

Working with Attorneys

by
Knud E. Hermansen
P.L.S., P.E., Ph.D., Esq.

As a surveyor, engineer, and attorney, I often find myself working with attorneys on engineering and surveying legal problems. Without doubt there are some members of the Bar that I have clearly enjoyed working with. Bright, intelligent, knowledgeable, good listeners, eloquent, logical, and capable are among a few of the attributes that these attorneys share. However, not all interaction with attorneys has been enjoyable. For those engineers and surveyors who have not worked with attorneys or within the legal system, I would like to share some frustrations and advice about working with certain attorneys and the legal system.

What's Good for the Goose is Good for the Gander — One time I had the pleasure to listen to a justice of a state supreme court speak. During the course of his speech, he remarked that he was recently involved as a party in a lawsuit. He made a very appropriate remark by saying that every attorney should be sued at the beginning of her or his career in order that they may approach the practice of law with humility and some common sense. Unfortunately, few attorneys have been sued and many opt for the shotgun approach to litigation. In other words, sue everyone that was ever involved with the project and let the legal system sort out the negligent parties. I have always been very frustrated with the shotgun approach to litigation that some lawyers adopt and employ. I've heard one lawyer justify the process by saying the approach is necessary to bring all relevant persons before the judge and let the judge decide who is at fault. I would opine that those attorneys that employ this tactic have never been a party in a lawsuit and undergone the agony, apprehension, and emotional trauma involved with litigation not to mention the expense, time, and resources required to defend against a frivolous complaint. Furthermore, for those trying to operate a consulting firm, there is the stain on the reputation of the firm every time a lawsuit involves the firm. As a consequence, I believe it would be in the best interest of surveying and engineering firms if a system was adopted that requires the loser pay the legal expenses of the winner. This system would reduce litigation faced by engineers and surveyors. I know a few victims will go uncompensated under this policy. However, under the present policy a lot of innocent firms become victims of frivolous lawsuits.

Procrastination and Negligence — Without doubt, we have all procrastinated from time to time. However, when we procrastinate to the point that our client's position or project are jeopardized, we are negligent. Procrastination to the level of negligence seems to happen so frequently in legal practice that I am appalled by its common occurrence. For example, I will get a call the day or night before trial asking if I would be an expert witness. (Let me make it clear that a week before trial is

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no less negligent in my opinion.) I am bothered by this behavior for three reasons. First, there is the inference that the engineering or surveying testimony that I will be presenting is so simple that it does not require any preparation time. Second, there is the attitude from the attorney that their client should immediately take priority over my existing clients. Third, there is the unquestionable inference that I will give testimony that helps the attorney's client. In other words, as an engineer or surveyor I am a hired gun and can be expected to provide only favorable testimony without knowing or analyzing the facts and the situation. If engineering and surveying firms were to operate in a similar manner on behalf of their client, I have little doubt attorneys would find it very easy to convince the court the engineer or surveyor is liable for negligence. I would advise engineers and surveyors to avoid situations where an appearance in court will occur without adequate and thorough familiarity with the facts and probable questions that will be asked.

Learning Curve — Before attending law school, experience taught me that there are three types of attorneys. First, there are attorneys who simply do not want to listen or learn. These attorneys are easily identified because they prefer to argue some unrelated legal concept or go to great lengths to settle rather than litigate the question (but settle only after great expense to their client). This attorney tends to be arrogant or subject to unreasonable procrastination. Second, there are some attorneys that, try as they might to learn, will not be able to understand because they lack the fundamentals required to understand the problem. Let me explain this category by way of selected experiences. I went to law school in the era when the HP-41 was just making its appearance so, as most of the readers know, calculators had been around for some time. (So much so that I had long since gotten rid of my log tables and slide rule.) Nevertheless, when the instructor announced that everyone would need a calculator for tax class, I was shocked to learn that many of my classmates had never owned a calculator. The instructor, seeing the student's consternation at the suggestion of using a calculator for the first time, tried to reassure the class by stating that only rudimentary calculations were going to be performed such as adding, subtracting, multiplication, division, and percentages. Again, I was shocked to hear many of my fellow law students start asking me if I could show them how to do a "percentage." I was incredulous that any person could have earned an undergraduate degree without owning a calculator or knowing how to do a percentage - yet these people exist and many are now attorneys practicing law. Now the purpose for this discourse is not to make light of all the attorneys with B.A.'s in political science, art history, English, social work, etc. who don't understand simple math yet practice law. No doubt, they are familiar with many seemingly simple subjects that I am unfamiliar with. My point for recounting the experience in tax class is to convey some idea of the frustration I often face when explaining to certain attorneys an engineering or surveying problem requiring far more mathematics than simple percentages. To present the problem in other terms, it takes at least 30 credit hours of course work to bring

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engineering students with SAT scores of 1400 or better to some level of understanding - surely not every attorney is up to the task after only an eight hour session. This brings me to the last category of attorneys. In this category falls those attorneys who take the time to learn, listen to you when you explain, and do learn what it takes to understand and present the surveying or engineering problem in an intelligent and accurate manner. Unfortunately, when I have the pleasure to work with these attorneys, more times than not this attorney has to argue before a judge who falls in one of the first two categories. The bottom line is that because of the learning curve among some members of the Bar, there really is no logical defense engineers and surveyors can use to counter frivolous litigation or prevent illogical verdicts from occurring. As a result, it is not enough that an engineer and surveyor know they are correct in their analysis and opinion when it comes to litigation. The engineer or surveyor that becomes involved in litigation must meet four criteria to stand a chance of success: 1) the practitioner must be thoroughly familiar with the facts and engineering or surveying principles relevant to the problem, 2) the practitioner must have the skill, resources, and time to adequately educate the attorney and judge on the relevant engineering or surveying principles, 3) the client's attorney has to have the ability and be willing to devote the time to learn, and 4) the judge must have the ability and be willing to devote the time to learn. Seldom are all four criteria present. My advice is to encourage alternate dispute resolution to resolve engineering and surveying problems whenever possible. Encourage your client to compromise rather than litigate.

Speedy Justice or Litigation — Flowing from the last category of frustration, is my latest frustration with certain members of the Bar. I have been a zealous proponent of alternate dispute resolution, also known as ADR, for solving engineering or surveying problems. Frankly, I have had little success in convincing other attorneys that ADR is an acceptable alternative to litigation. I will accept some of the blame because I am usually pushing for engineers and surveyors to be arbitrators and mediators rather than attorneys — not a smart political move when many attorneys can't find work or enough billable hours as it is. In my defense, I feel if there has to be some ignorance in the system, justice is better served when the arbitrator or mediator understands the problem, rather than the law. For my efforts, I hear comments from attorneys such as "without the rules of evidence my client won't stand a chance," "I need the time to beat my client on the head with his wallet," "I won't put my kids through college that way," etc. As a consequence of this disdain for ADR, I see people win judgments of \$100,000 and have a \$120,000 legal bill after spending five years in litigation. Of course, it has been pointed out to me by several engineers and surveyors that even ADR falls prey to the ills surrounding litigation if enough attorneys get involved.

In spite of the few frustrations I have been allowed to vent, I find practicing law in conjunction with engineering and surveying a very rewarding experience. A good deal of credit goes to the many

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exemplary attorneys, engineers, and surveyors I encounter and work with in my practice. To these individuals I offer a heartfelt "thank you." There is always an outstanding offer to work with you as a team in order to remove these frustrations from your practice and mine.