

## Shark Ready's Guide to Hiring Key Professionals

Every business needs two professionals, an accountant and a lawyer. The reasons for hiring an accountant are pretty obvious - you need someone to help you do your books and prepare all of your necessary federal, state and local tax returns. The reason for hiring a business attorney may not, however, be so apparent. A good business attorney will provide vital assistance in almost every aspect of your business, from basic zoning compliance and copyright and trademark advice to formal business incorporation and lawsuits and liability. First, some general rules about dealing with lawyers:

America's judicial system is a lot like sharks' teeth - they lock you in both ways even if you're not tasty.

Once you've been "trapped." Most lawyers agree that while nobody likes to pay attorneys' fees for anything (heck, let's let our hair down - nobody likes paying or dealing with lawyers, period), but the fee a lawyer will charge to keep you out of trouble is only a small fraction of the fee a lawyer will charge to get you out of trouble once it's happened.

- **Big firm or small firm?** Generally speaking, the larger the law firm, the greater the overhead, therefore the higher the hourly rates you will be expected to pay. Still, larger firms have a number of advantages over smaller ones. Over the past 20 years, lawyers have become incredibly specialized. If you use a solo practitioner or small firm as your lawyer(s), it's likely that they will not have all the skills you may need to grow your business. I don't know of any solo practitioner, and very few small firms (under 10 lawyers) that could handle your lawsuits, negotiate your lease of office or retail space, file a patent or trademark, draft a software license agreement, advise you on terminating a disruptive employee, and oversee your corporate annual meeting. Sooner or later, these "generalists" will have to refer you out to specialists, and you will find yourself dealing with two or three (or even more) attorneys.

While larger firms are more expensive to deal with, they have two significant advantages: 1) they usually have all the legal skills you need "under one roof," and 2) they have a lot of clout in the local, regional and (perhaps) national legal community. A nasty letter from a "powerhouse" law firm with offices in 30 states is a lot more intimidating than a nasty letter from a solo practitioner who is not admitted to practice in the defendant's state. Also, being connected with a large, well-established law firm may have intangible benefits--they may be



willing to introduce you to financing sources or use their name as a reference when seeking partnership arrangements. Certainly, if you run a fast-growing entrepreneurial company that plans to go public (or sell out to a big company) some day, you would need to work with lawyers whose names are recognized in the investment banking and venture capital communities.

### **Types of Attorneys**

Like doctors, lawyers are becoming increasingly specialized. Someone who does mostly wills, house closings and other "non-business" matters is probably not a good fit for your business. At the very least, you will need the following sets of skills. The more skills reside in the same human being, the better!

**1. Contracts.** You will need a lawyer who can understand your business quickly; prepare the standard form contracts you will need with customers, clients and suppliers; and help you respond to contracts that other people will want you to sign.

**2. Business organizations.** You will need a lawyer who can help you decide whether a corporation or limited liability company (LLC) is the better way to organize your business and prepare the necessary paperwork.

**3. Real estate.** Leases of commercial space--such as offices and retail stores--are highly complex and are always drafted to benefit the landlord. Because they tend to be "printed form" documents, you may be tempted to think they are not negotiable. Not so. Your attorney should have a standard "tenant's addendum," containing provisions that benefit you, that can be added to the printed form lease document.

**4. Taxes and licenses.** Although your accountant will prepare and file your business tax returns each year, your lawyer should know how to register your business for federal and state tax identification numbers and understand the tax consequences of the more basic business transactions in which your business will engage.

**5. Intellectual property.** If you are in a media, design or other creative-type business, it is certainly a "plus" if your lawyer can help you register your products and services for federal trademark and copyright protection. Generally, though, these tasks are performed by specialists who do nothing but "intellectual



property" legal work. If your lawyer says he or she "specializes in small businesses," then he or she should have a close working relationship with one or more intellectual property specialist.

### What to Ask When Interviewing Attorneys

- **Are you experienced?** Don't be afraid to ask direct questions about a lawyer's experience. If you know you want to incorporate your business, for example, ask if he or she has ever handled an incorporation.
- **Are you well-connected?** Your business attorney should be something of a legal "internist"--one who can diagnose your problem, perform any "minor surgery" that may be needed, and refer you to local specialists for "major surgery" if needed. No lawyer can possibly know everything about every area of law. If your business has specialized legal needs (a graphic designer, for example, may need someone who is familiar with copyright laws), your attorney should either be familiar with that special area or have a working relationship with someone who is. You shouldn't have to go scrounging for a new lawyer each time a different type of legal problem comes up.
- **Do you have other clients in my industry?** Your attorney should be somewhat familiar with your industry and its legal environment. If not, he or she should be willing to learn the ins and outs of it. Scan your candidate's bookshelf or magazine rack for copies of the same journals and professional literature that you read. Be wary, however, of attorneys who represent one or more of your competitors. While the legal code of ethics (yes, there is one, believe it or not) requires that your lawyer keep everything you tell him or her strictly confidential, you do not want to risk an accidental leak of sensitive information to a competitor.
- **Are you a good teacher?** Your attorney should be willing to take the time to educate you and your staff about the legal environment of your business. He or she should tell you what the law says and explain how it affects the way you do business so that you can spot problems well in advance. The right lawyer will distribute such freebies as newsletters or memoranda that describe recent developments in the law affecting your business.



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- **Are you a finder, a minder or a grinder?** Nearly every law firm has three types of lawyers. The "finder" scouts for business and brings in new clients; the "minder" takes on new clients and makes sure existing ones are happy; the "grinder" does the clients' work. Your attorney should be a combination of a "minder" and a "grinder." If you sense that the lawyer you are talking to is not the one who will actually be doing your work, ask to meet the "grinder," and be sure you are comfortable with him or her.
- **Will you be flexible in your billing?** Because there is currently a "glut" of lawyers, with far too many practicing in most geographic locales, lawyers are in a position to have to negotiate their fees as never before, and it is definitely a "buyer's market." Still, there are limits--unlike the personal injury lawyers who advertise on TV, business lawyers almost always will not work for a "contingency fee," payable only if your legal work is completed to your satisfaction.

Most lawyers will charge a flat one-time fee for routine matters, such as forming a corporation or LLC, but will not volunteer a flat fee unless you ask for it. Be sure to ask if the flat fee includes disbursements (the lawyer's out-of-pocket expenses, such as filing fees and overnight courier charges), and when the flat fee is expected to be paid. Many attorneys require payment of a flat fee upfront, so that they can cover their out-of-pocket expenses. You should always ask to "hold back" 10 to 20 percent of a flat fee, though, in the event the lawyer doesn't do the job well.

Lawyers will be reluctant to quote flat fees if the matter involves litigation or negotiations with third parties. The reason for this is bluntly stated by a lawyer friend of mine: "Even though it's a transaction I've done dozens of times, if the other side's lawyer turns out to be a blithering idiot who wants to fight over every comma and semicolon in the contracts, then I can't control the amount of time I will be putting into the matter, and will end up losing money if I quote a flat fee." In such situations, you will have to pay the lawyer's hourly rate. You should always ask for a written estimate of the amount of time involved, and advance notice if circumstances occur that will cause the lawyer to exceed his or her estimate.

If a lawyer asks you for a retainer or deposit against future fees, make sure the money will be used and not held indefinitely in escrow, and that the lawyer commits to return any unused portion of the retainer if the deal fails to close for



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any reason. You should be suspicious of any lawyer who offers to take an ownership interest in your business in lieu of a fee.

### Questions to Ask Yourself Before Hiring an Attorney

- **Is this person really a frustrated businessperson disguised as a lawyer?** Some lawyers get tired of being on the outside looking in when it comes to business dealings. Such a lawyer may attempt to second-guess your business judgment. Be wary of a lawyer who takes too keen an interest in the nonlegal aspects of your work.
- **Does this person communicate well?** J. P. Morgan once said, "I do not pay my lawyers to tell me what I cannot do, but to tell me how to do what I want to do." The right lawyer for your business will not respond to your questions with a simple "That's OK" or "No, you can't do that," but will outline all your available options and tell you what other businesses in your situation normally do.
- **Are the offices conveniently located?** You will need to visit your attorney frequently, especially in your first few years in business. You should not have to waste a day traveling to and from the nearest city each time you need legal advice. When in doubt, choose a lawyer close to home.
- **Do I like this person?** Don't forget to follow your instincts and feelings. You should be able to communicate openly and freely with your attorney at all times. If you feel you cannot trust a particular lawyer or you believe the two of you have different perspectives, keep looking. Just remember that Ally McBeal is not reality: good looks and a dynamic personality are not as important in a lawyer as accuracy, thoroughness, intelligence, the willingness to work hard for you and attention to detail. As a former client once told me: "My father always said, 'Never trust a lawyer who has 20/20 vision and wears Armani.' I chose you as my lawyer because you look like you work for a living." The right lawyer for your business will take that as a compliment.

