	Breach of contract

Fee-Shifting	Hundreds of state and federal statutes provide for attorney fee-shifting when the client prevails in a case, and also provide bargaining leverage to recover fees during settlement.	Consumer Fraud, Security Deposit, domestic relations (statutory fee shifting allowable where the other party can afford to pay fees)
Flat Fee Plus Contingency	The attorney charges an agreed upon flat fee in addition to a specified percentage of the damages awarded, if any. The client is typically also charged hard costs associated with the case. This arrangement works best in cases when there is greater uncertainty of either liability and/or the amount that may be recovered, yet the client still sees value in pursuing the matter.	Breach of contract
Flat Fee Plus Reverse Contingency	Where the attorney charges an agreed upon flat fee up front in addition to recovering a percentage of the amount saved for the client. The client is typically also charged hard costs associated with the case. This arrangement works well in situations when the client can benefit from receiving brief advice from counsel about their rights and responsibilities in the situation, and benefit from having a lawyer as their advocate to negotiate or obtain a better result than the client likely would be able to obtain on their own.	Consumer debt collection
Holdback	Specifies that the lawyer will withhold an agreed upon portion of the core fee arrangement on behalf of the client and return it to the client unless the attorney obtains a particular result, which is usually tied to client satisfaction.	Currently most often used in more sophisticated business litigation, but has broader potential applicability
Success Fees	Similar to the Holdback, in this instance the attorney receives an agreed upon bonus payment in addition to the core fee arrangement if the result meets agreed upon criteria. Aligns incentives for the lawyer and client.	Typically used in more sophisticated business litigation, but has broader potential applicability

Please see the [Fee Arrangements](#) section of the Pricing Toolkit for a full description of each fee arrangement.