

The Changing Business Model: Rise of the Freelance Support Attorney



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Over the past 25 years, the legal market has evolved resulting in the birth of a new form of legal practice with an ever-increasing demand – the temporary attorney market utilizing the freelance support attorney. Advances in technology, which allow for remote access work environments, have made utilizing temporary attorneys stress-free and economical. With email and other online tools making collaboration and project management between distant locations fast and easy, the temporary lawyer market has grown exponentially and has become a mainstream option allowing individual practitioners and small firms to become more competitive, improve net profits, and increase professional, personal, and client satisfaction.

While the term “contract attorney” is a well-known phrase in the legal community, the term freelance support attorney is less recognizable and understood. The term contract attorney may be synonymous with support attorney, but often is not. A contract attorney generally only has one client, works on a job site, may be employed by a temporary agency or serve as general counsel, follows the employer’s instructions without variation, does not provide her own supplies or equipment, the work undertaken is generally limited to more basic tasks such as document reviews, and often punches a timeclock and receives regular paychecks.

A freelance support attorney, on the other hand, is a licensed attorney hired by other attorneys to assist in the broad representation of the hiring attorney’s clients on a project-by-project and as needed basis. A freelance support attorney generally works for more than one client at a time, sets her own goals while working hand-in-hand and under the supervision of the hiring attorney, determines her own hours and rates, is an experienced attorney undertaking all phases of legal representation, and generally works remotely. An experienced freelance support attorney will maintain a subscription to either Westlaw or Lexis, allowing the hiring attorney to have access to an invaluable research tool without having to commit to monthly fees or otherwise invest in research costs. The relationship established with a freelance support attorney can be short-term or long-term, but is always flexible. Once all pending projects are completed, there is no ongoing relationship between the hiring attorney and the freelance support attorney until a new project is agreed upon.

A freelance support attorney is an independent contractor. The hiring attorney is not responsible for the costs associated with maintaining the support attorney’s license, yearly

continuing legal education obligations, or office space, supplies, or equipment. The hiring attorney need only pay the support attorney for the work completed and provide an annual IRS form 1099. Because the support attorney's work is performed for the hiring attorney's clients, malpractice coverage should be provided by the hiring attorney. Generally, inclusion of the support attorney under the hiring attorney's malpractice insurance is a mere ministerial act requiring a simple notice to the carrier of the association with the support attorney. Taking the time to include the freelance support attorney under the hiring attorney's malpractice coverage protects both the hiring attorney and the freelance support attorney. Undertaking this important step further helps the hiring attorney become aware of the support attorney's background, professionalism, and overall skill ensuring a better working relationship.

Establishing a relationship with an experienced, reliable freelance support attorney has become a readily recognized vital tool of solo practitioners and small firms because it allows them to effortlessly and efficiently take on new clients and increase profits even with a busy litigation schedule, while keeping overhead costs to a minimum and remaining competitive and flexible in today's unpredictable economy. Specifically, associating with an experienced freelance support attorney allows hiring attorneys to expand the areas of practice offered to clients as the support attorney often has a wide knowledge of legal matters. Adding a freelance support attorney to the legal team further prevents solo practitioners and small firms from being out-litigated by larger firms, allowing the hiring attorney to become more competitive and effective in the representation of clients.

Knowing a high skilled support attorney is available simply upon request ensures sufficient staff to meet an ever-changing workflow, alleviating the day-to-day stress of operating a solo or small firm practice. As workflow increases, utilization of a freelance support attorney allows the hiring attorney to keep up with current demands without working exceedingly long hours and/or weekends or taking on more long-term financial commitments associated with hiring a permanent associate or contract attorney. When workflow inevitably begins to wane, the hiring attorney need only withhold assigning further projects to the support attorney until work demand again increases.

Outsourcing work to a qualified freelance support attorney also increases career satisfaction. Many solo practitioners and small firms become overwhelmed with motion writing, responding to discovery, researching, and similar time-consuming routine tasks. While these types of tasks are vitally important requiring the skill and knowledge of an experienced attorney, they are often the least enjoyable part of a legal practice. These mundane yet critical tasks can easily be outsourced to an experienced support attorney. Some of the most common assignable projects to a freelance support attorney are legal research, analysis, contract drafting, editing, and document/motion preparation. A freelance support attorney is an expert in these and many more legal tasks.

Attracting and retaining clients is another significant benefit seen when an experienced support attorney is properly utilized. The hiring attorney is able to increase revenue and

income while simultaneously decreasing the amount of time and effort personally put forth without compromising quality. Adding a charge onto the work performed by the freelance support attorney not only benefits the hiring attorney as it generates net profit, as there is little to no overhead costs required to associate with a freelance support attorney, but it also benefits the hiring attorney's clients. A freelance support attorney's rates, even when a profit margin is added by the hiring attorney, are generally significantly less than the rate the hiring attorney would normally charge clients for the same services. Thus, while the hiring attorney acquires a new source of revenue through the freelance support attorney while investing little personal time and undertaking little to no additional financial commitment, the hiring attorney's clients are happier because fees are lower.

Once a good working relationship has been established between an experienced freelance support attorney and the hiring attorney, the hiring attorney's time is freed up to focus on other clients, expanding and developing client relationships, marketing and networking, preparing for upcoming matters, pursuing other business ventures, or simply spending more time with family. The hiring attorney is also able to brainstorm ideas and strategies, better improve work product, increase reputation in the legal community, and reduce chances of malpractice complaints. In addition, projects that once had to be passed along to another firm or practitioner such as appellate work, can be kept in-house, ensuring continuity of legal strategy, better retention of clients, and additional revenue.

All 50 state bars and the American Bar Association have addressed the ethics of using a freelance support attorney. The American Bar Association Standing Committee on Ethics and Professional Responsibility has found that it is ethical not only to utilize the services of a freelance support attorney, but also to include an additional charge when billing clients. When the proper procedures are followed, neither the hiring attorney/firm nor the freelance support attorney are deemed to share clients other than those clients for which the freelance support attorney has provided legal assistance, keeping conflicts to a minimum. Conflicts can further be reduced by withholding specific client information, such as when mere research is undertaken.

Whether the hiring attorney must disclose the use of the freelance support attorney depends on how the support attorney is utilized. The rate paid to the freelance support attorney, however, does not need to be disclosed to clients. As with all legal fees, the hiring attorney must keep in mind that only a reasonable fee can be charged. A hiring attorney can easily include a short provision into his/her retainer agreements stating that the attorney may outsource work to a freelance support attorney when doing so is cost-effective and in the client's best interest. As with any legal association, the hiring attorney must provide supervision over the work provided by the freelance support attorney.

To ensure the success of the freelance support attorney relationship and comply with ethical obligations, when first beginning to associate with a freelance support attorney, the parties should reduce their agreement to writing, setting out the clear terms of service, how projects are to be assigned, the responsibilities of each party, rate of pay, and similar

matters. A trial period can be included in the agreement but is not necessary as ongoing commitments are not part of a freelance support attorney's practice. To help guarantee a good working relationship, the hiring attorney should ensure that the freelance support attorney shares the same values and is experienced in the areas of law needed to meet the hiring attorney's practice.

Not all attorneys will make a good freelance support attorney. A good support attorney should have significant experience with a vast knowledge of various legal matters, a strong work ethic, be a good communicator, self-starter, fast learner, must have good attention to detail, and be very dependable with excellent research and writing skills. A good freelance support attorney must further be a good team player and willing to work with the hiring attorney to adjust hourly rates to ensure the needs of the hiring attorney and the clients for which services are provided are efficiently met.

The growing temporary attorney market, when properly utilized, is an invaluable tool in today's legal market for any solo practitioner and small firm who wants to stay competitive, maintain high profit margins, reduce stress, and ensure client retention and satisfaction.



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Kathleen Gilbertson is a trailblazer in the creation of the temporary attorney market, having spent the majority of her more than 25-year legal career as a freelance support

attorney associating with many AV-rated attorneys and enjoys an excellent reputation. She is not only an experienced litigator at the trial court level, but also has significant appellate experience, as well as being experienced in transactional matters. Kathleen can be contacted at bkgilbertsonpc@cox.net.