

## BOOK REVIEW

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### A Review of *How to Set Your Fees and Get Them*

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**REFERENCE:** Kelly, Kate. *How to Set Your Fees and Get Them*, Visibility Enterprises, Larchmont, N.Y., 1989, 109 pp.

This is a brief book on a topic that should be dear to the hearts of free lance forensic consultants: How to set up a fee schedule and how to collect one's fees once the job's done. Its chapters discuss such matters as how to determine what your time and knowledge are worth, how to choose an appropriate fee structure (per hour, per day, flat rate and the like), how to go about quoting the fee to the potential client, how to close the consulting agreement with a letter of agreement (examples of which are provided in an appendix) and what to do if problems arise.

The author, Kate Kelly, is a business consultant and a frequent lecturer on business-related topics. She is the author of other self-help books and articles. She was formerly an associate director at CBS Radio.

I found the author's discussion of how to determine the value of a consultant's time and knowledge to be most interesting. She considers several possible approaches. The consultant could, for example, base his or her rate on the annual salary of those doing comparable work. In this case the free lance consultant's hourly or daily fee should be approximately two and a half times the comparable rate of someone employed full time doing comparable work (to allow for fringe benefits that an employer normally provides an employee, but which the free lance consultant must provide himself). The consultant could equally well base his fees on the fees charged by other consultants in the same field.

One aspect of fee setting that the author neglects (and indeed an aspect that I have never seen discussed in other similar books) is the compensation of holders of advanced degrees for the time and expense of obtaining such degrees. Most Ph.D.s, for example, have endured years of low-paying jobs, as well as the considerable expense of tuition, in order to attain their advanced degree. If a Ph.D. or other advanced degree is a *sine qua non* for a consultant in a particular field, his fee should reflect that fact.

Kelly, in discussing quoting the fee to the prospective client, touches on the importance of educating the client. The forensic science consultant frequently needs to devote a substantial part of his initial interview with a prospective client to educating the client. If the client has little concept of sophistication of the analyses required in a given case, he may be reluctant to pay what he views as exorbitant charges. The client may not have a clear idea of what kinds of forensic expertise he actually needs. Over the long run, I

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have found it useful to spend some time discussing the details of the case with the prospective client. In this way, I can determine what kinds of expertise the client really needs. Frequently I find myself directing the client to another expert. Although I may have lost that consulting opportunity, the attorney may contact me about other cases.

Not all of this book is applicable to the free-lance forensic consultant. The fees charged by forensic consultants in criminal cases are in most cases limited to what a judge authorizes or what the public defender's service may pay. It is the rare criminal defendant who is not dependent on public funds to pay for his defense. Kelly places much emphasis on the consultant's selling himself to a potential client. My own experience is that because of an almost total lack of free lance forensic consultants in certain specialties, attorneys are only too glad to retain even marginally qualified forensic consultants.

Kelly recommends establishing a schedule for payment. Such a schedule makes it more likely that the consultant will be paid. She suggests different approaches to scheduling payments, depending on whether the consulting job is a short-term one or extends over a long period of time. In the cases of short-term projects, Kelly proposes that the consultant ask for a substantial portion of his fee as a retainer. The fee for longer projects might best be scheduled in a series of installments to be paid at specified time intervals. My personal recommendation to forensic science consultants is that regardless of the potential duration of the project they ask for a substantial portion of their fee as a retainer. I do not generally undertake any work on a case until I have received a substantial retainer. I have found that this insures that I don't get completely stiffed at the end of a case. Moreover, a client who balks at paying a retainer probably won't pay later either. Asking for a retainer is a good way to separate the sheep from the goats. I will waive my retainer if the attorney with whom I am working is one with whom I have worked or if the payment of my fee has been authorized by the court or the public defender.

Ethical considerations play a significant role in forensic science consulting. All too frequently a client wants testimony that may mislead the court or that is downright dishonest. Author Kelly's advice that the would-be consultant establish at the outset what the client actually wants is particularly appropriate in this context. She does not suggest that there may be circumstances in which the consultant should run—not walk—to the nearest exit. Kelly doesn't discuss the ethical considerations that might govern a consulting contract. If the client expects the consultant to do something that the consultant regards as unethical, the consultant will probably not perform up to his maximum potential. Moreover, unethical clients are those most likely to present problems in collecting fees.

The major failing of *How to Set Your Fees and Get Them* is the lack of advice as to what to do if you have provided timely, professional services to a client and now the client refuses to pay. Or worse, the client won't even respond to your letters or telephone calls. Even if you have followed Kelly's suggestion and have a contract with the client, you still may have difficulty collecting your fee. Suing to recover your fees is often expensive and inconvenient, especially if the client is located in another state. Bar associations occasionally will offer help in collecting fees from scofflaw attorneys, but they are more likely to be narrowly focussed on protecting attorneys' clients. Even if the forensic science consultant sues and wins, he still may not be able to collect: Convicted felons tend to be judgment proof.

On balance, while Kate Kelly's *How to Set Your Fees and Get Them* has some useful information for the entrepreneurial consultant, many of her suggestions do not apply to forensic experts. The brevity of the book and its lack of coverage of collection strategies to deal with scofflaw clients, in my judgment, make it only marginally useful to most other consultants.