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Circle No. 5 on ACTIONCARD



Legal Matters

Finding, hiring and managing a lawyer

By Gregory P. Hawkins and Claude T. Hawkins

A S A RETAILER, YOU NEED lawyers. You may not like them. You may not even trust them. You may know 101 lawyer jokes: "What do you call a bus full of lawyers going over a cliff, with one seat empty? A missed opportunity." The fact is, lawyers are important for your business. Or at least unavoidable.

Since 1960 the world's population of lawyers has nearly doubled to about two million attorneys. In the United States it has tripled — to over 750,000. Spending on legal services in the U.S. rose from \$10 billion in 1972 to around \$100 billion in 1991.

The July, 1992, issue of *The Economist* quoted Charles Sifton, a federal judge in New York. "Lawyers are like doctors. They have people by the throats. Sometimes they save you. Sometimes they choke you," he said.

Your challenge, as the owner or manager of a business, is to make sure that you are choked less often than you are saved. There are two levels to this process: 1) Finding the best person or firm to champion your legal interests; and 2) managing that person for the best results, with the least impact on your financial resources.

Most lawyers prefer that you get out of the way once you have passed the ball, and let them run with it. This is the traditional lawyer/client relationship. Today, such a relationship may not be in your best interests.

Times are changing. According to John J. Marquess, chairman of Legalgard, a company that audits legal bills, "Lawyers were the last of the sacred cows, the last people on the face of the earth to be held accountable to anyone." Note his use of past tense.

Increasingly, large corporations have begun to demand a more strict accounting from their lawyers — shopping for better rates and services, insisting on a detailed budget up front, monitoring the progress, then requiring an itemized bill.

Large businesses with their complex legal problems and corresponding big budgets possess the clout to compel satisfaction. Can you do the same? In one sense, the answer is no. You may not have the power to compel, but if you are willing to implement the following you can experience many of the same results.

- **Separate your emotions from the problem.** While you may have an emotional investment in your legal dilemma, your lawyer does not. Displays of anger, frustration and other forms of emotion waste time, cost money and put you at a disadvantage. Keep your communication on a "Just the facts, ma'am" level.

- **If you need to vent, choose another type of professional counselor.** This advice is not given in jest. Legal troubles can be as emotionally debilitating as any of life's major calamities.

- **Still, you are the best person to gather and order the facts that pertain to your particular situation, if you can step away from the resentment and sense of betrayal typical of many people caught in the jaws of legal process — especially litigation.**

- **Take time to organize.** Be methodical and organize the data in chronological order, attaching pertinent documents. Working with an organized client has a curious motivating effect on most lawyers.

- **Be honest with yourself.** In an adversarial situation you hope the facts will support your position and nullify your opponent's case, but distorting the truth greatly lessens your chances for victory. To serve you best, your lawyer will need a complete picture — both good and bad parts.

- **Shop around.** Armed with the facts and a list of questions, begin your search for an attorney. Many lawyers will not charge for the initial consultation and the time you invest at this point can pay big dividends. Remember, your search should be as thorough as if you were looking for a key employee, which, in effect, is what your lawyer will become — at least for a time.

Each of the following questions are simple and direct. Yet, they are an effective way to get inside lawyers' minds, to see how they think, how they practice law, how

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Legal Matters

comfortable they are with open, two-way communication. Plus, you gain valuable insight into a process that may have seemed unintelligible — and perhaps frightening — before.

Your questions are also a subtle form of management. By answering them, the lawyer essentially commits to a course of action. They are just as effective when posed to a lawyer with whom you have a long and successful relationship or one you are meeting for the first time.

1) **What experience do you have with matters like mine?** A pediatrician may not be the best person to perform bypass surgery and a surgeon could be unqualified to fix your child's broken arm. While no general practice pediatrician would consider heart surgery, many lawyers will accept a matter outside their area of concentration if you are willing to foot the bill for them to gain the expertise. Find someone who is not only familiar with the area of law you require, but also experienced in it.

2) **What were the results?** With few exceptions, court records are open to the public. Your prospective lawyer will be happy to talk about previous victories. With encouragement he (or she — 40 percent of American lawyers will be women by the year 2000) should be willing to discuss other, less triumphant cases, as well. Ask for references — names and phone numbers of current or former clients. It is common practice for lawyers to have a public list of clients they have represented.

3) **Who will be involved with the case?** This is a critical question. Contrary to popular opinion, most lawyers are honest. However, listen carefully and encourage them to be specific about who will be doing what. Although not a common experience, hiring a "partner" only to have the work turned over to a less experienced associate or letting a paralegal or secretary do most of the work, then billing at the partner's hourly rate, is unfair.

4) **What are the steps you will take to resolve my case?** For a simple matter the lawyer may be able to enumerate the steps on his fingers. For something more complicated it may require research and a formal report. The lawyer will usually require you to pay for his time. This is as far as it goes beyond the "let's get together and chat" stage. At some point before you make your final decision, be sure you have this question answered to your satisfaction.

5) **How long do you think my matter will take?** If the case involves litigation this question is practically impossible to answer conclusively. However, it is a question you want answered, at least with an intelligent estimate.

6) **What do you calculate as the total cost?** The answers to the question you have asked to this point will lay the foundation for a fairly accurate estimate. This also opens the door to a frank discussion of fees. Be sure you understand the fee arrangement completely. Will there be an engagement fee, or a retainer? Is it refundable? Are there different fees for associates, law clerks, paralegals, secretaries, etc.? What cost will there be in addition to lawyer's fees? (In one of the author's cases there were over \$60,000 in costs unrelated to lawyer's fees.) If there are large numbers of copies to be made, will they be commercially made or billed at the firm's usual rate? Will you be billed monthly or at the conclusion of the work?

Whether you interview a dozen lawyers or only one, ask the same questions. Once you entrust your legal matter to a particular lawyer, you have cleared a big hurdle, but you should remain involved, perhaps at a less intense level.

• **Ask for periodic updates.** Keep in mind that every communication will cost you money. Many lawyers bill a minimum increment of time per occurrence, such as 3/10 of an hour, even for telephone calls lasting less time. Strike a balance between hounding your lawyer's every move and being cut from the information loop. At the least, you want your lawyer to inform you of unexpected developments and expenses that go beyond projected limits.

• **Ask for a detailed bill.** A simple billing statement saying, "Professional Services, May, 1993, \$3,000.00," is not satisfactory. Request a detailed billing, including the dates each service was performed, the actual time each service took, who did the work, and a clear specification of nonlawyer costs.

The techniques mentioned above can help, but they are only a few among many. You should modify them to your own needs and remember, when in doubt, ask simple, direct questions. And expect clear, concise answers. Keep asking until you are satisfied or find a lawyer who will satisfy you.

Finally, the single, most important secret to eluding messy legal entanglements is not to avoid lawyers but to work with them sooner — and smarter — before a problem escalates or even before it begins. ▣