

## The Litigator's Toolbox

*Technology and Support for the Successful Advocate*

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Monday, March 17, 2003

### • GOODS AND SERVICES

#### **Outsourced legal writing**

**If it's used with caution, it can be a lifesaver.**

By **Robert J. Ambrogi**

SPECIAL TO THE NATIONAL LAW JOURNAL

One recent Friday in February, personal injury lawyer Gary Southworth knew he needed help. Monday was his deadline to file a removal petition in an unfamiliar federal court in a state 800 miles away. He had legal research to finish, local rules to pin down and a petition to draft. Southworth, a partner in a three-lawyer Pensacola, Fla., firm, got on the Internet and found BriefMasters, a Brenham, Texas, legal research and writing company. A phone call later, BriefMasters went to work. By Monday, Southworth's petition was ready. Two days later, he received word—the petition was a success.

Carolyn Elefant also turned to a legal research and writing service, albeit reluctantly. A Washington solo who concentrates on federal regulatory law, she faced a novel issue of law. Her client, the owner of a hydroelectric plant, suggested that she use an outside research service, believing it would save him money.

Against her better judgment, Elefant agreed. The national company she called put her in contact with a research attorney, who asked her to write a memorandum outlining the issues. Based on Elefant's memorandum, the researcher estimated the work would require 10 hours. Elefant gave the go-ahead.

What Elefant got back surprised her. "It was almost my memo regurgitated," she said. It failed to address key issues, and the bill, \$1,500, was several hundred more than the estimate.

"It wouldn't have cost more than \$1,800 to do the research myself, and, because it was an established client, I probably wouldn't even have charged that."

#### **A range of providers**

For lawyers in small firms or on tight deadlines, legal research and writing services can be lifesavers. But, as Elefant's case shows, they are not without flaws. And experts in legal ethics and professional liability warn that using them carries risks.

At least 40 firms market legal research and writing to lawyers. They range in size from Ardsley, N.Y., solo Lisa Solomon to large companies such as the National Legal Research Group of Charlottesville, Va., which employs more than 70 research attorneys full time.

Solomon works only for other lawyers, performing research and writing. The lawyers who hire her come mostly from small firms and solo practices, and often do so only when, as she puts it, "they're in a pickle." Even though she has never met many of her clients, their working relationships, she said, are often "no different than if I was an employee in their office."

In Wilmington, Del., Legal Writing Success takes a different approach. Founder Robert M. Unterberger, a former Philadelphia litigator, does no research himself. Instead, he assigns each case to one of 135 freelance researchers scattered across the United States. With few exceptions, the client and the researcher never speak. All communication goes through Unterberger.

Somewhere in between is BriefMasters. "We want to stay a brick-and-mortar firm," said co-founder Adam E. Quarles. "We do everything in-house." Quarles, a paralegal, and partner K. Andrew Amelang, a lawyer and former associate at Vinson & Elkins of Houston, divide the work, with Amelang supervising research and Quarles taking on most of the writing. The two maintain close contact with their clients, Quarles said. "We do a tremendous amount of handholding in this job."

### **Setting the fee**

Michael K. Eidman, a personal injury solo in New York, first called Solomon when he found himself facing a tight deadline to oppose a motion that involved unfamiliar areas of law. "I needed someone who would have the time to roll up their sleeves and get into the research," Eidman said.

A lawyer referred him to Solomon. They discussed the case over the phone and agreed on a fee. "I felt a huge load was lifted off my shoulders," Eidman said.

Solomon generally charges by the hour, as do most of these companies. She declined to give her rate, but others advertise hourly rates that start at \$65 to \$110 and go up to as high as \$200, depending on timing and complexity. BriefMasters' starting hourly rate, \$85, includes the cost of online research. Legal Writing Success starts at \$100 and charges extra for online research.

Unterberger of Legal Writing Success said that during the initial phone call, he and the client assess the time required to do the work and estimate its total cost. He requires half up front, paid by credit card or funds transfer. If the estimate later proves low, Unterberger does not exceed it without the lawyer's consent.

### **Conflicts and confidences**

Also discussed in the initial call is confidentiality.

"We stress to the client that we are bound by the same rules of confidentiality as anyone who is working for him," said BriefMasters' Quarles. "If that attorney decided to hire a contract attorney and set him up in his office, it would be no different."

William Hodes, a lawyer in Indianapolis who specializes in ethics and professional responsibility, agreed. "If the researcher is a lawyer, he is bound by the same ethical rules and you can be assured of confidentiality," he said.

Hodes, co-author with Geoffrey C. Hazard Jr. of the treatise *The Law of Lawyering*, cautions that a lawyer should check the researcher's credentials. "You should ask, 'Are you a lawyer?' The answer may be no. You should find out about their bona fides."

Of greater concern, Hodes said, is the potential for conflicts. Every one of these services has a system in place to check conflicts, and every one of them claims to use it before ever accepting an assignment. But BriefMasters' Quarles sees a potential weakness in these systems.

Hardly a day goes by, he said, that he does not receive at least one résumé from a lawyer wanting to work for him. Some already take work from other research companies and are looking for more. Quarles cannot point to a researcher working for multiple companies, but he suggests it is only a matter of time before it happens. Once it does, he said, it will make conflict checking more difficult.

### **Insuring the risk**

What happens if the research service makes a mistake?

"You have a duty to supervise them. If they make an error, and you don't catch it, you are liable," said Pamela Bresnahan, partner in the Washington office of Columbus, Ohio's Vorys, Sater, Seymour and Pease and former chair of the American Bar Association's Standing Committee on Lawyers' Professional Liability.

Because the lawyer's failure to supervise the research would be his or her error, the lawyer's insurance would cover it. "But the more interesting issue," Bresnahan said, "would be whether the lawyer has a claim against the researcher."

Research services often do not carry legal malpractice insurance. Neither BriefMasters nor Legal Writing Success does, although the latter has a general business liability policy.

Unterberger maintains that traditional malpractice policies do not apply to contract lawyering. "You can't insure the risk of contract lawyering because every few hours we get a new project in with completely different issues."

Solomon is one who does have malpractice coverage. "My clients might get sued and they may look to me," she said. "I'm not incorporated, I'm a sole practitioner. It certainly is not worth putting myself at risk."

In order for lawyers to protect themselves, Bresnahan offered three suggestions. "First, find out if they have insurance, and, if so, how much. Second, find out who you are getting. Are they experienced? Third, make sure that whoever hires them is supervising them."

### **Billing the client**

Most lawyers bill the cost of outside research to their clients. In fact, a 2000 ABA ethics opinion (00-420) said that when a lawyer bills his client for the cost of an outside lawyer, he may even add in some profit, as long as the overall amount remains reasonable.

The cost cannot be billed to clients in contingency-fee matters, said ethics lawyer Hodes, because the contingent fee is intended to cover all legal work. "The client would be paying more for legal services than they bargained for," Hodes said.

Whether or not the lawyer bills the client for the outside research, must the lawyer tell the client about it? Glenn Fischer, assistant staff counsel to the Standing Committee on Lawyers' Professional Liability of the American Bar Association, pointed to a number of ethics rulings that say a lawyer need not tell his client provided he closely supervises the researcher.

That view is not universal. The Kentucky Supreme Court, for instance, said that, before using a temporary lawyer, an attorney should obtain his client's consent. In any case, it is good practice to tell the client, Hodes suggested.

"If I am running a small business and I go to a law firm, I hire that firm because of their name, their tradition," Hodes said. "Even though it's probably the case that the firm has pretty unbridled discretion within its own ranks to assign lawyers to cases, it is certainly good client relations to tell them."

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#### **A SAMPLING OF SERVICES**

- Advocate's Legal Research, Oxford, Miss., [www.maryjensen.com](http://www.maryjensen.com).
- BriefHelp, Washington, [www.briefhelp.com](http://www.briefhelp.com).
- BriefMasters, Brenham, Texas, [www.briefmasters.com](http://www.briefmasters.com).
- CiteTheLaw.com, Kennett Square, Pa., [www.citethelaw.com](http://www.citethelaw.com).
- Fastcase, Arlington, Va., [www.fastcase.com](http://www.fastcase.com).
- Kristine E. George, San Francisco, [www.kgresearch.com](http://www.kgresearch.com).
- LawFinders, Dallas, [www.lawfinders.com](http://www.lawfinders.com).
- LAWrite, Kansas City, Mo., [www.lawrite.net](http://www.lawrite.net).
- Legal Research Center, Minneapolis, [www.lrci.com](http://www.lrci.com).
- Legal Research Service of Maryland, Baltimore, [www.mdlegalresearch.com](http://www.mdlegalresearch.com).
- LegalScope Research, Dunedin, Fla., [www.legalscoperesearch.com](http://www.legalscoperesearch.com).
- Legal Writing Success, Wilmington, Del., [www.legalwritingsuccess.com](http://www.legalwritingsuccess.com).
- Lisa Solomon, Ardsley, N.Y., [www.questionoflaw.net](http://www.questionoflaw.net).
- LRN, The Legal Knowledge Company, Los Angeles, [www.lrn.com](http://www.lrn.com).
- LRSolutions, Babylon, N.Y., [www.lrsolutions.com](http://www.lrsolutions.com).
- National Legal Research Group, Charlottesville, Va., [www.nlrq.com](http://www.nlrq.com).
- Perlin Legal Research, Miami, [www.perlinlegal.com](http://www.perlinlegal.com).
- Quo Jure Corp., San Francisco, [www.quojure.com](http://www.quojure.com).