

## 2 Best Practices For Determining Reasonable Fees and Their Impact on Realization Rates



reasonable fees

Are your fees reasonable for your clients? How do they impact your firm's realization rates?

It's 2016.

Cravath, Swaine & Moore LLP has just stated that it would boost its starting pay for junior lawyers to \$180,000. Firms across the country scrambled to follow suit. Those increases have continued to today where an associate's starting salary hovers at \$190,000.

How did clients respond?

With protests. Clients complained against the rate increases firms were paying their associates because they know where the money will come from.

It comes from them.

## Why clients hate rate increases

When Cravath increased associate salaries, Bank of America's [general counsel stated](#) they were against the rate increase and that they weren't going to pay for it.

"While we respect the firms' judgment about what best serves their long-term competitive interests, we are aware of no market-driven basis for such an increase and do not expect to bear the costs of the firms' decisions."

It's stressful when clients decide not to pay.

### **Yet it's unavoidable.**

There *will* be pushback. If you increase your rates in an attempt to ensure you're paid what you're worth your clients will resist.

Why?

Because there's an unconscious bias lurking at the bottom of your client's rate objections. An unreasonable bias that masquerades as fair and appropriate.

### **All rate increases are unreasonable.**

The majority of your clients won't admit this unpalatable truth but there it is. So how do you increase your rates, receive reasonable fees for your expertise and ensure realization rates stay high?

You follow best practices.

This means relying on the eight factors listed in [Rule 1.5](#) of the ABA's Model for Professional Conduct.

1. The time and labor required for the matter, the novelty and difficulty of the questions involved, and the skill necessary to handle the matter properly.
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;

7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. Whether the fee is fixed or contingent.

### **This is the foundation.**

These are important factors that every attorney and law firm should follow. As a whole though, these factors aren't as specific as they *could* be. Our focus here is **(a.)** setting reasonable fees (which is quite broad) and **(b.)** improving firm realization rates.

How do we do that?

Well, the solution is both obvious and counterintuitive.

### **You communicate and prepare.**

I realize this advice sounds generic so we're going to unpack this a bit. Simply telling associates to "*go ahead and discuss things with clients ahead of time*" isn't all that helpful. These strategies need four ingredients to work effectively.

1. Setting reasonable fees can be a frustrating and subjective endeavor. If you don't have a clear approach it's going to be difficult to get the results you need from your clients.
2. The clients you target aren't always the clients you accept. You need to make an important distinction between the *clients you want* versus the *clients you have*.
3. *When what* and *how* are just as important as asking "*how much?*" If your timing is poor, clients are far more likely to resist. When it's time to pay they may be unwilling or unable to comply with your request.
4. Circumstances tend to constrain our behavior. It's difficult to say no to the wrong client when they have deep pockets, the right connections or incentives you want. Sometimes though, it's important to say no even when we don't want to.

With that in mind let's take a look at our best practices.

### **Best practice #1: Disqualify your prospects quickly**

The first step in determining reasonable fees begins with choosing the right clients. When it comes to the word "*reasonable*," there's a great degree of variance.

Why is that?

Your services are only as valuable as you and your clients say they are.

What?

[Some firms](#) bill on a sliding scale representing indigent clients for \$21 to \$250 per mo. [Other firms](#) bill a rate of \$1,105 per hour sending clients invoices in the tens of thousands for services rendered in a given month.

What's the difference?

Both of these firms work exclusively with clients who meet the following criteria:

**They're willing and able to buy.**

That's it. This seems so obvious, doesn't it? Yet it's the one thing many firms refuse to do. Most firms do the opposite. They take on clients who appear to have the money for their services. They do incredible work for their clients. These clients then decide not to pay.

This is unnecessary.

Here are a few disqualification strategies you can use to dramatically increase your realization rates.

- **Tie practice areas**, fee arrangements and client demographics together. If you prefer to be paid on retainer identify the demographics of clients who can afford to do that. Identify the practice areas most likely to produce that result. Ask qualifying questions during your client intake process. Disqualify prospects who aren't a good fit.
- **Identify two to three firms** who are a better fit for unqualified prospects. Refer your unqualified prospects to these firms. This gives you the chance to provide value to prospects who aren't a good fit for your firm. But it also helps you avoid billing disputes and payment issues down the road.
- **Be selfish with your time.** Choose to share time with prospects who only meet your predetermined criteria. If you need a larger retainer or upfront fees *bill prospects for an upfront consultation*. This enables you to separate serious prospects from entitled time wasters or hungry knowledge vampires.

This strategy requires discipline, targeting, timing and a strong ability to say No. It's heresy to the attorneys and law firms who are desperate for revenue and afraid of losing the business.

## The effects on your realization rates:

- You attract clients who **(a.)** have the money/resources to pay for your services and **(b.)** are willing to pay for your services
- You decrease billing disputes and collection activity
- Dramatically reduce the number of write-offs, write-downs and discounts you have to issue to keep clients
- Increased realization rates [at all three levels](#) as you attract clients who *value your work enough to **pay full price*** for your services

See the difference?

## Best practice #2: Spell your terms and conditions out *first*

Clients *hate* surprises.

Negotiate a desired rate/range, ideal budget *and the mechanisms for adjusting that rate **at the start of your relationship***. This is **not** what happens at many firms.

Clients are simply told.

Many firms negotiate with a “*take it or leave it*” approach – “*if you want my services this is the price.*” If clients are desperate, and you’re the best candidate, many will go along with it. But this certainly doesn’t produce the kind of lasting loyalty you need to build a stable book of business.

Wait just a minute here.

Am I suggesting that you let clients dictate the price they should pay for your time, hard work and expertise?

**Absolutely not.**

I’m suggesting that you use *No* to negotiate with your clients.

Here’s the problem.

You really can’t use the word “No.” It’s a kind of currency you’ll need to spend carefully. Use the word No directly one too many times and you risk alienating your prospects before they’ve had a chance to become clients.

**This is complicated.**

How do you say no without saying no? Here's are a few strategies I've gleaned (and revised) from [Adam Grant](#), Wharton professor and author of Give and Take:

1. **The deferral.** I'm only able to take on two additional clients at this time. If you're not ready to move forward maybe you can check in again in # months? (for prospects who may not be serious)
2. **The delay.** Would you prefer to pay for X now or later? Paying now would require a larger upfront fee but would be cheaper overall. Paying later could be done in installments (via AFAs) but would be more expensive in the long term
3. **The bridge.** I have two associates in my firm, (Stanford and Earnest) who are specialists in IP Law. Getting their help on this would *require an additional \$8,000* in the next week but would **save you \$43K to 96K** in hard costs over the next five months. What would you like to do?
4. **The referral.** I'd like to work with you on this. I feel that Steven Mitchell, a partner at Rosenberry, Pasquale and Reinstadt, would do a much better job with your taxation matter. Can I put you in touch with him?

You can also use:

- **The stipulation.** I can handle 2/3 of the issues in your case at the budget you've set. How do you want to handle the 1/3 that's left?
- **The alternative.** Here are a few low cost alternatives we can use to handle the minor details of your case. This would ensure you have the budget needed to handle major items like X.
- **The option.** Would you prefer to fight this and go to trial or settle and make this go away quickly? You'll need \$350K to fight this and \$127K to settle. Fighting this will take 8 mo. (or more) settling can be done in 2 mo. or less.

See what's happening?

These examples give you the chance to tie your client's deepest desires to their wallet (budget). This is [psychological framing](#) at its finest. It also isn't a trick or a form of manipulation. If your clients want a specific result or outcome they'll need to provide you with the resources to accomplish that.

### **The effects on your realization rates:**

- Saying No frames the conversation appropriately. It shows clients you're willing to work with them but you have limits on what you're willing or able to do for them.

- Your willingness to say No, to walk away triggers [loss aversion](#), increasing *their* willingness to work with you in good faith.
- Their desire to keep you on the hook, to avoid losing you increases the likelihood of improved realization rates and greater profit per partner/employee
- Setting the terms and conditions ahead of time dramatically reduces billing disputes and clients haggling over rates

## **Are your fees are unreasonable?**

Some prospects think so.

Your services are only as valuable as you and your clients say they are. Most prospects *should* feel that your fees are unreasonable. If they're not a fit they should be disqualified.

What about your realization rates?

Most firms have far more control over their realization rates than they realize. Follow the right steps and your firm's revenue and profits will skyrocket. Start by:

- [Identifying the blind spots](#) that hurt your firm's realization rate
- [Optimizing](#) your firm's realization rate
- [Improving](#) your firm's realization efficiency
- Outlining the right strategies you'll need to [avoid billing disputes](#)

Rule 1.5 is the foundation.

Your firm can build on that foundation. With the right communication and a bit of preparation you'll have the strategies and tactics you need to boost your firm's revenues and realization rates, no disputes needed.

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