



Alternative Fee Arrangements for Appeals

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Lawyers and their clients continue to seek alternatives to hourly billing arrangements. One area of law especially suitable for an alternative fee arrangement is appellate litigation. Unlike trial-court litigation, where the costs of discovery can be unpredictable, the work required for an appeal is more predictable for experienced appellate practitioners. Because the record for an appeal is fixed by trial-court proceedings, and because the schedule for an appeal is much shorter than for most trial-court proceedings, an experienced appellate practitioner can generally predict the amount of work that will be required for an appeal with greater accuracy than a lawyer can predict the amount of work required for trial litigation.

This opportunity for greater predictability also makes it possible for clients to receive the benefit of an alternative fee arrangement, especially a fixed-fee arrangement. Lawyers preparing a budget or alternative-fee proposal for an appeal should consider several factors relevant to the hours of work the appeal will take. Those factors include:

Appellant, Appellee, or Cross-Appeal

Trial court resolution

Staffing

Oral Argument

Mediation

Did your client win?

At what stage of trial court litigation resolved (e.g., summary judgment, trial). If the length of the trial is long, the length of the appeal may be longer.

What are the expected trial court team members? Will the court require mediation?

Will the court require oral argument?

Will the court require mediation?

The answers to the questions above will drive the hours an appeal is likely to require and thus allow a lawyer to prepare an alternative-fee proposal.

For a lawyer to provide an alternative-fee proposal that is fair to a client and profitable for a law firm, the lawyer needs to consider answers to the preceding questions in light of experience with

similar case. Billing data about past appeals is critical to predicting work required for new appeals. Therefore, a law firm must keep reliable data about its work on past appeals. Best practices for keeping that data include opening a new matter for each appeal and using specialized task codes for appeals so that a law firm can analyze how much of an engagement was devoted to specific tasks, such as record review, legal research, drafting, etc. While opening new matters for appeals and coding the work performed adds a little time and inconvenience for those working on a matter, the data collected is worth the effort.

Questions for Clients

Clients evaluating an alternative-fee proposal may want to ask some of these questions:

- How many appeals has your firm handled?
- How many appeals has your firm handled in the relevant court?
- Is the proposal based on actual past experiences?
- How was data from those past experiences analyzed?
- What are the experiences of the people who will work on the appeal?

With the right experience and reliable data, alternative fee arrangements can provide predictability for clients and a profitable engagement for law firms.

For more information, contact [Darren Craig](#) or any attorney with Frost Brown Todd's [Appellate](#) practice group.

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