

Ten Commandments Of How To Work Effectively With Lawyers

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STARTING UP: Practical Advice for Entrepreneurs

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TEN COMMANDMENTS OF HOW TO WORK EFFECTIVELY WITH LAWYERS

As the result of my own law practice and teaching of the "Manager's Legal Function" course at The MIT Sloan School of Management I have developed this Ten Commandments of How to Work Effectively With Lawyers. Hopefully following these commandments will enable you to work more effectively with your lawyer and thereby reduce legal costs while improving responsiveness.

1. Remember You Are Purchasing Expertise By the Hour.

When you consult a lawyer the product you should be purchasing is "expertise by the hour". This may seem self-evident but many managers lose sight of this. For example, you pay the same amount for 30 minutes of a lawyer's time whether he or she is drafting a document or calling you to remind you to send the documents you promised you would send. Moral: Make sure that you are spending your lawyer's (i.e. your money) time wisely.

2. Plan Ahead.

"I want it quick, cheap and good." Unfortunately you rarely can get all three of these. By giving your lawyer advanced warning of what you want you can reduce cost while maintaining quality. For example if you will call your lawyer at 4:30 on a Friday afternoon requesting a contract by 9:00 Monday morning it is likely that a more senior lawyer will have to draft the contract because there may not be sufficient time for the senior lawyer to delegate the work to a junior (i.e. lower billing rate) lawyer and to also review the junior lawyer's draft before Monday Morning.

3. Get In Line.

A corollary of "Plan Ahead" is to let your lawyer know something is developing in your business which may require the lawyer's attention. A lawyer has multiple demands put on his or her time. By giving advanced notice you will enable your lawyer to plan his or her schedule and to assemble a team if required. Also if you get in line it is psychologically much more difficult for the lawyer to make excuses about why your work can't be done within your time schedule.

4. Keep Your Counsel Informed About Business Developments.

Legal advice cannot be given effectively in a vacuum. Choose a lawyer that is interested in and capable of understanding your business and educate him or her. Put the lawyer's name on the press release and new product announcement mailing list. Expect your lawyer to keep informed. If your lawyer charges you for the time he or she spends to keep informed generally about your business - get another lawyer.

5. Practice Preventative Law.

You may remember the old Fran oil filter commercial where the mechanic says that "you can pay me now or you can pay me later" - referring to replacing a \$5.00 oil filter which could have prevented rebuilding the engine. The same concept applies to legal matters.

Meet with your lawyer once a quarter or at least twice a year to review what you have done since the last meeting and what you are planning. This may generate some work for the lawyer to fix things you have done before they become larger problems but this should not be the prime purpose of the meeting. Instead get your lawyer's views on what you should watch out for in carrying out your plans. The idea is to avoid problems and create opportunities; to move the focus from remedial law to preventive law. Tell your lawyer that you will buy him or her lunch at these quarterly meetings but that you don't expect to be charged for the lawyer's time. In today's increasingly competitive legal services marketplace you should find that your lawyer has no problem with this arrangement which allows him or her to maintain good relationships with clients - you may even find that the lawyer will buy you lunch.

6. Use Your Lawyer's Contacts and Knowledge.

An active business lawyer regularly comes into contact with a variety of people who you might not meet in your business - e.g. bankers, accountants, venture capitalists. Your lawyer also sees a wide range of businesses and business deals. You should make use of these contacts and knowledge by educating your lawyer about your goals and objectives thereby making the lawyer part of your extended management team.

7. Follow Through.

You will tend to get the most cost-efficient result from your lawyer if you concentrate your efforts and if you follow through. The longer you stretch out a task the longer it will take, and the more it will cost. For example, if you meet with your lawyer and say "I'll get back to you on that" and you take two months to do so, the lawyer will have to review the file to get back up to speed. This takes additional time and results in larger fees.

8. Set Agendas - Do Memos.

If possible a few days before meeting with your lawyer send a memo describing the facts, what you want to accomplish, and your questions. If the lawyer sees that more information is needed he can call you to make sure you have it for the meeting. This makes the meeting more productive. In addition the lawyer can't help but think of your situation during times when he or she has a few spare minutes - e.g. jogging or in the shower. This should usually not be "billed" time.

9. Be Up Front About Fees.

Discuss billing arrangements up front. Review the bills and the relationship on a periodic basis. You may want to insist on monthly bills with detailed descriptions to see what has been done. This will create a tighter feedback loop between the work done and the costs incurred. If there are unexpectedly high bills you can find out why - perhaps the lawyer or his or her junior lawyers were not efficient or perhaps you weren't efficient. Find out why the fees were higher than expected and fix the situation.

As your business grows larger, centralize legal service authorizations with one or a few people. Avoid creating a situation where a junior employee calls up the lawyer and authorizes work.

10. Don't Be Penny Wise and Pound Foolish.

In their desire to keep down expenses some managers try to do their own legal work - e.g., use the last contract as a guide, etc. Because law and legal consequences are very fact and context sensitive, don't assume that the last contract will automatically work with this deal. Also, in the

interest of saving money some managers don't give the lawyer all of the facts etc. This can result in the wrong legal advice or missed opportunities.

Conclusion.

If you have developed a periodic review program with your lawyer, if you have taken the time to educate the lawyer about your business and if you include the lawyer as part of your business team - i.e., if you manage the legal function, then you are likely to have an effective and cost efficient relationship with your legal counsel.

DISCLAIMER: This column is designed to give the reader an overview of a topic and is not intended to constitute legal advice as to any particular fact situation. In addition, laws and their interpretations change over time and the contents of this column may not reflect these changes. The reader is advised to consult competent legal counsel as to his or her particular situation.