

## **HEMLOCK OR WINE? HOW TO CHOOSE A LAWYER**

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So you've finally decided to hire a lawyer. Maybe you need to sell your home. Or protect your intellectual property. Perhaps the decision was forced upon you because of a lawsuit. Whatever the reason, choosing a lawyer can be an intimidating process. Add to this the less-than-stellar view that the public has of the legal profession and it's no wonder why many people shudder at the thought of having to retain counsel. While there's no one right way to choose a lawyer, here are a few factors to take into account:

**He Said, She Said.** Sometimes the best way to find an attorney is the simplest: Ask around. Nothing you see on TV or on the internet can ever have the same effect as a personal recommendation from somebody you know who has had a positive experience. All professionals thrive on referrals from satisfied clients. If your friends and colleagues can point you in the right direction, that's a good start. Of course, what worked for them may not work for you. So while a recommendation is a starting point, you still need to make sure that the attorney is a good fit for your situation and personality.

Don't forget about asking other attorneys. Your "boring" corporate attorney is likely well-networked. If you need a personal injury lawyer, chances are your corporate attorney will know at least one. In fact, lawyers often know who the best attorneys really are, regardless of the ads you see on television. Ironically, the best lawyers don't need to saturate the airwaves with advertisements. Their excellent reputations among other attorneys give them a constant stream of referrals.

Better yet, ask your attorney: "Who would you go to if you needed a lawyer for \_\_\_\_\_?" And then ask why. The answer will give you some insight. Similarly, if you've been given the name of an attorney from a friend, ask your lawyer about the referral. Your attorney may be aware of things in the lawyer's background that you wouldn't know (such as professional reputation, disciplinary actions, losses/wins at trial, etc.). The more information you have, the more comfortable you'll feel when making a decision.

**The Fancy Digs.** You've just walked into the lobby of a lawyer's office. You can't help but notice the marble floors, the beautiful chandelier, the mahogany conference table, and the contemporary art on the walls. Impressed? Good—this is the very first thing that you'll be paying for.

Don't be impressed by well-adorned offices, interior design, and a beautiful view. Yes, it could be indicative of that lawyer's excellence. Unless the firm is generating the fees and has the resources to cover its overhead, it wouldn't be practicing there for very long. This doesn't mean, however, that a beautiful office translates into competent representation. First impressions may count, but this doesn't mean they're free. There are still many other factors to be considered and other questions that need to be asked. Be impressed if you want, but don't be too impressed, at least not until the attorney has proven herself.

**Specialize, Specialize, Specialize.** Beware of the attorney who does everything. Remember the old saying: "Jack-of-all-trades, master of none." The practice of law in any one area is far too complicated for a single attorney to know all of the relevant issues well enough to provide competent representation. In other words, your attorney should at least know when she's outside her own level of skill and competence. In fact, an attorney's ethical obligations expressly require this. Just like a podiatrist would not be qualified to perform heart surgery, a real estate attorney would not be qualified to handle a personal injury case. Be sure to ask questions such as: How long have you been practicing in this area? What training have you had? How many of these types of cases have you handled?

Keep in mind that most lawyers have several areas of focus. For example, a lawyer who specializes in real estate may also know tax law, as the two are related. In addition, a lawyer's sphere of competence tends to expand outwards over time and encompass other areas, especially if the attorney has been practicing for a while. Nevertheless, there isn't a lawyer out there who does it all, and does it all well. There are, however, many large law firms with several sections. There are the patent, employment, tax, and bankruptcy sections, for example. These types of firms, however, generally charge higher hourly fees as they have much higher overhead. You should carefully evaluate whether you need a firm such as this or whether you can simply get referrals to other specialists from your attorney when the need arises.

**The New Guy.** So you've found a lawyer in your specialty. The next question should be: "Are you the one who will do my work?" The partner who sold you on how good the firm is may not be the attorney who actually does your legal work. While there are many partners who do, there are those who are simply the "rainmakers"—the likeable schmoozers who bring the work into the firm and don't focus on much else.

Experience is key. Problems can arise (and costs will increase) if your work is handled by a lawyer with little actual experience. Law, like many professions, is cumulative. The longer you practice, the better you get at it. New attorneys, no matter where they went to law school, rarely have the ability to counsel a client competently through the legal process and handle a matter efficiently. While these attorneys will learn their specialty in time, the key question to ask yourself is: "Do I want an associate to learn on my money?"

This tends to be more of an issue at large law firms with hundreds of attorneys. They hire new (and generally clueless) lawyers and start them at exorbitant salaries. To earn their keep, they have to bill many hours. If this means learning on your money, so be it. As explained shortly, while they may be supervised by experienced attorneys, this can cost you even more money when they discuss your case. Just because law firms regard it as the "cost of doing business" doesn't mean that you should.

Some clients have told me that when hiring large firms, they insist their work only be handled by a partner or senior associate. Let's take a conservative example: Suppose it takes a partner 2 hours to review a contract that it takes a new associate 4 hours to do (which is not unrealistic). If the partner bills at \$350 per hour and the associate bills at \$200, it's not hard to see how the firm makes more money. The associate bills \$800, while the partner reviews the associate's work and bills half an hour, or \$175, for a total of \$975. Had the partner done all of the work, the firm would have only billed \$700. This is why discerning clients insist on using experienced counsel. They refuse to pay new lawyers to learn on their money.

**"We're at your service more than 24 hours-a-day!"** Stories abound about billing abuses: From lawyers who charge \$120 or more to leave a 20 second phone message to associates who bill every hour of the day. Find out at the outset how many hours an attorney is expected to bill. This requirement can give you some indication of the firm's billing practices. Hourly quotas aren't a bad thing, *per se*. Law firms are expensive to run and a certain amount of revenue from each attorney is to be expected. Problems arise when this quota exceeds 2,000 hours per year, which is 40 billable hours or so per week. Not everything a lawyer does is billable, however. It may take 60 hours to generate 40 billable ones.

I interviewed at a large firm many years ago and asked what the requirement was. The partner said it was 2,000 hours. Pretty standard. Then he added, "but if you really kick ass, you can bill 2,300 to 2,400 per year." Bottom line: The firm wanted at least 2,400 billable hours, and probably even more. This amounted to almost 10 billable hours per day, which is a great deal of time. The sad truth, however, is that many firms with high requirements often don't care if the time is billed legitimately or if there's some embellishment here and there. As long as the quota is met, most firms don't ask too many questions. Investigations are typically only initiated in blatant instances of suspected abuse or complaints by a client.

Ask your potential attorney what the firm's billable requirements are for partners and associates. The attorney may tell you what you want to hear: 2,000 hours (or less) per year. The key is to talk to former associates or employees of the firm, if at all possible. They can tell you what the unofficial "whisper

numbers” are. If you learn that the firm’s numbers exceed 2,000 hours per year, you may want to look elsewhere or risk being billed by lawyers anxious to meet these quotas.

**\$1,100 Per Hour.** One of my clients shared an observation about a law firm she had once used. The partner of the firm brought her in as a client and was her lead contact. Whenever she had any legal issue, she called him. The partner, who billed at \$350 per hour, would discuss the issue with the \$300 per hour junior partner, who then discussed it with the \$250 per hour senior associate, who discussed it further with the \$200 per hour junior associate—who actually did the work. She estimated that she was being billed at an hourly rate closer to \$1,100 after everyone conferred with each other. In fact, in one \$25,000 licensing deal, her legal fees were a very high \$11,000. She eventually decided to find another law firm.

While some conferences are necessary in complex matters, others only serve as a vehicle to bill clients even more. Unless a matter is in litigation or there is transactional work which cuts across several specialties, there’s generally no need for constant multiple consultations. Similarly, in most instances, there’s no need for numerous attorneys to constantly review each other’s work. While some review may be necessary, it should not become habitual. If possible, try to find out in advance about a firm’s attorney conference policy, especially if it’s a large firm with many lawyers.

**“I feel queasy.”** Finally, don’t ever forget the all-important “smell test.” This is the sixth sense all of us have in our gut which tells us that something may not be quite right. Is the attorney being a little too aggressive? Too smooth? Promising you the world? Does the lawyer have the temperament and personality that you’re looking for? Whatever it is, pay attention to what you’re feeling. It could be your first sign that this might not be the lawyer for you.

Remember, when you’re looking for an attorney, you’re not just looking for competent, professional, and cost-effective representation. You’re also looking for a lawyer you can trust and whose judgment upon which you can rely without worrying whether your best interests are being taken into consideration. In other words, you’re looking for a relationship that endures for many years. In the final analysis, whether you need a lawyer on a consistent or occasional basis, you want to feel comfortable that your attorney is trustworthy and credible. No fancy offices, walls papered with impressive degrees, or memberships in prestigious legal organizations can give you that. After all, a great deal could be riding on the advice that you receive.

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