

Law Offices Gary Oberst
A Professional Corporation

111 East Avenue - Norwalk, CT 06851

Phone: (203) 866-4646 - Fax: (203) 852-1574 - E-Mail: info@oberstlaw.com

LEGAL ANARCHY

To the editor:

Our Legal system: are we headed for Anarchy?

Yes, and no.

The good news is that, because lawyers charge such high rates, an increasing number of citizens are successfully representing themselves in court and our legislatures are passing statutes governing such matters as consumer protection, estates and trusts, tort reform, etc. It is far easier for a non-professional to read these rules than sort through a maze of case law.

The bad news is far more serious. For the average middle class citizen whose tax dollars support the courts, justice is not for all. They can neither qualify for "pro bono" representation nor afford a lawyer. My experience is that attorneys are either too busy or disinterested in suits that won't garner large rewards. Although this may help reduce the number of pending suits, it leaves room for unethical use of the law to threaten and coerce people.

Recently, a large home improvement contractor attempted to extort monies and releases from me via the placement of an invalid mechanics lien. Fortunately, I was successful representing myself in having it discharged. However, emotional and financial expenses were extreme. Further, the subpoenaed witnesses did not appear and, in withdrawing from the court, the opposing attorney introduced a letter from the corporation with false and misleading statements. When reported to the Connecticut Statewide Grievance Committee, my claim, despite overwhelming evidence, was dismissed: "no probable cause."

The legal community is reputedly self-regulating, but sadly the Rules of Professional Conduct are all too often ignored. There are many highly professional and ethical law firms whose reputations are tarnished by the transgressors. I urge them to take a more active interest in enforcing the standards of professional conduct. If not, indeed, we are headed for anarchy.

LEONA E. COTTER
Norwalk

April 2, 1991

Norwalk News
P.O. Box 1049
So. Norwalk, CT 06856

To the Editor:

In response to Leona E. Cotter's letter published March 21, 1991:

Your view of the legal system reflects the view of many wronged people: they are 100% right, the other side is 100% wrong, and they should therefore be compensated fully, without incurring significant emotional or financial expense.

Such a person invariably reacts to a lawyer refusing to represent her as it being because it won't garner large rewards. She refuses to believe it when her lawyer tells her that her claim is without merit or is balanced by sufficient argument on the other side as to preclude a reasonable expectation of the results she seeks for the price she is willing to pay.

Attorneys themselves understand that emotional involvement blocks the objectivity required to analyze a case appropriately and therefore rarely represent themselves. The adage is, "a lawyer who represents herself has a fool for a client." What must then be said of a non-lawyer who represents herself? As an example, your statement that reading statutes is easier than sorting through case law indicates your lack of understanding. To proceed to court on the basis of a statute, ignoring the case law interpretation is to invite disaster. Any lawyer can give you examples where courts have held statutes to mean something very different than what their language would imply.

Your own experience is instructive. You admit to extreme emotional and financial cost. It is entirely possible that your financial costs would not have been higher had you engaged a competent attorney, and it is likely that your emotional costs would have been much less. An important value that an attorney offers is removal of a great deal of the stress caused by operating within the morass of the legal system.

You also cite your experience wherein the Grievance Committee said you lacked probable cause despite what you considered to be "overwhelming evidence." However, since probable

cause is a relatively low standard of proof, your claim that you had overwhelming evidence is typical of the person who can see only one side.

Now I must admit that none of the above excuses or justifies the important central point of your message: that money moves the judicial system. There is, in fact, some correlation between the amount of money a party is willing to spend and the amount of success she can anticipate.

It is inappropriate, however, to place all blame on busy or greedy attorneys. Every attorney I know does some pro bono work (which by the way, is not limited to the indigent, as you imply). We attorneys reflect our clients' wishes. Most cases go to trial because one or both parties are too stubborn to see the merit on the other side, notwithstanding their attorneys' attempts to persuade them to accept a pre-trial compromise. Wronged people should be more reasonable in attempting to right their wrongs. The courts are not a solution for all problems nor are all court solutions going to satisfy the litigants.

Connecticut is in the forefront of states currently attempting to implement alternative processes to resolve disputes. These include negotiation, mediation, arbitration, and other pre-trial approaches. But they all depend on both sides being reasonable and willing to settle for something less than a complete win. Willingness to compromise is the solution to expensive litigation.

Gary Oberst, Esq.
Norwalk