

Survey Says: What Farmers and Agri-Businesses Have to Say About Agriculture Lawyers

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June 28, 2013

Rincker Law, PLLC conducted an online survey titled “Use of Lawyers for Agriculture Producers and Agri-Businesses” via Constant on June 8, 2013. There were 70 participants in the short survey over a four-day period advertised via social media platforms (e.g., Facebook, Twitter, Rincker Law, PLLC’s blog) and via email to New York Agri-Women, National Cattlemen’s Beef Association’s Young Producers’ Counsel, and selected agriculture clients. The results are interesting and tell a lot about what farmers and agri-businesses desire from agriculture law professionals.

The survey was completely anonymous. I asked the participants eight simple questions. On each question, there was about one nonresponse. The participants were able to leave comments after each question. This article describes the data and lessons from the survey so that agriculture lawyers can better serve the community.

Like any good survey, it is important to know the **demographic**. Of the 70 participants, 45 (64.2%) were involved in agriculture production (including a dairy farm in Canada and a vineyard). Twelve (17.1%) participants identified themselves as an agri-business. Two (2.8%) participants identified themselves as the food and beverage industry. Ten (14.2%) participants identified themselves as “other.” From reading the comments, the majority of the “other” participants were involved in extension education, state government and agricultural not-for-profit organizations.

When asked “[h]ow many lawyers have you worked with over the last 2 years?”, data are:

- 18 participants (25.7%) had not worked with a lawyer;
- 23 survey takers (32.8%) had worked with one lawyer;
- 22 respondents (31.4%) had worked with two to three lawyers; and
- Six people (8.5%) had worked with 4 or more lawyers.

The respondents who left comments after this question shared the instances when attorneys were hired such as performing succession/estate planning, drafting a gas lease, solar farm development, working on a farm/ranch lease, doing a real estate transaction, and a debt consultation.

In response to this question, one survey taker noted that out of the “5 [lawyers] only 2 knew the law better than myself.” This highlights the fact that the lawyers should better educating the agriculture community on the complexity of the legal system and the requisite learning curve with certain legal questions that a farmer or agri-business person has. Furthermore, this also demonstrates the frustration that many in the agriculture

community have with their specific legal issues. For example, few employment attorneys understand the nuances affecting farm labor. Another example: few agriculture attorneys have a strong grasp of federal farm programs and how a farm can structure its business to maximize payments (i.e., federal farm payment planning). Because agriculture law touches upon nearly every area of law, it is challenging for any attorney to have an in-depth understanding in each area; yet, that is what the agriculture community sometimes expects.

In the next question, survey participants were asked “[i]f you needed a lawyer, which of the following search mechanisms would you most likely utilize?” The statistics are as follows:

- 31 people (44.2%) said they would ask someone they trust for a referral;
- 29 participants (41.4%) said they would use an attorney they already know;
- Only four survey takers (5.7%) said they would ask a food or agriculture organization for a referral;
- Two participants (2.8%) said they would do a Google search; and
- Only one person said that he/she would use an attorney search website such as Avvo, Lawyer.com, Justia, etc.

No participants said they would use social media to locate an agriculture lawyer- which is interesting since this survey was primarily advertised via social media. In other words, even though farmers, agri-businesses and food entrepreneurs use social media, it is not the desired search device when looking for a trusted professional. Finally, two participants said they would use another mechanism not listed in the answer choices.

Here were some of the selected comments:

- “I met one of the lawyers that I have worked with this year because he made his passion for food evident to me while shopping in my farm stand store and the other because he and I share the same graphic designer who is also passionate about good, clean food.”
- I “[u]se a firm that I have personally met or have heard speak.”
- “Combination. i.e., asking someone I trust for a referral, ask a food or ag organization for a referral & search Google.”
- “Find a lawyer that’s a specialist in the matter in question.”
- “Asked a professional business person who has reason to refer their clients to legal advisors.”

In sum, approximately 90% of the participants would choose an attorney they know or were referred by someone they trust. These referral sources are likely other members of the agriculture community, accountants, financial advisors, extension agents, and other

attorneys. Like the client base, the best agriculture law practices are farmed with patience by cultivating relationships with the agriculture community and their trusted advisors.

When asked “[w]hat is the most important factor when deciding on a lawyer?”, 44 participants (62.8%) said the “it is someone I trust to properly deal with my legal issues.” In second place, 19 participants (27.1%) said that “it is someone that understands my food and agricultural business.” Tied for third place with only two votes (2.8% each) were (1) “it is someone I like and want to work with, (2) and “other.” Only one participant each picked “that it is someone near where I live” and “that it is someone who is affordable.” No survey participants selected for “someone who is available to help me after business hours (nights and/or weekends).”

Here were some of the responses:

- “All of these are very important factors. 5 years ago I would have said "someone I trust" as the most important factor. But, how would I know if I really would "trust" someone when initially selecting my lawyer? After working with 2 different lawyers pretty frequently over the past few years, I feel like someone you like AND trust is the most important factor.”
- “I needed to be understood, treated fairly, treated respectfully. Needed someone locally and affordable. Needed someone I could trust and respect. Needed someone to discuss my circumstances and issues.”
- “Trust would include at least a basic understanding of animal agriculture.”
- “Reputation.”
- “Ability and competence are critical, as is knowledge of the applicable statutes.”
- “Combination. i.e. 1. Trust 2. Someone who understands ag 3. Someone who is affordable (this point is overarching).”
- “We must be able to communicate our thoughts to each other with efficiency.”

In a future survey, it would be helpful to ascertain what makes a client “trust” an attorney with their legal problem.

The next question in the online survey was “[w]hat is your primary legal need?” Interestingly, 33 respondents (47.1%) reported that general business law (e.g., business entities, contracts, leases, trademarks) was their primary need. In second place, ten participants (14.2%) indicated that their No. 1 legal need was succession and estate planning (“The next generation has taken over the farming operation”). There were six votes (8.5%) for litigation and three responses (4.2%) for “permits & licenses with government authorities.” Only two participants (2.8%) stated their primary legal need

was land use and zoning while one respondent each selected for environmental compliance, debt collections and insurance disputes. No survey participants opted for “food labeling” as their primary legal need.

Ten participants selected “Other”, which included some of the following comments:

- “Legislation”
- “Pipeline right-of-way issues.”
- “Non-profit management advice.”
- “Water issues.”
- “1031 exchanges, fence problems with neighbors. Making them aware of the ‘right hand’ rule.”

The following two comments demonstrate the broad spectrum of legal problems affecting the agriculture community:

- “It could be all of the above.”
- “Nearly all options listed here. I prefer working with someone that is familiar with all my legal needs or at least has an associate in house that is more focused on particular areas.”

It is impracticable for most small law firms to have “an associate in house” to serve the needs of every practice area affecting agriculture production and business; however, the food and agriculture law community should strive to build stronger coalitions with agriculture attorneys who concentrate in other practice areas other than their own.

Importantly, I asked the survey takers “**[w]hich of the following payment methods would you prefer to use with your lawyer?**” There was an overwhelming desire for flat fees (41 votes representing 58.5% of the poll). There were only seventeen responses (24.2%) for the traditional billable hour. Four participants (5.7%) selected for a “subscription service (monthly payment for X amount of monthly or annual service).” Six voters selected other/contingency.

Some comments were as follows:

- “We often have to work with lawyers who can offer *pro bono* support.”
- “I need to have billing on a sliding scale, monthly payment arrangement on an as needed basis.”

- “In my husband’s estate, [the lawyers] bill by the hour and [the] extensions of tax filings are killing me. [I]t has been two years and I am still getting \$500 bills every month for one thing or another.”
- “. . . [I]t’s pretty hard to even find someone, much less afford the \$1500 retainer he asked for.”

It would behoove agriculture lawyers to implement more predictable alternative billing structures for the agriculture community such as flat fees, range/maximum fees, subscription services, and unbundled legal services for those Do-It-Yourselfers. Retainers for subscription services should be narrowly tailored to clearly explain what is and what is not included on a monthly or annual basis. Retainers for flat fee services to allow additional billing if the transaction becomes significantly more complicated than originally anticipated.

Packages for flat fee services can be utilized cooperatively with other attorneys with complementary practice areas on a matter-by-matter basis or an of counsel relationship. Think outside the box: flat fee packages offered to agriculture clients can reach outside the attorneys normal practice areas. To illustrate, if you are an agriculture lawyer helping set-up a farm, a flat-fee package could include setting up the business structure(s), applying for a trademark, drafting a farm lease, setting up an employee handbook, and drafting the Terms of Use for the farm’s website. Perhaps this lawyer will work with an employment lawyer on the employee handbook portion and an Internet/technology lawyer for the Terms of Use element of the flat-fee farm set-up package. There are limitless possibilities for flat fee structures by developing thoughtful coalitions with other attorneys.

Solo practitioners and small firms typically have less overhead and can offer reduced or “low bono” fees for indigent farmers or ranchers. However, these lawyers oftentimes have less secretarial and paralegal support to help reduce the attorney time required to manage these cases. The agriculture law community needs to develop more “virtual legal assistants” and “virtual paralegals” that have a proficiency in agriculture law matters to better assist agriculture lawyers in solo and small firm settings.

The next question posed to survey participants was “**[w]hat is your biggest concern with using an attorney?**” The responses here were pretty evenly distributed among the top three choices. Coming in first place with 19 votes (27.1%) was “[t]hat an attorney won’t add value- he/she will overcomplicate things.” In second place with 16 selections (22.8%) was “[t]hat my attorney won’t fully understand my food and agriculture business.” Not far behind with 15 responses (21.4%) was “[t]hat my attorney won’t be worth the legal fees.” Ten people (14.2%) said “[t]hat a good lawyer will be too busy to give my business the time and attention that I need.” Five participants (7.1%) choose “other” while two survey takers selected “[t]hat a lawyer will just try to sell me more legal products that my business doesn’t need.”

Survey respondents left the following comments:

- “It has been my experience in practice that the lawyer charges me for every minute they talk to me, even when they are returning my call to tell me they haven't done the work, or made a mistake and need to file additional papers, or that government has not gotten back to them which is why they have not returned my calls. And it turned out once that after \$3K in legal fees and a year of waiting I got the job done quicker and for free after I fired the attorney and took all my files home.”
- “That the attorney be understanding, provide fair treatment, be unbiased as far as political preference. That the lawyer be competent, knowledgeable about the difference in state and Federal law and know that Federal supersedes state laws. That the lawyer have time to discuss my circumstances and issues. That the lawyer not complicate my case and not take advantage of my circumstances. That he choose judges that use the law fairly and not by his/her own interpretations.”
- “I seem to never be 100% sure we got the issue at hand resolved properly, so it won't be challenged in the future. It seems very difficult to get a straight answer from a lawyer. . . many times after asking a question, I am more confused than before I asked the question.”
- “That my case will not be properly managed and/or the services provided will be inadequate.”
- “It takes a special type of attorney to truly understand what a farmer deals with on a daily basis. It is too easy to forget or overlook the fact that the farm often times also is the farmer's home. This is a bit of an issue sometimes. They also need to realize that most farmers can't always just adjust their price to recover the cost of a good attorney.”
- “Lawyers are "untrustworthy" - which is a typical view of most farmers & ranchers.”
- The final respondent complained that her lawyer was not listening to her estate planning concerns and stated that her “husband would have wanted it this way.”

Put simply, the agriculture community does not believe that lawyers are worth the legal fees. Agriculture attorneys need to do a better job educating our clients and the community about potential harm to the food and ag business if legal issues are not properly dealt with.

The final survey question was open-ended. It was “[h]ow can the legal community better serve you?” Twenty-three of the respondents answered this question. Some of the responses were as follows:

- “Be more open to answering my questions.”

- “Have a more reasonable fee structure for farmers.”
- “Realize the long term ramifications.”
- “Be more familiar with the agriculture business.”
- “Be available when I need a lawyer.”
- “Keep up to date on agriculture/food issues.”
- “Help me to learn local and state law.”
- “Get out in the field and get their hands dirty.”
- “Keep it simple.”
- “Listen and understand; if you don’t [understand then] ask questions.”
- “Unwarranted motion practice should be eliminated.”
- “Have attorneys that specialize in specific aspects”
- “Realize that a lot of farmers find the fees too hi [sic].”
- “To better understand agricultural issues in an ag [operation].”
- “Give value. And knowledge.”
- “Stay current/reasonable pricing.”
- “Try to keep everything more cooperative.”
- “Quit filing frivolous law suits just to get rich.”
- “General assistance to help me do it myself.”

To summarize, there are a few take home points from this survey:

- When searching for an attorney, farmers, ranchers, agri-business owners, and food entrepreneurs will talk to someone they know or will be referred by someone they trust.

- Agriculture clients primarily seek solid business law counsel for their farm, ranch or agri-business; however, they also have a myriad of other potential legal issues that affect their operation that they need counsel on from time to time.
- Agriculture clients seek attorneys/law firms that can handle the full breadth of their needs. Agriculture attorneys in solo and small firm settings can serve these diverse needs through cooperative arrangements with other food and agriculture attorneys that have concentrations in specific areas.
- Agriculture clients want reasonable, predictable fee structures. When possible, agriculture lawyers should consider alternative billing methods such as flat fees, capped ranges for billable hours, sliding scale fees for financial hardships, subscription services, or hybrid arrangements.
- Agriculture clients do not want to be oversold on legal products. They need to be educated on the value of the legal service.
- Although agriculture clients hope to work with a lawyer who understands the food and agriculture industry with reasonable fees, ultimately they will select a lawyer who they trust to handle their legal issue.
- The agriculture law community should focus more on concerted marketing in the industry.

This was a short survey taken over a long weekend advertised primarily through social media. A more sophisticated survey might be a valuable learning tool for the agriculture law community in the future.

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