

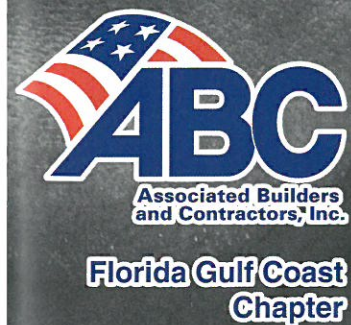
# Plans & Specs

ABC - Election Issue

Make  
sure  
your  
hard  
work  
doesn't  
go to  
waste

**VOTE**  
**ON NOVEMBER 8**

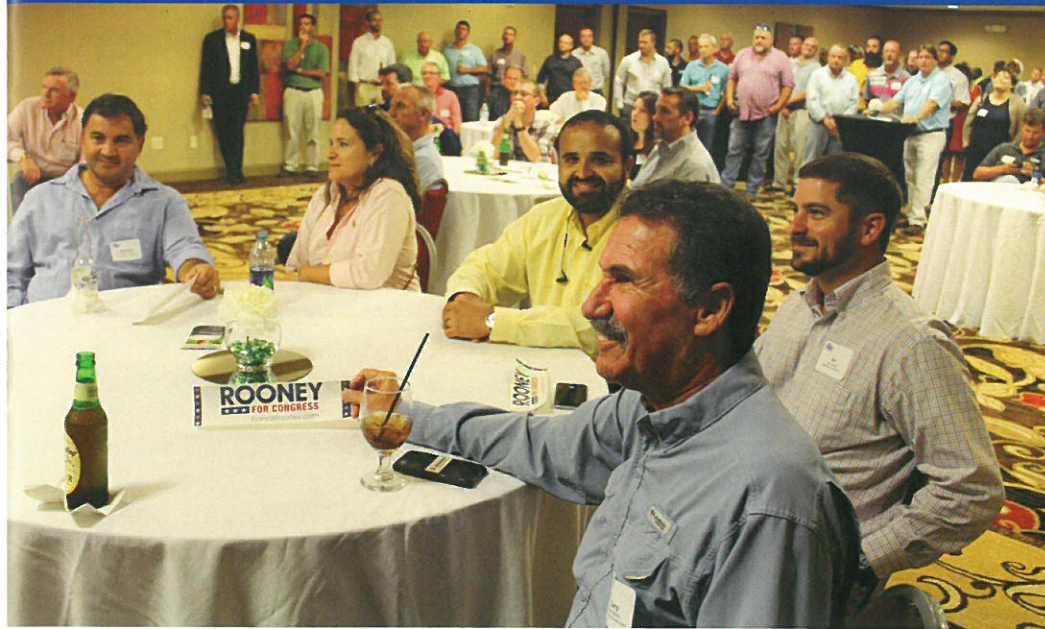
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**FREE ENTERPRISE  
ALLIANCE**

# 21

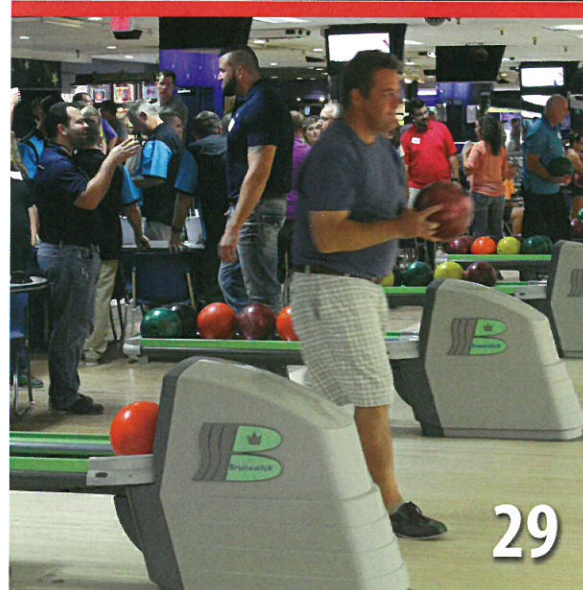
## ABC Get Out & Vote Meeting



- 5** Chair's Report - All Eyes on Florida - Your Vote Matters
- 7** Associated Builders and Contractors Announces Its Endorsements for the 2016 Election Cycle
- 9** Associated Builders and Contractors Endorses Francis Rooney
- 9** ABC Files Suit Against DOL's Overtime Rule
- 11** Associated Builders and Contractors Endorses David Jolly in Congressional District 13
- 13** Associated Builders and Contractors Endorses Sen. Marco Rubio
- 14** "First Thing We Do, Let's Kill All the Lawyers" (*Think Shakespeare*) by Justin R. Zinzow
- 18** Top Golf Event
- 24** Backlog Skyrockets for Largest Firms During Second Quarter, But Falls to 8.5 Months Overall
- 29** ABC Bowling Night
- 31** Why SIMPLE Plans Don't Work for Prevailing Wage Contractors by Karen deMontigny



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## “First Thing We Do, Let’s Kill All the Lawyers” (*Think Shakespeare*)

by Justin R. Zinzow

**D**oes this lawyer have your attention? Allow me to set the stage. You meet an interesting fellow at a social event. He asks you what you do and what brought you to the event. Intrigued, you then ask him the same, at which point he responds that he is a lawyer. You remember Shakespeare’s admonition, shake hands, and walk away, thinking or hoping that you seldom need that or any other lawyer’s assistance. Was Shakespeare onto something? You bet he was, but perhaps not for the reason you think.

Those famous words were uttered in William Shakespeare’s play *Henry VI*, but not because lawyers were contemptible. The character who uttered those words was named Dick the Butcher. The Butcher was a tyrant, whose sole roadblock to the ascension of absolute power was the lawyers of society who stood for law, order, and fairness. Lawyers wore the white hats.

Then why do your experiences leave you with an unsavory taste? There are a number of reasons, but allow me to suggest one that stands out head and shoulders above the rest: you do not receive true value. When is the last time lawyers were viewed as a valuable asset instead of an expense line item? It has been a long time for most contractors. Few see lawyers as offering anything other than advice on the law. Lawyers can, however, offer that and far more. Lawyers have seen what works and what does not across countless businesses and years. Because of their position they see the forest through the trees. They know that law only matters if you have someone or something to apply it to. They know how to locate and deliver solutions far beyond traditional legal advice.

Let us turn to a current need in our industry and examine how lawyers can fill it. People are the greatest asset to your business. This truth has become more evident the last 12 months than in the last 12 years; the labor shortage, from field personnel to executives, has challenged every contractor. If you are like most, you have contacted colleagues, friends, headhunters, trade associations, and even competitors to gain their insight on how to solve the problem. Would you contact an attorney if you learned that an attorney could suggest untapped markets to recruit new hires? Would you contact an attorney if you learned that an

attorney can provide insight on how to best show off and differentiate yourself in the hiring marketplace? Would you contact an attorney if you learned that an attorney can provide insight on non-immigrant work programs largely untapped by your competitors? Would you contact an attorney if you learned that an attorney can handle some of your most critical daily tasks, allowing you to free up your in-house talent to perform other mission critical items?

Intrigued by this article you reach for the telephone to call your favorite lawyer, but once again remember Shakespeare and decide not to call. After all, lawyers are just another expense; or are they? As the client you can and should be a huge part of the value proposition, but that requires you to request a value that is meaningful to you. You have had to reengineer your business countless times for your clients to deliver maximum value while retaining respectable profitability. When was the last time lawyers reengineered their business to deliver maximum value to their clients? I am not talking about lawyers quoting the lowest hourly rate or the lowest retainer requirement. I am talking about real reengineering. When is the last time you were asked about or offered an alternative fee arrangement that made sense to your business? When is the last time you were asked what the lawyer’s work product was *worth* to you instead of being *told* what it would cost you? When is the last time you felt that your lawyer had skin in the game?

If your answer to most of these questions is never, or it has been so long I cannot remember, congratulations, you sit with the supermajority. But change is once again upon your industry, and you have the power to change the industries that serve you, most especially lawyers. Change the dialogue and feel empowered to do it. As you select and move forward with lawyers ask yourself and them a series of questions. What service do I need (legal, non-legal, leadership, training, etc.) and can lawyers provide that to me? What is this service or work product really worth to me? What are my real business (not legal) objectives and can they be met by the fee arrangement and the direction suggested?

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Evaluate whether any of the following fee arrangements work best for your situation:

Arrangement Type	Description	Client Considerations
<b>Hourly</b>	Lawyer's hourly rate multiplied by hours, or portion thereof, expended	<ul style="list-style-type: none"> <li>• The only arrangement offered by many lawyers</li> <li>• Sometimes best for small projects or other projects where costs and time cannot be estimated</li> <li>• Unpredictable costs</li> </ul>
<b>True Retainer</b>	For a recurring fixed monthly or quarterly fee, client secures unlimited access to lawyer's resources in all areas or limited area (e.g. advice only, negotiation only, drafting only, dispute resolution, or some combination of the above)	<ul style="list-style-type: none"> <li>• The way it used to be in the "old days." Client can now view lawyer as a true asset and counselor who helps to grow the client's company</li> <li>• Predictable cost</li> <li>• Encourages client to contact lawyer as needs and issues are just developing, instead of long after they have festered</li> </ul>
<b>Project Fixed Fee</b>	Lawyer and the client agree up front on scope and price based on value to client.	<ul style="list-style-type: none"> <li>• No unpredictable costs</li> <li>• Useful for ongoing advice, contracts, and litigation</li> <li>• Incentivizes lawyer to deliver services effectively and efficiently to conclusion.</li> </ul>
<b>Phased Fixed Fee</b>	Similar to Project Fixed Fee, but used where certain phases of work may be optional or where work involved in future phases of litigation cannot be priced up front. Each phase is priced before it begins.	<ul style="list-style-type: none"> <li>• Slightly less predictability than Project Fixed Fee, but significantly more than other arrangements.</li> <li>• Allows Client to negotiate Fee before each phase commences.</li> <li>• Useful for litigation.</li> </ul>
<b>Fixed Fee with Collar/Spring</b>	Client and lawyer agree to a Project Fixed Fee or a Phased Fixed Fee with a collar set as a percentage of the fixed fee. If time exceeds the fixed fee by a certain percentage, client pays a percentage of the over-run (spring). If time is less than the collar, the law firm pays back a percentage of savings to the client.	<ul style="list-style-type: none"> <li>• Increases predictability of legal costs and minimizes the risk to the client of over paying.</li> <li>• Useful for litigation.</li> <li>• Collar incentivizes the lawyer to work efficiently.</li> <li>• Useful when the matter has a fair degree of unpredictability that cannot be easily priced up front.</li> <li>• Good transition arrangement from traditional hourly.</li> </ul>

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Arrangement Type	Description	Client Considerations
Success Fees	Client and lawyer define at the outset what results, interim or final, constitute a success, and what bonuses are earned for each. Paired with a reduced hourly rate or a reduced fixed fee.	<ul style="list-style-type: none"> <li>• Reduces expenses to client if lawyer does not meet certain success criteria.</li> <li>• Useful for litigation and contract work.</li> <li>• Focuses on how client defines success.</li> <li>• Forces early case/matter assessment and encourages candid advice.</li> </ul>
Performance Based Retainage	Paired with other fee structures. Similar to the concept of retainage in the construction industry. A percentage of the fee is held back by the client and released only at project completion or upon the occurrence of certain pre-defined milestones.	<ul style="list-style-type: none"> <li>• Client protected against cost overruns or incurring significant fees for unsuccessful outcomes</li> <li>• Useful for litigation and a variety of matters.</li> <li>• Encourages lawyer to share downside risks, with potential to participate in rewards.</li> <li>• Encourages lawyer to be accountable for results on a regular basis instead of merely at matter end.</li> </ul>

Pressing for change in the legal industry is critical because lawyers and laws are not going away. Congress only needed 29 pages when it passed the Federal-Aid Highway Act of 1956, building 41,000 miles of roads by 1970 and changing the way we traveled as a nation. In 2012 Congress needed 584 pages to pass a far less sweeping highway act, and yet our roadways are deteriorating at a rapid pace. Complex business issues are not going away and neither are sophisticated

lawyers, so change your experiences with them and change the way you view them. Rather than work in a paradigm that does not work for you, create change that does. Look for lawyers that wear the white hat.

**About the author:** Justin R. Zinzow, a Florida Bar Board Certified Construction Specialist, is one of the attorneys at Zinzow Law, LLC. For more information, or to inquire about a free seminar on this or other legal topics, email [jjinzow@zinzowlaw.com](mailto:jjinzow@zinzowlaw.com), or visit [www.zinzowlaw.com](http://www.zinzowlaw.com).

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