



CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION

Testimony of
The Connecticut Business & Industry Association (CBIA)
Before the Judiciary Committee
Hartford, CT
March 25, 2011

CBIA represents approximately 10,000 member companies in virtually every industry. They range from large, global corporations to small, family owned businesses. Approximately 90 percent of our member companies have fewer than 50 employees. All of our members need to reduce costs to remain competitive in the region, country and world.

Thank you for the opportunity to comment on the following bills:

- **HB-6477 AAC the Unauthorized Practice of Law by Notaries Public and the Outsourcing of the Drafting, Review or Analysis of Legal Documents**

Section 2 (8) has the effect of prohibiting anyone who has not been admitted as an attorney under the provisions of C.G.S. 51-80 from drafting, reviewing or analyzing legal documents for clients.

As drafted, this proposal is problematic. First, would prevent a practice that clients and lawyers have accepted as standard business practice (See Attached Connecticut Law Tribune Article, Outsourcing 1/17/11). Second, it prevents paralegals or legal assistants from “drafting, reviewing or analyzing legal documents for clients.”

The common denominator is that legal services are expensive. Like all expenses, businesses try to minimize their legal costs. One way businesses have been able to mitigate legal costs is to require firms to outsource document review or use legal assistants, paralegals or other professionals to assist in document review or preparation.

For example, the closing of a real estate deal is a legal transaction that requires drafting, reviewing and/or analysis of legal documents. **HB-6477** would increase the legal costs associated with real estate transactions because it would require attorneys to perform duties that legal assistants currently perform. This will mean increased legal costs for individuals and businesses.

CBIA opposes **HB-6477**. Although the bill is well intentioned, it will increase the cost of legal services – something neither individuals nor business can afford.

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Outsourcing

Proposed bill would regulate overseas document review

By CHRISTIAN NOLAN

State Rep. Patricia Dillon recalls a conversation with some constituents about five years ago in which someone said, "There's one kind of work they'll never be able to outsource and that's legal work."

Then a second voice chimed up. "They're doing it now."

Over time, Dillon, who is not a lawyer, heard more stories about the trend. The most common scenario is that a large corporation, wanting to cut legal costs, forces law firms with which it does business to send document review work overseas to places like India for a fraction of the cost.

But what Dillon wants to know is who is doing the legal work? What is their training?

"There is a quality issue here and also a jobs issue," said Dillon, a Democrat from New Haven. "The licensure of teachers and health professionals is often not portable across state lines in this country, yet some legal work is being done abroad with no quality oversight."

The lawmaker, who is concerned that the outsourcing of legal work might take jobs away from recent law school grads, has introduced a bill to address the "doc review" situation. Under Dillon's proposal, "unlicensed" offshore workers who engage in the drafting, reviewing or analyzing of legal documents for clients in Connecticut could be charged with unauthorized practice of law.

Though the practice of legal work being sent overseas may still be a relatively new concept to politicians like Dillon, it's nothing new to some folks in the legal industry.

As economic times took a turn for the worse, corporations looked for ways to cut their legal costs. Law firms, not wanting to lose clients, have complied with the requests to outsource menial legal tasks overseas.

According to Valuenotes, a consulting firm in India, the number of legal outsourcing firms there had grown to 140 by the end of 2009, employing about 24,000 people. Revenue was expected to reach \$440 million in 2010 and surpass \$1 billion in four years.

Legal experts doubt whether the Connecticut legislature can do anything to stem the tide. "The whole business of lawyering is going to change, and is changing right before our eyes," said Frederic Ury, of Ury & Moskow in Fairfield, who serves on the American Bar Association's Commission on Ethics 20/20.

"You can't look at the profession and try to go backwards... We're just like every other industry that's in the midst of a paradigm change," said Ury. "Legal services overseas are really in demand."

Ury noted that the ABA gave the practice of outsourcing legal work its blessing in 2008.

The ABA said at the time that outsourcing "affords the lawyers the ability to reduce their costs and often the cost to the client to the extent that the individuals or entities providing outsourced services can do so at lower rates than the lawyers' own staff." The ABA also said outsourcing created new opportunities for smaller firms to handle larger matters.

No License Required?

Informed of Dillon's proposal, Peter Giuliani, a law firm consultant with Smock Sterling in Westport, asks a key question.

"Is anybody offshore actually practicing law?" asked Giuliani. He said the doc review-type tasks being done overseas is more like paralegal work. "You don't need a license anywhere in the U.S. to do what they're doing," he said.

Giuliani explained that doc review, which consists largely of going through thousands of pages of documents during discovery in large, complex lawsuits, had previously been done by first- and second-year associates. Associates would literally spend hours and hours on the grunt work in preparation for litigation.

At the end of the day, Giuliani said, BigLaw would be paying an associate \$165,000 or so a year to do a service that can be done for as much as 90 percent less in India. An attorney's average salary in India ranges from \$6,000 to \$36,000 annually.

"The idea of trying to maintain a client base is really what it's all about," said Michael Kraft, of Kraft & Kennedy Inc., which provides technology and strategic consulting services to law firms around the country.

"It's my belief people are going to do what they have to do in order to make the client feel appropriately accommodated and a lot of times that has to do with whatever fee arrangements get discussed," added Kraft, a Connecticut resident who operates his consulting firm in New York. "There's a lot more discussion on alternative billing than perhaps in the past.... If your organization could deliver the same quality and do it less expensively, don't you think they would?"

Ury said his ethics commission with the ABA is considering tweaking the wording of the professional rules of conduct in light of the surge in legal work going overseas.

As a lawyer working on a case, "I have the responsibility to make sure the work is done within the code of professional responsibility," said Ury. "If I send over files with confidential information, I have to make sure that [overseas] firm maintains certain policies that comply with the code of professional responsibility."

Ury said a law firm couldn't later say that the outsourcing firm had different rules and disseminated confidential information without repercussions on the law firm that hired them.

No Going Back

Despite some debate over improving safeguards, the general consensus is that overseas legal work is here to stay. "We as an industry have shown that a lot of basic legal support work can successfully be done offshore very cost-effectively with no quality problems," Mark Ford, of the global law firm Clifford Chance, recently told the New York Times. "Why on earth would clients accept things going back?"

Nevertheless, not everyone is happy about the legal outsourcing trend.

Scott Bullock, a contract lawyer who has blogged about the woeful economics of non-big-firm practice, told the New York Law Journal, a sister publication to the Law Tribune: "It's just preposterous that we have to go to an American law school and pass a bar exam and then see our jobs shipped overseas. Why even require people to go to law school?"

Rep. Dillon said the General Assembly's Judiciary Committee would take a look at her bill proposal and that a public hearing would likely be scheduled. •