

The Problems with the Legal Industry

By Ary Rosenbaum, Esq.

I love being a lawyer and I wanted to be one since Mrs. Rosenblum's third grade class. I love being a lawyer a lot more since I started my own practice more than 3 years ago and one of the reasons is because by being on my own, I believe that I'm no longer part of the problem and the problem is how the legal industry operates. While being a lawyer is one of the great professions out there, the problems are with the industry as a whole that wants to cling to a dying era and doesn't want to face facts that the professionals in our industry and potential law students are suffering. As attorneys, we are supposed to adhere to the highest standards and for the most part, the legal industry and the business of law fails to do that. This article is about the problems of the legal industry and what we can do to make sure that it becomes a better-run industry.

Why I Started On My Own

The most frustrating experience of my life was working for a Long Island law firm and mind you, I went to 4 years of law school (which includes a tax LLM). I had hopes of starting a national ERISA practice as an associate there and the bureaucracy there limited that. So when you can't draw much business and they have very limited work for me, the writing is on the wall. Contemplating my next move, it was either starting my own practice or latching on to another firm. I knew at the time that I could probably have \$150,000 worth of business to start and a discussion with a partner from another firm quickly made the choice for me. He told me that the only way I could be brought on to justify a \$150,000 salary was to bring in \$450,000 in portable business. I'm no economics major, but why do

I need to be part of a law firm to lose 2/3 of my business to their overhead? If I can bring in \$150,000+, why not keep it all to myself? That to me, along with my experiences in the past pointed to some of the problems in the industry and I just didn't want to work for people that were part of the problem and not the solution.

We Don't Mentor Our Young, We Eat Them

My grandfather was a cobbler and he learned his trade by being a cobbler's apprentice. The fact is that law school doesn't properly prepare new lawyers to



start practicing from Day 1. That burden falls to that lawyer's first employer. I was lucky because an attorney Harvey Berman took a chance on me and his paralegal Marge Tracy taught me how to be an ERISA attorney. Too many law firms out there don't provide the proper training and guidance for their new lawyers. Their point is to get some billable hours out of them. Like the new prisoners in The Shawshank Redemption, they are fresh meat and the very few that survive the 5-7 years might make partner and the majority have to start over. My old law firm had a laughable mentoring program. In 2 years, I had 3 mentors and I don't recall ever having one of the mentors talk to me about is-

sues that I might be having. To be a better-run industry, we need to take better care of our new lawyers. Since most law schools are always going to punt their responsibility in getting law students ready to be lawyers, it falls to us fellow attorneys. Legal employers are attorneys too and the best way to ensure that there will be a quality profession in the future is to take care of the attorneys who just passed the bar. Law firms should look at these associates as potential future law firm partners rather than some billable hour machine. We need to take better care of our newly admitted attorneys. When your top-billing partner is the 65-year-old property tax attorney who looks 80 and you have no one young on the backbench to take over, you have a major problem.

Too much emphasis is placed on the billable hour

In Caddyshack Ted Knight as Judge Elihu Smails is incredulous that Chevy Chase's character Ty Webb never keeps score on the golf course. Smails asks how Webb measures himself

against other golfers and Webb quickly says he measures by height. In many ways, measuring a successful associate and partner solely by the amount of hours they bill is probably as reliable as measuring them by height. With all apologies to Chief Justice Marshall in McCullough v. Maryland, I believe the power to bill by the hour is the power to destroy. I know other businesses that bill by the hour, but I know that when I take my car in for service, I only get billed for work the mechanic who worked on my car did. I know Ralph, the service station owner isn't billing for looking at my car and neither are the other mechanics. When a client takes a matter to a law firm, that client may unwittingly pay

for 3-4 attorneys to review the same documents related to the legal matter. When pay and career advancement is tied mostly to the amount of hours you bill, abuses and the fudging of hours is probably more prevalent. I used to be criticized for working so efficiently and not billing enough. I remember an ERISA partner trying to bill for a matter that I quoted the client for a flat fee for work she did not do. When I told that I quoted a flat fee and billed the client, her attempt at fudging was stopped. The reason that law firms put so much emphasis on the billable hour is because it's open to abuse, but more importantly, it's much easier to bill by the hour than come up with a reasonable flat fee. Of course, matters like litigation likely need billable hours because a reasonable flat fee is impossible to figure out. But the most important reason that law firms cling to the billable hour because they need to feed the "machine" and that machine is an inefficient business model. When you have so much overhead in fancy offices and too many clerical staff and too many partners who don't pull their weight in business or billable hours, you need those billable hours to feed that bloated buraracy. Why does a law firm of 70 attorneys need 4 people in human resources and 4 people in billing? If clients rarely visit the offices, why have such magnificent offices? Law firms are a business, not a country club. Salaries are important, but the bling bling in the offices is not.

We Resist Too Much To Change

My father is an electrician and I'm a lawyer. What is common between us is that we both provide a service to clients. I'm in business like everyone else, yet there is so much resistance to change within the legal profession. When I was working at the law firm, my idea of using social media to draw in clients especially by writing easy to read articles was thwarted because the advertising committee of one said that social media was legal advertising. If done correctly, social media is not advertising, but the lawyer advertising rules in New York would allow it anyway. I like flat fee billing because most of my work is work where I truly know what a reasonable fee is, yet most law firms wouldn't even try to determine whether flat fee billing is a good fit for their practice areas. While companies in this country are continuing look to rein in costs by cutting back on benefit and

outsourcing their workforce to professional employee organizations or to other countries like India, most law firms that don't cater to the largest corporate clients will need to understand that their bloated buraracy puts them at a financial disadvantage because many clients with a large legal tab will consider hiring smaller firms or carrying a legal department on staff.



As Lou told the caddies in Caddyshack: "If you wanna be replaced by golf carts, keep it up." If mid sized and small law firms don't want to change to an environment that requires cost containment and competitiveness, then they should except to be replaced by someone else willing to do their job at a better price.

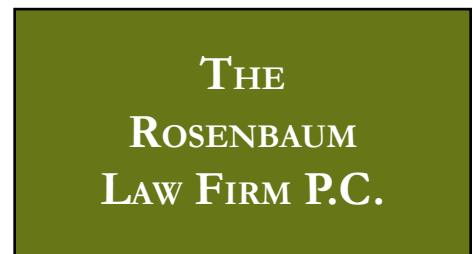
We Don't Treat Each Other With Enough Respect

When I mean treating other attorneys with enough respect, I'm not just talking about opposing attorneys. When I was working as an ERISA attorney for a third party administration firm, I was not actively practicing since my firm wasn't a law firm. The most difficult situations were when I had to work with other ERISA attorneys that clients had hired to review my work. Through our flat fee billing, I'm sure that my fees were a small fraction of what the other ERISA attorneys were. The ERISA attorneys would invariably ask for plan document changes that weren't required and unnecessary. The ERISA attorney charging by the hour probably needed to justify their fees by requesting these dubious changes, but there was usually a lack of respect exhibited by them because they felt that there was some sort of competition (there wasn't) because their ego wouldn't allow a stress fee

working relationship. Even working with fellow attorneys at law firms, I can attest that many times there isn't enough respect exhibited by partners towards associates and even other partners. I have never been to a partnership meeting since I'm a law firm of one, but I have heard enough partners says disparaging things about other partners and as Rodney King once said: "can we all just get along?" When I took my oath of office in New York, we were told by the appellate judges to treat fellow attorneys with respect. I have kept my end of the bargain; we need all other attorneys to keep their end of the bargain as well.

Just because we went through it, doesn't mean it should stay the same

The Socratic method in law school was developed in Harvard in the 1870s. Is that the best way to teach the law? Should law schools be 3 years or 2 years in length? Is the billable hour the best way to bill? Are there better ways to recruit associates and partners? Too often, the legal profession only keeps the common practices in place just because it always has been this way, but the questions is whether that way is still right? Just because something has always been done a certain way, doesn't necessarily make it right. As attorneys, we have a gift and that gift is to practice law. As an industry, we can do better and the only way we can do better is to take an honest look at what we do and question whether what we have always been doing is correct or where the only reason we've been doing it is because we've always been doing it that way.



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