

Working with and Without and Attorney

This is background information for general use and not intended to respond to specific questions. For that you need to talk with your own attorney or contact the author, Lynne R. Ostfeld, P.C., 300 N. State St., Suite 5405, Chicago, IL 60654; fax: (312) 645-1515; e-mail: ostfeld@ostfeldlaw.com

Jerry Seinfeld is rumored to have said "the law is a game and we all play by the same set of rules - it's just that lawyers have read the rules."

The law is a set of rules that have developed over the course of centuries to establish our rights and obligations and the missing terms.

In the United States we follow the common law. Certain rights are inherent - the right to security in one's own home or in a church - and subsequent laws have codified these as well as related rights. The legislatures of the state or federal government adopt others laws from time to time relative to new issues (i.e., pollution, equal rights, discrimination). Court decisions are used to interpret application of the laws when that is unclear.

Most problems come not from the law but from the failure of people to communicate and talk about their expectations from the other and their own responsibilities in the agreement.

CHOOSING AND WORKING WITH AN ATTORNEY

OBTAIN REFERENCES

There are many lawyers in Chicago. The Chicago Bar Association and Women's Bar Association have referrals.

It is not necessarily true that we have so many more lawyers than in other countries because other countries often limit the number of lawyers or call them by other names. In France, the work that an American lawyer does is done by *avocats*, *avoués*, *notaires*, *juges*.

You don't need a big firm for a small problem. I was hired to represent an author against a publisher for failing to provide the 5,000 copies of the book paid for. It was a small case. The defendant hired a large firm which staffed the defense of the case with a new associate, a senior associate and a junior partner. They tried to throw a lot of paper at the problem to delay the resolution of the case and cost the plaintiff money. I irritated them by asking for immediate hearings on their arguments but without going through the process of a time consuming and expensive briefing schedule, contrary to their normal expectation.. Eventually, the Defendant started calling me to ask to get him out of the whole thing because of the amount of money the firm was charging. The end of the story was that I obtained the settlement that should have been given in the beginning.

DISCUSS GOALS

Know what you want. There is no "one size fits all". I try to have attorney-client letters which explain what I will do, to avoid confusion.

Although we often use standard contracts, they must be applicable to each case. No one can guess what you want. An attorney, particularly one who does not specialize in your area, will not always know the customs of your industry or the customs of your family.

Talk to your attorney.

I once had a guardianship case where I discussed with my client the absolute legal need for a report from a physician recommending that a person have a guardian. After several months of intense work trying to get the respondent/parent to a physician for the evaluation, the petitioner/child told me that her father-in-law was a physician who had treated the person at about the time we filed the petition for guardianship. That information would have saved several months and several thousands of dollars.

At the same time, I understand that a client does not always know what I am looking for. It's a delicate balance of questions and answers - from each side.

BE TO THE POINT

A lawyer's time is her money. Chatting or complaining or whining wastes your time and her time. It wears people out. It demeans the seriousness of the matter. I can't pay my expenses if I don't charge a client for the time they take from me, no matter what it is for.

Do not micromanage. You go to a lawyer for the benefit of their knowledge and experience - don't try to direct the "what" and "how".

Respond to the questions. If you hide something now it will likely come out at trial and truly hurt you. A lawyer cannot protect you if he does not know all the relevant information. If I think that you're going to lie, I have to refrain from aiding you.

DISCUSS PRICES

I have only heard of a few people who charge clients what the client makes per hour. Both were from religious backgrounds.

Contingent fees are generally used in personal injury, class action, discrimination cases - cases where a person is rather unprepared for the suit.

Most professional work is done by the hour. Some attorneys charge more for in court time. Some attorneys charge the actual cost for non-overhead expenses such as photocopiers and long distance service. Some firms make quantifiable costs into a profit center - faxes, photocopies; staff.

Lawyers use their hourly fees to pay rent, heat and AC, staff, computer, health insurance, supplies, taxes, phones and then their own salaries.

Know what you are buying and at what price. But, don't try to get a flat estimate on litigation. Litigation is an unknown lava flow.

Avoid going into a losing battle because you want to scare someone or if you only want to spend a certain amount. Many defendants ignore lawyer letters. Once an attorney is in a court case, the court will not let him out without more. Courts are not empty threats.

Something like incorporating your own business is more clear cut as to price. However, even there, time must be spent to discuss your goals and options.

Even with wills and estates, time is spent in discussion. The more you know in advance, the less of your attorney's time you take and the lower the charges.

Some attorneys charge flat prices for certain things. That may or may not be a good deal.

PREPARING AND MODIFYING A CONTRACT

KNOW WHAT YOU WANT

According to the Restatement of Law, a contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

There are exchanges of promises - you will do a translation for a certain payment. Contracts can be oral or verbal or non verbal. Enforcement does not always depend on how they are made but whether you can prove what they contained.

A contract is sometimes held against the party preparing it because he is in the greater position to know what is in it and to control it.

Do not sign something you do not agree with or, more importantly, have not read.

Contracts which are onerous or against public policy are not enforceable. Certain contracts are void from the beginning (made with an idiot) or voidable (misunderstanding of terms on both sides).

If the work is to be used multiple times, do you desire a greater fee? - I don't say deserve because that is not a concept that has value in the law unless you are in a court of chancery. There you get the benefit of your efforts.

If you provide services other than straight translating, do you desire a greater fee?

No contract is written in stone before it is signed. Lawyers often use "standard contracts" or "boilerplate provisions", particularly with real estate, because they have been tested in court. These are adapted to the client's end goals.

Contracts can be modified after signing but be sure it is done right.

DISCUSS ESSENTIAL TERMS

- What you will do
- What the client will pay - how can a court uphold your fee if the client did not agree to it
- When you will receive the work to be done and return the finished promise
- The quality of the product
- When the client will pay

The law provides missing terms - reasonable time, professional work - but it becomes the lawyer's job to argue your side. A stitch in time saves nine - discuss the terms upfront or you will be discussing them in court.

DO NOT MAKE PROMISES YOU WILL NOT OR CANNOT KEEP

There is potential liability for claiming skills you do not have - if client relies on your promised or advertised skill, you may find yourself liable if his client sues him (product liability problems).

Failure to complete the job by the date needed may subject you to liability, unpaid work, lost client - it doesn't matter what other problems you have in your life if you make a commitment to finish a job by a certain date.

DISCUSS PRICE AND PAYMENT TERMS

- Nobody wants to guess
- You cannot enforce something not previously agreed to
- The law fills in missing information (reasonable work in a timely manner) but you cannot count on the law protecting you when you failed to protect yourself

AVOIDING PROBLEMS

BE REALISTIC

Don't promise what you can't deliver - as to time or quality or quantity

BE WARY

A client who wants impossible work, who wants work immediately, who complains about other translators - this is a potential problem. You don't have to accept the work on her terms.

OBTAIN A PORTION OF PAYMENT FOR NEW CLIENTS

More and more people are promising payment and failing to do so. They are dishonest. The law will not volunteer to protect you from dishonest people.

Even lawyers get stiffed.

Get a fair advance payment up front.

DO NOT GUARANTEE MORE THAN YOU CAN DELIVER

If you promise something and a client relies on that to his detriment, you can be held liable.

OPTIONS IF A CLIENT DOES NOT PAY OR IS UNHAPPY

LAWSUITS

There are many lawsuits in Cook County - everything from simple gas bills to complex multiparty litigation. For small cases you can and should do it on your own or *pro se*. The court has forms. There is a growing tendency to limit the opportunity for defendants to delay resolution of the case or for either side to conduct unlimited discovery. Discovery is that which was intended to help the court narrow the issues but seems to be the thing which causes the greatest expense and attention. Anything over \$50,000 is in the Law Division and the discovery will be somewhat unlimited.

In addition, there are procedural issues - serving a summons on the defendant who may try to avoid service, defendants who delay doing anything or plaintiffs who forget to pursue the matter. Defendants do not agree with everything the plaintiff claims so the plaintiff has to prove it.

Even with judgments, the court does not obtain the money for the winner. The winner has to get the money from the reluctant loser. The loser may appeal. The loser may file for bankruptcy. The loser may have put everything into his wife's name.

MEDIATION

A third party comes in without the benefit of much formal discovery to listen to both sides and help both sides agree to an equitable and reasonable solution. Once accepted, it must be enforced.

ARBITRATION

There is informal arbitration, arbitration within the Cook County system if the case has a value of less than \$50,000, and arbitration by commercial companies such as the American Arbitration Association.

The arbitrator, or panel, renders a decision based on a shorter presentation with less discovery than normally happens in court. In the Cook County system, the arbitration award can be rejected upon payment of a fee. With the other systems, the award cannot be rejected absent a showing of fraud on the part of the arbitrator.

To avoid problems, discuss the terms in advance. get some money up front, and do the work you promised.