

Contract Lawyering – The Rewards (and Risks)

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Program & Presentation Materials:

- The Program Materials and this Presentation are available as PDF files at www.RRollings.com

Recent ABA Action

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- ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing was issued on May 2, 2011.
 - The Initial Draft Proposal has only a few changes from the Discussion Draft.
 - The Initial Draft Proposal includes a presumption that the client's informed consent is necessary before hiring contract lawyers.

Recent ABA Action

- “The ABA Commission on Ethics 20/20 has concluded that, although *changes to the text of the Model Rules are not necessary*, comments to some of those Rules should be clarified to address this issue so that lawyers can more easily determine their ethical obligations.”
ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 1.

Recent ABA Action

- “The Commission understands that certain outsourcing is controversial in light of the current employment market for lawyers and the economic hardships faced by lawyers currently seeking jobs.”
ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2.

Recent ABA Action

- “The changes to the comments to Rules 1.1, 5.3, and 5.5 of the Model Rules of Professional Conduct are neither an endorsement nor a rejection of the practice of outsourcing.” ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2.

Recent ABA Action

- “Rather, the proposals respond to the existence and growth of outsourcing practices and are intended to clarify a lawyer’s obligations in this context so that lawyers who decide to outsource do so in an ethical and responsible manner.” ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2.

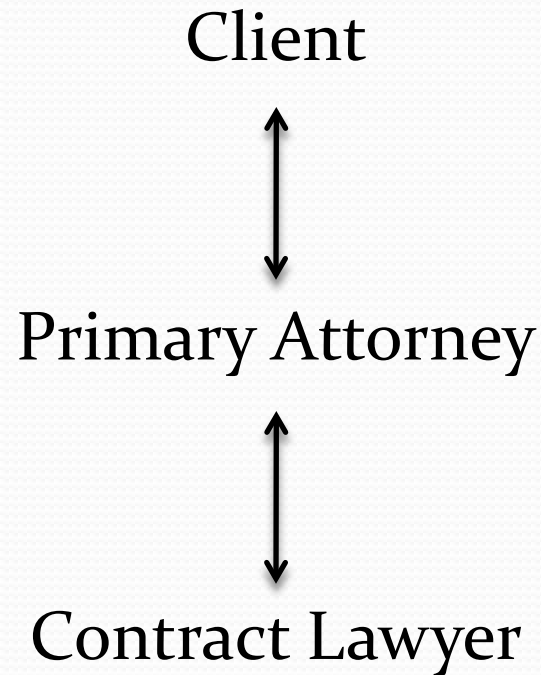
What is Contract Legal Work?

Client



Attorney

What is Contract Legal Work?



What is Contract Legal Work?

- Depositions or Other Discovery

What is Contract Legal Work?

- Depositions or Other Discovery
- Hearings

What is Contract Legal Work?

- Depositions or Other Discovery
- Hearings
- Research
- Drafting

What is Contract Legal Work?

- Specialized Legal Knowledge
 - Workers Compensation
 - Environmental Law

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 - Environmental Law
 - Appellate Practice
 - Intellectual Property Law
 - Government Relations
 - Taxes

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- “Outsourcing also occurs when lawyers retain other lawyers and law firms to conduct a range of services, such as legal research, document review, patent searches, due diligence, and contract drafting.” ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2-3.



Advantages of Working for Other Attorneys

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 - Office with conference room and support staff vs. home office or small office with limited or no staff
- Collecting Fees
 - Getting paid by client vs. getting paid by primary attorney

Advantages for Hiring Attorney

- “Lawyers have found that the same technology-driven efficiencies that have led to an increase in outsourcing throughout the global economy are also making outsourcing an attractive option within the legal profession.” ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2.

Advantages for Hiring Attorney

- “In particular, lawyers have found that, if they exercise proper care in the selection of a provider, work can be completed with greater speed and lower costs without sacrificing quality. These efficiencies may be of particular benefit to solo practitioners and small and medium-sized U.S. law firms, allowing them to better compete for large matters without fear that they will lack adequate resources to perform the legal work involved.” ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2.

Advantages for Hiring Attorney

- “Also, by reducing the cost of legal services, outsourcing can improve access to justice by making legal services more affordable.” ABA Commission on Ethics 20/20 Initial Draft Proposal-Outsourcing, Report, p. 2.



Advantages for Hiring Attorney

- Commitment

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- Commitment
 - Access to additional attorney for a project or case without long term commitment or the overhead involved with hiring associate.

Advantages for Hiring Attorney

- Commitment
- Focus

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- Commitment
- Focus
 - Contract Lawyer conducts research so primary attorney can focus on broader aspects of case.

Advantages for Hiring Attorney

- Commitment
- Focus
- Expertise

Advantages for Hiring Attorney

- Commitment
- Focus
- Expertise
 - Workers Compensation
 - Environmental Law
 - Appellate Practice
 - Intellectual Property Law
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Disadvantages of Contract Legal Work

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- Money

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- Money
 - Reduced Fees

Primary Attorney = \$\$
Contract Attorney = \$

Primary Attorney = \$
Contract Attorney = \$\$

Disadvantages of Contract Legal Work

- Money
- Inconsistent Hours and Income

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- Money
- Inconsistent Hours and Income
- Types of Work Available

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- Types of Work Available
- Isolation



Marketing

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- **Rule 7.3: Direct Contact With Prospective Clients**

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- **Rule 7.3: Direct Contact With Prospective Clients**

(a) A lawyer (including the lawyer's employee or agent) shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, *unless the person contacted*: (1) is a *lawyer*; or (2) has a family, close personal, or prior professional relationship with the lawyer.

Marketing

- **Rule 7.3: Direct Contact With Prospective Clients**

(c) Every written, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client potentially in need of legal services in a particular matter shall include the words “Advertising Material” conspicuously placed both on the face of any outside envelope and at the beginning of any written communication, and both at the beginning and ending of any recorded or electronic communication, *unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). . . .*

Marketing

- **Rule 7.3: Direct Contact With Prospective Clients**
- **LinkedIn, Facebook, Twitter, blogs, and websites**

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- **Lawyer Listserves and Groups**
- **Word of Mouth**

Fees

- Contract lawyer's fee must meet the reasonableness requirement of Rule 1.5 regardless of the fee arrangement used.
 - Rule 1.5(a):

A lawyer shall not make an agreement for, charge, or collect *an unreasonable fee or an unreasonable amount for expenses.*

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 - Hourly
 - Flat Fee
 - Contingent Fee

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- Hiring attorney may add surcharge if reasonable *and* client consents.
- Basis of contract lawyer's fee:
 - Hourly
 - Flat Fee
 - Contingent Fee
- Any fee arrangement must meet requirements of Rules of Professional Conduct.

Fees

- Rule 1.5: Fees

Fees

- Rule 1.5: Fees
 - Rule 1.5(e):

A division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable.

Fees

- Rule 1.5: Fees
 - Rule 1.5(e)
 - Rule 1.5(a):

A lawyer shall not make an agreement for, charge, or collect *an unreasonable fee or an unreasonable amount for expenses*.

Fees

- Rule 1.5: Fees

- Rule 1.5(e)

- Rule 1.5(a)

- Rule 1.5, Comment [7]:

A division of fee is *a single billing* to a client covering the fee of two or more lawyers who are not in the same firm.

Fees

- Rule 1.5: Fees
 - Rule 1.5(a), (e), and Comment [7].
 - Requirements of Rule 1.5(e) must be met *if* the hiring attorney bills the client for the *fees* for both attorneys in one statement.

Fees

- Rule 1.5: Fees
 - Rule 1.5(a), (e), and Comment [7].
 - Requirements of Rule 1.5(e) must be met *if* the hiring attorney bills the client for the fees for both attorneys in one statement.
 - Compensation of the contract lawyer may be structured to avoid involving a “division of fee”.

Fees

- Rule 1.5: Fees
 - No division of fee when:
 - Contract lawyer's charges are billed to client as expenses.

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 - Contract lawyer's charges are billed separately to client.

Fees

- Rule 1.5: Fees
 - No division of fee when:
 - Contract lawyer's charges are billed to client as expenses.
 - Contract lawyer's charges are billed separately to client.
 - Hiring attorney is responsible for contract lawyer's fees *regardless* of whether hiring attorney paid by client.

Fees

- Rule 1.5: Fees
 - Client communication is important regardless of the compensation arrangement.

Fees

- Rule 1.5: Fees
 - Client communication is important regardless of the compensation arrangement.
 - Client should be (1) informed of use of contract attorneys, (2) agree to use of particular contract attorney, and (3) be clearly informed and agree to how and when client will be responsible for payment of any charges.



Scope of Practice

Scope of Practice

- As varied as reasons for practicing contract legal work.

Scope of Practice

- As varied as reasons for practicing contract legal work.
 - Unemployment
 - Augment Salary
 - Supplement Practice Growth
 - Work/Life Flexibility or Balance
 - Dissatisfaction With Traditional Practice

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time

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 - Simplicity of attorneys as clients

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 - Multiple attorneys as clients can provide more stable flow of legal work.

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- As varied as reasons for practicing contract legal work.
- Full Time
 - Simplicity of attorneys as clients.
 - Multiple attorneys as clients can provide more stable flow of legal work.
 - Marketing only to attorneys.

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income
 - During unemployment while seeking other work.

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income
 - During unemployment while seeking other work.
 - While building existing practice.

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income
 - During unemployment while seeking other work.
 - While building existing practice.
 - During slow periods.

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income
- Part-Time

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income
- Part-Time
 - Desire different work/life balance.

Scope of Practice

- As varied as reasons for practicing contract legal work.
- Full Time
- Supplemental Income
- Part-Time
 - Desire different work/life balance.
 - Individual or family circumstances require reduced hours.

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