

DO'S AND DON'TS ON HOW TO USE GOOGLE FOR LEGAL WORK

Unfortunately, about two out of three new clients come to our firm because they have a problem with their signed contract or legal documentation. Too late, they have received the previously unconsidered information that their contract does not have a jurisdictional provision (so they are being sued in Idaho); or their contract doesn't allow for interest and storage fees (so they are paying interest and storage but can't charge the client for them); their star sales person is stealing clients but there is no confidentiality and non-competition agreement in place. Their LLC does not have an Operating Agreement, so ownership and authority issues are unclear. The company does not have buy-sell agreement setting forth the conditions and terms under which business partners will part company (So money which might have been spent on "business as usual" afterward or orderly split, is spent on unproductive litigation). I could go on, but I'm sure you see the point. These are a few examples of some common problems caused by mistaking (i) general information for legal advice and (ii) forms as suitable contracts.

Here are a few quick pointers on how to use Google (or Bing or Yahoo, Firefox, etc) for legal information and to avoid finding yourself in the above, or similar, situations.

Do's:

1. Do: Use Google for a quick definition of terms. Be aware it is best to have a law degree and several years experience to fully understand the ramifications of the definition.
2. Do: use Google for general information about a subject –so that you can know *what questions to ask* – to become a better consumer of legal work and lawyer services
3. Do: In a stretch you can even use Google to see what types of contracts or documents are used in a given situation, what they look like and the topics they might cover. You might want to call a law office or two to determine which contracts you need so you don't research the wrong contracts.

Don'ts:

1. Don't use general information as legal advice. Here are some of the reasons why:

A. Different Facts Mean Different Results: Any lawyer or law professor can tell you that ONE FACT can change the entire outcome of a case. For example, consider the case that held that McDonald's was liable for the wrongful death in an automobile accident caused by of its employees who worked too much overtime, even though the worker had volunteered for same. Why? Is a business now required to meddle into its employees' lives? And, even if we wanted that, realistically, could the business actually know how each of its employees was feeling on a particular day and whether that employee was able to drive normally? And,

what's "normal" for that employee – or anyone? The critical fact here was that the employee was a *minor* and a student. That one fact changed the outcome.

B. Your Need is Unique. Your case is not like anyone else's case. Each case is unique. General rules may not apply. General information is not "advice." Advice is based on *your* documents, *your* facts and your circumstances. Advice is tailored to *your specific facts* – and that is what you need for something as important as a legal matter. Legal issues can be – and often are life altering. If you own a business, you need and deserve a contract written for *your* business, to cover issues that arise with *your* clients; that is, a contract tailored to your needs.

C. You are Unique. Representation needs to be tailored to your *personal* needs and motivations. For *you* the case may be in the ordinary course of business: regrettable, but fairly routine. For someone else it may be simply overwhelming due to personal or family health issues. Some clients thrive on legal issues. Others do not. I have had clients walk away from very strong cases with substantial money at stake because the husband was dying of cancer and ill from chemotherapy and the wife was just overwhelmed by that and other personal issues. So the question of what we do is different than what can be done. What will be done depends on the consultation between attorney and client. In short the representation can be tailored to your needs.

D. Legal Advice is not "One Size Fits All." Legal documents are like shoes. One pair is not right for all occasions, nor will one size fit all. Except to help you ask questions, general information may be no more valuable to you in your particular matter than a pair of shoes off the rack may be for a particular size and social situation. The advice needs to be suitable for what you are doing, and also fit you, your circumstances and your objectives.

E. The Law Varies from State to State. Also, as you may have gleaned by listening to the news, legal decisions are not consistent, but vary from one jurisdiction to another. This means the law from one state to another may and almost always does vary. Some states do not even have the same legal claims as others. For example, Arizona is liberal on negligent misrepresentation claims; New York and Delaware are not. In fact contracts are drafted to use or avoid the laws of certain states. Much of this knowledge would be beyond the interest, knowledge and expertise of many non-business attorneys, let alone a lay person.

F. Lawyers are not Licensed to Practice or Have knowledge of Other State Law: Last but not least, attorneys are licensed by state and are required and only required to pass the State Bar of the state they live in. So, advice offline may not only be accurate for your facts, and in your jurisdiction, but may be given by a lawyer who is not licensed in or knowledgeable about the laws of your state.

2. Don't use form contracts from other matters and jurisdictions.

A. A Form is Not a Legal Contract for You. For the same reason as online information is not legal advice, an online form is not a legal contract that you just want to use without an

attorney's review. First, it may be the wrong agreement, Second, as discussed above, the contract may not even be valid, as written, in your state. It may and probably will have been written by a lawyer who does not practice law in your state. If it has been written by a non lawyer, it has likely excluded all legal advice or questions, to avoid being charged with the unauthorized practice of law. If a non-lawyer is giving you legal advice, beware.

B. The Contract Needs to Be Tailored for You. Moreover, a stock contract downloaded from a website will not be tailored to your specific needs. Most of the time to make the contract work, regardless of who buys it, i.e. whichever side of the transaction buys it, the contract will be written "down the middle" on many key points –but some of those key points may be critical to your interests and should be discussed. Or, worse, the form contract may just eliminate many issues which need to be covered; these issues may arise later at much greater cost and harm, and, unaddressed in any agreement, be litigated by the parties. (Business brokers' contracts are infamous for this. The broker has no incentive to resolve issues; he or she gets paid on commission of advocacy/ only if the deal is done.)

C. A Form Contract Ignores the Necessity of Advocacy/ only and therefore Loses the Benefits. The practice of law is always *advocacy*; that is, the lawyer and your contract should serve your interests as much as possible. Many times the success or failure of a venture can depend on the strength of the contract and it's accompanying organizational documents. And, that strength comes from your consultation with the lawyer about the special facts and objectives of your company and its transactions, then having a contract written accordingly. For example, consider a simple contract for the sale of a phone. A form contract may lack certain provisions that could have been added to serve your special needs – like the right to repossess the phone if it's not paid for, and the agreed right of peaceful entry to do so. Obviously, the power to shut down a business by repossessing its phone system is great leverage to get paid. Alternatively, the contract could have provisions that are directly adverse to you and which need to be removed or modified. A common mistake is to use the contract a lawyer drafted in another deal without having it reviewed and tailored for your deal. It may look okay, but in practice be 180 degrees from what you want.

D. You May Think You Know What You Are Reading, but You Don't. Clients think that because a contract is in English that they can read, understand and negotiate the contract. This assumption is virtually always false. First, legal terms have special meanings, and those meanings vary in the context and may interrelate with other terms in the contract or document. (The case law and business community standards which determine the enforceability of a provision also change.) A lawyer would know to go immediately to the indemnity section if he sees a damages or limitation of remedies section. A non-lawyer justifiably may not know what I am talking about.

E. Non-Lawyers Will Not Know What's Missing. Also, clients often fall into what I call the "documents look OK to me fallacy." They read and negotiate only what is in the contract, not realizing that there could be *pages* of provisions which should be in the contract which

would protect them or advance their interests. But the other side doesn't want those provisions in there because they are adverse to their client, and has no obligation to put them in. Without a lawyer, you won't even know they are missing. This is common in business sales and other forms of sales agreements. Additionally, clients leave themselves open to huge breach of warranty, consequential damages and punitive damages claims and awards that could be eliminated or mitigated by good drafting. For example, the defective bidding software that cost its purchaser \$1.5 million in damages due to a defect in the software. It under-bid a job, which the purchaser then "won", and had to complete at a loss. When the purchaser sued, its damages were limited to the cost of the software, about \$129.95. Reason: good legal drafting. And, no off the shelf contract that I have seen does a good job of analyzing the situation and drafting to maximize the possible benefits, and mitigating the possible detriments of the deal. This takes a little time and effort by the client and the attorney but is overall cost-effective, especially where the cost of the sales or employment contract – or other agreement – is spread over many sales or employees.

F. A Word about LegalZoom. I do not mean to pick on LegalZoom. I am sure it is a fine and reputable company. But LegalZoom violates all of the above principles and its use can cause serious harm. Please consider the following:

1. If the law varies from state to state, which it does, how do I know the form contract does not violate applicable state law – therefore may be not only worthless but harmful – or, conversely, that it takes advantage of applicable law? For example, Arizona enforces key employee non-competition agreements to the extent that the employer can prevent, in advance by contract, the employee from leaving to work for a major competitor. In contrast, California does not favor such contracts at all. How can an off- the-shelf form agreement minimize the possibility of non-enforcement and maximize the benefits of local law? It can't? So, why would you pay, say, \$300 for an Online Agreement when you could have a tailor-made agreement done by a lawyer licensed in your state and with knowledge of local law for, say, \$750.00 to \$1250.00? When you consider the downside losses for a poorly worded contract, this is a bargain. And, once you have the correct agreement you can use it for multiple employees, and thus spread its cost – and benefit – over a number of employees and attributable revenue.

2. If you are a business you spend day and night thinking about your business. You probably have much or all of your net worth in the business. Then why would you not protect the business by getting business law advice from someone who, like you, spends night and day thinking about business and who, unlike you (we hope) has encountered and dealt with these same issues many times over his or her legal career? That experience can be virtually priceless in avoiding life-altering mistakes. Yet, the cost of same is included in the price of the document or consultation.

3. For example, I had a client use an online service to file a trademark. Easily done and easily paid – until the USPTO received an objection from the "Ivy League" who owned the

name. Our Firm charges \$865.00 for a tradename or trademark. It cost our client five times that to get out from underneath that mistake. This comes back to my point: You do not pay the attorney for the “form,” but for the knowledge incorporated into the form and the advice that goes along with it. And, “forms” only exist for non-attorneys. Lawyers know that legal documents need knowledge, experience and applicable law incorporated into them. Thus, they are not forms.

Conclusion.

Lincoln said “He who would be his own lawyer has a fool for a client.” And, forgive me if this sounds harsh, but one can really make a fool of oneself by practicing do-it-yourself law. My clients are justifiably proud of their expertise in running their businesses, but some of them make the mistake of believing that their genius in one area or field of endeavor allows them to understand what has taken me law school and decades of legal practice to learn. I can no more run my clients’ businesses than they can practice law. Every day I see matters which could have been handled as brief, inexpensive office visits before the deal, but which later are the subject of time-consuming and expensive litigation. Worse, I see lives ruined because many mistakes are so devastating the client cannot recover.

Time and money are always scarce for business owners, but that is the very reason to spend time and money on loss prevention. Having good contracts and legal organization will more than pay for itself – in fact, probably in just one sale or transaction as the benefits begin to accrue. The law is a living, breathing entity; the law which holds today may be modified by a court ruling tomorrow. And even the law does not always take into account practices in the Arizona business community which are known only to those immersed in that community, the psychology and motivations of the parties also play a part in negotiations which modify a contract, the form contract is static, and when you modify it without advising you give up what few protections it had to offer.