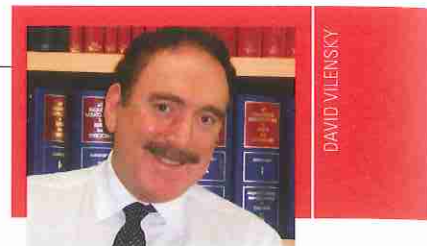


Need to adopt fixed fee pricing by lawyers is self-evident



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According to German philosopher Arthur Schopenhauer: "Truth follows three stages. First it is ridiculed. Then it is violently opposed. Then it is accepted as self-evident."

Having followed the momentum in the financial planning profession towards fee-for-service and away from commission payments, which have for so long represented the status quo, it seems to me Schopenhauer's description is particularly appropriate. Equally appropriate, perhaps, to the changes that are beginning to take place in the way lawyers charge for their services.

And here's why this should matter to financial advisers: have you ever referred a client to a lawyer to deal with an estate planning or other matter, only to be subsequently embarrassed by the large and unexpected bill that was presented? Have you ever thought that legal advice would be helpful, but didn't pick up the phone or arrange a meeting because you knew you'd be invoiced, whatever the value of the advice? Has it ever concerned you that, in charging for hours spent, law firms are actually incentivised to be inefficient at your expense?

If your answer to any of these questions is a heartfelt 'yes', then read on.

The whole idea of billable hours can be traced to Reginald Heber Smith who, as a Harvard Law School graduate in 1914, devised the system as a means of introducing accurate cost accounting into the legal profession. On the surface of things, time billing has an undeniable logic. There are only so many working hours in any day. The main costs of running a law firm are its people. The most equitable way of charging seems therefore to be for clients to pay for their share of lawyers' time.

Once time was accepted as the basic measure of industry, it became the norm for associates and partners to be required to bill a certain number of hours.

A study by the American Bar Association in 1958 showed there were about 1300 fee-earning hours in a year. Fast forward 50 years and we find that most firms expect at least 500 billable hours more than that. The working week hasn't got any longer, so where do the additional 10 hours a week come from?

Talk to most lawyers in large law firms and they'll tell you the answer – from their personal lives, their public service, often from their physical and psychological health.

The tyranny of the billable hour puts lawyers on a treadmill, which is impossible to get off. If you are an ambitious firm or individual – and most are – the only way to get ahead is to bill more hours than your competitors, and to wring every last drop of time from your partners and associates. And it's a curious fact that your colleagues will frequently bill whatever hours are needed to hit their bonuses.

Perhaps you've already been struck by the inherent conflict of interest in all of this? As a lawyer who can find all kinds of ways to spend billable hours on behalf of a client, even if those hours are extremely unlikely to achieve a better outcome, what are you going to do – put the hours in or save your client money?

It is much the same dilemma facing commission-based financial advisers. You can recommend from a wide range of different products, including some which may perform no better than others, but which carry higher commission payments. What road do you take?

This is not in any way to suggest the majority of lawyers, like most financial planners, behave unethically. But some do, and as a buyer of legal advice it can be difficult, if not impossible, to tell the difference.

What's more, the inherent pressures in the system make it difficult for even the best-intentioned lawyers to resist the relentless demands of the time sheet.

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Which is why, if the focus is to be on client outcomes rather than billable hours, lawyers need to move to a model based on the notion that lawyers sell intellectual capital, not time.

That model is called fixed fee pricing. As the name suggests, clients are quoted a fixed fee after an initial meeting to discuss their needs. The fee is a contract, not an estimate.

Like the move from commission-based charging to fee-for-service, fixed fee pricing aligns a law firm's interests much more closely with those of a client's. Once the fee is agreed, both parties share the same focus – a positive client outcome. It is not in a firm's interests to seek delays or create unnecessary distractions.

Having adopted fixed fee pricing over a year ago, my firm knows from experience that financial planners and their clients appreciate the greater certainty and therefore peace of mind of fixed fee pricing where fees are agreed with the client before work is commenced.

Communication is also much improved when clients know they can pick up the phone or email their lawyer and they won't be charged for every contact.

It is also possible to more fairly match fees to particular matters – the billable hour makes no distinction between an emergency requiring urgent court preparation and a routine case that can be efficiently processed by a well-oiled legal machine.

Just as early advocates of fee-for-service found that many of their peers reacted first with ridicule, and then with violent opposition, there are many in the legal profession who react in similar ways to the prospect of fixed fee pricing.

But my firm, and many more like mine in other countries, have shown it can be done.

That fixed fee pricing is in the best interests of both clients and lawyers seems, to me, to be self-evident. «