

## How to Choose and Use Your Business Attorney©

By Donald W. Hudspeth

### Introduction

On the shelf in the break room of my law school was a cup that said “Possession of the Right Attorney is 9/10<sup>th</sup>’s of the Law”. In 1992 I wrote and published the book “**Inside the Firm, The Art of Choosing and Using a Lawyer.**”<sup>1</sup> This article is a summarial update of that book. The following are checklists by category of things to consider, know and do when hiring your legal counsel.

### Pre-Conditions of Acceptance

The following are my list of things one must have in a lawyer:

a. Works primarily in that area of law, e.g. business law and not business law and immigration.

b. Knowledge and experience gained by working in the practice area for quite some time. This should be at least five years without supervision and more is better. Twenty years is great.

c. Aptitude or instinct; that is the ability to know what to do without having to ponder or research every matter. I call this the “ability to see.” While there is no substitute for knowledge and experience, there is also no substitute for brilliance.

d. Reasonable case load. The overburdened attorney is not going to do a good job on a case no matter how good the attorney is.

### Possible Pre-Conditions of Acceptance

a. Compatibility. If you don’t like your attorney that is an additional negative in a field of other negatives, such as the opposing parties and counsel. Or if you like to be kept informed and to be involved while the attorney does not, that could be a problem. You and the attorney should have compatible personalities and be on the same wave length about the case.

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<sup>1</sup> If you will forgive a sidebar to this story. I was pleased and surprised that Langdell Hall, Harvard Law School’s Law Library bought a copy. However, that was one of the few copies I sold. At that time, I was on a board with Robert T. Kiyosaki, whose book “Rich Dad, Poor Dad” had just hit the New York times Best Seller list. (It may have been at the top of the category.) He must have made \$1,000,000’s from that book. I gave him a copy of my book and told him that current dollar sales were \$13.48.

## Other Factors

Other factors which may or may not be important to you are:

a. The attorney's work style with clients. Does the attorney seek to impress or communicate?

b. The attorney's work style with others: Rambo or Indiana Jones?

c. The attorney's work style for him- or herself. Last minute or far ahead? There is not necessarily a right or wrong on this. One of the most brilliant Yale-educated attorneys I worked with would start a brief at 3:00 PM that was due that day. I, on the other hand, usually had the brief on the ledge the night before. To me that was less stressful.

d. Ability to communicate. Once I had a major client, the head of a semi-conductor company, tell me that he hired me because when he walked out the door he knew and understood what we had talked about. Using analogies and other methods I like to express complex concepts in simple everyday terms.

e. Related experience, such as business or tax experience for a business lawyer.

f. Cost. Some attorneys are more expensive than others. Based on reviews, word of mouth, or perception the question is "Is the attorney worth the money? Note, the more expensive attorney can be the better investment because he or she knows what she is doing, and opposing counsel knows that. I have an article "Let Us Now Praise Opposing Counsel" on this subject.<sup>2</sup>

## Things That Don't Matter

a. The size of the firm or its library no longer matter for the most part because:

1. Current rules limit the work a big firm can dump on a small one.<sup>3</sup> This used to be a major disadvantage for small firms. It is not any longer.

2. Technology levels the playing field. The small firm or sole practitioner can have the same access to caselaw and legal materials as a big firm because the resources are all online. One doesn't need the large library. In fact, the large library is a burden because if not kept up to date its value greatly diminishes.

## Why and When You Should Use a Lawyer

a. Consultation and advice on an issue.

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<sup>2</sup> Azbuslaw.com/Publications/Articles. Also, checkout our Blog.

<sup>3</sup> When I became an attorney the Rules of "Civil" Procedure allowed attorneys, usually mid-level associates, to send reams of document requests and interrogatories (formal questions to answer). The receiving side would respond and launch its own "discovery missiles" back to the other side. His was very hard on the small firm or sole practitioner.

- b. On-going representation in a transaction or litigation.
- c. When presence of the attorney adds credibility to your team. Who is sitting at the table with you can make a difference, especially if you lack experience?
- d. To deal with persons you don't want to deal with personally, especially in a deal or dispute.
- e. For objectivity.
- f. To facilitate expansion into new areas where the attorney may have experience.

### **What to Seek in Your Representation?**

- a. Whether the matter is a transaction or potential litigation ideally the attorney would proceed as follows:
  1. Review and analyze the case materials.
  2. Provide options.
  3. Provide the pros and cons of each option, and
  4. After consultation, make a recommendation.

You would be surprised how few attorneys provide the options and pros and cons. Clients love it.

### **How to Poison the Well of Your Attorney-Client Relationship**

- a. Hide or fail to disclose important information. The worst thing that can happen in a deal or lawsuit is the important fact which comes to light in the middle of the action.
- b. Seek something for nothing, e.g. free or extra work. You probably resent such conduct. The attorney does too.
- c. Believe your own press release; that is, refuse to consider anything negative about your case, even though there are always negatives. The trick is to know the negatives and mitigate their effect.
- d. Change attorneys more than once. This is usually a sign that there is a problem and that problem is you.
- e. Attempt to tell the attorney what to do. Objectives, Yes. What to do as a lawyer, No. Smart people sometimes think they are smart in everything. The smartest person in the room does not feel the need to be the smartest person in the room.

f. Haggle about fees after the fee agreement is signed and the case has begun. Of course, it is acceptable to review a bill, but to engage in a tirade or regular complaints probably means the attorney is not right for you and vice versa.