

WHAT BUSINESS OWNERS SHOULD LOOK FOR IN A BUSINESS LAW FIRM AND BUSINESS LEGAL REPRESENTATION

BY Donald W. Hudspeth

In selecting a law firm for an owner-operated small or medium sized business (aka “SMB’s”), we can start with some basic positions:

1. The law firm client is well advised to choose a lawyer, not a firm. Lawyers vary in aptitude, knowledge and experience in various practice areas, just as other businesses do. So, obviously, you need an attorney who actually practices business law. Unfortunately, due to the number of businesses in Arizona, many lawyers are hanging out their shingle in “business law” who do not have a business or business law background – especially prior experience as, or for, business owners.
2. Many smaller boutique law firms were started by successful larger firm attorneys who grew tired of sharing their profits and carrying the large firm overhead.
3. Substantial fees are required to carry large firm salaries, overhead (and egos).
4. Many large law firm attorneys may have no clue what it is like to own and operate a small business nor do they have a strong incentive to really care to, because such firms can’t “pay their freight.”¹

Given these premises no reason exists for a small or medium size business owner to use a big box firm. Rather, the business owner may well do better to pick a law firm that understands, appreciates and values them the way the owner-operated business in turn values its clients.

I decided to start my own business law firm when I left a larger law firm after the last great recession known as the “RTC crisis.”² At that time targeting

¹ I am not impugning ill motives. Some of the finest people and lawyers I know work for larger firms. I am talking about the large firm need to bill larger dollars to cover the large firm salaries and overhead. For example, clients tell me that we charge a fee of \$950 to \$1250 for documents for which they paid \$4-5,000 or more – in part because they were billed by the hour.

² The banks went broke (sound familiar?), consolidated and we lost their business.

small or very small business was not in fashion mainly because the thinking was that such law firms could not support the fees and overhead required to operate. This may have been true at the time, as I started in very humble surroundings and charged fees about one step above “volunteer lawyering.” My goal at the time was to earn \$100 a day; the goal was dollars to live on, not dollars per hour.

What I thought I knew and confirmed was that there were many business owners who were like I had been, i.e. a small business looking for a lawyer who understood us. Before I went to law school at age 36 I had owned and operated a bar and bar real estate chain in my 20’s and a three store chain of major mall retail stores in the 1980’s. But as the “big box” stores grew in prominence I found my mall store business slipping away. So, I took what I had left and went to law school – an earlier goal before I got sidetracked by life.

When I started my own firm, targeting owner- operated businesses, I focused on what I thought was my unique selling proposition (aka “USP”); that is, that I had “been there” as an SMB business owner myself. I knew the long hours, about the manager who quits the day before my first vacation of five years, of lying awake thinking about payroll, and about the problems with banks and other professionals including lawyers, accountants and marketing experts, who seemed to be looking past me to see if there were somebody better in the room.

Even today I wear both the “lawyer hat” and the “business owner hat” and analyze every problem in terms of both. Frankly, while I am ethically compelled to give the proper legal advice, sometimes the client cannot do, or has already not done, what the law would recommend or require; so, we look to remedy the situation and minimize risks and consequences. And, clients will tell attorneys “I am not paying you to tell me I can’t or should not have done this, but to advise me on what we are going to do now.” Again, this can be the difference between a purely legal and a global, practical, real-world, businesslike problem-solving approach.

Thinking about these things and my early years of practice led to my book “Inside the Firm,” The Inside Story Choosing and Using a Lawyer, in which I explained why and when to call a lawyer and identified some criteria for picking a

law firm for your small business. Things to look for in selecting an attorney include:

1. Understanding the nature of an entrepreneurial, owner-operated, driven business and how it differs from corporate America. If one identifies with “Corporate America” and Wall Street then one may not identify with Main Street. Most SMB’s probably have more in common with Main Street than Wall Street. (In my opinion small business owners often mistakenly identify with big business and Wall Street which may not identify or give a damn about them). Because big law firms need the large corporations to survive, it is unlikely an SMB will get the level of empathy and understanding from a big box law firm than a smaller one. It is highly likely that the large corporate law firm may have no attorneys on staff who have ever owned or operated their own business.

2. The ability to listen, know what things mean and what to ask. Again, this comes from knowing the area.

3. Connection and communication. I remember a saying: “It is hard to see eye-to-eye when you are looking down on people.” I am not saying that larger firms and their attorneys actually do this, but, generally, the higher the level of identification, connection and effective communication between attorney and client, the better the outcome. A background of common experience facilitates this process. To me it is like raising a child: You can read the books about child rearing, but you really learn what it is all about – especially the overall, big picture – by raising the child. The same is true with business representation: One really learns the area by having been “on the other side of the desk,” by having run one’s own owner-operated business.

4. Compassion, empathy, the ability to care. Customers want to be served by businesses that care about them. Because I have “been there” in terms of operating my own businesses, I have great concern for, and empathy with, my clients. I understand their financial limitations and the need for cost-effective representation. The firm does its best to make the bills fair and reasonable and the representation cost-effective. In our firm we talk a lot about client options, pros and cons and what those options will cost. We balance possible outcomes

with cost to determine value. And, because we care about our clients – and act like it – we find the clients care about us. This is one facet of good teamwork.

4. Responsiveness. Often, the clients who call the firm are in trouble and “need something done yesterday.” Responsiveness is the small firm advantage. While elephants are powerful, cougars are more responsive. It takes about two miles to turn around a 747; much less for a Cessna or Lear Jet. Small businesses and their law firms need to be able to “turn on a dime.” When I worked for a larger law firm it might take a week or more for a file to get open, hit my desk and/or for me to get to it. Generally, today, even with our firm’s busy and successful practice, most of the time we turn projects around (not litigation of course) in about a week. That is always our goal. One reason for this is that we tend to face similar business and legal problems and do similar projects again and again so we bring a high level of knowledge and experience to the process. Most of the time we do not have to “reinvent the wheel.” While the matter may be new – a once in a lifetime event for the client – it is probably something the firm has dealt with many times.

³ And, if we do have to create something new – which happens because many of the business areas we work in did not exist a few years ago -- we can analogize from the past. Often our firm is in the forefront of what’s new in business concepts, business models and business methodology because our clients are. We are the pioneering entrepreneur’s law firm.

5. Team work; that is, client participation and involvement. Many if not most of this firm’s clients are brilliant and/or outstanding in a least one way. Capitalizing on their unique talents has allowed them to succeed. While the client may not be versed in the law and the way of doing things in the legal profession - anymore than I am well-versed in, say, engineering and an engineer’s approach – that intelligence can be used and it would be a shame to waste it. Thus, following my Mom’s idea that “two heads are better than one,” we seek the clients’ input and involvement every step of the way in their representation. In particular the client sees a draft of any letter or document before it goes out and we meet and discuss (often by phone or email) with the client where we are and where we are going in

³ This reason alone is why every business should have an attorney “on retainer.” The business lawyer may have 20 years of experience in dealing with your “unique” (for you) legal or business matter.

every matter. In this day and age of cloud sourcing, video conferencing, texts, emails, and even faxes, there really is no excuse for not having the client's review and approval of significant work before it goes out. And we find, often, that "last look," can trigger a whole new set of recollections and ideas from the client, which takes the level of representation up a notch. All of this may seem like a "no brainer," but you would be surprised at the independent and top down approach taken by many law firms and their attorneys.

While legal work cannot be purely democratic in that attorneys are subject to procedural, ethical and competency standards, an attorney-client relationship which includes client input, feedback, participation and involvement optimizes results – not only in terms of improved outcome of the transactional or litigation matter but also in improved acceptance by the client of the outcome. While results are usually not perfect for either side in a legal matter, where the clients know what we did, and why, and how we got here, they are more likely to accept and appreciate the outcome. It's like democracy, i.e. participation improves results, acceptance of the outcome and, perhaps, educates the client against false expectations.

6. Pick a lawyer, not a firm. This advice did not originate with me. Given the leveling effects of technology and rule changes, large law firms no longer have a practice advantage. In fact, they may be trapped with overhead in library and staff no longer required in this internet age. In fact, most attorneys now use online search tools like Westlaw or Lexis-Nexis. So, typically, the smaller boutique firm which practices mainly in your area of need will provide the best representation: In knowledge and experience of your kinds of business and legal problems, empathy and understanding, response-time and cost-effectiveness. Leave the big box law firm to the big box corporate client. If you are a business owner or entrepreneur, work with your SMB law firm to take your business to the next level, or even to create the next and new business reality.⁴ `

⁴ Again, this is something I have done personally and do as a lawyer for my clients. I use the saying: "We don't just connect the dots, we *create* the dots."