Lawyers cannot do “simple”

(excerpt from "Why Lawyers Suck and What You Can Do About It" by Melody A. Kramer)

Lawyers cannot do "simple." This complaint comes over and over again in different iterations. Lawyers write documents that are too complicated to understand. They talk to people in such complicated terms that no one can understand them. They call a 25-page document a “brief.”

Truth is that lawyers don’t know how to do things in a simple matter. There are several reasons for this. First, they live and work in a judicial system that is barely beyond the Stone Age in efficiency and mentality, governed by overlapping layers of multiple sets of rules and regulations that even the best and brightest minds find hard to comprehend. Second, they are educated to see levels of complication in every situation that ordinary people rarely have reason to see. Third, there is rarely any financial incentive to be simple and concise. And finally, though really a sum of the above reasons, lawyers live in daily mortal fear of missing something.

It would be easier to invade a small country than file a court document!

We live in a society where you can order a pizza, buy a movie, and order an arsenal of weapons for home delivery with a few clicks of a keyboard or on your smartphone. Lawyers, on the other hand, work within a near Stone Age legal system governed by the most complicated and overlapping set of rules, regulations, and conventions as to boggle even the most genius of legal minds.

Let me give you some examples. I was handling a lawsuit in the United States District Court for the Central District of California. This court handles cases involving patents, large commercial disputes, civil rights cases, legal disputes between citizens of different states, lots of important stuff. You would think that a court handling such sophisticated subject matter would have sophisticated computer systems to handle all of the paperwork going back and forth in the case. Not so much.

During the course of a lawsuit, there are likely to be hundreds or thousands of pages of documents filed with the court regarding the case, beginning with pleadings outlining the respective positions of the parties, and then many motions or requests to the court to decide parts of the case or argue over the exchange of information and documents (discovery) that occurs within the case. It used to be that whenever a side to the lawsuit had an issue to raise with the court they would prepare a document which would outline what they wanted, what legal reason they believed supported their request, and what facts made their legal reason applicable. The party making the request would file the original document with the court (and maybe one copy), and send a copy to the other side in the lawsuit. For the ease of the court clerks, there were some rules about how these documents needed to look and what information had to be contained in them. Some courts even required blue-backing, attaching a sheet of light blue cardstock to the back so it was easy to see where one document ended and began in the court’s growing file of papers.

About 10 years ago, the courts started using an electronic filing system. Yeah!!! Joining the rest of the world technology-wise. Well, not so much. Here are the steps needed to file a simple motion in this court.

First, you need to consult at least the following four sets of interlocking rules and make sure you comply with every one. Consult the Federal Rules of Civil Procedure to make sure that the content of your motion or request to the court complies with permissible requests and permissible timeframes.

Then consult and comply with the USDC Local Rules that add additional requirements to filings and time limitations. For example, if you are filing a motion relating to discovery (exchange of information between the parties in the case), you have to do the following:

1. Write a meet and confer letter to the other lawyer, explaining what you want and why.

2. Within 10 days after the letter, both lawyers must have a meet and confer conversation about what you want and why (and, of course, why they don't want to give it to you, and why). If both lawyers are located within the same county, the conference must take place at the office of the moving party's lawyer's office, unless agreed otherwise. If they are not in the same county, then they can meet by telephone.

3. If the lawyers cannot agree (and let's face it, they almost never do), then they need to prepare a document together called a joint stipulation that contains both sides' positions on issues. The moving party is required to deliver a draft document, the other lawyer has 7 days to respond back, the information is merged together and then it has to be signed by the second lawyer and sent back by the end of the next business day so it can be filed with the court.

4. After the request and stipulation is filed with the court, the parties can file a supplemental document not later than 14 days prior to the hearing date.

Throughout these various Local Rules are also page limitations, manners of service of documents required (personal, fax, email, etc.), and mandatory sentences to be placed within the documents.

But these two sets of rules do not near cover everything. There are two other sets of rules to consult and comply with. Many of the individual judges have chamber rules governing how and when certain motions can be filed, how to schedule hearing dates, and some even place complete bans on contacting the judge's clerk by phone or email for any inquiries about anything. In most cases, there is both a Presiding Judge that makes major decisions, and a Magistrate Judge that makes other decisions. Both have their own chamber rules. Then when it comes to the electronic filing of documents, there are other series of rules relating to technical requirements, format of documents (no embedded codes or hyperlinks, etc.), redaction of certain sensitive information, and also a list of certain documents that should not be electronically filed.

And after jumping through compliance with all of these interlocking rules, timeframes, technical requirements, page limits, mandatory language, conferences with other

lawyers, you finally log onto the computer system that looks slightly more advanced than a DOS interface and upload your documents onto the computer system. Whew! Done. Electronic filing completed. Automatic email received confirming your filing and that it was also emailed to the other lawyer. You are done. Hardly . . .

After electronically filing your request with the Court, you then need to send a proposed order in both .pdf and Word format to a specially-designated email address (different for each judge, of course). Done now?? No.

After all of that highly regulated and meticulous electronic filing, you then need to download and print out the entire document you just uploaded into the electronic system. Then after consulting the list of the meticulous different requirements for every judge regarding mandatory chambers copies, you arrange for a hard copy of the electronic filing to be personally delivered onto the judge's desk no later than noon the following day. No kidding! The court website has an alphabetical list of every single judge and magistrate listing their unique rules for chambers copies. Some just require a simple copy. Others demand attachment of a copy of the efiling notice to accompanying it. Others require insertion of tabs and marking of each document as "Chambers Copy." Some specify different delivery locations for different types of filings, some want blue-backing (that is attaching a piece of blue cardstock to the back of the document), specific hole-punching, some specifically demand that the copies not be placed in envelopes, some want courtesy copies on CDs or flashdrives with hyperlinks (remember that the electronic filing system rejects documents containing hyperlinks). Not only are there a myriad of different requirements from judge to judge, but some even threaten rejections of the documents, removal of hearing dates, or sanctions if these mandatory hard copies do not meet their nit-picky requirements.

Each courtroom is its own fiefdom. After dealing with such nitpicky requirements, you can understand why lawyers cannot understand anything that is simple and straightforward. Simple to their brains has been converted to ungodly complicated and cannot be changed back.