

A Call for a Bar Task Force to Address the Lawyer Underemployment Problem

I am a member of the faceless throng of underemployed lawyers the legal profession appears to be doing its best to avoid addressing.¹ After a successful 20-plus year legal career in civil litigation, I was laid off (for the first time) for purely economic reasons at the end of December 2011. Since that time, despite strenuous efforts to obtain a new permanent full time attorney position, I have largely been relegated either to unemployment or the legal “purgatory” of temporary or contract document review work.

As I look around the floor of the law firm at which I am now performing document review work, I observe that the document review work force consists primarily of three groups of lawyers: (1) lawyers at or near retirement age who are relatively financially secure and who are primarily seeking to postpone their retirement (at least in part to obtain higher benefits upon retirement); (2) lawyers, like me, over the age of 40 who have been laid off during the recession of 2007-2009 and its aftermath, who lack the capital or clients to start their own practice and who have been unable to obtain regular full-time employment despite their experience and efforts to do so; and (3) young lawyers or recent law school graduates who similarly have been unable to obtain regular full-time employment after graduation.²

Becoming a lawyer used to be one of those career moves that could withstand any type of economic setback. However, that is no longer the case.³ Due to the recession of 2007-2009 and a still-struggling economy, the legal profession is under severe stress.⁴ Not only are there not

enough positions for current lawyers, there are too many upcoming law school graduates and too few jobs to employ them.⁵ Moreover, the legal profession, like many others, has been downsizing, boosting productivity of current staffers, rather than hiring new employees, and anyone newly hired is likely to be doing so at half the salary than that of a new hire just four years ago.⁶

According to an oft-quoted definition provided by Albert Einstein, “insanity” consists of “doing the same thing over and over again and expecting different results.”⁷ I often ponder that phrase as I apply for yet another lawyer position. By my own rough count, over the past three years, I have been laid off twice for purely economic reasons, applied for over 450 attorney positions, attended only five interviews as a result of those 450 job applications, and obtained only one full-time regular lawyer position through networking as opposed to the normal legal job application process.⁸

From my viewpoint, two of the most discouraging factors in the current legal job application process is the lack of human interaction⁹ in the process and the apparent and sometimes blatant “ageism”¹⁰ present in the process. Based on my job application history, experience, knowledge and hard-gained wisdom apparently have virtually no place in the evaluation of legal job applicants.

Perhaps this apparent and sometimes blatant “ageism” is driven by human resource personnel questioning “why” an experienced litigator would be applying for an entry level position or an unsubstantiated “fear” that such an experienced litigator would “jump ship” at the first opportunity. As for the “why,” an entry level salary with employment benefits is clearly better

than unemployment or the legal “purgatory” of temporary or contract document review work at low pay without benefits. Moreover, any such “fear” flies in the face of the realities of the current legal job market. Simply put, there is no such opportunity to “jump ship.”

Although various organizations have attempted to address the employment issues associated with recent law graduates,¹¹ I do not believe that any bar association or similar organization has even remotely attempted to address the employment issues associated with experienced lawyers laid off over the past seven years. Given the enormous waste of human potential represented by those individuals, perhaps now is the time for such an effort.

Name Withheld by Request

Endnotes

1 Perhaps this reluctance is due to the fact that human beings by nature generally do not want to confront their own mortality. For a lawyer over the age of 40 currently employed full-time in a regular attorney position, it can be very uncomfortable for him or her to contemplate and realize that, once they get laid off, their employment prospects are fairly bleak for the foreseeable future.

2 The predicament of underemployed or unemployed recent law school graduates has already been addressed by an ABA Task Force. As stated in the January 2, 2014 Report and Recommendations, American Bar Association Task Force on the Future of Legal Education: “The predicament of so many students and so many recent graduates who may never procure the employment they anticipated when they enrolled in their law schools is a compelling reality that should be heeded by all who are involved in our system of legal education.” http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf. However, no such

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effort has even remotely been made to address the employment issues facing experienced lawyers laid off during the last seven years.

3 <http://www.thefiscaltimes.com/Articles/2013/03/21/No-New-Lawyers-Economy-Cant-Handle-Them>.

4 <http://www.thefiscaltimes.com/Articles/2013/03/21/No-New-Lawyers-Economy-Cant-Handle-Them>.

5 <http://www.thefiscaltimes.com/Articles/2013/03/21/No-New-Lawyers-Economy-Cant-Handle-Them>.

6 <http://www.thefiscaltimes.com/Articles/2013/03/21/No-New-Lawyers-Economy-Cant-Handle-Them>. For example,

based upon personal knowledge, I know that in 2011, lawyers performing document review work in the Kansas City metropolitan area were earning roughly 2-1/4 times (\$45/hour) the current prevailing hourly rate (\$20/hour) for the same work today.

7 <http://www.brainyquote.com/quotes/quotes/a/alberteins133991.html#5QffBbEQymhS0wCzY.99>.

8 Alas, I was eventually laid off less than a year later for purely economic reasons.

9 Generally, you either submit a resume by email or complete and submit an online job application. Thereafter, for more than 95% of those applications, you hear absolutely nothing

from anyone.

10 On far too many occasions, even when applying for an entry level position, I have received rejection notices or emails by return email in less than 24 hours. The fastest rejection I have received was in less than five hours, which I considered absolutely remarkable given that it was for a fairly generic entry level litigation position.

11 For example, the ABA Task Force on the Future of Legal Education. http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

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