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Pricing, Fee Structures, Billing and Collection

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One of the most fundamental ways lawyer can make their services valuable and accessible, and in turn increase their client base, is through alternative pricing structures. Providing certainty in your pricing can set the stage for more affordable, accessible, and transparent services for the client and a more fulfilling and successful practice for yourself.

SETTING YOUR FEES

Setting fees entails a thorough understanding of the area of law you practice, the average time required to complete a task, and your client base. Your business plan, your fee structure, billing and collection require constant review and monitoring. 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.

Consider Alternative Fee Structures

Clients are used to paying a set price for just about everything in their lives, and just about every other consumer market (including for other professional services) offers transparent pricing. Potential clients can see a price and determine whether they can afford to pay it and whether they will get commensurate value in exchange for it.

For legal services based on the billable hour, clients are typically being asked to make what amounts to an open-ended commitment with no sense of control over what it might ultimately cost. The billable hour also can act as a disincentive to efficiency because it puts the focus on the lawyer's time rather than on the value to the client.

As a result, you should consider fee arrangements other than the billable hour that can offer the opportunity for increased affordability, transparency, and accessibility by prioritizing client value, innovation, and efficiency. They also help you to distinguish yourself in the market, opening up what are now latent client opportunities.

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

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- There are functioning markets for many consumer legal services that do not depend on the billable hour (*e.g.*, personal injury, real estate closings, etc.);
- Companies such as Legal Zoom, which offer what they describe as legal solutions for fixed prices, are growing their market share every day;
- Many larger companies and a growing number of law firms serving them are successfully using alternative fee arrangements (see the Association for Corporate Counsel Value Challenge, www.acc.com/valuechallenge, for examples); and
- Other professional services, such as accounting and consulting, have been able to transition away from the billable hour, proving that doing so is not only possible, but also potentially lucrative.

Even if you do not use the billable hour, you still need to understand how much time you spend 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 defend against an Office of Attorney Regulation Counsel claim. Third, tracking your time will allow you to show clients the value you are bringing to them, which could become particularly important in a case where an assumption changes and you need to revisit and potentially change the Client Engagement Agreement. Finally, tracking time will give you a feel for how much time it typically takes for a certain type of case or task, allowing you to set an appropriate fee.

Alternative fee arrangements are becoming more prevalent by the day as potential clients seek greater value and certainty. As you assign pricing to your legal services, ask yourself what fee arrangements fit your practice and your clients. See the Fee Arrangement Matrix to review a variety of arrangements.

Consider Market Research

When considering what your fees are going to be, you might consider conducting market research. Market research is an important step in the pricing process because determining what other lawyers and businesses in your target market are charging for similar services or other types of resources where there is a discernable market for that service, such as the online legal forms market, will give you a better sense of how to be competitive.

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 competitors' pricing and branding will help you understand the market. Differentiating yourself and explaining the value you offer is an essential part of your branding and will help you attract prospective clients. If your proposed pricing does not appear competitive in the marketplace, it would be good to assess whether you can become more efficient or reinvent your processes in order to effectively compete in that space. One resource is the Colorado Bar Association's Economic Survey, which provides statistics on Colorado attorney income. See the Economic Survey on the Law Practice Management page at www.cobar.org. This survey is scheduled to be produced again in 2017.

Fees Must Be Fair and Reasonable

Pursuant to Colorado Rule of Professional Conduct 1.5, fees must be fair and reasonable. Colo. RPC 1.5. Factors to be considered include:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service 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.

Set Up Proper Accounts

The Colorado Rules of Professional Conduct 1.15(a) through (e), Safekeeping of Property, detail specific rules an attorney must follow to track and protect client's property. Colo. RPC 1.15(A-E).

1. Trust account: A trust account is separate from any business and personal accounts and from any other fiduciary accounts that the lawyer or the law firm may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which the lawyer shall deposit, or shall cause the law firm to deposit, all funds entrusted to the lawyer's care and any advance payment of fees that have not been earned or advance payment of expenses that have not been incurred. A lawyer shall not be required to maintain a trust account when the lawyer is not holding such funds or payments.
 - a. One or more of the trust accounts may be a Colorado Lawyer Trust Account Fund ("COLTAF") account. A COLTAF account is a pooled trust account for funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time, and as such would not be expected to earn interest or pay dividends for such clients or third persons in excess of the reasonably estimated cost of establishing, maintaining, and accounting for trust accounts for the benefit of such clients or third persons. Interest or dividends paid on a COLTAF account shall be paid to COLTAF, and the lawyer and the law firm shall have no right or claim to such interest or dividends.
 - b. Importantly, money held in trust for a client should be placed in a regular trust account. Colo. RPC 1.15B(h). The difference between a regular trust account and a COLTAF trust account is that the interest earned in a regular trust account goes to the client or third party. Similarly to the COLTAF trust account, the lawyer and the law firm have no right or claim to the interest or dividends.

2. Operating account: A business account or accounts is account(s) into which the lawyer shall deposit, or cause the law firm to deposit, all funds received for legal services. Each business account, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a “business account,” an “office account,” an “operating account,” or a “professional account,” or with a similarly descriptive term that distinguishes the account from a trust account and a personal account.
3. Personal account: An account where funds are deposited that you are paying yourself and paying your personal expenses.

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Understand What Success Means to the Client

It is important that you determine what “success” means to each client so that you can realistically discuss and then choose an appropriate fee arrangement that aligns with the client’s 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.

Provide Choices for Legal Assistance

Lawyers distinguish themselves and build positive relationships with clients by providing choices to clients and pricing accordingly:

- offering unbundled services and other options;
- offering payment options for pricing; and
- pointing them toward information and resources they can use on their own to prepare for and supplement your services, such as to the Colorado courts’ self-help website, www.courts.state.co.us/Self_Help/Index.cfm, for free resources and court forms.

Theory of Quantum Meruit and Setting Milestones

Flat fees are not earned until a benefit is conferred on the client. Colo. RPC 1.5. It is important to clarify in the fee agreement the basis of payment if the representation were to terminate before the attorney has completed all agreed upon services. One method is the use of milestones. By including milestones or an earnings schedule in the fee agreement, there is a basis for determining the proper amount of unearned fees that need to be refunded to the client in the event that representation terminates. Also, this adds an element of transparency for the client as to the fee arrangement.

The following is an example of setting milestones in a Chapter 13 Bankruptcy case that could be incorporated into a fee agreement:

**Chapter 13 Bankruptcy Case Example:
Client Charged a \$2,650 Flat Fee**

\$700.00	Earned after lawyer reviews client's credit report and documentation and calls the client to confirm Chapter filing, requests additional documentation from client (if applicable), and schedules the filing.
\$1,200.00	Earned after paperwork required for Chapter filing, including a plan, is completed.
\$750.00	Earned after the client reviews and signs the paperwork required for filing, the case is filed, notice is given to the applicable creditors, and the lawyer has checked in with the client regarding the 341 hearing date.

Utilize Solid Project Management and Process Mapping/Improvement

By fully understanding the component parts of a given matter and the various contingencies that may arise, you can determine where you are offering the most value to the client, how you might price the matter in each phase of the case, and whether you can offer an unbundled or flat fee.

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 you can generate the most accurate baselines and guardrails possible. This process 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 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. See samples of Process Mapping in the Appendix to this chapter.

BILLING YOUR CLIENT

When selecting a billing system, think about user-friendly billing experience. Each invoice is an excellent opportunity for you to demonstrate transparency and value to your clients. Each invoice can illustrate that you are carrying out your agreed upon plan and moving closer to achieving the client's goals. Use terms and language that your client will understand, provide detailed descriptions of each segment of work, and send out invoices regularly.

When it comes to creating invoices, you have three options. You can create your own, purchase legal billing software, or purchase law practice management software that includes a billing feature. Many billing and law practice management software programs are designed to integrate with credit card processing software developed specifically for law firms. Note that you still need to provide invoices to clients when they pay all or a portion of the fee up front, including in flat-fee cases. All of the same rules apply, and your invoices should line up with the fee schedule in your Client Engagement Agreement.

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Collections can be challenging for all attorneys. Big and small firms alike have experiences of unpaid bills or writing off receivables as an inevitable aspect of practice. Also, every law firm has at least one client who either does not pay in a timely manner or does not pay his or her fees — or a portion of them — at all. However, there are tools and systems you can set up to help ensure collection.

Detailed Fee Agreement

Develop a Client Engagement Agreement that clearly outlines the terms of the representation, including payment expectations and non-payment ramifications. Basic contract principles apply here: use a written agreement, sign the agreement, have the client sign the agreement, address all material terms therein, etc. Importantly, make sure the agreement clearly states the consequences to the client for failure to honor the agreed-upon payment terms. For further information on Engagement Agreements, be sure to review Chapter 2: Client Intake, Initial Screening, and Client Engagement Agreements.

Send Regular Invoices

Not only does sending regular bills to the client provide transparency and communication, but it also offers a friendly reminder of fees due. Importantly, try to create a conversation with the client to determine why he or she is not paying. The client may be angling for a discounted bill, and a simple conversation might be all that is needed to resolve the dispute. If numerous invoices are ignored, you might consider writing the client a demand letter more firmly requesting payment.

Payment Options

As discussed earlier in this toolkit, clients value convenience and having choices. Therefore, in addition to offering traditional payment options, consider offering credit card and

online payment options, such as eChecks. Certain card processing companies can provide a streamlined process by:

- allowing your clients to pay by credit card (either in person or online);
- immediately separating the funds into trust and operating accounts; and
- deducting service fees only from your operating account, as required by C.R.S. § 5-2-212, the ABA Code of Professional Conduct, and the Colorado Rules of Professional Conduct.

TIPS

1. Consider alternative fee structures.
2. All fees charged must be reasonable. See Colo. RPC 1.5.
3. Are your fees clearly explained in the fee agreement and communicated to the client?
4. Except in circumstances where a lawyer has previously represented a client, communication regarding fees must be in writing. See Colo. RPC 1.5.
5. Set up proper accounts and ensure that client trust funds are kept in a COLTAF or other bank trust account separate from operating funds in the operating account. See Colo. RPC 1.15.
6. Avoid commingling by regularly transferring earned fees out of the trust account and placing them into the operating account.
7. If the fee agreement involves a retainer, do you have a proper trust account and has it been explained to the client how unearned fees will be held in trust? See Colo. RPC 1.15.
8. Remember, a flat fee cannot be “non-refundable” or “earned upon receipt.”
9. For flat fee arrangements, is it clearly defined how fees are earned?
10. For a contingent fee agreement, have you complied with Chapter 23.3 of the Colorado Rules of Civil Procedure? See C.R.C.P. Chapter 23.3 and forms.
11. Establish a billing system and provide detailed bills that are reviewed regularly.
12. Have you considered tools and establishing systems to help ensure collection, including an arbitration clause?
13. If you are going to accept credit cards, you cannot pass credit card processing fees to the client. See C.R.S. § 5-2-212.
14. If client funds are held in COLTAF in error, you can contact COLTAF and get a refund so the interest goes to the client. See www.coltaf.org/10-2/, click on “COLTAF’s refund procedures.”

Liens

Attorneys can assert liens in Colorado as a means of collecting fees. For detailed information about types of liens, Colorado law and ethical considerations, see Chapter 7 of *Lawyers' Professional Liability in Colorado: Preventing Legal Malpractice and Disciplinary Actions*, published by Colorado Bar Association CLE.

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Include an Arbitration Clause in Fee Agreement

It is advisable to include an arbitration clause in your fee agreement as a way to address potential fee disputes. Arbitration is an informal process, typically faster and a low-cost alternative to court. Additionally, unlike litigation, the arbitration process is confidential and not open to the public. The Colorado Bar Association offers a free arbitration service through the CBA Legal Fee Arbitration Committee, www.cobar.org/legalfee.

Filing a Collection Lawsuit

There are no ethical problems with an attorney filing a lawsuit against a client for collection of fees. (See CBA Ethics Opinion 20, www.cobar.org/ethicsopinions.) However, it is important to note that pursuing unpaid fees through the courts is often not in your firm's best interest. A large percentage of legal malpractice claims are the result of a counterclaim in a fee dispute. As a result, costly litigation that takes time and energy to defend can ensue, so it is important to carefully weigh the costs of litigation as a means to collect. Furthermore, many lawyers get a large percentage of their clients through referrals.

If you do decide to pursue your fees in court, you will first need to secure a judgment from the court in which your case was initially heard. For example, if the underlying case is a

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divorce case, you will need to go back to the domestic relations court and ask for a judgment for your legal fees. Additional statutory or model rules may also be relevant. Once you have an enforceable Client Engagement Agreement and you have sought and obtained a judgment, you can then pursue collection, including but not limited to garnishing property or non-exempt wages.

FIND ADDITIONAL WAYS TO PROVIDE VALUE TO CLIENTS

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It is worth noting that today's clients are seeking value beyond resolution of their perceived legal issues. Many clients, but particularly moderate income clients, also find value in the following:

Price Certainty: This might be a flat fee, such as in a routine traffic case, or a range of pricing or contingency fee options, such as in a contested court proceeding. In other matters, such as a debt collection case, this might be a relatively modest fixed fee for unbundled legal services, advice, and coaching that can lead to other service arrangements going forward. Whatever the case, remember to always have a written fee agreement. The more certainty you can offer the potential client as to what your services will cost, the better. 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. Let potential clients know up front as much as you can about your pricing.

Clear and Consistent Communication: This seems straightforward, but the number of lawyers who fail to clearly and consistently communicate with their clients is surprising. See Colorado Supreme Court Office of Attorney Regulation Counsel Annual Report 2015 at www.coloradosupremecourt.com.

Affordable Fees: Offering reasonable fees that are competitive in the marketplace will help you get and keep clients. See the Fee Arrangement Matrix in the Appendix to this chapter for alternative fee structures.

Collaboration: Working closely with the client builds empowerment and trust and can reduce the client's expenses if he or she is able and willing to handle some parts of the legal matter personally. Technology increasingly allows online collaboration as a way for clients to complete forms and other key documents. See Chapter 5: Unbundling/Limited Scope Representation and Chapter 7: Brick and Mortar or Virtual.

Convenience: Offering hours and locations that are convenient for potential clients can be accomplished in several ways, including by offering them the option to communicate and collaborate with you using online collaboration tools or through a virtual law office client portal. See Chapter 7: Brick and Mortar or Virtual.

Flexibility and a Variety of Potential Fee Arrangements: By offering a variety of fee arrangements, you allow potential clients to choose the option that works best for them and show them that you are working to meet their needs. Take care, however, not to overwhelm potential clients — you should offer no more than two or three fee arrangements for any given legal matter. See the Fee Arrangement Matrix in the Appendix to this chapter.

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APPENDIX

CBA Resources

Law Practice Management

- As a service to its members, the CBA Department of Law Practice Management provides information and resources on a variety of law practice management issues, including templates on Forms2Share, a collection of materials in the Lending Library, Tech Tuesday Webinars, and monthly newsletters.
- CBA Economic Survey: provides statistics on Colorado attorney income, annual compensation for other legal staff, and law firm billing rates and practices.

The Colorado Lawyer

- “Collecting Fees: Making Life Easier,” Randy Evans, Shari Klevens & Lino Lipinsky (June 2015)
- “Deciding When to Sue a Client for Unpaid Fees,” Randy Evans, Shari Klevens & Lino Lipinsky (July 2015)
- “Flat-Fee Arrangements: The Risks, the Rules, and Fee Recovery,” Nancy L. Cohen (Dec. 2015)
- “Perfecting the Tenth: Best Practices in Billing,” Heather Kelly & Ed Hafer (Oct. 2016)

The Docket

- “Seven Things to Consider Before Accepting Credit Cards,” Karen Kishbaugh (March 2013)

Articles

Alternative Fee Arrangements & Pricing

- “A Case for Alternative Billing,” Mark A. Robertson, *Law Practice Magazine* (July/Aug. 2012)
- “Making Alternative Fee Arrangements Work for Any Size Law Firm,” author unknown, *YourABA* (July 2015)

- “Post-Recession Gives Rise to New Law Firm Models,” Joe Forward, *Inside LegalTrack* (Sept. 18, 2013)
- “Planning for Flat-Fee Billing,” Frederick J. Esposito Jr., Blog Post on AttorneyAtWork.com (May 24, 2011)
- “Take the Guesswork Out of Flat Fees,” Peggy Gruenke, Blog Post on AttorneyAtWork.com (April 3, 2015)
- Jon Lax: “Let’s Kill the Billable Hour,” published on YouTube.com on March 3, 2014
- “How to Help People Represent Themselves,” Mike Vraa, Lawyerist.com (Feb. 17, 2016)
- *Alternative Fees for Litigators and their Clients*, Patrick Lamb, American Bar Association (2014) (CBA members can check this book out for no cost through the Lending Library)

Conducting Market Research

- Association of Legal Administrators Antitrust Guide (for members)
- Federal Trade Commission – Price Fixing, www.ftc.gov

Billing

- “Bills That Show Progress Get Paid: Some Practical Invoicing Tips To Demonstrate The Value Of Your Work,” Carol Schiro Greenwald, *Law Practice Management* (Nov./Dec. 2015)
- “Communicating with Clients through Invoices,” Gianfranco A. Piertrafesa, *Law Practice Magazine* (Nov./Dec. 2011)
- “Billing is Marketing,” Sally J. Schmidt, Blog Post on AttorneyAtWork.com (Aug. 22, 2013)
- “eChecks: A Simple Alternative to Credit Cards,” Sam Glover, Blog Post on Lawyerist.com (Dec. 9, 2015)

Collections

- “Get What They Owe You,” Edward Poll, Blog Post on AttorneyAtWork.com (May 17, 2011)

Process Mapping

- “What is a Process Map?,” Chris Anderson, Blog Post on *BizManualz.com* (date unknown)
- “Building Valuable Process Maps Takes Skill and Time,” Joy Taylor, Blog Post on *isixsigma.com* (date unknown)

Setting Up Business Operating & Client Trust Accounts

- “ILOTAs and Client Trust Accounts,” Carole J. Buckner, *GPsolo* (July/Aug. 2011)
- Colorado Lawyer Trust Account Foundation, www.coltaf.org
- “Business Bank Accounts: 6 Mistakes Small Businesses Make,” Sarita Harbour, Blog Post on BusinessNewsDaily.com (April 22, 2014)

Setting Up Payment Plans

- “How You Can Afford a Lawyer: Payment Plans for Every Budget,” Antonio B. Mari, Antonio B. Mari, Attorney at Law, WordPress Blog (Oct. 2010)

Taking Credit Cards

- “Credit Card Processing Tips for Lawyers — Don’t Get Ripped Off,” Stella Fayman, *Lawyerist.com*, (July 2010)

Managing Your Trust Account

- Trust, Ethics, and Practice and Financial Monitor Schools, Colorado Office of Attorney Regulation, www.coloradosupremecourt.com

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Authorities

Colorado Rules of Civil Procedure

- Chapter 23.3, Rules Governing Contingent Fees

Colorado Rules of Professional Conduct

- Colo. RPC 1.0(e), Informed Consent
- Colo. RPC 1.4, Communication
- Colo. RPC 1.5, Fees
- Colo. RPC 1.15, Safekeeping of Property
- Colo. RPC 1.16A, Client File Retention
- Colo. RPC 5.4, Professional Independence of a Lawyer – Legal Fee Sharing
- Colo. RPC 7.1, Communications Regarding a Lawyers Services
- Colo. RPC 8.4, Misconduct

Colorado Ethics Opinions

- CBA Ethics Committee Formal Opinion 20, Fee Collection
- CBA Ethics Committee Formal Opinion 25, Use of Attorney’s Signature on Collection Case Summons

- CBA Ethics Committee Formal Opinion 34, Advancement of Living Expenses for Personal Injury Client
- CBA Ethics Committee Formal Opinion 38, Referral Fees
- CBA Ethics Committee Formal Opinion 40, Accepting Case Handled By Another Lawyer
- CBA Ethics Committee Formal Opinion 54, Fees Charged in Foreclosure or Redemption
- CBA Ethics Committee Formal Opinion 66, Imposition of Interest or Finance Charges on Client Accounts
- CBA Ethics Committee Formal Opinion 67, Contingent Fee Arrangement in Child Support and Spousal Maintenance Cases
- CBA Ethics Committee Formal Opinion 72, Recovery of Attorney Fee by Lender Using In-House Counsel
- CBA Ethics Committee Formal Opinion 82, Assertion of Attorney's Retaining Lien on Client Papers
- CBA Ethics Committee Formal Opinion 85, Release and Settlement of Legal Malpractice Claims
- CBA Ethics Committee Formal Opinion 94, Ethical Duties Relating to a Client's Property Held by a Lawyer in Which a Third Party Has an Interest
- CBA Ethics Committee Formal Opinion 99, Use of Credit Cards to Pay for Legal Services
- CBA Ethics Committee Formal Opinion 100, Use of Conversion Clauses in Contingent Fee Agreements
- CBA Ethics Committee Formal Opinion 104, Surrender of Papers to the Client Upon Termination of the Representation
- CBA Ethics Committee Formal Opinion 106, Referrals Fees and Networking Organizations
- CBA Ethics Committee Formal Opinion 109, Acquiring an Ownership Interest in a Client
- CBA Ethics Committee Formal Opinion 110, Assertion of Attorney's Charging Lien and Taking Security Interest in Client Property to Protect Fees
- CBA Ethics Committee Formal Opinion 118, Handling of Funds Disputed After Proper Withdrawal from Trust Account

Case Law

- *Elliott v. Joyce*, 889 P.2d 43 (Colo. 1994): Unless provided in the contingent fee agreement, *quantum meruit* recovery is not enforceable.
- *Dudding v. Norton Frickey & Associates*, 11 P.3d 441 (Colo. 2000): Attorneys may seek *quantum meruit* recovery even when a contingent fee agreement fails as long as the attorney gave written notice to the client of the possibility of a *quantum meruit* claim.
- *Mullens v. Hansel-Henderson*, 65 P.3d 992 (Colo. 2002): An attorney is entitled to fees under *quantum meruit* when the agreed-upon services are successfully completed but the contingent fee agreement is not in writing. The *Dudding* rule only applies when the attorney-client relationship terminates before the agreed-upon services are completed.
- *Fasing v. LaFond*, 944 P.2d 608 (Colo. App. 1997): Attorneys are solely responsible for ensuring the validity of a contingent fee agreement and cannot rely upon a client's representations.

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- *In re Sather*, 3 P3d 403 (Colo. 2000): Advance fees, including flat fees, cannot be “non-refundable” and must be placed in trust accounts to be withdrawn only after the attorney has earned them.
- *Jenkins v. District Court*, 676 P2d 1201 (Colo. 1984): When a lawyer has chosen to seek judicial aid in collecting his or her fees and obtains a judgment, the lawyer can assert the full range of a judgment creditor’s remedies.
- *Enyart v. Orr*, 238 P. 29 (Colo. 1925); *see also Rupp v. Cool*, 362 P2d 396 (Colo. 1961): When an attorney sues a client for unpaid legal fees, the attorney must show, in addition to proof of contract and performance, that the contract was “fair and reasonable under the circumstances” and that the services to be performed were “reasonably worth the amount” stated in the contract.
- *In re Marriage of Swink*, 807 P2d 1245 (Colo. App. 1991): Under the Uniform Dissolution of Marriage Act, the court can order a party to pay a reasonable sum for legal services rendered to the other party by a pro bono attorney in dissolution of marriage proceedings.
- *Olsen and Brown v. City of Englewood*, 867 P2d 96 (Colo. App. 1993), *aff’d*, 899 P2d 673 (Colo. 1995): An attorney’s *quantum meruit* recovery is limited to the value of services rendered as of the date the attorney-client relationship terminated.
- *People v. Banman*, 901 P2d 469 (Colo. 1995): Upon request, an attorney should provide an accounting of fees.
- *Jones v. Feiger, Collison & Kilmer*, 903 P2d 27 (Colo. App. 1994), *rev’d on other grounds, Feiger, Collison & Kilmer v. Jones*, 926 P2d 1244 (Colo. 1996): Any provision in a legal services agreement that would deprive a client of the absolute and unqualified right to accept or reject a settlement is void as against public policy.
- *Law Offices of J. E. Losavio, Jr. v. Law Firm of Michael W. McDivitt, P.C.*, 865 P2d 934 (Colo. App. 1993): The reasonableness of attorney fees is still subject to scrutiny by the court even if the parties have agreed to the amount, rate, or terms of the fee.
- *People v. Radinsky*, 490 P2d 951 (Colo. 1971): Excessive fees can be a basis for disciplinary action.
- *In re Gilbert*, 346 P3d 1018 (Colo. 2015): Discussion by Colorado Supreme Court on the applicability of *quantum meruit* in flat-fee disputes between lawyers and their clients.

American Bar Association Ethics Opinions

Fee Agreements

- Formal Opinion 11-458, Changing Fee Arrangements During Representation
- Formal Opinion 02-425, Provision that Fee Disputes Arbitrated

Billing

- Formal Opinion 00-420, Contract Lawyers, Surcharge to Client for Use
- Formal Opinion 93-379, Itemizing Services and Disbursements

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Business Transactions with Client

- Formal Opinion 00-416, Purchase of Client's Accounts Receivable from Client
- Formal Opinion 00-418, Stock Ownership as Compensation

Contingent Fees

- Formal Opinion 87-354, As Payment Arrangement with Medical-Legal Consulting Firm
- Formal Opinion 94-389, Recovery and Liability Certain
- Formal Opinion 93-373, Reverse Contingent Fee

Division of Fees

- Formal Opinion 95-392, In-House Counsel Sharing Fee Award with For-Profit Corporate Employer
- Formal Opinion 87-355, Prepaid Legal Services
- Formal Opinion 93-374, Pro Bono Organizations, Sharing Court-Awarded Fees with Sponsoring Pro Bono Organizations

Fees Paid by Third Party

- Formal Opinion 08-450, Multiple Representation

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FEE ARRANGEMENT MATRIX

Sample fee structure and suitable practice areas

Type	Description	Well-Suited For
Fixed Fee by Task*	A lawyer 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.). The term "fixed fee" and "flat fee" are used interchangeably.	Most practice areas
Fixed Fee by Phase	A lawyer 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

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Fixed Fee by Case*	<p>A lawyer 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.</p> <p>Concerns with this arrangement include potential “windfalls” if the case is resolved quickly or conversely a lopsided agreement where the lawyer is working many more hours than expected in order to earn the set fee.</p>	Uncontested divorce, many post-decree domestic relations issues, real estate closings, immigration visas, wills/trusts, less complex estates, landlord/tenant, more modest civil litigation and contract disputes
Recurring Fixed Fee* **	<p>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.</p> <p>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.</p>	Small business (non-litigation), domestic relations (e.g., contested custody cases, contested divorce), condo associations
Contract Recurring Fee**	A lawyer 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 lawyer 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 lawyer does not receive any fee unless the case results in a successful recovery. This structure is a way to share the risk between lawyer 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 lawyer 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 at issue but damages are not.	Breach of contract

Pricing, Fee Structures, Billing and Collection

Fee-Shifting	<p>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.</p> <p>When available, this type of fee arrangement works particularly well for clients who can afford to pay little or no money for services and the client's case has potential merit.</p>	Consumer fraud, security deposit, domestic relations (statutory fee shifting allowable where the other party can afford to pay fees),
Flat Fee Plus Contingency ***	The lawyer 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 lawyer 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
Time Based	Usually hourly rates based on the amount of expertise of the lawyer and the time spent on the case.	Complicated dissolution cases or contract cases
	Additional hybrids can be found in <i>The Chicago Bar Foundation Pricing Toolkit</i> , http://chicagobarfoundation.org/pdf/jep/pricing-toolkit.pdf .	

**Chapter
3**

*In Colorado, all types of fixed fees are not earned "until a lawyer confers a benefit on the client or performs a legal service for the client." Colo. RPC 1.5. Therefore, these fees must be placed in a trust account upon receipt. Once the fees are earned pursuant to the Client Engagement Agreement, they can be transferred to a business operating account. All client engagement agreements involving fixed fees need to contain an earnings schedule or milestones that form the basis for quantifiable recovery so you can refund the client the proper amount of unearned fees in the event that either of you terminates the representation prior to completion of all the legal services outlined in the agreement.

** A lump-sum or fixed fee should not be confused with an "engagement retainer fee," which "is a fee paid apart from any other compensation, to ensure that a lawyer will be available for the client if required." Colo. RPC 1.5, Comment 16. "[E]ngagement retainer fee[s] will be earned upon receipt because the lawyer provides an immediate benefit to the client, such as forgoing other business

opportunities by making the lawyer's services available for a given period of time to the exclusion of other clients or potential clients, or by giving priority to the client's work over other matters." *Id.*

***Note that in all contingency fee arrangements, the fee arrangement must be in writing and comply with Chapter 23.3 of the Colorado Rules of Civil Procedure, "Rules Governing Contingent Fees." Fee arrangements that permit lawyers to earn additional money if a certain event occurs or a milestone is achieved could potentially be construed as contingency fee arrangements; therefore, lawyers offering such fee arrangements should put them in writing and comply with same rules.

Chapter 3

PROJECT MANAGEMENT EXAMPLES

As mentioned above, mapping out and fully understanding all aspects of a given matter along with various contingencies will help you determine whether you are offering the most value to your client and how to best price the service(s) you will offer.

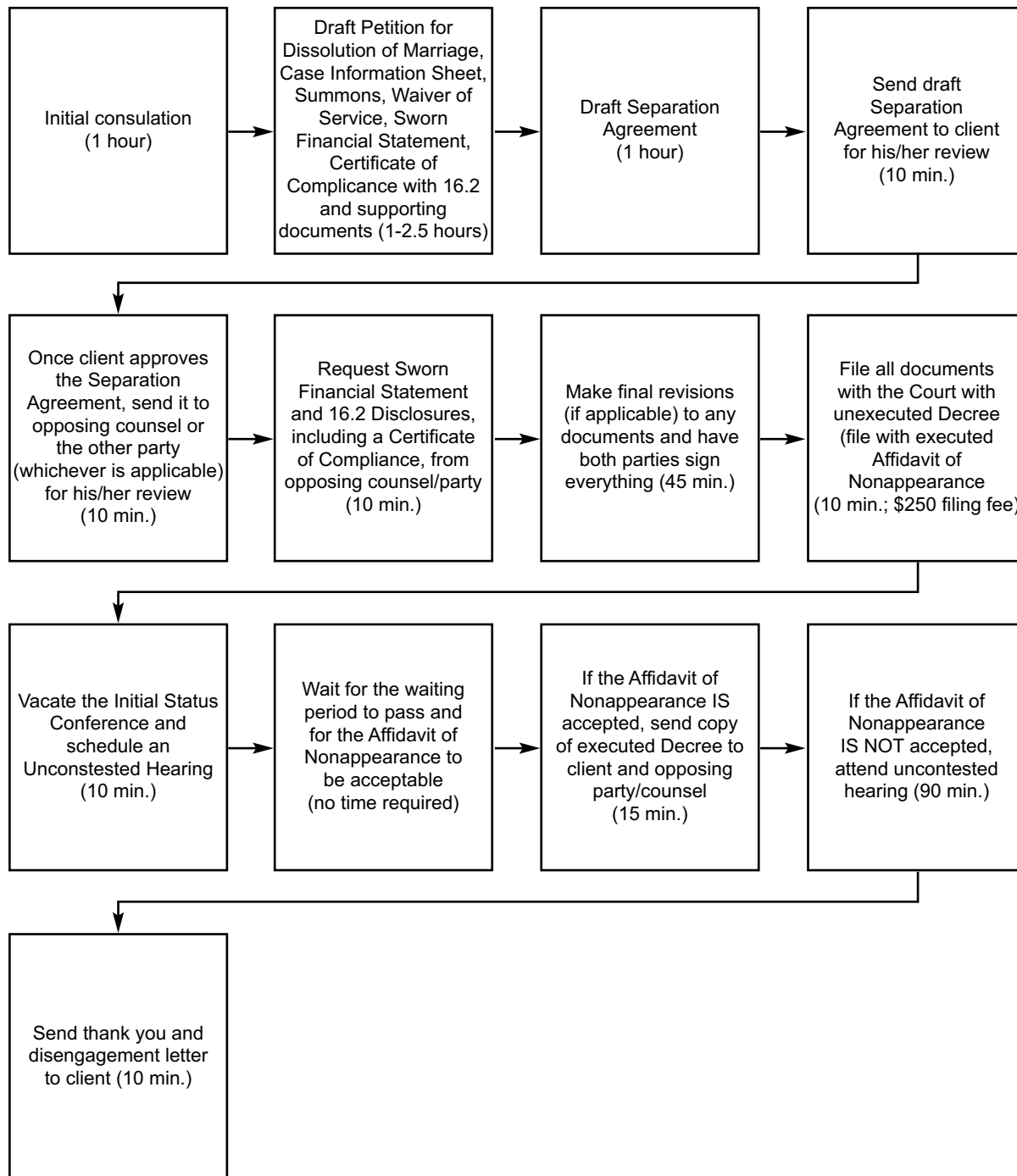
Below are two examples — an uncontested divorce case and a Chapter 7 or 13 bankruptcy case — of how process mapping can help you complete this step and visually break down each matter into discrete tasks with associated units of time. To do this, you will have to start at a baseline. What information do you know about potential clients 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? When process mapping, it is important to list any built-in assumptions and to assign dollar values to each task.

Uncontested Divorce Case*

Assumptions:

- No kids, no maintenance, and limited assets;
- Draft all paperwork prior to filing;
- Using Colorado Supreme Court forms as starting points for all drafting;
- Postage (if any) will be built into the final fee; try to communicate and exchange documents electronically.

Pricing, Fee Structures, Billing and Collection



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

Chapter 7 or 13 Bankruptcy Case*

Assumptions:

- Using templates as starting points for all drafting;
- Postage (if any) will be built into the fee; try to communicate and exchange documents electronically;
- \$100 in fees for two required classes for debtors will be included in the final fee;
- Travel costs will be built into the final fee;
- Chapter 13 Bankruptcy has a presumed reasonable fee of \$3,600, and in order to charge in excess, an hourly billing must be provided to the court and notice given to the creditors.

Chapter 3

