

Seven Rules on Screening, Hiring and Working With Lawyers

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I am not only a real estate investor and lawyer marketing my law firm to others. I am also a consumer of legal services from other lawyers, and I help my clients to find lawyers in other states and other areas of practice, even in Pennsylvania, to help me to help them. From over 20 years of giving and getting legal advice, I have developed a perspective on how to screen, hire, and work with lawyers, and how not to do those things. These comments apply to hiring any lawyer, anywhere you need one, in the United States at least, and in any discipline of law. For that matter, some of the comments apply to hiring other professionals as well.

My first rule is that you don't want to be the lawyer's first case in the type of law or type of problem you have. Lawyers all practice law, and over time we develop experience in particular types of problems and areas of the law. That way, we don't learn how to handle a tenant case, draft a will or negotiate a contract while doing it for you, on your dime.

I would not be the lawyer you would want to hire for a DUI or a contested divorce. I've never represented anyone in criminal court, haven't had a DUI of my own, and know the process only from information provided to me by others. I have been divorced, didn't like the process at all, and hated paying huge legal fees for what seemed to be a small amount of work. After my own experience, I stopped referring clients to the lawyer I had recommended for years. So, as sympathetic as I might be on these types of cases, I don't do that kind of work, know the applicable law like the back of my hand, know the procedures, the rules and the judges who handle those cases, or even know the lawyers likely to be on the other side that well.

If you want a lawyer to help you with a certain kind of case, find a lawyer who has handled that kind of case recently for other clients, ideally one who does that work successfully for many other clients on a regular basis. This will result in a lawyer or law firm who or which doesn't have to invent or reinvent the wheel while billing you for their time, and who is comfortable doing the work you need done. For documents, it is easier to draft a document, from a will to a contract to a pleading in a court action, using a template you have used over and over again and modifying it to fit a

particular case, than it is to draft the same from scratch. Going to court, it is more comfortable for a lawyer to evaluate, prepare for and try the same types of cases he or she has tried in the past, than a completely different kind of case.

How do you know what kind of experience a lawyer has in your area? Check out his or her website, firm brochure or other advertising materials, to start. Pay attention not only to the fact that the type of work you want is described there, but also to how many other types of work are there, and how many other lawyers are listed. If a lawyer practicing alone markets himself or herself as an expert in divorce, criminal law, personal injury law, real estate law, bankruptcy law and immigration, you should wonder how much time he or she actually spends in each of those areas. Handling one personal injury or bankruptcy case at a time doesn't bring with it the efficiencies of handling twenty of the same kind of case at the same time, or the expertise that comes from having handled hundreds of similar cases. Next, search online for any indication the lawyer devotes time to the area of law in which you have a problem. Teaching other lawyers continuing education in that area of practice means a lawyer has to know what he or she is teaching at least as well as or better than the lawyers taking the class, or they wouldn't pay for the class. Teaching non-lawyers means the lawyer has to be able to explain the legal issues or concepts involved in a way that non-lawyers can understand. Writing articles on a particular area of the law or lecturing on that area to non-lawyers are also good indications that the lawyer devotes at least some of his or her time to the area of law in which you need help. Any combination of these things can be helpful in choosing the right lawyer.

Finally, if you are going to court, look up the lawyer in that court system or others nearby and see if he or she has other pending cases in that area of law, and even if they have been successful in other similar cases. Many local courts allow you online free access, or inexpensive access to the court records. Search the lawyer's name and see what cases come up. If you are filing for Chapter 7 Bankruptcy, does the lawyer have other Chapter 7 Bankruptcy cases pending or recently concluded? By the way, you can also check the local court to see if that lawyer regularly sues other clients for fees.

My second rule is that other lawyers who practice in the same area of law are likely to know more about the skills and experience of another lawyer in that area of practice and location than you do. Martindale Hubbell is a

private, peer review rating system where lawyers who practice a certain type of law in a certain locale are asked to grade both the professional expertise and ethics of other lawyers in the same type of practice and locale. The ratings are anonymous, but screened through the company to reduce the chances that lawyers who practice together in big firms can get together to rate each other highly, or that friends can help friends get better ratings. The current ratings include unrated, C, B and A for legal ability in the area of practice, and V for the highest ethics. According to the firm's websites, Martindale.com and lawyers.com, the ratings are being changed to AV Preeminent, BV Distinguished, and Peer Review Rated. Statistics on the different ratings do not appear presently on the website, but previous information indicated that only about 5% of practicing lawyers held the AV peer rating, while another 15% held the BV peer rating. Even if these numbers each increase with the new rating scale, they are valuable tools in finding a lawyer whom other lawyers believe has strong legal skills and ethics. I use the Peer review ratings to search only for lawyers who have AV or BV ratings when helping a client to find a lawyer outside my geographic or practice area.

If you put trust in other ratings systems for lawyers, consider that the best ratings come from the largest number of responsible sources being asked to evaluate on a clear set of standards. I have never been asked to participate in evaluating lawyers for any other rating program, and my rating at Martindale was not affected by whether or not I chose to place a paid listing in their directory each year. One of the other ratings systems on lawyers discloses right on its website that the ratings are based on the input of the marketing directors for each participating firm. Another solicits ratings only from those already rated.

My third rule is based on the old quote from Abraham Lincoln, loosely paraphrased that you can please all of the people rarely, most of the people most of the time, and some of the people all of the time, while a few people are impossible to please. Knowing this, I check both the lawsuits filed against clients by the lawyer being considered, lawsuits filed by the lawyer against other clients, and public disciplinary actions against the lawyer. I wouldn't rule out a lawyer because a client or two over many years sued him or her, because the lawyer sued one or two clients, or even because a disciplinary action was started against the lawyer. Any of these events can recognize that you can't please everyone all of the time, and the longer a lawyer is in practice and the larger that practice, the more likely someone

will be unhappy, or the lawyer will be unhappy with them and sue for fees. But when either type of action or disciplinary proceedings become commonplace, this indicates that the lawyer is not pleasing a lot of clients a lot of the time, and you should proceed with caution.

When I had a fee dispute with my divorce lawyer, and questioned the hours charged and resulting amount of fees for a small part of the process, instead of negotiation and amicable resolution, I was sued for the fees. When I got online and checked, I was surprised at the number of such other suits the lawyer had against other clients, including more than one of the clients I had referred to the lawyer. Had I looked at the court website and seen all of those actions in the Court of Common Pleas, I would not have hired that lawyer, let alone referred good clients of mine. I won't make that mistake again.

The disciplinary board of the PA Supreme Court also recently went online, and you can search lawyers at PAdisciplinaryboard.org. The information shows public censure, suspensions and disbarment, as well as active or inactive status and administrative suspensions for not paying licensing fees or completing required continuing education.

The fourth rule I follow in hiring a lawyer is that size of the law firm matters. I may be biased in this regard, but I think the largest law firms with the most lawyers available to work, at the corresponding highest rates, are best suited for the really big companies with really big and complex legal problems, requiring experts in several different fields of law to work on the same case together. Sole practitioners in the suburbs, conversely, are best suited to the client with a small and simple legal issue who doesn't want to spend much and whose problem is general, since the sole practitioner often has to do a little bit of everything to keep the doors open, and doesn't have the opportunity to develop a lot of expertise in a single specialized area.

In between these extremes are small boutique firms with several lawyers concentrating their practice in single areas or several related areas requiring some level of volume to build expertise, and mid-sized firms which are really the combination of several boutique law firms with different types of practice into a single firm. Since most firms are either in the process of growing, shrinking, combining or separating at some point every few years, and individuals move from firm to firm, there are no numbers, types or individual lawyers other than the lawyer you hire on

whom you can count to be with the firm or on your case from beginning to end, and the longer the process the more this is true.

Make sure you meet the lead attorney on your case and as many other staff members who are assisting on your file as you can, and know who will do what and at what rates. See if the firm has a free consultation available for this purpose. Make sure you also know when two or more people will be working together and billing simultaneously for their work. If three lawyers are working together at rates over \$200.00 or \$300.00 per hour, it doesn't take long for the bill to add up.

For my real estate clients looking for real estate lawyers in other jurisdictions, I try to find an AV rated lawyer from a small or boutique firm, but not a sole practitioner, and not a big law firm. This is for the same reason you don't need or want to pay your brain surgeon at his rates to take your blood pressure, but you want him or her available if you need brain surgery. You don't need or want to pay your dentist to clean your teeth. The nurse can take your blood pressure; the dental hygienist can clean your teeth, and the doctor or dentist checks to make sure the job was done correctly.

In a law office, there are secretaries who can do the secretarial work, and paralegals and student law clerks to do work beyond the level of the secretaries, but not requiring a license to practice law. However, a license is required to give any legal advice, and almost always to go to court for a client. But every piece of advice, even on a complex case, isn't the most complicated advice, and every appearance in court isn't the trial of the case. Having a less experienced lawyer as well as secretaries, paralegals and law clerks available to work on a case can help to match the right price level of assistance to the job to be done.

In the end, this practice at least in theory results in the senior lawyer being able to provide the case strategy, and get the assistance of others on the legal team at lower hourly rates to provide the services more effectively. If it takes the junior staff too long to complete the tasks assigned however, or if the senior lawyer has to spend too much billable time supervising the work, the savings can be reduced or eliminated.

This brings me to **my fifth rule**. This is after you hire a law firm. Make sure you know the basis and rates for your fees, what costs will be charged in addition to fees, and how often you will be billed. Then watch your billing to make sure it matches. New clients should get an engagement letter describing the terms of their financial relationship with their lawyers soon

after becoming clients. Then review any statements you receive quickly and ask any questions you have promptly after you receive each bill. Does the bill match your understanding from the engagement? If not, why not? Write an e-mail or letter and talk to someone about your questions as quickly as possible. Remember hourly rates alone are not the whole story on an hourly bill. A lawyer working more hours at a lower rate can cost a client more than a lawyer working fewer hours at a higher rate. You need to make sure you receive the right balance.

Firms working on an hourly basis generally keep track of each professional's time daily and send bills monthly. Firms working on a flat fee generally bill in either the beginning by retainer or the end when work is done, and don't account as meticulously for their time. Firms working on a contingency basis often do not send any record of the actual time spent. If you knew they spent four hours on your case to make a ten thousand dollar fee, you might get upset, since you don't see the hundred hours they may have spent on the last case to receive no fee at all.

My sixth rule is a good way to keep your costs down on hourly cases, and not be a nuisance to lawyers or their staff on contingent or flat fee matters, while still making sure the work you need is being done. This rule is to know what will be done when, and watch for it. This could be as simple as watching the mail or e-mail for a copy of a letter or contract draft or pleading, or it could require logging on to a court docket online to watch everything a civil, criminal, bankruptcy or family lawyer is doing on your behalf, and what other lawyers involved in the same case are doing. Track your case and follow up by e-mail if you can when something is due and not done. Copy the senior lawyer on the case and the working staff, and let them know you don't want to be billed for them to read or respond to your e-mail. You just want them to send a copy of the work that is due to be completed. You may get the thing you were looking for, you may get an explanation of why it isn't done and when it will be, or you may hear nothing at all.

Unless a statute of limitations or an important deadline of another nature is looming, the only true cause for concern is the lack of any response. Any good law firm will be busy, and I believe a busy firm is more cost effective for you than a firm where professionals are sitting, waiting for your calls and to do work on your files. If a firm has too much staff for the work available, the employees will tend to spend more time than is necessary on a given case, and you will have very prompt service at the price of being

more expensive. If a firm is busy, and its staff has no problem finding enough work to keep busy and reach their billing objectives to earn their pay, then you will get the work needed on your file without additional time being wasted on unnecessary additional work. It may not be done early, but it won't be done late, and you will get the service for which you bargained. If you don't hear back from the firm at all, you need to find out why. Did a lawyer leave? Don't they want your case? Are they too busy this week, which is usually O.K., and happens in any firm because legal work never flows evenly from day to day? Are they too busy for a long time to get to your work? That can be a more serious problem if they don't have a plan to get the right staff in place to deal with the increasing volume of work they face. For a lawyer, it is both a relief and a problem for his or her law firm to have more work than it can handle. The work means job and income security, but also means it may be time to commit to more staff. Another secretary, law clerk or lawyer means an ongoing commitment to higher overhead, and the need to bring in even more new work on a regular basis. Those steps should not be taken lightly, but if a law firm doesn't continue to match its staff to changing workload, it either won't be able to keep clients happy as it grows, or won't be able to keep existing clients happy as it shrinks. Feedback on client happiness is often too little, too late, so providing that feedback can not only help your lawyer to handle your case better, but can also help your lawyer to manage his or her practice more efficiently for all the firm's clients.

My seventh and last rule is to pay what you agree to when you agree to, if you expect to get the service you want now and in the future. If you can't do that, come as close as you can to what you are supposed to pay, and communicate proactively about how you plan to pay the rest. Real estate investors have been through a rough credit market, and many have been unable to pay their bills in full every month. Lawyers will work with those issues as much as we can, but if last month's bills aren't paid to us in full by next month, we still have to pay staff, rent, insurance and other overhead, as well as pay ourselves. We have to make up the difference somehow. The easiest way is to devote more effort this month to the files of clients whom we anticipate will pay this month and next month, and less effort to the files of clients whom we do not expect to pay for a while. That way, more of this month's time is paid next month. We can borrow on lines of credit to carry unpaid bills, but if we do too much of that, we will exhaust our own credit to finance clients. We can raise rates on all clients to cover the cost of those

who don't pay on time, or insist on full retainers from every client for all work to be done, but either of those practices penalizes the clients who plan to and do pay when they should.

Eventually, we have to stop doing work for clients who don't pay, and spend time on collecting those fees. That leads to poor client relations and wasted time for whoever is involved in the collection process. If you review your legal bills when you receive them, discuss issues with those bills promptly, and pay what you owe timely, you will be a good client and your lawyers will be happy to handle your legal work now and into the future. If you don't do these things, you will have to move from law firm to law firm, go through a learning curve with new people for each new problem, and in the end probably pay more for legal services than you would otherwise.

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