On-Demand Staffing for Solo and Small Firms

Presented by:

Curtis Linder
President and Owner
Linder Legal Staffing Inc.

Michael Spekter
Attorney at Law
Washington, DC

March 9, 2018
The presenters: Curtis Linder

- Former litigation paralegal
- Three decades in law-related staffing
- First with large, national staffing firm, ’85-’96
- Then with smaller, regional staffing firm, ‘97-’02
- Owns Chicago-based law-related staffing firm, since 2003
- Hires and places dozens of law-related professional
- Clients are small and solo law firms

www.linder.jobs
The presenters: Michael Spekter

- Law Offices of Michael Spekter, Washington DC
- ExperiencedSolo Practitioner specializing in Plaintiff’s Federal Employment Law
- Former Senior Prosecutor U.S. Office of Special Counsel
- Adjunct Professor, University of Baltimore School of Law,
- Adjunct Professor, Washington College of Law, American University
- Council Member Law Practice Division
To begin: the ABA’s 1988 Ethics Opinion

Increased use of temp lawyers leads ABA to issue Formal Opinion 88-356. (ABA Committee on Ethics and Professional Responsibility Dec. 16, 1988). Temporary Lawyer...

• May work on a single matter for the firm or may work generally for the firm for a limited period...to meet temporary staffing needs of the [law] firm or to provide special expertise not available in the firm and needed for work on a specific matter.
• May work in the firm's office or may visit the office only occasionally when the work requires.
• May work exclusively for the firm during a period of temporary employment or may work simultaneously on other matters for other firms.
To begin: the ABA’s 1988 Ethics Opinion

Follow Rules relating to:

• Conflict/s of interest
• Confidentiality of client information
• Disclosure to the client
• The arrangements between the [law] firm and the [contract] lawyer (including fee division); and the arrangements with lawyer placement [staffing] firm.
The Ethics of Outsourcing: 2008 ABA Formal Opinion 08-451

• Discusses Ethical Issues Raised by Outsourcing
• Model Rule 1.1 Requires the provision of competent legal services to the client, but does not specify that the tasks be done in a certain way
• Lawyers may outsource, as long as the outsourcing attorney renders legal services competently
• Model Rule 5.1(b) a lawyer with direct supervisory control over another lawyer to make reasonable efforts to ensure that the supervised attorney conforms to the Rules of Professional Conduct.

• Important! Client consent should be obtained if a temporary lawyer is to perform independent work without the close supervision of the hiring lawyer’s firm.
Surcharges on Fees Paid to Contract Attorneys

• ABA Formal Opinion 08-451 explains the rationale for surcharges and OK’s them.
• Opinion formalizes that: It is OK to yield a profit to the law firm.
• ABA Formal Opinion 08-451 says that “…this is not substantially different from the manner in which a conventional law firm bills for services of its lawyers.”
Advantages of Using Contract Attorneys

• Allows smaller firms to become full(er) service firms
• Levels the playing field with large firms
• Can produce better results
• Frees up time for marketing and rainmaking
• Can provide a testing ground for potential permanent hires
• Can act as a Personnel cushion – increase during busy period, fill in gaps during attorney leave
• Provide an alternative to hourly billing
When to use

• For discreet project
• That one-off large case
• That unexpected deal or transaction
• To cover during leave of absence
• To Audition Possible Future Employee — i.e., later hire that temp (more on that later...)
Types of Staffing Firms

- Large, national corporations – such as Robert Half Legal, Adecco, Special Council
- Regional firms
- Small, one-office/one-city firm
- The Axiom model: corpora
What the Legal Staffing Agency Will Do

• If it is a good agency it will have access to top legal talent, since it is constantly checking and vetting the market
• Agency handles the screening process, verifies resume and credentials and bar memberships
• Agency can find a suitable fit promptly
• Agency has already met the candidate personally and knows who will be a good fit for your firm
Types of Temps

• Contract lawyer
• Temporary paralegal
• Administrative Assistant
• Legal Secretary
• Other specialists
The Three Ways to Hire a Contract Attorney

• Independent Contractor  -- Plus (Avoid paying Taxes, 1099 Form
  Independent Contractor status)
  Minus (Search Time, Vetting, Interviews
  References, Etc.)

As your own Employee --  Plus (None, you are essentially hiring a
  New employee with all required
  benefits)

Legal Staffing Agency  --  Plus (everything we’ve talked about
  above) – should be W-2 of staffing firm
The Employment Arrangement

• The temp you select will be an employee of the staffing firm. Their W-2 employee
• NOT a 1099 Independent Contractor (that’s a huge IRS no-no for the placement firm)
• Make sure you know that
• If they don’t bring it up - ask
The Temp Assignment

• Minimum assignment duration?
• Unpaid break time?
• NOT work from home – that’s not the idea
• Temp must work at your firm
• You provide supervision and monitor performance
Your Client Can Pay

• Capture the hours worked by the temp and pass that cost on to your client

• That is allowed
The math – example. Let’s say…

- Temp staffing firm pays the temp $20/hour
- Payroll cost and applicable taxes and contribution (FICA, etc.) is 20% on top.
- So “payroll and “burden” is $24/hour
- Temp staffing firm charges your firm $34/hour
- Pay rate times 1.7 = $34 per hour
- Temp staffing firm clears $10 dollars per hour during assignment
The math – but...

• Temp staffing firm is not required to tell you what they pay the temp
• And you should not share with the temp the hourly bill rate
• If you do want to hire the temp – call the staffing firm to get an idea what the temp makes
The three parties

YOU – the Law Firm. Client of the staffing firm

Temp is an employee of the staffing firm.

Temp Staffing Firm

Pays $
The arrangement – usually a contract

• A contract? Yes = there should be. More on that
• Contains: confidentiality, payment terms, buy-out or hiring provision, etc.
• If no contract – then usually the back of the temp’s timesheet has the fine print
• Read it
How to start an assignment

1. Call a few temp staffing firms
2. Make sure they know you are a small firm – and will pay
3. You get to see resumes – usually emailed, often redacted
4. You can ask to interview a few candidates
5. Select temp
The day before the temp starts work

1. Is a work station at your office ready: computer hooked up, password, documents ready?
2. The temp is “on the clock” the moment he/she arrives
3. So make sure you have actual work for the temp to perform
How to end an assignment

1. The temp resigns
2. Call temp firm and tell them the assignment is over
3. Hire the temp
4 – there is no 4th way
Do You Want to Be A Contract Attorney?

• As a solo or small firm attorney you may not only want to utilize contract attorneys but also offer your service/expertise as a contract attorney

• If you are Starting your own Practice

• If you have Extra Time Available

• Make more $ and introduce your expertise to the legal community in your area.
Market Yourself as a Contract Attorney

• Best idea is to offer your services to a Legal Staffing Agency
• (Otherwise may serve to alienate your current clients)
• Attorney’s rate to a Legal Staffing Agency lower than your private firm rate
• Agency is the entity that pays (employs) you, NOT the law firm or client.
• No direct billing to clients
• No need to invoke collections
• You will be paid for all hours worked
Sample Contract: Staffing firm and you.

Linder Legal Staffing Inc.
Client Agreement

The purpose of this document is to define the agreement between Linder Legal Staffing Inc. (“LLS”) and Smith & Jones, LLC (“Client”):

LLS agrees to use its best efforts to find appropriate personnel for assignments for Client and to provide appropriate services as required. Client is not obligated to use LLS personnel when presented.

Assignment Professionals (also referred to herein as “APs”) placed with Client will remain the employees of LLS and are not the employees of Client. LLS will pay any applicable state and federal employment and unemployment taxes and insurance. Assignment Professionals are covered by LLS’s workers’ compensation insurance.

Client will pay LLS for Assignment Professional services, at a regular hourly billing rate to be agreed to between the parties in advance of the assignment. Any hours worked by an Assignment Professional in excess of 40 in any one Monday-to-Sunday work week will be based upon an overtime hourly billing rate equal to 1.5 times the regular hourly billing rate. LLS reserves the right to change its billing rates and practices, and will notify Client of any such changes. Client representative approval is required for any overtime qualifying hours.
Sample Contract

**GUARANTEE:** LLS will not charge Client for time worked by an AP for up to the first 8 hours of service if Client is dissatisfied with the work performance of an Assignment Professional, and if Client notifies LLS of its dissatisfaction within that 8-hour window, or before the AP performs any additional work. Absent notification under this paragraph, Client agrees that the Assignment Professional is satisfactory unless and until written notice of dissatisfaction is given to Curtis Linder or until Client requests that the Assignment Professional be removed from the assignment.

**CONFIDENTIALITY OF CLIENT INFORMATION AND CONFLICT OF INTEREST:** LLS will use its reasonable best efforts to maintain the security of protected information. Each LLS Assignment Professional is required to sign a confidentiality agreement as a condition of their employment with LLS. Client may also require completion of its own confidentiality agreement if it so chooses.

**CONFLICT OF INTEREST:** Prior to placement, LLS directs its Assignment Professionals that they (i) must disclose to Client and to LLS any matters on which the Assignment Professional has been previously or is presently engaged which might or could represent a conflict of interest with respect to the assignment to Client, (including in such disclosure a description of the possibly conflicting services and the identity of the person or business for whom such services were provided); (ii) must respond to any reasonable inquiry from Client or LLS with respect to any such matters; (iii) must notify LLS prior to accepting any assignment if he or she believes that there is any conflict of interest, and if, in the course of the assignment has reason to believe otherwise, the Assignment Professional will advise Client and LLS of the possible existence of a conflict of interest.
Sample Contract – Timekeeping and Payment

TIME KEEPING/PAYMENT TERMS: Client will allow only authorized signatories to sign LLS time sheets. The Assignment Professional will present a weekly time sheet to Client representative for Client’s signature. Signature of Client Representative on the LLS time sheet verifies the hours listed are correct and that client agrees with the terms and conditions of the Client Agreement on the LLS time sheet. Compensation to the Assignment Professional is on a weekly basis, and Client will be billed weekly for total hours worked on a weekly basis. Client agrees that payment is due upon receipt of invoice. In the event of non-payment of LLS invoices after notice by LLS, Client will be responsible for all collection expenses, including reasonable attorneys’ fees and court costs and will also be responsible for paying interest charges at 1.5% at the end of each 15-day period on unpaid items. LLS rounds hours to nearest quarter of an hour for billing purposes.
Sample Contract: Will Temp Practice Law?

NO PRACTICING LAW. SIGNING DOCUMENTS, OR PROVIDING LEGAL ADVICE BY ASSIGNMENT PROFESSIONAL. LLS’s Assignment Professionals will not practice law (as defined in Illinois) while on a work assignment with Client. LLS Assignment Professionals will not sign legal documents of Client or Client’s clients and will also not give legal advice to LLS, Client, or to Client’s client. Assignment Professionals may create draft versions of documents under the supervision, review, and ultimate responsibility of one or more lawyers at Client. It is expressly understood and agreed to that an Assignment Professional is not authorized to render legal advice, opinions, or judgments on behalf of LLS or its Clients. Assignment Professionals are subject to the supervisory oversight of Client, and Client assumes full responsibility for supervising the Assignment Professional while on the assignment and for final review and approval of Assignment Professional’s work.

SCREENING AND BACKGROUND CHECKS: LLS will not conduct any criminal, credit or background checking, or drug or alcohol screening of APs or prospective APs unless explicitly agreed to in advance, in writing by Client and LLS.
Sample Contract: The Law Firm’s Responsibility

CLIENT RESPONSIBILITY: Client will not entrust an Assignment Professional with unattended premises, cash, negotiable instruments or other valuables. Supervision of Assignment Professionals on Client project assignment is Client’s responsibility. LLS operates solely as a staffing firm for law firms and corporate law departments and is neither a law firm nor a partnership of attorneys.

It is agreed that Client accepts full responsibility for bodily injury, property damage, fire, theft, collision, public liability damage claims, and any other claims which result in whole or in part from any act or failure to act of Client. Client hereby agrees to indemnify and hold LLS and its Assignment Professionals harmless from any and all cost, liability, expense (including reasonable attorneys’ fees and costs) arising out of any such claim. LLS has workers’ compensation coverage and comprehensive general liability coverage. In the event of loss that may be covered under either of these policies, Client shall give prompt notice of the loss and agrees to follow all requirements of the insurance company necessary to qualify such event for coverage. Client agrees that LLS’s liability is limited to the insurance coverage provided by LLS and that LLS shall not be liable for any claim or amount covered by its insurance policies. Client agrees to cause LLS and any Assignment Professional assigned to Client to be covered by Client’s errors and omissions, malpractice and professional liability insurance, and to further indemnify and hold LLS and its Assignment Professionals harmless from any and all cost, liability, expense (including reasonable attorneys’ fees and costs) and any claim arising from any action or failure to act by Assignment Professional on this assignment.
Sample Contract: Temp-to-Hire Conversion Fee

CONVERSION OF ASSIGNMENT TO HIRE EMPLOYMENT FEE ARRANGEMENTS: Client may hire an LLS Assignment Professional during the course of an Assignment and for 6 months after its termination by paying an Assignment Conversion Fee using this fee schedule:

- During the first two months on assignment, pay 25% of AP’s first year base compensation.
- After 2 months on assignment, pay 20% of AP’s first year base compensation.
- After 3 months on assignment, pay 15% of AP’s first year base compensation.
- After 4 months on assignment, pay 10% of AP’s first year base compensation.
- After 5 months on assignment, pay 5% of AP’s first year base compensation.
- After six months on assignment and until the expiration of six months following the last day of the Assignment, Client may be asked to pay assignment conversion fee of $1,000.00.

For purposes of this section, the term “first year base compensation” means the base monetary compensation to be received by an AP during his or her first twelve months of service for Client other than through LLS. Client agrees not to utilize an Assignment Professional as consultant, employee or temporary staffer from any other staffing company for six months after Assignment Professional’s resignation from this Assignment, or its termination, except upon payment as above. LLS may, at its discretion, waive or reduce the requirements of this conversion provision.
Sample Contract

**ADDITIONAL AGREEMENTS:** Assignments will continue until Client notifies LLS that the assignment will end, or until Assignment Professional notifies either Client or LLS of his/her resignation. Client will not disclose the hourly bill rate to an Assignment Professional.

Client will comply with all applicable laws and regulations (including without limitation OSHA, wage and hour, discrimination, labor and environmental laws and regulations) with respect to LLS Assignment Professionals placed with Client.

Client and LLS hereby represent and agree that they are equal employment opportunity employers and are in full compliance with any and all applicable anti-discrimination and anti-harassment laws, rules and regulations. Client and LLS agree not to harass, discriminate against, or retaliate against any employee of the other because of his or her race, national original, age, sex, religion, disability, marital status, or other category protected by law. LLS and Client agree each will maintain a sexual harassment policy that is distributed to all employees providing procedures for reporting complaints, and that contains the name or position of at least two persons to whom reports or complaints may be made, and that provides for appropriate action and non-retaliation. In the event of any complaint by or on behalf of any LLS Assignment Professional, Client and LLS agree to cooperate in the prompt investigation and resolution of such complaint.

Client recognizes the importance to LLS of maintaining work quality and will endeavor to give reasonable and timely comment to LLS concerning the performance of an Assignment Professional and (following the initial eight (8) hour work period) will make reasonable effort to notify LLS of any dissatisfaction with any Assignment Professional.
Sample Contract – Statement of Work

Date

Roger Smith
Smith & Jones, LLC
123 Lawton Ave., Suite 230
Chicago IL 60523

Dear Roger,

Thank you for allowing Linder Legal Staffing to provide you with contract staffing services. This agreement letter will confirm the details of this project staffing assignment.

Linder Legal Staffing Inc. (“LLS”) is pleased to confirm the assignment of Mary Martin (“Assignment Professional” or “AP”) to Smith & Jones, LLC (“Client”) starting on April 39, 2018 at the hourly bill rate of $45.00. The overtime hourly bill rate is $67.50 for any hours worked by Assignment Professional in excess of 40 hours in any one Monday-to-Sunday work week.

ASSIGNMENT DESCRIPTION: Assignment Professional is assigned to Client located at address shown above or at a work site location designated by Client as a Contract Law Clerk and will perform the following general duties: those assigned by and supervised by Client.

AGREEMENT: The attached Client Agreement outlines the contractual details for this and future assignments.
AUTHORIZATION: The undersigned represents that he/she has authority to sign this Agreement on behalf of Client and that Client agrees to the terms of the Client Agreement.

We appreciate this opportunity to be of service. Should you have any questions, please contact me.

Sincerely,

[Signature]

Curtis A. Linder
President

The undersigned agrees to the terms set forth in this letter and in the Client Agreement and represents that he/she has authority to sign this agreement on Client’s behalf.

Signed: X______________________________

Printed Name: ____________________________

Date: ________________________________
The “other” Contract

Linder Legal Staffing Inc.

Assignment-Professional Assignment Agreement

This is an Agreement between Linder Legal Staffing Inc. (hereinafter “LLS”) and [redacted] (hereinafter “Assignment Professional” or “AP”) relating to an offer of a contract work assignment with [redacted] (“Assignment”). LLS is in the business of providing temporary contract work assignments of varying length to its employees. Assignment Professional accepts the Assignment from LLS as set forth below. Assignment Professional understands and agrees that by virtue of this Assignment, AP is an employee at will of LLS during this assignment.

SERVICES TO BE PERFORMED by Assignment Professional: (check one or more)

- Analysis
- Document Coding
- Document Indexing
- Document Drafting
- Litigation Support
- Document Review
- Quality Control
- Legal Research
- Writing/Drafting
- Other (Specify)

ASSIGNMENT PROFESSIONAL’S COMPENSATION:

$[redacted] per hour regular time rate, up to and including the first 40 hours of work each week. A work week begins on Monday and ends on the following Sunday.

$[redacted] per hour overtime rate. Overtime hourly pay rate will be paid for the hours or portions of hours worked in excess of 40 hours in any one Monday through Sunday work week. Overtime hours worked without approval will be paid but may result in disciplinary action, up to and including termination of employment.
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**CLIENT SIGNATURE**
(Please initial any hours over 40)

X

**CLIENT:**
CLIENT SIGNATURE ABOVE REPRESENTS THAT CLIENT IS IN AGREEMENT THAT THE HOURS SHOWN ARE CORRECT AND THAT THE WORK WAS SATISFACTORILY COMPLETED.

**Employee Name**

**Are you continuing this assignment next week?**
- [ ] Yes
- [ ] No
- [ ] Unsure

**If no, are you available for work?**
- [ ] Yes
- [ ] No

**When?**

**Paychecks will be deposited electronically unless otherwise specified.**

**Employee Signature**

X

**Employee:**
I CERTIFY THAT THE HOURS SHOWN HERE REPRESENT THE TOTAL HOURS WORKED THIS WEEK, BY ME, AND WERE PROPERLY VERIFIED BY THE CLIENT.
• YOU play the most important part in keeping TECHSHOW exciting. *Please complete the Speaker evaluation before you leave.*

• Reserve the dates!

TECHSHOW 2019: February 27 – March 2, 2019