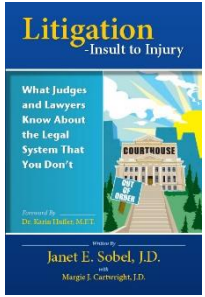
A New Kind Of Practice: Providing Affordable Legal Services Through A "Limited Scope" Counseling Approach

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Litigation – Insult to Injury:
What Judges and Lawyers Know About the Legal System That You Don't

Available on Amazon



What is the human value of affordable legal services through a Counseling-at-law "limited scope" practice?

- By and large, consumers cannot find affordable legal services and are grateful when they can
- Few consumers qualify for legal aid, and there is a large, unmet need for affordable legal services
- Many legal issues are too small to justify hiring a traditional lawyer or law firm (hourly or contingency) and many consumers suffer without legal help
- A good living, albeit a modest one, can be made through the offering of a Counseling-at-law "limited scope" law practice
- A Counseling-at-law practice enables a lawyer to find a more rewarding, happier, less stressful way to practice law
- Society and the legal system profit from expanding the resolution of disputes through pre-litigation mediation
- There is more than meets the eye to a Counseling-at-law "limited scope" law practice: it is meaty, satisfying, and allows for creative lawyering

Why offer affordable legal services through a Counseling-at-law practice?

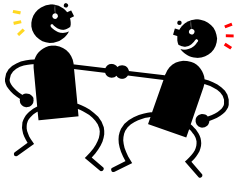
Why I decided to do it: Misery drove me out of my litigation practice.

- I graduated in the top 10% of my UCLA Law School class
- Law school was my fourth career, after being:
  - an elementary school teacher
  - elected to School Board in Las Vegas
  - licensed as real estate agent in Las Vegas
- After finishing very well at UCLA Law School, I joined a large law firm in San Diego, CA, as a litigation associate
- Then moved to a mid-sized firm in San Diego
- Then changed to a two-person law partnership
- Then started "counseling at law"

Why offer affordable legal services through a Counseling-at-law practice?

What does it have to offer consumers?

- Provides the opportunity for legal advice where it cannot otherwise be found
- Gives people with legal problems an understanding of their situation, an understanding that can put it to rest or facilitate a solution
- Puts the facts of their situation into the light of legal solutions, allowing them to see and evaluate their options
- Gives them a hope of finding a traditional lawyer to handle their case, which is itself a daunting task
- Brings the prospect of maximizing the potential of their legal rights in ways only a practicing lawyer can understand



Why offer affordable legal services through a Counseling-at-law practice?

What does it have to offer lawyers?

- Gives lawyers a way to meet the public's need for legal advice where it is otherwise not to be found
- Satisfies the honorable desire of lawyers to help people find a way to put their problems to rest or to facilitate solutions towards resolution
- Provides lawyers with a way to earn a living that is not fraught with stress and aggravation
- Gives lawyers a way to assist people in the difficult, often daunting, task of finding a traditional lawyer to handle the person's case, something most people often cannot do without guided help
- Brings to the lawyer a way to use the experience gained from years of practice in a way that feels good, helps people, and promotes society's interest in expanding the availability of legal services



What are the issues involved in providing affordable legal services through a Counseling-at-law practice?

- What qualifies me to talk about this topic?
- What is the nature and scope of "lawyer unhappiness" and what problems come from it?
- What do the "commentators" say is the cause of lawyer unhappiness – and what do they say lawyers should do about it?
- The GOOD NEWS is that the causes of lawyer unhappiness are not set in stone!
- What can and should be done about lawyer unhappiness?

Practicing law is not what it's cracked up to be . . .

I am an example!
Are you, too?



- Many (most?) lawyers start full of vim and vigor – and a desire to have an exciting career
- Many soon realize that they are not alone with unhappiness from the profession
- Civil litigation is full of unpleasant surprises, unhappy clients, moral pressure, long hours, constant stress and worry
- No clear exit plan to another career (Owning a 7-11 seems better)
- "Counseling-at-law" is an option

What is the nature and scope of "lawyer unhappiness" and what problems come from it?



Most, if not all, states have a LAP, meaning Lawyers Assistance Program. Some include Judges in the title, like the State Bar of Michigan, which has the Lawyers and Judges Assistance Program. Canada has the Legal Profession Assistance Program.

All of these programs are meant to offer assistance to lawyers suffering from depression, often combined with substance (including alcohol and drugs) abuse.

Suicide is a recognized problem among lawyers.

There is a lot of data – statistical and anecdotal



A study by Johns Hopkins University found that out of more than 100 occupations, lawyers were three times more likely to suffer from depression than any other profession.

After cancer and heart disease, suicide is the third leading cause of death among lawyers.

The National Institute on Alcohol and Alcohol Abuse estimates that 10% of the U.S. population is alcoholic or chemically dependent. Experts estimate that the numbers are between 18-20% among lawyers.

Besides the above data, the May 2, 2011, issue of Psychology Today reports in an article entitled "The Depressed Lawyer":

- An ABA Young Lawyers Division Survey concluded that at least 40% of female attorneys were unhappy with their jobs
- In 1996, lawyers took the number one spot as the profession with the highest rate of suicide
- The ABA estimates that 15-20% of all U.S. lawyers suffer from alcohol or substance abuse
- Seven in ten lawyers responding to a California Lawyers magazine poll said they would change careers if the opportunity was available

www.pychologytoday.com

What problems come from lawyer depression and substance abuse?



Besides suicide (failed attempts and completed efforts), doesn't everyone know how alcohol and drug addictions destroy the lives of those addicted and the families that connect with them?

What other problems are special to the legal profession?

- 60% of Oregon's LAP attorneys had malpractice suits filed against them (Butler Center for Research, id.)
- The American Bar Association reported that 27% of disciplinary cases involved alcohol misuse by attorneys
- Mishandling of client's cases and bringing heartache to clients and their loved ones, regardless of whether a malpractice action is filed
- Loss of jobs and reputation – and the impact on the cases that were being handled by that lawyer
- We are losing good and capable lawyers to attrition

What “commentators” say is the cause of lawyer unhappiness – and why can Counseling-at-law can help.

Most written materials on lawyer unhappiness is focused on the depression, suicide, and substance abuse that results.

Causes of unhappiness:

- Workload and performance expectations
- Stress from deadlines, caseload, clients, and other lawyers
- Time pressures and long hours, lack of sleep
- Burnout and discouragement
- Lack of control over tasks and outcomes
- Life out of balance
- No time for relaxation, exercise, fun, healthy diet
- Financial problems



In "Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence," Professor Krieger, a professor of law at the Florida State University College of Law, looks at "human needs, values, and motivation, and the relationships between them" and suggests that law schools and the legal profession coax people to seek "extrinsic" goals (such as money, power, and image) notwithstanding they are not the source of happiness. **Prof. Lawrence S. Krieger, Florida State University, College of Law, Journal of Legal Education, March/June 2002**



In contrast, Prof. Krieger posits that "persons whose primary goal content [is] "intrinsic" – namely **personal growth, intimacy, and community integration** – experienced significantly greater well-being.

Prof. Krieger's article concludes that lawyers may well be unhappy because they are seeking things that do not lead to happiness.

A change in your law practice can make all the difference!
For the lawyer – and the consumer!

And what do "they" say we should do about the "unhappiness" that is now endemic to the legal profession?

Things – all good – that lawyers are told to do about their depression, suicidal thoughts, alcohol and substance abuse:

- Therapy and substance abuse treatment programs
- Meditation
- Exercise
- Healthy diet
- Engage in enjoyable recreation activities
- Own a pet
- Live modestly (i.e., beneath your means)
- Set realistic goals
- Prioritize your time
- Keep your life in balance
- Learn to say "no" to clients
- Refuse to act unethically
- Practice good time-management

Here are some "D's":

Practicing law is . . .
- Demanding – taxing
- Difficult – nothing easy about it
- Dicey – unpredictable and fraught with risk
- Distressing – causes mental suffering
- Disreputable – to many, we are disgraceful, dishonest, and unprincipled

The legal system is . . .
- Delusive – its promise of justice is misleading and deceptive
- Disagreeable– despite lots of rules, it works poorly
- Demanding – requiring more than should be due
- Demoralizing – it corrupts the idealistic goals of lawyers
- Discouraging – it is disheartening and dispiriting
- Disconcerting – it is upsetting, confusing, and perplexing

It's no wonder lawyers are . . .
Depressed – and driven to drink and do drugs

The GOOD NEWS is that some of the causes of lawyer unhappiness can be changed!

Certainly the "causes" noted by the commentators – like workload, stress from deadlines, caseloads, clients, other lawyers, time pressures, lack of sleep, burn-out and discouragement, unbalanced life activities, lack of relaxation, exercise, fun, healthy diet, and financial problems – all contribute to depression, drinking, and drugs.

QUERY: Can we perhaps change the way we practice law – maybe not all of us, but at least some of us – so that we can improve our connection with the intrinsic goals that bring personal satisfaction and greater hope of happiness?

Counseling-at-law – a limited scope practice – can offer a good and satisfying way to practice law, for the good of many people!

What is the nature of a Counseling-at-law "limited scope" practice?

Structurally:

- There are no litigation services offered to clients
- Home office; meetings occur with clients at their homes or at public restaurants or coffee places
- Services depend entirely on the client's needs, situation, and budget
- Affordable rates: $100/hour

Services:

- Begin with listening to the client's story, reviewing documents, and understanding the concerns and situations
- Advise the client regarding legal rights and obligations and options for proceeding – aiming for pre-litigation solutions, especially mediation
- Determine with the client what help the client would like (and be able to afford) – and what is realistically possible (including why or why not)
- Decline assistance where it is beyond your expertise, unless you can ethically get the help you need from another practitioner
- Help the client to find other assistance – legal or non-legal
- Prepare "turn-key" presentations for contingency lawyers when appropriate and get client's permission to accept referral fee

How does it work in practice?

Counseling should be within area of experience:

- The kind of advice will depend on the lawyer's practice – generalist vs specialist
- If "ghost writing" pleadings and/or other court filings, check with your jurisdiction to determine your ethical and statutory obligations to court
- Specialists –**Bankruptcy, employment law, family law, trusts & estates, criminal, tax** – can advise clients of rights and options (both transactional and litigation), find and refer to full-service lawyers, "broker" and facilitate mediations, give second opinions where a person is questioning the advice of another lawyer (and possibly help to set it right), help self-represented parties prepare forms
- Generalists – can call upon all aspects of knowledge and experience to help clients ferret out approaches and options, and determine best course of action; do all of the above, with an eye towards the big picture
- Every counselor-at-law must develop networking connections with fellow members of the bar, to consult with and make referrals; this is key (and fun)!

You are limited only by your imagination and good judgment!

Here is my "marketing" postcard:



The goal is affordable legal services:

There are lots of lawyers competing for clients who have a case that justifies hiring a lawyer who charges $250-$500 or more, or who has a large-value contingency case. And indigent people can sometimes find legal help through legal aid or some publicly funded legal organization.



But there are many, many people who cannot find a lawyer to take a case because it is too small to justify hiring a lawyer at standard hourly rates. For example, the amount in controversy could be less than $20,000, or the client may want to have a better understanding of the legal problem before they decide whether to hire a lawyer at any price. Many people just want to know what their situation entails, and they do not want to get inside a lawyer's office, sometimes because they have had unpleasant experiences with lawyers in the past, or their friend has, and they want to know about their rights and obligations before they commit to making an appointment with a traditional lawyer.

By way of example:

1. Client wouldn't sign settlement agreement over nursing home lawsuit because couldn't understand and lawyer wasn't explaining it - $700
2. Clients were unable to close escrow on a $1.6 million house and seller was refusing to return any part of the $35,000 deposit - $1,200
3. Elderly woman in an automobile accident, $20,000 in meds - $1,800
4. Pregnant woman's Dr. put wrong gestational age; she was unable to terminate her pregnancy in the first three months – 10% contingency
5. Client and brother were fighting over mother's estate - $800
6. Neighbor had a broken pipe in outdoor sink and it caused substantial flooding in client's house and crawl space - $1,500
7. Elderly client was betrayed by real estate broker who aided another person in purchasing valuable property; found a contingency lawyer
8. Client's neighbor constructed a parking pad on her dominant road easement, involved claims of title insurance - $3,500
9. Home buyer spent $13,000 remediating damage to her home when her agent did not get her a final walk-through - $1,800 contingency
10. Elderly client did not want to return a $5,000 deposit to a buyer who failed to qualify for a loan - $100
11. Etc., etc., etc., etc!

Some general considerations:

1. Collaborative law approach – when a case seems to require the exchange of some discovery before the parties feel ready to mediate, I always propose the voluntary exchange of information. Sometimes it seems only fair, and mediation usually protects the confidentiality and admissibility of "evidence."
2. Educate your clients – informed clients make better decisions and are less likely to turn on their lawyers. I recommend all clients read my book, *Litigation – Insult to Injury: What Judges and Lawyers Know About the Legal System That You Don't.* Clients ought to know that litigation is unpredictable, uncontrollable, unpleasant, and mostly unsatisfying. The fewer the surprises, the better. Lawyers are well-served to give a copy to their clients.
3. As my book states, the best a lawyer can do is to prepare cases for trial, but to aim for pre-trial mediations. Cases that are well prepared for trial settle well for the clients without having to go to trial.
4. Lawyers should embrace and promote pre-litigation, or at least pre-trial, resolution of straightforward cases. Using a version of the "collaborative law" model, lawyers should encourage opposing counsel to identify the real issues in dispute and aim for compromises that narrow certain dispositive issues for the court's determination, and not leave so much to chance. Skilled mediators can aid that effort.

Compensation:



There are different ways of compensation:

- Remember, the goal is "affordable" (which includes reasonable)
- For basic counseling services, I charge $100/hour. With low overhead, and with the tax advantages of working out of my home, I can work 20 hours/week and make a good (albeit modest) living, with low stress and time to enjoy myself.
- Prospect of referral fees. Lawyers are subject to ethical rules related to fee-splitting and those must be followed – so check your state's laws. Referral fees paid to a licensed lawyer are not prohibited by the ABA Model Rules so long as certain requirements are met. Moreover, I perform "work," namely the preparing of the case, including law and facts, for which I am entitled to be compensated. In this situation, I usually do not charge the client at all. Also, I always meet any lawyer to whom I refer a client.
- Sometimes my claim is for fees that will be paid when the case is resolved, i.e., to the prevailing party under a contract, When the adverse party pays my fee, and when there is some risk of loss (isn't there always a risk of loss?), the client agrees that I will be paid commensurate with my hourly rate, and I will await all payment.

How do clients find me?



Clients come to me in many ways:

- Referrals from previous clients
- Referrals from mediation services
- Referrals from other lawyers – who should prefer to give a person looking for a lawyer more than "sorry, we're not interested"
- Referrals from business owners and/or other professionals who know what I do
- People who learn about me from talks that I give
- People find me on my www.counselingatlaw.com website
- People who learn about me through networking organizations

Basic marketing actions I take:

- Lots of networking with lawyers
- I carry postcards that tell about me (and then I mail them to people after they I meet them and get their card)
- Lots of networking in business and non-business settings

Once again, here's my postcard:

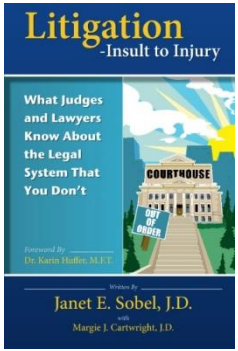


Miscellaneous issues:

I have found from doing this practice for 14 years:

- I do not carry malpractice insurance. At $100/hour, it isn't possible. However, I usually deal with people at the start of their problem, so SOL are not generally an issue. I have never had a complaint against me, verbal, written, or otherwise.
- Only one client has refused to pay my bill. Sometimes I do not charge someone who simply cannot afford to pay me, but a counseling client has never stiffed me (except for one).
- I do not usually do fee agreements. In California, they are required when the work exceeds $1,000, and the total fee on my matters is usually under $1,000. Moreover, in California, failing to have a fee agreement just means the lawyer can only collect *quantum meruit*, and I assume that $100 will always meet that test. Whether there must be written fee agreements will depend upon the rules of your jurisdiction.
- I use email to document my assignments and the progress of the case. I always like to keep clients fully informed and they appreciate it.
- I bring the same kind of attention and care to these small matters that I always brought to my larger cases. Care and attention, to me, is the best risk prevention.

Litigation – Insult to Injury: What Judges and Lawyers Know About the Legal System That You Don't



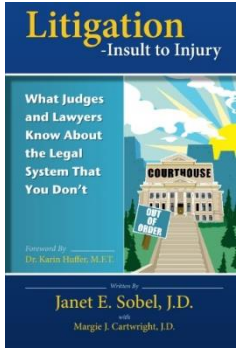
Available on Amazon -

Read it yourself and then give a copy to your clients and (1) instruct them to read it, and (2) remind them to re-read certain chapters when they relate to what is happening in their case.

Clients left in the dark can become problematic. Having informed clients will protect you from the misunderstandings and confusion that come from our disagreeable legal system. Client trauma, dissatisfaction, and finger-pointing are best avoided by improving the client's knowing.

Check out the table of contents and you'll see what I mean.

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www.counselingatlaw.com
www.judgingthelaw.com

Go to Amazon, and look inside the book, read the reviews, and give it to someone who needs to know what it has to say! For the sake of all consumers, lawyers, and society.