



INFORMATION
GUIDE
for

BUSINESSES
HIRING
LAWYERS

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INTRODUCTION



Whether your business is a start-up or well established, sooner or later you'll need legal counsel.

In the early stages this could involve such things as business formation and licensing.

Later, it might include building and equipment leases, employee issues, vendor issues, customer issues, regulatory issues, or protection of intellectual property.

This book is a guide to help you decide which lawyer to hire when that time arrives.

I wrote it to take some of the guesswork and stress out of your decision.

My background and experience has given me unique perspective on the questions that ought to be considered. With more than three decades practicing law in a variety of settings, from poverty law, to corporate and general counsel, to private practice, I've counseled and represented a variety of clients, from welfare mothers to chief executives of large organizations. And with the exception of the United States Supreme Court, I've tried cases through every level of the state and federal judiciary.

And I've hired and fired many lawyers in the process.

I hope you will find this guidebook useful.

1

WHAT ARE YOU LOOKING FOR?



Think first about what you need.

Are you looking to solve a specific problem, such as an employment issue? Or help with your building lease? Loan documents? Is there a person or organization you believe you may need to sue?

Or are you beginning to think your business is of sufficient size that you should have regular access to a lawyer; either as part of your staff, or someone in private practice you can call on short notice and have a discussion with?

In the first case, you can conduct the search yourself, and I'd suggest you do it in this order:

2

HIRING A LAWYER FOR A SPECIFIC TASK

Referrals And Online Research



REFERRALS

Ask friends, acquaintances and fellow business people.

Be sure you're getting a referral for a lawyer based on legal work very close to what you're looking for. It is probably not helpful to use an intellectual property lawyer for an employment matter, or vice versa. It may be that the IP lawyer was perfect for the issue your colleague had, but that will not necessarily translate into the same results with another matter.

ONLINE RESEARCH



If you can't get a referral or reference to a lawyer for your issue – next is online research.

In fact, you should do this even if you were able to get a referral or reference. If you got one, confirm online that this lawyer is right for your project or issue. Look at her website, blog and case studies or white papers she may have written.

Does she appear to be knowledgeable in the field you're using her for? Do you like the tone? Does it seem like this is someone you could work with?

If you don't have a referral, start with a general Google search. For instance, if you are a Michigan based business and need a lawyer to help negotiate and then document the separation of an employee, you could search for Michigan employment lawyers, or Michigan employment lawyers in (name of your city).

Then look at the websites of the lawyers who come up in the search. Many state bar associations (including Michigan) also have search features for the public within their websites.

You could also search via question, to see whether any local lawyers have written on your subject. In the above example, you could search "Essential issues in the separation of an employee" or "How do I release an employee without risking a lawsuit." Chances are a lawyer in this field has written on your topic. You can then read the articles, look up the lawyer via her website, check credentials, activities, etc.

A note here about schools, certifications, associations, activities, etc. Do not let any one of these items be determinative. The fact that a lawyer graduated at the top of her class from an elite school, wrote for Law Review, etc., certainly speaks to that lawyer's work ethic and intelligence, but not necessarily to her competence as a practical, day to day lawyer, or your ability to get along with her.

This is not to take anything away from these lawyers, I am just saying in my experience I've encountered lawyers with sterling credentials who were just not very good at getting results promptly and efficiently, and others who seemed to have little in the way of credentials who were excellent and earned their way into my Rolodex (that's old school for contact list). Just keep in mind these are clues, not determining factors. In the end, you should take it all in. The referrals and recommendations if you have them, your own Internet research, and what the lawyers have done, written or talked about.

Finally, call the lawyer and explain what you are looking for. Have a brief call to confirm you're a good fit. And then use your intuition and make your decision. If you do these things your chances of picking the right lawyer will have vastly improved.

FEES

You can also ask for an estimate of fees.

Depending upon the difficulty of the matter, and whether you're able to give the lawyer most of the relevant facts, it may be that you will get a range. Hourly rates are not terribly helpful, unless the lawyer can also give a fair sense of how many hours the matter will take. Drafting or examining a contract is more susceptible to the giving of fee ranges. Litigation is more difficult, unless the matter will be handled on a contingency basis (a percentage of any award of money, but only if there is an award).



3

HIRING A LAWYER AS A FULL TIME EMPLOYEE



But what if your business is large enough, or you compete in an industry that is heavily regulated, or that is susceptible to recurring legal risks, and you've decided you need someone you can rely on, regularly and on short notice, to help guide you?

In that case your approach to searching should be modified. Yes, you should ask your network, and yes, you should conduct internet research. Perhaps even consider an executive search firm, if your goal is to hire a lawyer as your employee. Whether you're looking to actually put the lawyer on your payroll, or just to have him on retainer, the inquiry should include these things:

- **Experience in the law** - Not necessarily in the area covering your business, but it should include someone who has practiced law, with clients, for a period of time and by that experience understands the interacting dynamics of applying the applicable law to a problem, looking at alternative approaches to solving the problem, and providing cogent, practical analysis of each to aid the client in making the ultimate decision.

There are often "correct" answers, but not always, and even the correct answers may come with a price or collateral outcome that, on balance, makes the correct answer unpalatable. An experienced lawyer understands this, and, coupled with his thorough understanding of the business, will bring these out and be able to discuss them in ways that helps move the decision point forward.

3

- **Experience in life** - Most legal issues do not reside in a vacuum. There are often “soft” issues surrounding a controversy or problem. These are the human dynamics that come into play, to some degree (sometimes to a large degree) when working through what is at first seen as a purely legal issue. This is the case where, right or wrong, a human being on one side of the equation is reacting out of pure emotion rather than a calculated analysis of win/loss.

This is easy to see in, say, a technical violation of a law or regulation. That law or regulation may have specific monetary awards in the event of violation, but the human involved (the plaintiff) is reacting to what happened in an emotional manner.

This is not always obvious and doesn't always entail a screaming plaintiff. It could also be a sophisticated individual who speaks calmly yet seems to be demanding more than he can legally obtain. In that case it is likely there is an emotional component that is not, and never will be, revealed. In that, something more, or maybe even instead of, the remedy provided by law needs to be employed to resolve the issue. Only a reader of human nature will be able to see this, and I maintain that it is infinitely more difficult to do by someone with little life experience.

Does this mean you need gray hair? No. But it does mean you need to probe your candidates to try to get a glimpse of the kinds of life experiences they've had. Things like travel, unique struggles, sports and military experience all play into the mix to create the stew that is the personality of your candidate.

Do they appear quietly confident? Loud and cocky? Intuitive or impulsive? Inquisitive... or shallow? Authentically interested in the people around them, or looking for what you can do for them?

Take these clues and think about them, and how they would play with your own personality.

3

- **Can you get along?** - Your relationship should evolve into a close and trusting one. You needn't become best friends, but it will be critically important to you that you genuinely trust each other. These will not be (or, shouldn't be) marketplace transactions in the sense you give your counsel some facts and expect a reply with a solution. Though this may occasionally happen, you will find that with good counsel who is tuned into you and your business, you will increasingly have interactions that are not purely legal. Most lawyers are good at analysis. They have analytical minds by training, and this is not limited to the law.

So you may find yourself bouncing business decisions off him as well.

I hope you do.

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IN-HOUSE COUNSEL V RETAINED OUTSIDE GENERAL COUNSEL



There are pros and cons to each, covered below. The final decision will be determined by your unique organization and style and, of course, there are no right and wrong answers to this one.

HIRING A LAWYER AS AN EMPLOYEE OF YOUR BUSINESS:

PROS


- Physically present whenever you need him;
- Daily interaction with the business owners and employees, which allows unique insight into the business;
- Bonding wth other employees and building trust and friendship;
- Fixed cost-you'll pretty much always know your legal spend, except for out of the ordinary situations such as a lawsuit or tax/ip considerations;

CONS


- It is expensive, between salary and benefits;
- It may be difficult or costly to release someone who is not performing;
- There may be a temptation to please the superiors/owners and thereby not giving bad news when it is needed;

HIRING A LAWYER AS RETAINED OUTSIDE GENERAL COUNSEL

PROS

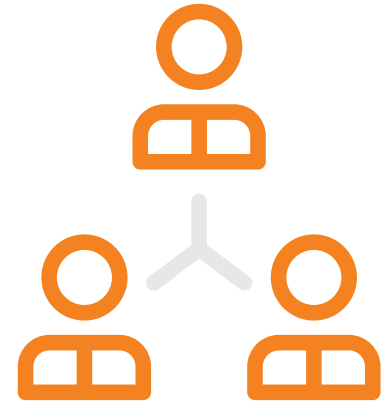
- 
- Relative certainty of expense-your legal spend is the retainer, unless you both agree to hourly, but the business would not incur costs of benefits, tax liabilities, workers comp liability, etc.
 - Ease of terminating the relationship-no break up fee;
 - (Probably) more likely to get needed bad news or politically unpopular advice;
 - Easier to limit information to “need to know” individuals, and less likely to spread throughout the organization;

CONS

- 
- Will not know the organization as well;
 - Requires supervision (preferably by another lawyer);
 - Steep learning (about the business) curve;
 - Hesitation to use since most time will be billed (depending upon the terms of the retainer agreement).

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GENERALISTS



These are the days of the specialist, in almost every aspect of work. And that is certainly true of lawyers.

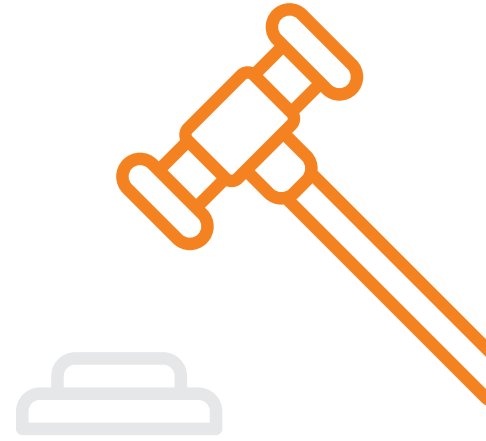
A lawyer who specializes in employment law will get to a much faster, and probably better, result than a generalist. And while her hourly rate may be higher, the total fee may actually be less than someone who only has a passing familiarity with that aspect of the law.

That said, I believe there is room for the generalist in today's legal world, if properly utilized. In fact, he could be more valuable than the specialist.

The generalist I have in mind is someone who is either employed by the business, is on a retainer, or otherwise has a relationship with the business such that he can be called upon on short notice to look at the issue and either resolve it himself, or hand it off to someone he knows will be the right fit for the work, and then would supervise that lawyer to be sure the business is getting exactly what it needs, at a fair cost for the work.

This generalist would need to"

- a. have a fair amount of legal experience
 - b. know the business very, very well, and
 - c. have access to a variety of legal specialists he knows and can call upon.
- I've written about the generalist, and where I believe we are headed in the [management of legal work](#).



CONCLUSION



Consider the following when your business needs legal counsel.

1

Determine first what you need - one task or several/ongoing.

2

For a single task, utilize your network for referrals + online research.

3

If your business has reached a size where the legal tasks seem to be multiplying, or is in an industry heavily regulated and/or subject to lawsuits, think about the pros and cons of hiring a lawyer either as a full time employee, or as outside general counsel in a retainer arrangement where you will have direct access to a lawyer who knows your business.

Good luck and best wishes in your endeavors.

ABOUT **DAVID**

Dave has been a practicing lawyer for 30+ years, from inside and general counsel, to private practice.

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He maintains a private practice as well as a consulting and copywriting business focused on professional services firms.

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