

Interviewing a Prospective Attorney: What to Ask

by Susan Boyd, J.D.

1. How long have you been in practice? What types of legal issues have you handled?

Clients mistakenly believe that attorneys already know how to handle every legal issue. They don't. The reason they don't is that the body of law is so huge that no one can be an expert on everything. So, attorneys specialize. The first time they handle a certain type of case or legal question, it takes them longer because they're learning on the job. That's a problem for you if you're paying them by the hour. You don't want them learning at your expense! So, you want someone who has been practicing law for a few years already. They will have had the opportunity to handle a number of different legal matters, and have gained experience. If they haven't done any of the things you are considering (like patenting a product, incorporating a business, writing an employee handbook), then you will be paying them to research how to do all this.

2. Do you represent other entrepreneurs, family-owned businesses and small businesses?

Your legal needs will be different from those of a giant corporation. You want an attorney with a mindset like yours and a vision toward innovation, creativity, and fresh ways of doing business. If an attorney has only represented large corporations, he/she may not understand your financial constraints, your need for fast-paced decisions, etc. Additionally, you may not have a large management team with whom to brainstorm and on whom to depend, as you would in that large corporation. Your attorney can fill this role, if you and he/she are like-minded. There will be legal issues that you haven't even thought of yet. If your attorney has worked with a number of entrepreneurs and/or small and/or family-owned businesses, he/she can help you predict problems and avoid them! You can learn from those businesses' mistakes through your attorney.

3. How quickly do you respond to telephone calls? Do you have e-mail access? Do you have a pager/cell phone?

One of the biggest complaints that clients make about their attorneys is inaccessibility. If an attorney can't or won't promise to return phone calls within 24 hours, cross him off your list. You will save yourself later frustration. Make sure that his office can reach him/her anytime, anywhere, whether by pager or cell phone. If you have an emergency, you must be able to contact your attorney immediately. If he/she cannot guarantee emergency access, cross him/her off the list. There are lots of attorneys who will.

4. How much do you charge?

This is obviously of paramount importance. In fact, fear of legal fees is probably the biggest reason why people avoid using attorneys. Once you have a clear understanding of when you'll be charged and how much, you'll feel more comfortable contacting your attorney. You want an attorney who is willing to create different types of fee arrangements, depending on your needs and cash flow.

. The following are common fee arrangements:

- Hourly rate--Most attorneys charge by the hour. One of the best reasons for interviewing more than one attorney is to get a basis for comparison within your community. People often assume that the rate quoted is set in stone. However, it may be negotiable. There are lots of lawyers out there. They need work. You are in a great position to get a good deal on legal advice. So, ask the attorney if she will consider a reduced rate while you're getting started, if your business is new (with the idea that when you're a success, you'll be a valuable client and can pay the standard rate); or a discount for repeat business (I know attorneys who regularly deduct 10% from the bills of clients with whom they have an on-going relationship; so, make sure the attorney knows you are looking for a long-term commitment). Also, ask the attorney if you can pay your bill over time, spread over 2--3 months, or more. If he/she agrees, **make sure you pay each month on time**. If the attorney knows he can count on you, he might be more flexible in the future.

Ask the attorney to give you an estimate on the number of hours a particular job will take; ask if a cap can be placed on the job, because you have finite resources--then set a limit on the amount of money you can spend. See if the attorney will do the job for that amount.

If you're interviewing a partner in a firm, ask if the hourly rate you're billed will be reduced if an associate (that's an attorney who works for the firm, and hasn't been made a partner; usually, he/she gets paid a salary and doesn't share in the firm's profits) or a legal assistant performs work for you under the direction of the partner. The rate should be less for the associate, and significantly less for the legal assistant.

- Contingency fee--If an attorney is representing a client in a case which may generate money damages or payments due the client from the other party, the attorney may agree to take a percentage of whatever damages, payments, etc. that he/she obtains for the client. The percentage varies according to how much action the attorney is required to take. Again, don't assume that the rates are non-negotiable. Give the attorney some solid reasons why he/she should take less, like doing some of the legal research yourself. [Look for "Legal Research On Your Own" is a later *Heritage* issue]
- Flat fee--Sometimes an attorney charges fixed rates for specific services (for example, \$250 for a standard will) no matter how many hours of his/her time are involved. If he/she already has a standard form will on the computer, it doesn't take much time to plug in the changes for you. So, it doesn't hurt to

ask for a price break based on the fact that you're a client who pays your bills on time, or because

you're just getting started, or as part of a fee arrangement which includes other services being billed on an hourly basis or contingency fee.

- Annual retainer--Attorneys will sometimes ask for a retainer, and what they mean is a deposit toward work they will begin. An annual retainer is different. Some clients have a fairly predictable amount of legal work each month. They may prefer to keep an attorney "on retainer." This means that the attorney and the client have determined a monthly fee that the client pays for all specified work, no matter how much or how little time it takes. This helps a client budget an exact amount for routine legal work. There are certain services that would be excluded, though, and paid for separately. When you are beginning your business, you have a multitude of questions that you would probably like to ask an attorney, but you're afraid that it will cost too much. Having an attorney on a small monthly retainer will make him/her available to answer your questions and can prevent you from making expensive mistakes. If you are concerned that the monthly retainer will cost too much, remember that there are thousands of attorneys graduating from law school every year. There are more attorneys than there is work to keep them employed. Many attorneys would welcome a consistent, even though small, monthly amount of income! Make your attorney an offer -- you might be surprised at how little he/she will accept, particularly if you sell yourself and your business as having terrific potential.

As you're reviewing the answers you got from the attorneys you interviewed, in addition to what each of them said, remember how each of them made you FEEL. Even if an attorney is accessible, and her rates are reasonable, if you feel uncomfortable, she's not right for you. Some "twenty-something" entrepreneurs shared the following interviewing experiences with me. The first attorney they interviewed had a traditional office. While they were waiting, these entrepreneurs talked among themselves about how impressive and professional everything looked. They felt good about this choice--until they met the attorney. He was stiff, and they were intimidated. At their appointment with the next attorney on their list, the attorney took them into his conference room, kicked back in his chair, propped his feet on the conference table, and lit a cigar. The entrepreneurs were surprised by this attorney's casual style, but it put them at ease. He was the one they chose. Had it been me, I would have been out of the door when he lit the cigar, because I hate cigar smoke. The point is that everyone relates differently, attorneys included! You need to feel relaxed and comfortable with your attorney since he/she will play an important role in your business future. Keep looking until you find the attorney who is accessible, will work with you on rates, and makes you feel welcome and respected.

This article originally appeared in the Fall 1999 (Vol. 3, Issue 3) Family-Owned Business Institute newsletter, Heritage. Susan Boyd is an Applied Assistant Professor of Business Law at the University of Tulsa and the Director of the Genave King Rogers Business Law Center. You can email her at: susan-boyd@utulsa.edu.