

# **Working for Others While Working for Yourself: How to Build a Successful Practice with Contract Work**

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# What is Contract Legal Work?

Client



Attorney

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Primary Attorney



Contract Lawyer

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- Depositions or Other Discovery

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- Hearings

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- Hearings
- Research
- Drafting

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  - Workers Compensation
  - Environmental Law

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  - Government Relations
  - Taxes

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- Contract Legal Work can be as varied as the practice of law in general.

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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

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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
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  - Environmental Law
  - Appellate Practice
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  - Taxes

# Disadvantages of Contract Legal Work

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- Money

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- Money
  - Reduced Fees

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

or

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

# Disadvantages of Contract Legal Work

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- Inconsistent Hours and Income

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# Marketing



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This Rule 4-7.3 applies to in-person and written solicitations by a lawyer with persons known to need legal services of the kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment.

(a) **In-person solicitation.** A lawyer may not initiate the in-person, telephone, or real time electronic solicitation of legal business under any circumstance, other than with an existing or former client, *lawyer*, close friend, or relative.

(b) **Written Solicitation.** A lawyer may initiate written solicitations to an existing or former client, *lawyer*, friend, or relative without complying with the requirements of this Rule 4-7.3(b). . . .

# Marketing

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# Fees

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- Rule 4-1.5(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 association and the agreement is confirmed in writing; and (3) the total fee is reasonable.

# Fees

- Rule 4-1.5: Fees

- Rule 4-1.5(e)

- Rule 4-1.5(a):

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



# Fees

- Rule 4-1.5: Fees

- Rule 4-1.5(e)

- Rule 4-1.5(a)

- Rule 4-1.5, 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 4-1.5: Fees
  - Rule 4-1.5(e)
  - Rule 4-1.5(a)
  - Rule 4-1.5, Comment [7]
  - Responsibility for Fees:
    - Primary Attorney vs. Client

# Fees

- Rule 4-1.5: Fees
  - Rule 4-1.5(e)
  - Rule 4-1.5(a)
  - Rule 4-1.5, Comment [7]
  - Responsibility for Fees
- Communication with Client
  - (1) Informed of use of contract attorneys, (2) agree to use of particular contract attorney, and (3) be clearly informed as to and agree to how and when client will be responsible for payment of any charges.

# Contract Legal Work

# Contract Legal Work

“We say who, we say when, we say how much.”  
Pretty Woman (1990).

# Contract Legal Work: What Prompts Decision of Contract Services Provider?

- Economics
- Layoffs / unemployment
- Firm termination
- Quality of life decisions
- Starting a practice area
- Niche practice area
- Supplement practice

# State of the Legal Economy

- Is the legal profession in the midst of a quantum change?
- Do big firm “economics” make sense?
  - Many argue no.
  - Linked-in: Alternative Fee Group
    - General Counsel from Fortune 50 companies expressing displeasure with billable hours and fees;
    - May provide opportunities for small and solo firms to capture traditional “big firm” market share
- Consolidation and grow to achieve market share and synergies?
  - The “Tycos” of the world suggest no.
  - Law firm insolvency and failures
  - Presents additional competition **but also additional opportunities.**
- Project-based legal team assembly
  - Possible trend

# State of the Legal Economy

- “The only stability in the legal business is having legal business.”
- Contract legal concepts --- indication of the need for flexibility and responsiveness in the delivery of legal services.
- Provides an additional source of methods to supply that need and opportunities to lawyers
  - Lawyers and Law firms looking for value



# Hiring Drivers: Contract Legal Work

- Drivers – What does the hiring attorney need?
  - Short term legal assistance
  - Cost effective support
  - Specialized subject matter expertise
  - Trial evaluation period prior to hiring
  - Project team assembly
- Each presents a different type of opportunity with possibly different requirements **and dangers.**

# Full Time verses Part Time?

- For many legal professionals, the pursuit of contract opportunities may be a full time pursuit.
  - These professionals pursue contract legal work from other attorneys, who are in essence their clients.
  - This strategy has several advantages, including :
    - Stable flow of legal work for the contract attorney from among their client base.
    - Market to attorney clients alone, rather than engaging in a broad-based marketing strategy.
  - Attorneys who successfully provide full-time contract support to others often includes those who provide specialized legal services that are sought by other practitioners, such as those previously mention.

# Full Time verses Part Time?

- A second strategy involves providing contract legal services to others to supplement an existing legal practice.
  - Contract attorneys who pursue this strategy often find that providing services to other attorneys provides a stable source of income for their practices.
  - The contract attorney is then free to pursue clients and grow their business.

# Full Time verses Part Time?

- Work/life balance
  - Many attorneys turn to contract work arrangements in an effort to achieve a more favorable work/life balance, or during periods when “part-time” work may be more appropriate under their individual circumstance.
  - These arrangements often arise from the attorney leaving a firm or practice and providing a reduced scope of services to that previous firm.
  - Personal needs of contract attorney
  - The actual working arrangements may take any form and the many find the lack of a formal structure to be beneficial.

# Practice Areas: Contract Legal Work

- The value that a contract attorney brings to the contract relationship often rests in:
  - The contract lawyer’s ability to provide; **supplement services on demand and for a limited period of time**
  - The contract lawyers’ **experience in the particular subject matter or the fact that the contract lawyer has specialized legal subject matter expertise;**
- These attributes allow the retaining counsel or firm to better **meet the needs of their clients in a cost-effective and timely manner** – ideal in recession and possible for years to come.
- Linked-in – Alternative fee group
  - Fortune 50 companies struggling with “out-of-control” legal fees
- **Result: need for value proposition provides opportunity**

# Practice Area 1: Specialized Legal Expertise

- The first practice area that works well with contract legal services involves those that **require specialized legal knowledge**.
  - The attorneys sought in this category include those with practice areas that are tied to very specific and discrete subject matters, such as **tax, securities, environmental law, government relations, appellate practice or employment law**.
  - By supplementing the legal skills available to a client with subject matter experts, **the retaining firm may effectively compete with larger “full-service” law firms that offer specialized legal expertise or services as a part of the firm**.

# Practice Area 1: Specialized Legal Expertise

- **User of services:** Mid-sized, solo, small firms.
- **Value proposition to hiring firm:**
  - The use of a contract attorney allows target firm to provide those same services **on an as-needed basis**, allowing them to compete effectively for the legal work for larger firms **without incurring carrying expenses**.
  - In this situation, the contract lawyer may augment the services provided by the hiring firm, or may be directed to perform a discrete legal task.
  - By hiring specialist – **hiring firm meets needs, but doesn't need to worry about a full service firm "stealing good clients."**
    - Specialist firm – **"does its thing" and client stays with hiring firm.**

# Practice Area 2: Litigation or Appellate Services

- A second practice area that is very compatible with contract legal relationships involves **providing litigation or appellate services**.
- During litigation, many hiring firms often find the need to augment their staff at **critical phases of the litigation process**.
  - The use of a contract lawyer will allow the retaining firm to augment its staff to perform those tasks that **are “man-hour” intensive and provide the firm with a greater level of expertise that may be obtained through the use of paralegals**.
  - **Experienced**. Contract lawyers with previous litigation experience are especially valuable additions to any litigation team.
  - **Less-Experienced**. “Grinders.”



# Practice Area 2: Litigation or Appellate Services

- Appellate services.
  - These counsel may provided valuable assistance as a part of a litigation team by providing critical research and writing skills in motions and in anticipating and preparing for any post trial strategies and activities.
- I would suggest retention of appellate counsel to assist and advise during “big trials.”
  - Assist in identification of issues as they arise at trial
  - Supplement research and motion support
  - Preserve the record
- Skype Example

# Practice Area 3: Due Diligence Support

- A third area where contract attorneys may also provide assistance included real estate transactions or mergers and acquisitions.
- The due diligence review and analysis requirements associated with these types of transactions often require significant review and analysis of both historical and current data regarding the acquisition target.
- The use of specialized contract counsel to reliably perform these functions often allows the hiring counsel to meet enhanced or the “one-time” legal needs of clients.

# Practice Area 4: Legal Research & Writing

- Well established practice among “large litigation firms” on a case-by-case basis.
- The establishment of a relationship with a reliable contract attorney to perform **general research and writing services on an “on-call” or “as-needed” basis** allows the solo or small firm practitioner the ability to effectively provide legal services to clients as they arise and fight “**Toe-to-Toe**” with larger firms with more robust resources.
- It allows the hiring practitioner to operate with existing staff and facilities.

# “I know this Person Who ...”

- **Red Flags and Concerns**

- Conflicts of Interest
- Thoroughly document your relationship with hiring firm or individual
- How much should you know about the “hiring attorneys” relationship and dealings with the Client?
- Who is the client?
- Records Retention.

# “I know this Person Who ...”

- **Red Flags and Concerns (Continued)**
  - What happens if ethical issues arise in joint relationships?
  - What happens if you must withdraw from representation?
  - Insurance – can you really have too much?
  - Monitor, evaluate and correct fire – continually.
  - If in doubt – use the resources provided by Missouri or MOBAR