

*Best Practices Series:*

## **10 Simple Rules for Working with Your Attorney:**

( or “*How I learned to love my attorney and deal with his bill* ” )

As a practicing attorney and franchise business consultant for over 20 years, I constantly have listened to clients and prospective clients gripe about the high cost of legal fees and / or professional fees such as attorneys, accountants or other business consultants. Although, there are undoubtedly a few attorneys and business professionals out there that will attempt to pump up fees, the vast majority are trying to do the very best they can to help their clients. It has been my experience that this true in most professions. However, many times extra legal fees are incurred because neither the client nor the attorney have taken the time to set parameters for how to maximize receiving good advice at a minimum cost to the client. Below are some tips on how to use attorneys (and most professional business advisers) to your best advantage:

### **Rule 1. Don't select an attorney on Who He knows but What He Knows.**

This sounds obvious, but most clients don't know how to select an attorney, so they either ask a friend for a referral or call someone that they know or have used in the past. Just like selecting a doctor, you don't call a dentist to operate on your knee. If you need to make an acquisition, find an attorney who specializes in business transactions. If it is a franchise opportunity, find an attorney that not only knows business but also has worked with franchises in the past. Conversely, if you are in financial trouble, find someone who has experience working with lenders or creditors or has bankruptcy as a specialty. Although referrals can be one source of qualification, expand your selection possibilities by checking the local bar association for specialists in a certain field such as Finance & Business, Franchise, Bankruptcy, Litigation, Securities, etc. Next, set up an initial appointment with several attorneys and interview them. Most will initially meet with you for free or for a reduced hourly amount. Get a feel not only of their experience and credentials but also their philosophy or approach on your situation or issue. For example, if you are looking for a detailed-oriented problem solver who can work through complex business issues or a combative, aggressive prosecutor to litigate a contentious business issue, you need to ask questions or request examples of past cases that would reveal whether his approach and personality suit your needs for this particular situation. Remember, you are not looking for a friend, you are looking for someone who can best accomplish what you need. Therefore, it is important that you either know what you are looking for going into the interview or that you keep an open mind and speak to several

candidates and find one whose philosophy and background best match your needs. Also, do not judge an attorney to be good just because he is Board Certified and with a large law firm. Just because your candidate specializes or was hired by the “biggest and best firm in town” does not necessarily mean that he is good or even qualified to handle your case. While these are indicators that should be considered, I found that there usually is very little difference between good lawyers based on size of firm or specialty. Obviously, if your problem requires specialized experience such as patent or intellectual property or requires expertise in several different areas or is a massive case requiring several attorneys to work as a team, you have to seriously consider certifications and law firm capabilities. However, if you are involved in small to medium-sized matters, you probably will get more attention and service at a lower price by speaking with a really good sole practitioner or small local firm who value you as a client and who will return your call when you need to speak to him. Remember: Bigger is not always Better!

## **Rule 2. Get Your Attorney Involved Early!**

Probably the most expensive thing you can do, is wait to consult or involve your attorneys or professionals until weeks or months after you have begun negotiations or recognized that you have a problem. Many wasted hours of negotiation or arguing with an adversary could have been saved if you will involve your attorney early in the transaction or dispute. By not accepting input or advice from professionals early, you risk making critical mistakes that will only serve to cost you more in the long run. Remember the old phrase, “anyone who represents himself has a fool for a client”. It is never a bad idea to seek opinions and approaches from professionals who are objective and experienced before investing your valuable time into a dead-end project. This does not mean that you have to have them represent you openly in the beginning but every good President and CEO will get advice from their Board or Officers before making any critical decisions. You should too. I can’t tell you how many times a client has come to me with an agreement he negotiated by himself that was impractical, unenforceable and sometimes outright impossible. This rush to do a deal or to seek revenge has almost always proved costly. Your attorney or professional must now solve two problems, the original deal or dispute and the problem you made for yourself by rushing into something without any early input or advice. Two problems always cost more than one.

## **Rule 3. Tell your Attorney Everything and Keep Him Updated.**

Since you will always be on the forefront of your own business and your own deals, you will always have the advantage of superior knowledge of the facts and details of what is going on in the beginning. Your attorney is NOT a mind-reader nor is he omnipotent. Tell him everything, whether you think it is important or not. This includes whether the information is bad for your case or is embarrassing to you personally. Your lawyer cannot create defenses or strategies to protect you

if you don't tell him every detail. Even small facts could change an entire legal strategy and could mean the difference in winning or losing your case or closing a successful transaction. Better for him to find out the bad stuff early rather than be blindsided in trial or at a critical time in negotiations. Then it is too late. Lawyers, like doctors, see bad cases and bad facts all the time. They are in business to protect you, not judge you.

Additionally, when a new situation or development occurs, you need to memorialize what has changed in writing or, if really critical, contact your attorney immediately. If your attorney does not have **up-to-date** facts, he will inevitably give you **out-of-date** advice that will create more problems and expense to you. One small detail or change, not properly communicated, can completely affect the quality and type of advice or approach that he will recommend.

#### **Rule 4. Time Is Money!**

The only product that an attorney has to sell is his time. If you take up more of it, he has no choice but to bill you since there is only a finite amount of hours in each day. Certainly, you should always get a detailed monthly accounting of the time expended on your project but don't expect him to talk to you over the phone for free. Each call will usually be billed and it adds up quickly. If you have something to say, make sure it is important and **get to the point!** Each phone call is usually billed in 15-minute increments so get an understanding of how he bills his time upfront. Also, remember that if you keep changing your mind on what you want to do, it will cost you double even triple what he originally quoted you because you asked him to do different things than originally indicated. How many times has a client requested a partnership document, only to change it to a limited partnership and then decided he wanted a corporation. Obviously, when you ask your attorney to do 3 different things, he will have to charge you 3 times what you originally thought you were going to be charged. This is not over-billing, this is the price for not being consistent. Things do change that are unanticipated so try to control costs by controlling changes. Also, do not continue to ask other attorneys how they would approach your problem, they cannot possibly know all the details of your case and will inevitably advise a different approach. If you constantly change approaches, this will serve not only to alienate your counsel but will cost you more for less results.

#### **Rule 5. If Your Attorney gives you advice – Take It!**

You chose this professional because you believed in his expertise. (see #1 above) Accordingly, you should either trust him implicitly or you should get a new counsel. Your friends and business associates will not know either (a) all of the facts (b) the law or (c) both. If you take the usually incomplete or bad advice of unqualified third parties,

you have just wasted all the time and money you invested in your attorney. This will serve only to enhance the chances that you will pay your attorney more to undo the damage you have inflicted on yourself. I repeat, if you feel the need to second-guess your counsel, you either have the wrong attorney or you may be too distrustful and over-controlling for your own good. Beware of sabotaging yourself and your case!

### **Rule 6. You are the Deal-maker; Attorneys are the Guard-Dogs.**

An attorney's first duty is to protect his client from legal exposure or future liability. Recognize the role of your attorney. It is his job to tell you what you **NEED** to know, not what you would **LIKE** to hear. If he were to allow you to enter into a deal that you really wanted to do without informing you of the accompanying risk, you would feel betrayed and would probably sue him for malpractice. He is there to minimize risk. Since everything you do will entail risk, it will be up to you to inform him what level of risk is acceptable to you and which approach you would like to take. If you have selected a good attorney, he will give you several alternative solutions and should explain what risks are entailed for each one. It will then be your decision to inform him which approach has the right balance of risk and reward for you. This is a decision that only you can make. If you feel he is too guarded or too aggressive or is always looking for problems and not solutions, you should discuss this with him. You can be assured that your adversary will take the same approach and will leverage his attorney's influence to his greatest advantage. You should too. The client is the only person who can decide whether or not the risks are too great. Clients, once fully informed, should be the only person ultimately responsible for making a decision whether or not to proceed with certain deals or legal strategies. Your attorney is only there to inform you and to implement your decisions based off of his recommendations and input. Ultimately, you should be the only person to make or break a deal.

### **Rule 7. You Get What You Paid For.**

If you tell your attorney you want a simple \$300.00 document, don't expect that it will protect you against as many contingencies as a more costly detailed document drafted based off of your unique situation or deal. You will not get a Mercedes for the price of a Kia. Just like cars, added protection costs money. Certainly, if your situation is simple, many boilerplate documents will suit your needs. However, watching pennies on multi-million dollar deals will inevitably cost you more in the long run.

### **Rule 8. Do Not Expect Over-Night Results.**

Clients are naturally impatient to complete a deal and make a lot of money or to resolve litigation and make (or save) a lot of money. If you rush your attorney into making quick decisions, you risk everything you are seeking to achieve. Complex deals require careful thought and litigation is a slow expensive pursuit. Do not blame your attorney because the court system does not agree to your timetable or because the other counsel has not properly responded to your latest deal proposal. If your attorney is diligent and hard

working, he is doing all that he can. Certainly, you don't expect a brain surgeon to finish an operation or your mechanic to fix your car in 15 minutes. If they did, would you not be a little concerned about the quality of their job and your own well-being?

Many times I have had clients ask me to draft a quick letter of agreement without any provisions for breach and without any real details as to how the deal will be accomplished or what responsibilities each party has to the other. Usually, they are concerned that if there is too much detail it will scare off the other party because it looks intimidating. Certainly, mere letters of understanding are OK in certain situations. However, in many situations, clients need to ask themselves, why is the other party so anxious to enter into a deal that does not obligate them to do anything? Unenforceable or ambiguous agreements only waste client's money, never saves them time and potentially costs them more money by unnecessarily exposing them to liability or extra costs in drafting an enforceable contract.

### **Rule 9. Carefully review bills and ask questions.**

Be aware that attorneys and consultants sell their time and advice. In order for them to pay bills, they must charge you for the time you spend talking to you or working on your transaction. In the initial interview, find out how the attorney bills his time. Does he charge in 15-minute increments for every telephone call? Will paralegals and other legal or business associates be billed on your account? If so, what is each professional's hourly billing rate? Will he try to reduce hourly expenses by utilizing administrative staff and paralegals for routine tasks? How much personal involvement will he have in your case? How much does he charge for copies, faxes, travel time, etc.? These are all important questions to ask in order to insure that you are not shocked the first time you receive his bill. In certain situations, you might also ask if he will take your case on contingency or on some kind of set monthly retainer. In all cases, you should have the billing and expense approach detailed in a signed engagement letter between you and your attorney (or consultant).

If your attorney is billing you by the hour plus out of pocket expenses, make sure that you agree on the amount of detail you will require in his statement. Billing formats vary drastically between law firms or professional consultants. If you want detail, you must agree on how much and what format you would feel most comfortable with. It has been my experience that clients forget how many times they call their attorneys during the month and how long the conversation took. These calls can add up quickly and will inevitably be a large portion of your monthly billing. Therefore, you might want to keep your own personal log of your phone calls in order to track of how much time you are really using. Do you really need to talk to him 3 times a day or could you save time and money by speaking with him once a week? Remember, every time you talk to him about sports or the wife and kids, he is billing you. The time you waste talking about extraneous things, is taking away time he could bill with a client who needs him for his professional advice.

You should also always review the detail provided in your bill. Your review will not only allow you to question and correct any errors or find excessive uses of time, but it will let your attorney know that you are watching the bottom line.

These rules, if properly implemented, will save you money and will maximize your final results. However, although we have spent considerable time talking about things you can do to control costs, there is no doubt that your attorney or business professional is responsible to you as well. They should always treat you as a valued and respected client, return phone calls promptly, give you solutions (not obstacles) and they need to be responsive and diligent to your need to complete transactions or litigation in a timely manner. If you follow these simple rules and select attorneys or business professionals who uphold their responsibilities to you, I guarantee that your expenses will be lower and your returns will be higher.

Oh! I almost forgot...

**Rule 10. Never take your attorney for lunch and ask for free advice.**

We hate that!

*Larry Simmons is President of MarshallMorgan, LLC, a firm that specializes in franchise acquisitions, divestitures, financing and loan workouts. MarshallMorgan is a business consulting firm comprised of financial and legal franchise experts. If you would like to contact him, please call (972) 387-3131 or email him at [lsimmons@marshallmorgan.net](mailto:lsimmons@marshallmorgan.net). For more information on MarshallMorgan, see their website at [www.marshallmorgan.net](http://www.marshallmorgan.net).*