

How to Choose an Attorney

By Raymond P. Kolak

You and your friend Sam have finally decided to make the break and start your own furniture company, after years of working for others. You will handle sales and customer relations, and Sam will handle production and operations. Together, you have the knowledge, experience, capital, and sheer nerve it takes to begin this journey. You have lined up space, equipment, employees, and suppliers, and have promised orders in hand. You know you also have to bring in professionals to guide you - accountants, attorneys, insurance people, bankers. How do you find and select your attorney? That's what this article is about.

There are over a million attorneys in the United States today. Finding one isn't hard - finding the right one for you can be a challenge. First, ask yourself what you are looking for. Growing businesses need a well-rounded business attorney familiar with the law of corporations and business organizations. Tax considerations play a major role in business planning, so the attorney should also have a tax background. You need someone with real estate experience to handle your lease, and also someone you can turn to for employment problems. Your business may need other legal expertise, such as patent, secured financing, mergers and acquisitions, or immigration experience, among others.

That covers the legal practice areas, but there is a lot more to choosing an attorney than that. The best attorney/client relationships involve more than discrete legal projects given by the client to the attorney. Ideally, your attorney should become your advisor and counselor - in your business, and possibly in your personal legal affairs as well. An attorney who is a true advisor is transformed from an expense item to a revenue-enhancer on your income statement. You want your attorney to tell you about opportunities you can take advantage of (say, a tax election), and to warn you about risks before they blow up in your face (say, failure to protect trade secrets).

An attorney can also be a valuable sounding-board for you as the business owner. I have found that many CEOs of growing businesses lack this. They cannot share their greatest frustrations and fears with their top employees out of concern for frightening them, but can unload on their attorney, who generally has a thicker skin and will always maintain the confidence.

All this is to say that you need someone you can develop a personal chemistry with. Your attorney needs to communicate at your level and in your style. Different business owners have vastly different communications styles. Plain spoken and blunt, diplomatic, detail-oriented, broad brush approach, competitive, paternalistic, creative, organized, disorganized. Good attorneys can actually shift between these styles, depending on the client. One of the greatest challenges in my legal career has been to transition between the communications style of my favorite business client (brusque, almost harsh) to a charitable organization we represent (indirect to the point of

diplomacy), several times per day as the calls and communications come in from each of them.

Finally, you need an attorney who won't break your bank. Beginning businesses are always short of capital, and you should be devoting your scarce capital to equipment, inventory, employees, and operations, much more than attorneys or other professionals. Your goal should be to hire the best attorney for your purposes and situation. This does not mean the most expensive attorney or the one in the biggest building in town.

How do you find an attorney who meets all of your criteria? You could go to advertisements in the yellow pages or on the internet, but in my experience, the best and most competent attorneys do little or no advertising.

The best way to find attorney, and also the oldest way, is through word-of-mouth recommendations from someone you trust. Ask other business owners you know, ask your accountant, banker, insurance person, investment counselor, business associates. Tell them what you think you need, and be frank about your approach and what you think you can afford. Listen to the people who can relate a personal experience with the attorney they talk about. Have they seen her perform in court or at a negotiations table, or is this just someone they play golf with? Accountants and bankers especially have opportunities to see attorneys at work, and they can usually give you several references.

Do you go with a small firm or a large firm? There are international firms with thousands of attorneys, but believe it or not, most attorneys in private practice in the United States today are solo practitioners. If you are beginning a business, you should probably stay away from a solo practitioner who is a generalist (he does incorporations, but also divorces, driving under the influence, and writes wills). It is almost impossible for someone to maintain a high level of competence in that many practice areas. There are many solo practitioners who are fantastic business lawyers, but they have concentrated their practices and know the law well.

At the other extreme, you could call a firm with hundreds or thousands of lawyers. Those firms say in their marketing materials that they represent everything from sole proprietorships to multinational corporations. Some could do a good job for you, and if you need special expertise in several areas at once (for example, international trade, patent infringement, and tax audits), then a larger firm makes sense. But beware of two concerns.

If you go to a larger firm, you will be a small fish in a big pond. You may talk to a partner initially, but quickly be shuffled off to a less experienced associate lawyer. If you ran a larger firm, and had to allocate resources between a publicly-held company and a beginning business, who would you choose? The second concern is fees. As a general rule, the larger the firm, the higher the billing rate. The difference in the rate per billable hour is not that great, but the increase in your total bill may be more due to the fact that you have junior lawyers working on your account, who have a greater learning curve at your expense.

My firm is somewhere in the middle. We have five lawyers. We handle only a few practice areas, among which is middle-market businesses. A very small business, such as a restaurant with a few seats, would not be a good fit for us, but we have handled businesses with substantial sales. Having a few lawyers allows each of us to specialize in one or two practice areas. Law is still a kind of cottage industry. For most of your legal problems, you will need one or perhaps two attorneys on the project, rarely more than that. Hire the attorney you think can do the job best.

When you have your names, call and interview the top candidates. Most attorneys will give an initial interview to a business client at no or a reduced fee. Describe your business, but don't hand over all your legal work at once. A good approach (often used on me, without objection) is to give your new attorney a relatively small project, such as a lease negotiation, employment agreement, or even a house closing. This is a particularly good idea if you are switching attorneys, since you don't want to give up the old relationship before you are confident in the new one. If the attorney does well on the small project, can communicate with you, adds value, and doesn't overcharge, then you can expand the relationship over time. And tell your friends about him or her. Good attorneys are hard to find.

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