

# Preventive Law: Necessary Legal Services for Any Business

by Noel Bagwell  
for Executive Legal Professionals, PLLC

November 13, 2014

## Every Business Has Legal Risks.

Preventive Law is an approach to the practice of the law oriented toward preventing legal risks from becoming legal problems. From this single definition, the insightful reader will have already deduced the value to businesses of preventive legal services. Quite simply, if an attorney can help a business address their legal risks, and thereby prevents those risks from becoming legal problems, the attorney will have performed a valuable service for the business.

Why, then, do more businesses not engage the services of an attorney to provide preventive legal services? The answer to this deceptively simple question is multifaceted. “In order of preference, people value achievement, productivity and activity. In order of frequency, lawyers sell time, projects and performance.” (Rowley, “The Matter with Lawyers: Why is it that people love to hate lawyers? Just what is the matter?”, 2000) Unfortunately, the legal profession is perceived as lacking credibility, accessibility, and accountability—three essential components of a productive, healthy relationship between an attorney and their client.

Breaking through this perception to reveal truly innovative ways attorneys can promote achievement and productivity through their services is vital for the preventive lawyer. Unless the lawyer can successfully do this, the negative stereotypes of lawyers will often deter businesses from hiring a lawyer until their legal risks have become legal problems. The remainder of this article, therefore, (1) will demonstrate how preventive legal services can increase achievement and enhance productivity for businesses; and (2) will explain why preventive legal services are not just an optimal component of every healthy business’s regular operations, but, in fact, are necessary to the long-term financial stability and controlled growth of a business.

## Transcending the Cost Barrier

Most attorneys bill their clients in a way that makes assessing the value of their services difficult for many business—especially smaller businesses with cash flow challenges. Most attorneys bill by the hour, in six-minute increments of time. This “billable hour” is the foundation of the traditional law firm model, but the billable hour is quickly becoming obsolete. The obsolescence of the billable hour is, perhaps, most apparent in sectors of the legal marketplace concerned with the provision of business legal services.

As David Rowley points out, businesses place priority on achievement and productivity, not just time spent working on a project. “Activity isn’t enough. ‘Putting in your time’ is a universal indictment. Productivity is better. It shows up as products, plans, reports and studies—deliverables. But results are what they really want—increased sales, improved margins, reduced costs, enhanced service. Make a profit. Achieve an objective. Add value.” (Rowley, 2000) Businesses often find it difficult to see the value attorneys can add when the attorney’s billing is measured solely by billable hours. Even “flat fees” are often based on the billable hour, with calculations often simply being a time estimate multiplied by the attorney’s hourly rate.

To transcend the cost barrier, the preventive lawyer ties his services directly to specific goals and objectives his client wants to achieve, and thereby makes much easier the client’s job of assessing the value of services rendered. This necessarily causes a break with the traditional model for providing legal services utilizing the billable hour. “Preventive law is an unconventional animal that lends itself to unconventional fee arrangements.” (Rowley, 2000) How unconventional are these fee arrangements?

Executive Legal Professionals takes unconventional to a whole new level by offering unlimited remote legal consultation services with all of our legal service plans. Tennessee State Law includes in the definition of “Law business,” which only a licensed lawyer can do, “the advising or counseling for valuable consideration of any person as to any secular law” (the laws in other states have similar definitions); this means legal consulting services are legal services—often extremely valuable legal services. We put no limits on how much of these valuable services our clients can use. That’s adding value by making an unlimited resource available to a client. We stop the billable hour “clock,” and offer our clients access to as much of this kind of service as they could possibly need as part of our legal service plans for which we charge a flat monthly fee. That’s just the beginning.

## **“Make a profit. Achieve an objective. Add value.”**

“The [preventive lawyer in his role as] Designer works proactively with clients to identify potential legal trouble-spots and design interventions that prevent those risks from occurring. Further, however, the multi-dimensional lawyer is a Problem Solver for those problems that do erupt, notwithstanding the best preventive efforts. The Problem Solver listens actively to understand a problem in its business, relational, or organizational context and attempts to prompt comprehensive, enduring resolution of the problem by the parties themselves. Failing that, or where justice concerns otherwise seem to warrant it, the multi-dimensional lawyer can become the Fighter who initiates judicial resolution of the problem. All three dimensions of lawyering are important.

The key to a lawyer providing optimal service for a client, in sum, is for the lawyer to be multi-skilled or to be part of a team of professionals that will prevent whatever problems can be prevented, approach imaginatively and cooperatively those problems that do arise, but always be willing to litigate traditionally where more accommodative solutions are infeasible or inappropriate. The multi-dimensional lawyer must be a sensitive listener, an open-minded yet skeptical and realistic counselor, a person with the creative vision to understand problematic

environments and make suggestions for their restructuring, and an advocate with the courage and passion to advance a client's interests in whatever forum is required.”

(Barton, “Preventive Law For Multi-dimensional Lawyers”)

Attorneys practicing preventive law for businesses must be proactive in their efforts to analyze legal risks, bring them to the attention of business decision-makers, and present solutions for preventing those risks from metastasizing into expensive legal problems. If utilized correctly, preventive legal services will allow the preventive lawyer's client to focus on running their business instead of addressing legal problems. Put in economic terms, preventive legal services lower a business's opportunity costs, allowing them to direct their most valuable resources toward achieving their most rewarding objectives.

Also, working as a problem solver to address whatever problems arise, despite proper prior planning, is a valuable service any business should easily recognize. All businesses experience legal risk, but an attorney working as outside general counsel for a firm can help them spot and address those risks before they become problems. To get ahead, you have to take risks. A good business lawyer using a preventive approach to the practice of the law can keep you from taking bad risks. That's the value preventive legal services create for a business.

## **The Necessity of Preventive Law**

Law touches every aspect of business. You can choose to be either reactive or proactive. My experience informs me that being proactive—having a plan, following it, and addressing problems before they have a chance to grow out of control—allows me to exercise more control over my circumstances, and nearly always reduces my long-term costs. On the other hand, when I observe someone who waits for situations to crop up, and then just deals with them Whack-a-Mole-style, it seems they usually end up spending a lot of time, effort, and money solving a problem that could have been prevented in the first place.

There is wisdom in the age-old proverb, “An ounce of prevention is worth a pound of cure.” Every kind of business organization needs at least some preventive legal work—even if their needs are limited to having access to an attorney that can answer legal questions and explain legal language when necessary. Partnerships need a Partnership Agreement. LLCs need an Operating Agreement. Corporations need Charters & Bylaws. Even sole proprietors should use contracts to shield their operators from personal liability for the debts of the business. Every business needs insurance of some kind, and insurance policies are contracts that should be reviewed by an attorney. I haven't even mentioned any legal services related to collections or hiring employees or freelance workers.

The list of legal services any kind of business will eventually need is long. The question is not whether your business needs preventive legal services. The question is which preventive legal services does your business regularly need, and what is a reasonable fee to charge based on the value those services will add to your business?

## **SOURCES & CITATIONS**

Rowley, D. (2000, January 1). The Matter with Lawyers: Why is it that people love to hate lawyers? Just what is the matter? Retrieved November 13, 2014, from <http://www.preventivelawyer.org/main/default.asp?pid=essays/rowley.htm>

Barton, T. (n.d.). Preventive Law For Multi-dimensional Lawyers. Retrieved November 13, 2014, from <http://www.preventivelawyer.org/main/default.asp?pid=essays/barton.htm>