



## Chapter 14

### **Practicing Six Sigma Consumer Law Service<sup>1</sup>** *A Practice Management and Client Service Strategy*

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#### **What is Six Sigma?**

It is a way of thinking. It is a new way of looking at what you do and how you do it, in order to improve your profitability and client satisfaction. This “mindset” helps you to achieve the highest level of client satisfaction, which ultimately leads to greater economic success for yourself. It is a “quality control” analysis that can be adapted to servicing the consumer client’s Consumer Law needs.

But the concept itself involves something broader. A more fundamental objective is to improve your processes and procedures, and those in your office, to the point that errors and mistakes are absolutely minimized, if not eliminated altogether. Understanding Six Sigma, “what it is and how it works”, can lead your Consumer Law practice to a more efficient and profitable operating level.

Using what is called a “six sigma” approach will cause you to reexamine and question the efficiency and propriety of everything that you do. In turn, that examination, thoughtfully pursued, will cause you to improve what you do and the way you do it. The immediate benefit is to your client, but the long-term benefit will be to yourself and your firm.

Initially developed by Motorola and others as a manufacturing philosophy, Six Sigma has since been adapted to service industries and professions. Every company known to have adapted the Six Sigma philosophy has increased its economic success. There is no reason that the private Consumer Law bar cannot do the same thing.

Put simply, Six Sigma is a way to give better service, get more clients, make those clients happier, and make more money too. Notice that “make more money” follows all the rest of what Six Sigma can do for you.

#### **Why should you adopt a Six Sigma approach to Consumer Law?**

Because it works. Tried, tested and found true, it’s no longer a very “new” concept at all. Highly successful business enterprises use it because it works.

The primary objective of Six Sigma service is not to increase the quality level of the service you give to your clients. It is to increase your own profitability. It is only by increasing your own profitability that you can increase the *quantity* levels of the service you give your clients. In that sense, it is a variation on the theme of “work smarter, not harder.”

For decades, attorneys have always thought that working longer hours would increase personal success and profitability. Then along came along the philosophy of “work smarter”, but no one told Consumer Law attorneys how to do that. The dawn of the personal computer made working smarter a concept that was easier to implement, but it was not really a way of working “smarter” --- it was just a way of doing the same work more efficiently.

The problem was that as we began to be more efficient at doing the same old things, so did the defense bar. In effect, we were no more successful in working “smarter” than the defense bar --- we were both just working more efficiently at doing what we had each always been doing.

Now we are right back to where we started: We still have not identified what we need to do in order to work any “smarter”, and in the meantime the only thing we have learned is that increasing efficiency, by itself, has not changed anything.

One of the keys to determining what we need to do is to understand what we *have* been doing. The only way to know that is to analyze and measure the current practices and procedures. You cannot know where to improve if you do not know what needs improving.

Analyzing is what a Consumer Law attorney does everyday. We just routinely do it in the wrong way.

When a client comes to us with a problem we analyze every aspect of that problem. It is our nature, as attorneys, to analyze a problem before understanding possible solutions, and measuring the seriousness of the problem (and all other variables in the scenario) before recommending the best solution.

When we analyze the facts in a dispute in order to determine what laws are relevant, we are doing what comes naturally to us as Consumer Law attorneys. We also, as a natural part of the process, “measure” the relative strengths and weaknesses of various aspects of the dispute: the credibility of the client, the facts not expected to be disputed, the hotly contested issues (legal and factual), the likelihood of a stalwart defense, the ease or difficulty of mustering evidence to prove our truth, the damages suffered by the consumer, the likelihood of winning

the case (or each part of it), the amount of time and effort it will take by the attorney (and by the client), the ability of the client to afford the costs of litigation or attorney fees, and a hundred other factors.

Some of the analysis and measurement is done subconsciously, while much of it is done with conscious and deliberate thought. Indeed, in the life of a trial attorney, practically everything is done with conscious and deliberate thought and calculation.

The attorney who takes a case just because it is a “good case” had better have highly developed psychic powers (and have no small amount of Maloxx on hand), if he does not rely upon the analysis and measurement part of the process. After the analysis is completed, after the “measurements” of strengths and wealthiness are taken, the Consumer Law attorney is better able to decide if the case is worth taking. After all, if you just “shoot from the hip”, you are very likely to hit your own foot.

The legal profession frequently proclaims it is dedicated to providing legal services in a way that satisfies the consumer of the quality level of that service. But if we do not measure the quality of that service, than can we really say that we are able to provide excellent legal representation? If you don't *know* that you are doing good work, can you really be sure you are? Bringing some objective analysis and measurement to the process is the way to tell.

If what you value is a satisfied client, then you must determine how to satisfy a client --- and you will not really be able to know that until you understand how to gauge client satisfaction in the first place.

When you understand how to gauge client satisfaction, you will know what you need to do to satisfy your client. When you know what you need to do to satisfy your client, you can focus on doing it. When you focus on doing what you need to do, you can get it done, efficiently and well. When you get the job done efficiently and well, your client will be satisfied. When your client is satisfied, your client will tell other potential clients. When other potential clients know you have a reputation for satisfying your clients, they will want to become your client. When that happens, professional profitability inevitably and naturally follow.

### **Six Sigma is about measuring.**

You cannot improve future customer satisfaction if you not understand present client satisfaction, and the way to understand that is by measuring it.

### **It's also about value.**

Consumer clients, perhaps more than any other type of client, value a successful result. The perception they frequently have of the Consumer Law attorney is that you are a specialist and, inherently, that means you are better than the average attorney at handling the Consumer Law problem they face. There is value in that. To the client. To the attorney.

What the client wants most is, however, not just a satisfactory result, but a timely one. Businesses and business people understand that the litigation process takes time. A consumer frequently does not understand why it may take several weeks for a lawsuit to be filed and months for settlement negotiations to be done, and even a year or more before trial — when Boston Legal seems to get it all done in an hour. The accelerated pace of the world we live in has created an unnatural expectation of speed in the litigation process. There is value to speed, as perceived by the client. Of course, to the Consumer Law attorney there is danger to that.

The values of the client can be similar to, identical, or at odds with the values of the Consumer Law attorney. However, you will not know which it is, if you do not understand what those values are and measure the relative strengths of each of those values to the consumer (as well as to yourself).

Six Sigma is also about understanding those values, measuring them, and balancing them (those which the consumer client has and those which the Consumer Law attorney can deliver.) If the Consumer Law attorney does not analyze, understand, and measure the services he or she provides to the consumer client, the Consumer Law attorney has an untrustworthy basis upon which to predict what will happen in the case.

Being able to accurately predict what will happen in the case (how long it will take, what it will cost, what the odds are on winning any particular claim, and what the client is likely to get out of it, etc.), is of extraordinary value to the client. It may be the most important thing the attorney can do for the client, short of winning the case. That accuracy is based on knowledge and experience and it builds a trusting relationship between the consumer and the attorney. Building that trust, building that confidence, is what results in repeated referrals and enhancement of your personal reputation. The client who wins, like a client who is satisfied, is one who tells everyone about his case, what a great attorney you are, and what a great job you did. There is immeasurable value in that, too.

Adopting the “Six Sigma” approach to client relationships will build a stronger and more satisfied client base, which will only lead to more referrals and ultimately more financial success.

The Six Sigma concept in Consumer Law really means understanding and measuring the client's needs so that you can understand and measure your own practices and procedures, so that you can modify what you do and how you do it, in order to best meet your client's needs, thereby increasing client satisfaction (and, not coincidentally, your own profitability at the same time).

The Six Sigma approach also expands the definition of client satisfaction by adding analysis of economic value and practicality in considering both the needs of the consumer and the abilities of the attorney processes and procedures to meet those needs. "Is it worth it?" becomes the considered question for every step, process and procedure to be implemented by the attorney. Each part of the attorney's client handling process has to be questioned.

Overall, the client handling process I broken down into phases, with each phase then further broken down into its processes. Each process is then further broken down into its steps.

Each step then is questioned with the view toward determining if that particular activity cost effectively moves the process forward toward the client's fundamental goal. In another parlance, the question could be rephrased as "Does taking this step give me and my client enough 'bang for the buck'?" If does, do it. If not, don't.

The analysis goes beyond looking at any one step. It involves examining every single step and every single phase, process, and procedure. Client satisfaction is not improved merely because a receptionist answers the telephone quickly, if another part of the process breaks down repeatedly (such as the attorney failing to return the call just as quickly). You can improve one small piece of the puzzle and still be left with a client who is puzzled about the overall poor level of service the client feels is being received.

The highest level of "quality service" is achieved when both the client and the attorney feel it has been achieved. There is an expectation that follows on both sides of the equation. The attorney rightfully expects to be compensated for the work being undertaken, and the client rightfully expects to receive high quality legal services at what the client perceives to be a reasonable cost. When the attorney satisfies the client's perceived needs, the attorney can expect satisfaction of his own economic needs in the process. Properly valuing and evaluating the process and procedures employed by the attorney in satisfying the client's needs, is the first step.

The reality is that the consumer wants to receive the best quality legal services obtainable at the most reasonable cost possible. Corollary to that is the

fact the attorney wishes to provide exactly that same thing: The best possible legal services at most reasonable cost. Economic value for both the consumer client and the attorney is achieved when both are satisfied with the results. Often, what neither realizes is that a quality level of service is actually the focus for both of them. The client is focusing on the quality level of service they feel has been received because it obtains the results that they want. The attorney is focusing on the quality level of service being given because it enhances personal reputation, fosters referrals, and promotes financial success. No doubt, some amount of ego is also involved.

Oddly enough, high quality legal service can actually occur in spite of poor and inefficient attorney practices and procedures. You can spend 80 hours of time on a case that should take 40 hours of time, and get to the same result; the problem is you just don't get paid for 80 hours worth of work — either because you do not charge for all the time or the client objects and will not pay for all the time. Worse yet, in a fee-shifting case where the Court is doing the fee analysis in the critical light cast upon your records by an aggressive defense attorney, the Court's opinion of your value can be diminished by attorney time perceived by the Court as being wasteful. The Court's opinion in one case may, of course, easily influence subsequent fee decisions.

In other words, the attorney will frequently find it impossible to recover the "investment" in the case (i.e., the time and money expended to achieve the result that could of been achieved with far less investment). As a result, the attorney economically suffers. The attorney's legal fees must be competitive. If too much is charged for the services rendered in a given case, even though the hours may have been invested, it will cause long-term economic harm to the attorney, for the simple reason that it will mean client dissatisfaction, fewer client-referrals and otherwise, and loss of reputation.

A "balance" must be achieved if long term economic success is to be achieved by the attorney. In other words, if the attorney does not want to give away the time, or the billing records will be meticulously examined, then the attorney must find another way to do the job with the same level of quality but at a cost the client will gladly pay.

The fact is that the quality of legal services can be at their highest when the cost is at its lowest, for both the consumer and the attorney. That is the key objective of Six Sigma Consumer Law service: To provide the highest level of quality legal services at the lowest cost, for the simple reason that in the long run, it will mean the greatest profit to the attorney and the greatest satisfaction to the client.

Beneath the Six Sigma concept is a more fundamental concept; an attorney can gain a competitive edge by increasing personal efficiency, which causes the by-product of cost-savings for the client. When client cost savings is realized, without a loss of quality service, client satisfaction increases. Client satisfaction necessarily drives more referrals to the Consumer Law attorney, and the cycle starts over again. Anything that diminishes the quality level of the service provided, necessarily impacts the equation and the result.

When a motion hearing is missed, more time is expended in straightening it out than the motion itself might have taken, and the motion still occurs at a later time. In other words, oversight and error causes inefficiency which increases time and costs to the attorney, most of which may ultimately be absorbed completely by the attorney, and that portion which is not absorbed by the attorney (but is passed on to the client,) diminishes cost effectiveness in the eyes of the client which, in turn, decreases client satisfaction and, thereby, client referrals. It is cyclical. The only question is whether the cycle is going to be a good one or a bad one.

The Six Sigma concept was born about 20 years ago, as a way of measuring quality in the manufacturing process, regardless of the product being manufactured. Later, it was applied to services. The original concept was to develop a “yardstick” to measure quality, regardless of the industry to which it may be applied. The higher on the numerical Sigma scale (1 to 6,) the higher the quality level; the lower the number, the lower the quality level.

After first applying it to manufacturing principles, it was extended to service providers in different industries. There is no reason it cannot be applied to legal services as well. The overall objective is to reduce “defects” whether those are perceived as defects in a physical product or defects in services rendered or even defects in the efficiency of the services being rendered. A defect is nothing more than an error or oversight which impacts on the customer or, in our case, the client.

In short, if we can arrive at a Sigma level that is high, and quantify it on a measurable scale in doing so, we will be delivering a higher quality level service to our client at what will ultimately be a lower level cost to the law firm, and (not coincidentally) a lower cost to the client. The ultimate goal is to deliver the legal service to the client in the most efficient and effective manner for the attorney. Doing so not only decreases the cost of the service to the client, and the internal cost of rendering the service to the attorney, but it effectively “makes room” in a given day for more work to be done for other clients. Hence, attorney profitability and client satisfaction can both increase.

What we propose here is a relatively simple, but sometimes puzzling, concept. If we handle the case right, it will actually reduce the cost to the law firm of handling the case. The resulting savings can be shared between the client and the law firm and will go directly to the bottom line of each.

You have to begin to look for ways to cut waist, reduce errors, simplify and perfect procedures, and hone your litigation skills.

### **“Bandit” Litigation Techniques**

Each Consumer Law attorney develops, over time, practices and procedures that work best for him or her. “Bandit” litigation of Consumer Law cases involves the concept of taking the best ideas from different sources and implementing them in you own practice, in order to achieve or maximize your own efficiencies. Obviously, it is highly inefficient to “reinvent the wheel.” Conversely, it is highly efficient to borrow every good idea you can find and adapt it as your own, always seeking to find what works best for you and what gets the best results for your clients.

This collaborative and assistive process, which most Consumer Law attorneys encourage and accept as a normal way of practicing Consumer Law, can allow you to develop and improve your own systematic handling of consumer litigation, for the benefit of yourself and your clients. Doing so allows you to use proven pleadings, strategies, and systems, without going through the years of “trial and error” that many senior attorneys endured before you. This allows you to arrive at a “defect free” litigation style (and not coincidentally a “defect free” litigation process) much sooner than would likely be otherwise occurring.

Remember, the Six Sigma objective is not just to help the consumer win their case, but to do so in as expedient and economical a fashion as possible, because both the attorney and the client benefit from doing so.

### **What Is “Practicing” Consumer Law?**

Let’s get back to fundamentals. Practicing Consumer Law is really nothing more than the process of providing legal services to a consumer. Everything the Consumer Law attorney does involves a process, whether you recognize it or not.

You are taking the information given to you by the client, adding your own “value” to it (the process of applying your legal analysis and legal skills) and giving the result back to the client in the form of a recommendation, a result or a verdict. Every law office, regardless of its size, brings together numerous processes to provide legal services to its clients.

Any part of the law office organization which contributes to the output is part of the process and each part can consist of multiple processes. Obtaining information, doing legal analysis, performing research, giving advice, drafting a pleading, appearing in court, these are not just “actions” that are taken for the client but they are the result of processes used by the attorney, if not themselves actually a process in action.

You can analyze all of your daily activity as minutely as you desire, but you will find that you are always doing the same sort of activities. Six Sigma is about doing those activities better. However, you cannot do better that which you have not taken the time to analyze and understand.

The Six Sigma approach will cause you to reexamine the way that work gets done, and not just the notion of improving an existing system to get that work done.

The objective of this chapter is to get you thinking about the processes and procedures that you and your office use every day. Don't just *do* what you always do. Start questioning each step of each process, even the process itself, in search of better, faster, more efficient ways to get the job done.

Clients come to Consumer Law attorneys because they have a problem and they want a solution. The sooner, better, faster, cheaper that you provide a solution, the happier the client, the more time you have for other clients, and the more clients you'll have. Guess what? That also means the more money you will make and, fundamentally, if you don't make money you don't stay in business. And if that happens, you can't help anyone at all.

The Practice of Law is first and foremost a profession. But don't ever forget that it's a business also. Because if you do, you won't have a profession to practice.

1. Source Materials for this article, and further research materials for the reader, include *What Is Six Sigma* by Peter Pande (2001), *Six Sigma, The Breakthrough Management Strategy* by Mikel Harry & Richard Schroeder (1999), and *Six Sigma Simplified* by Lowell Jay Arthur & Jay Arthur (2000).