

WHY DO PEOPLE HIRE A LAWYER OR LAW FIRM? AND WHO THE HECK ARE THESE PEOPLE?

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Why do fools fall in love? Why do birds sing? Life is full of mysteries.

But the answer really depends upon who is responding to the question, and where they are "coming from" in their viewpoints.

To the surprise of no one, the view of lawyers differs from that of just about everyone else. Lawyers believe that everyone needs a lawyer for everything in life. Raise your hand if you have heard of a lawyer or law firm that advised someone he/she did not need legal representation...didn't think I'd find anyone.

According to "Do you really need a Lawyer¹":

"Sometimes it's a no-brainer, such as when you get sued or when you're arrested or charged with a crime. **But keep in mind that people hire lawyers for advice and expertise all of the time, in all kinds of situations.** While you may be able to get through a legal problem without hiring a lawyer, you should always remember that when you represent yourself, you might have a "fool for a client," as the saying goes.

One of the first things to ask yourself in deciding if you should consult an attorney is: "What's at stake?" When your finances or liberties are in serious jeopardy, the obvious answer is to get legal help. But what is *serious*? An ordinary parking summons is a brush with the law, but you need not consult with an attorney to pay the fine or even to fight it. However, if you've accumulated a number of unpaid parking tickets and a warrant has been issued for your arrest, you would probably want to hire a lawyer to help you best resolve the situation, and perhaps save you money or even keep you out of jail.

In good times as well as bad, individuals and businesses rely on their lawyer's advice to understand and secure legal rights and financial interests. Lawyers help clients with estate planning and business negotiations, strategies and transactions. With good legal advice, clients are better prepared to comply with and navigate through the complex mazes of governmental rules and regulations.

It is also a lot easier to rest easily after consulting with experienced lawyers for important undertakings such as tax and estate planning,

¹ *Lawyers.com:*

drafting wills and trusts, negotiating business deals and even pursuing personal family matters such as adopting children.

Many attorneys specialize in one type of law. Other lawyers handle a wide range of matters. ***You want to hire an attorney who has expertise to represent you effectively with respect to your legal problem.***

The Wisconsin Bar recently addressed the issue thusly²:

"The headline in the *Vancouver Sun* was catchy. "Lawyers could go the way of the dodo, magazine suggests" was splashed right there on page A5 of the July 7, 2008, edition. The story reported on an article printed in *National*, the official magazine of the Canadian Bar Association. The story focused on family courts throughout Canada, and stated that in Ontario the rate of self-represented litigants in family law cases is approximately 60 percent, bringing with it the crowded dockets and court congestion familiar to Wisconsin lawyers. The *National* article continued:

"The system is in crisis - and no one is entirely sure what to do about it. Because it isn't just a problem of access to justice, of litigants unable to pay lawyers' fees, although that is a major issue. It's also because a lot of people experiencing marriage breakdown simply don't want to hire a lawyer at all."

In Wisconsin, Judge Mary M. Kuhnmuensch, the presiding judge in Milwaukee County family court, reports that in 2006, 49 percent of divorce cases in the county involved no lawyers, and 83 percent of divorce cases had at least one self-represented party. In a whopping 96 percent of paternity cases, neither parent had a lawyer, and in another 3 percent of paternity cases, only one party was represented. That means that both parents had lawyers in only 1 percent of paternity cases. Just as in Canada, the problem isn't just one of access to justice in Wisconsin. ***Beyond affordability, what is the problem?***

The *National* identified many possible reasons for high numbers of self-represented litigants. First, people feel confident with their ability to use Internet tools and government Web sites to find the information they need to address their legal issues. Also, some self-represented parties may disagree with the advice they have received from lawyers, have a vengeance motive, want to drive up their former spouse's or partner's legal fees, or want to cross examine the

² Diane S. Diel, ***Why Don't They Hire Lawyers***, *Wisconsin Lawyer*, Vol. 81, No. 9, September 2008

other party themselves. The article argues that, generally, people simply are no longer in awe of institutions and do not feel a need for legal expertise.

The now-extinct dodo is not the only bird to be evoked by the Canadian journalists. National editor Jordan Furlong, in commenting on the family law story, said, "I'm coming to think that family law is the canary in the coal mine. Every day, more things that used to be the exclusive bailiwick of lawyers are automated, down-marketed and commoditized by non-lawyers. You already know this if your practice involves transactional matters like wills and real estate. But the pro se trend in family court shows that litigators aren't immune either...."

Furlong identified the two unspoken reasons lawyers aren't hired as, first, the "unacknowledged and disproportionately high cost of hiring a lawyer" and second, the fact that, however slow and cumbersome the process, the courts still function despite the high volume of self-represented individuals.

It is clear that the growth in the number of pro se litigants is partly attributable to the many accommodations made by the courts for them. The availability of self-help clinics, mandatory legal forms found online, and easy Internet research are among the factors contributing to the increase in the number of self-represented litigants. Those accommodations have combined to create the "commoditization" of legal services referenced by Furlong. This is not a criticism of these programs. These programs do, however, pose a challenge to all Wisconsin lawyers.

We lawyers must find a way to demonstrate that we provide more than any "commoditized" package can. Lawyers can start with the idea that increasing the availability of civil legal services to the poor will help us demonstrate the value of being represented by a lawyer. Unless legal services and lawyers are available to all people, lawyers will become more and more irrelevant. By expanding the availability of our services, our services will become more valued. Professional self interest is not the only reason to support the many projects the State Bar developed in response to the "Bridging the Gap" study, but it is one of them."

The jump from, "Not as many people are hiring us anymore" to "let's provide more pro bono services," is an illogical one. Providing more free legal services is commendable and will benefit the poor but will surely not solve the problem expressed above, i.e. how do lawyers get more paying clients?

You may notice that there is absolutely no mention that the **results** achieved by pro se litigants is any different from the results achieved by represented litigants. Moreover, there is no indication that the system moves faster when attorneys are involved. The real problem, from the Bar's point of view, is that people are not hiring lawyers, therefore distressing the legal marketplace.

California lawyers have a slightly different view³:

“Lawyers - the “knights in shining armor” during litigation processes... Certainly!

Every lawyer specializes in one type of law and handles a broad range of matters. ***Private individuals and business people depend on their lawyers’ advice*** to know and protect their legal rights and financial interests. ***They actually hire a lawyer who has expertise to represent them effectively with respect to their legal problem.*** In having a good legal advice, clients are better prepared to comply with and find the way through the complex mazes of governmental rules and regulations.

Always remember that people hire lawyers for legal advice and assistance all of the time and in all kinds of situations. If you aren’t much sure with what your legal rights are, it might be worth your time and expense to keep a lawyer to assess your situation and advise you on alternative courses of action. Even though, you may be able to get through a legal problem without the need of hiring a lawyer, you must always remember that it’s still better to find someone who will represent yourself in your pursuit for the truth and justice.

Say, when your assets or liberties are in serious jeopardy, the obvious answer is to ask for legal help. Even if you end up having to pay a few hundred dollars for the consultation with a lawyer, it can be a very wise investment that ultimately saves you time and money. After all, your main reason in these cases is to keep your money out of your adversary’s pocket and/or avoid criminal sanctions.

To talk to a lawyer can be the best thing you can do if you think you have a legal problem that you can’t resolve by yourself. You just need to be realistic about your chances of winning and what your case is worth. It is also a lot easier to take a rest after consulting with an experienced lawyer for important endeavors such as tax and estate planning, drafting wills and trusts, negotiating business deals, and even pursuing personal family matters.

In most instances, it is evident that you have to take actions fast. Because even if you think you’ve got lots of time to consider your alternatives, deadlines might still sneak up on you and lawyers also need time to prepare for your case. Therefore, it’s always better to start looking for a lawyer sooner than later.

Remember that if you sit on your rights, you can absolutely lose them.”

Each of these articles is written from the viewpoint of the legal profession, and has a common theme: “Hire me and I’ll set you free!⁴” The reality is that people hire a lawyer because the lawyer possesses something that the non-lawyer does not: a license to

³ ***Lawyers, Why Do We Need Them***; Reprinted from www.attorneyservicesetc.com

⁴ With apologies to *The Temptations*.

practice law. In short, people hire a lawyer (or law firm) to practice law on behalf of that person.

“Practicing law” used to mean just that-work performed by attorneys admitted to practice in a particular state or jurisdiction. Eons ago (you know, during the 60’s and 70’s), Law Firms were made up of Partners, Associates and Legal Secretaries-this was the traditional “Triumvirate” of law firms⁵. Legal secretaries aspired to work for Partners. Associates aspired to become Partners, and Partners aspired to become rich and then retire.

Sometime over those years, the Bar bent to allow Paralegals (also known as “Legal Assistants”) to **assist** lawyers in the practice of law. The precise issue of **who** can be designated as a paralegal has not been formally addressed for some time. According to me, a “Paralegal” is the following:

Paralegals or legal assistants are a distinguishable group of persons who assist attorneys in their delivery of legal services. Through formal education, training and experience, these individuals have knowledge and expertise regarding the legal system and substantive and procedural law, which qualify them to do work of a legal nature under the supervision of an attorney. Paralegals should meet certain minimum qualifications. While the case law is generally silent as to who qualifies as a paralegal, Legal Cost Control, Inc. (www.legalcost.com) historically has taken the position that one must possess one of the following qualifications:

- Graduate of an ABA-approved school or program;
- Graduate of a state-licensed school or agency; or
- An individual with three or more years of paralegal experience prior to billing time for this particular client.

Note that this historic definition conforms well to the definition set forth by the National Association of Legal Assistants, Inc. In essence, one should possess either the education or experience necessary to assist the attorney in performing work that would otherwise be performed by the attorney, but under the continued direction and control of that attorney.

It appears at some point in the last 10 years, that law firms decided they no longer wanted to pay fair market value for paralegals but still wanted to charge clients as if the work was qualified professional work. In short, produce the same revenue but compensate personnel on a lesser basis. How has this been achieved? Firms have taken unqualified personnel or secretarial/clerical staff and conveniently designated them as “paralegals” or “legal/litigation assistants” so that work previously done by

⁵ There were also “Law Clerks,” who were lawyers-in-training, kept in the dark, fed manure and definitely never billed to a client. Some lawyers thought it would be legal malpractice *per se* to even think about relying on anything found by a mere law clerk. As for myself, when I was a Law Clerk I primarily aspired to make the world’s worst coffee so that coffee-making would never become my permanent job at the firm.

them, at no charge to the client because same was included in the hourly rate, is now producing billable hours.

Furthermore, many law firms hire newly minted college graduates – with no legal qualifications whatsoever- and designate those personnel as “paralegals” or “paraprofessionals” or “legal assistants” and likewise bill these personnel to the client at professional rates in the \$30 to \$300 per hour range. What part of the college major in Anthropology, Greek or English, for that matter, qualifies these people to be designated as “Paraprofessionals?” They are neither “Para” nor “Professionally” educated. Most clients would seriously object to paying professional rates to non-professional personnel.

The only way for a client to combat this problem is ***to know the qualifications of all personnel working the client’s matters***. As part of its legal auditing process, LCC historically requests the CV’s/Resumes of anyone not identified as an attorney. This is sound advice for any client contemplating hiring a lawyer or law firm.

Law firms today do not practice law on behalf of a client. They instead practice ***the business of law on behalf of the firm***. Firms no longer consist of admitted attorneys practicing law on behalf of clients. Those firms are made up of Senior Partners, Equity Partners, Non-Equity Partners, Of Counsel, Associates (First Years, Second Years, etc.). Any problems with those folks? None at all, so long as the client is satisfied that these people should be working the case or matter.

How about the rest of the people now being billed to the client: Non-Admitted Attorneys (or as non-attorneys like to say, “People who can’t do any more than I can do”); Paraprofessionals, Librarians, Clerks, Senior Clerks, Document Clerks, Calendar Clerks, Technology Personnel, Technology Specialists, Data Clerks, Data Entry Clerks, Litigation Support, Project Assistants, *Special Project Assistants*⁶, Temporary Project Assistants, Research Paraprofessionals, Summer Associates/Law Clerks, Other Paraprofessionals, Public Relations Specialists, Database Personnel, Contract Personnel...the list goes on and on, is fluid and changes almost daily, and is universally undefined.

The old Triangle of Partner-Associate-Legal Secretary is long gone; the geometric equivalent is now a Polygon (go ahead, look it up).

One thing is certain: ***these folks have nothing at all to do with why you hired the Lawyer or Law Firm-to practice law on your behalf***. This cast of characters instead merely represents an opportunity for your Lawyer or Law Firm to charge you an awfully lot more money for the same outcome: win or lose my case, successfully or unsuccessfully complete my transaction, get us out-of-bankruptcy or liquidate my company, etc.

⁶ As opposed to “non-Special” Project Assistants? After all, who wants to be told they are “Not Special?”

In a recent case, Legal Cost Control, Inc. personnel uncovered the following non-lawyer staffing:

- 56 CONTRACT TIMEKEEPERS
- 8 SUMMER ASSOCIATES
- 2 CONSULTANTS
- 20 PARALEGALS
- 1 ASSOCIATE LIBRARIAN
- 4 ASSISTANT MANAGING CLERKS
- 5 CLERKS
- 1 MANAGING CLERK
- 1 MANAGER OF LIBRARY SERVICES
- 1 ONLINE SERVICES LIBRARIAN
- 2 REFERENCE LIBRARIANS
- 1 SUMMER INTERN

When asked, the Relationship Partner did not know most of these people and had a difficult time describing what they did and why they were assigned to the matter. In the end, she agreed they were unnecessary and reduced her fees accordingly.

Moreover, all these people need to achieve Billable Hours and, to do so, requires *mucho* reviewing and revising of the same documents or pleadings⁷, duplication of effort, duplicate attendances. The latter two items I like to affectionately refer to as the “Hand Holders” or “Atta Boys/Atta-Girls” groups.

I don't really need a herd of people with me at most events. Lawyers got the job done for many years without an Entourage. No more. A Team of Law Firm Personnel goes to an event. When the Attorney in Charge needs a drink of water or a new pen, someone on the Team acts as personal courtesan and retrieves same, much to the chagrin of the Other Members of the Entourage who did not first seize the opportunity to provide first class service to the Boss. Where would he/she be without the hand holders and back slappers?

Or a Team of Lawyers and Others enters the courtroom. One stands up and speaks or argues. When finished, the Entourage then gives the speaker an “Atta Boy” or Atta Girl” pat on the back. Just one time before I go to my ultimate reward⁸ I would like a Judge to question the need for so many personnel at the table and, if not satisfied, kick the excess personnel out of the courtroom...it would sure save the poor client a ton of money.

There are usually only two reasons for all those other people to attend the event: training or billable hours, neither of which benefits the client.

⁷ Query: how many lawyers does it take to get it right? Answer: As many people as I have on my Team or Practice Group payroll.

⁸ Retirement, of course.

In my 32 years of legal experience, a law firm's "billing culture" often plays a significant role in the reasonableness or lack of same regarding a firm's fees and expenses. For example, it is conventional wisdom within the legal profession that billable hour incentives frequently are factored into attorney and other employee salaries, bonuses and promotions. As such, billable hour goals (either formal or informal) are established by the firm for attorneys and employees and in turn used in evaluating job performance. New or young associates can be particularly influenced by billable hour objectives to establish security and status in the firm. Likewise, similar objectives for senior associates are typically germane for firm consideration towards a partnership track.

Indeed, the most illuminating example of law firms' billing culture was a memo that circulated among associates in a major law firm. That memo derived from an internal survey of the firm's associates. In that memo, a group of firm associates lamented and decried the firm's billable hour requirements amongst a host of other billing and firm culture concerns. Specifically this memo stated that the firm's associates believed there was a billable hour requirement of 2420 hours (per year presumably) which, in my experience, is on the high end when compared to other similarly situated law firms nationally⁹.

A particularly revealing excerpt from this memorandum regarding the aforesaid perceived billable hour requirement neatly summarizes the pervasive billing culture suggested above, as follows:

"Associates stated that the requirement is profoundly unrealistic, particularly in slow areas of the firm. Moreover associates found the stress on billable hours dehumanizing and verging on an abdication of our professional responsibilities insofar as the requirement ignores pro bono work and encourages "padding" of hours, inefficient work, repetition of tasks, and other problems. Associates expressed concerns that the requirement promotes misallocation of work to senior associates who "need" the hours when less expensive junior associates could do the work. Associates also stated that partners care only about associates' billable hours." (Emphasis added)

Another pointed example of firm billing culture and billable hour incentives for associates was articulated by one of the associates, who noted:

⁹ Professor William Ross opines that "the credibility of billings in excess of 2,000 hours {in a year} is particularly suspect if one assumes that an attorney normally must spend three hours in the office for every two billable hours," Ross, *The Ethics of Hourly Billing by Attorneys*, 44 Rutgers Law Review, Vol. 1, Page 14 (Fall 1991), citing McMenamin, *Lawyers at Bay*, 31 Law Office Economics and Management 370, 373 (1991). Based upon my experiences, I agree with Professor Ross.

“There was a policy at the firm for any associate who billed more than 250 in a month, would be entitled to a dinner at a restaurant of their choice with one other person.”

The longstanding issue here is, “How can I bill so many hours?” As the associate noted above, “padding” and repetitive, unnecessary work helps get one to the annual goal.

In performing any evaluation of a law firm, I always examine the numbers of hours worked each day, by each timekeeper. A report is then generated showing all days in which any timekeeper billed in excess of twelve (12) hours. This figure is used in light of the so-called “67% Rule.” A study¹⁰ of accountants, attorneys, independent adjusters and others who bill by the hour concluded that an average hourly biller could work and bill for approximately 67% of each hour spent on the job. In other words, to bill 8.00 hours in a day requires someone to be on the job for 12.00 hours; to generate 12.00 billable hours requires someone to be on the job for 18.00 hours; to generate 16.00 billable hours requires someone to be on the job for 24.00 hours. (The remaining time in any day is expended on breaks, meals, restroom stops, personal business, etc.). Thus, when one sees so many days with billable hours exceeding 12.00, the time must be closely scrutinized.

According to the aforementioned study, 15 hours could yield 10 billable hours, 18 hours could yield 12 billable hours and it would take 20 hours in the office to yield 13 billable hours. The frequency of these charges on a daily basis raises questions¹¹. Is every minute in the office inappropriately charged to the client, regardless of whether personnel are using parts of the day for non-chargeable business? Is time being recorded contemporaneously with the work performed so that time is being accurately recorded? And, most disturbing, is time being inflated?

I understand that there are some times when people must “Burn the Midnight Oil” and expend long hours. Those instances should be the exception, however, not the norm. The large number of 8+ hour days also raises concerns of accountability, contemporaneous timekeeping and “portal to portal” billing practices.

“Courts have refused to believe that an attorney could perform legitimately billable tasks for periods of time that would seem to require nearly preternatural powers of concentration and stamina. Questioning the accuracy of an entry for 18.9 hours in one day, Judge Charles Hardy of the United States District Court for the District of Arizona observed that the attorney “would have had have been in his office from 5:06 in the morning until midnight, without taking any time for meals, to relieve himself or to do anything else.” Ross, *The Ethics of Hourly Billing by Attorneys*, 44 Rutgers Law Review, Vol.1, Page 13 (Fall 1991), citing *Metro Data Systems, Inc. v. Durango Systems, Inc.*, 597 F. Supp. 244, 246 (D. Ariz. 1984).

¹⁰ The study was not performed by me or Legal Cost Control, Inc nor did LCC participate in the study.

¹¹ A client should be concerned that the quality of work would suffer from anyone allegedly working such long days

Professor Ross goes on to cite the following: “In another case, Judge James K. Logan of the United States Court of Appeals for the Tenth Circuit noted that “[w]e consider it doubtful that one lawyer, briefing an appeal, would work 20 days of a consecutive 21-day period, never spending less than 5.5 hours on the case and spending between 11.80 hours and 20.75 hours on 15 of those days.” Ibid.

And what about the **quality** of the legal representation? Quality is surely a subjective measure that can be assessed only by the client: did I get the results I wanted or intended? Was the outcome fair and reasonable?

Clients don't get better representation or better results because a law firm employs an army of support staff, each of whom is billed to the client. Charging a client for librarians, tech support to the firm, document support staff, paraprofessionals and the like does not change or improve the quality of the representation...so why pay for those people?

The bottom line: clients hire lawyers to practice law for them; those other people do not-cannot-practice law and are therefore superfluous to the client.

In this horrific, downturned economy- where lawyers and other law firm employees are losing their jobs-you can bet the remaining employees understand the unstated message: bill more hours or risk losing your job. Worse, it has been reported that some firms have told their employees that bonuses will be paid based upon increased billable hours.

In this once-in-a-lifetime economy, **clients have to absolutely control the number and mix of law firm personnel who work client matters**. Law firms cannot be left to their own devices in deciding how to staff the cases or matters; those devices inure strictly to the benefit of the law firm's revenue machine, and do not benefit the client.

Clients also need to be attuned to the number of hours being billed per day by law firm personnel.