



MY LAWYER, MY FRIEND

A CEO'S GUIDE TO WORKING WITH AN ATTORNEY

BY JACK GARSON

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Have you had more attorneys than exes? Do you regularly get: a) bad work, b) late work, c) oh-my-God-this-is expensive work or d) all of the above?

Almost every business has the pleasure or torture of dealing with a variety of outside advisors, from accountants to attorneys to brokers. Here's your insider's guide to a heavenly relationship with your attorney. OK, maybe I'm being overly optimistic. But this will help.

Give Them The Story

You may be embarrassed. You may think certain details are irrelevant. You may think you can save money and time by just focusing on the issue or contract provision in question. But a good attorney looks at the big picture, the details and the law that applies to all of that. Give your attorney the full story.

In one case, I had a client that had signed a lease that he needed to get out of. He didn't have a lot of money, but he had a big problem. He was committed to build out a store and pay rent on space — for the next 10 years — that he didn't need. I asked him to get every scrap of information that he could, including pictures of the shopping center and the store that he had abandoned. In the pictures, I saw a few shopping carts filled with tools in the space that my client had leased. My client said that once he had told the landlord that he would not take the space, the landlord started using that abandoned space for storage while he was finishing the construction of other stores.

This scenario reminded me of a court case that was over 150 years old that proved critical. In the old case, a tenant had refused to take a barn that he had leased, and then the landlord started storing tools in the barn. The court in that old case said once the landlord started using the premises for the landlord's own purposes, then the landlord legally released the tenant from his obligations to rent the barn. I used the same argument to get my client out of his shopping center lease. There was a lot of luck involved in that situation, but you never know what might affect your case.

On the flip side, holding back information can cut the legs out from under your attorney. We need to know the bad as well as the good. You might wonder how knowing the bad can possibly help your attorney. But there is a very good reason. We can prepare for the weaknesses of your case and be

ready to defend against them. There is nothing worse for your case than when your lawyer is blindsided by a damaging fact that you forgot to mention.

Organize and Educate

On a related point, some clients ask how they can help — whether to reduce the legal bill or just get a better result. On the other hand (of a very long arm), other clients expect attorney telepathy. But there is little question that one of the best things you can do to save money and improve results is prepare a written history for your attorney, together with all of the related emails, contracts, and other documents. The entire package should be clearly identified as a communication from you to your attorney for the purpose of obtaining legal advice, so that you can maximize your position that these materials, especially the history, are confidential and not subject to disclosure to the opposition. Discuss this with your attorney and get guidance on how to label these materials.

Of course, preparing a good history and a package with all of the relevant documents may take a bit of your time and may require a lot of review by your attorney. But having all of that information can improve the legal advice you get and ultimately speed you to the best possible result. Your attorney may say you are in a great position or a terrible one. But better to know right away and plan accordingly.

The Boy Who Cried “Rush”

Deadlines sometimes sneak up on all of us. Worse, most executives juggle a lot of plates and only realize one is about to crash at the last second. But don't make every assignment for your attorney an emergency. That does not mean you need to pull the trigger too soon on a project that is not ready. Sometimes just a “heads up, this might be coming” is enough for an attorney to think about scheduling and staffing the assignment and, consequently, be better prepared for your work.

In other instances, more elaborate communication helps. For example, you might ask how much time and what information your attorney will need once you do authorize her or him to proceed. Then you have your deadline and your attorney has hers or his. I have one dream client that gives me rushes all of the time. But he also sends projects on a regular basis where he specifically tells me that it isn't a rush and that he doesn't need it back for weeks. This lets me know that when he has a rush, he means it, and it also builds trust and mutual respect. I know that he plans in advance when he can and that he does not take me for granted. Consequently, I'm especially motivated to work hard on his assignments.

The Money Stuff

First, understand how you are going to be charged. For example, most attorneys charge by the hour, in increments as small as one-tenth of an hour, and if they are spending time, including travel to your office, they are on the clock. In other cases, you may arrange for a flat fee for a project or a fixed

monthly retainer or a contingency for a good result — or a mix of these arrangements. But don't beat around the bush. Have a clear discussion and then confirm it in a written agreement.

Second, let your attorney know if you have any preferences about whether you want senior or junior attorneys working on your matter. Your attorney may assume that you want only the most experienced (and expensive) attorneys working your case. But you may be perfectly content to have less experienced attorneys working on certain matters. Virtually identical businesses often have completely different philosophies on this point. And attorneys really can't tell what you want a lot of times.

Third, review your legal bills and let your attorney know if you have any concerns right away. There may be a mistake in the bill, or you may very well be entitled to a discount. But don't ignore a problem or let it fester. For many attorneys, their bill is a way of communicating with you about how he or she is handling your case. If you say nothing, the attorney assumes you are fine with the invoice and your legal representation. Worse, if you have a big problem and wait six months to say something, you've led your attorney to believe that all was well, when instead, she or he should have been doing something differently.

However, if you don't have any problem with the bill or the legal work, then pay. Absent some special understanding, you should be paying those bills within 30 days, although 60 days usually won't create a big problem. But after that, you may be creating financial hardship and undermining your relationship with your attorney.

Establish Your Goals

Your attorney can't help you achieve your goals if you haven't communicated them. In fairness, however, you may not know what is realistic. If that's the case, at the very outset, brainstorm with your attorney and discuss what results could be appropriate for your case. The truth is, you may be faced with a range of options. But almost always, your attorney will do a better job if he or she knows what you are trying to achieve from the beginning.

Plenty of things make for a good relationship with any professional. But one common theme is good communication. Above all, you need and deserve an attorney who promptly returns your calls and hears you out fully. And your attorney needs a client who listens to the attorney's guidance, even if you don't always follow it.

Here's to a long-lasting relationship with a great attorney.

Jack Garson is the author of *How To Build a Business and Sell It for Millions* (St. Martin's Press) and writes a business law column called *The Legal Edge* for *SmartCEO Magazine*. As founder of the law firm *Garson Law LLC*, he leads the business and real estate practice groups. Jack serves as a legal advisor for numerous local, regional and national companies, focusing on business transactions, commercial real estate and construction law. In addition to providing legal counsel, he services as a

strategic advisor and negotiator for many clients, providing guidance on issues such as the growth and sale of businesses, liability and risk reduction, the hiring and retention of key personnel, and protecting and enhancing profitability, as well as negotiating the resolution of complex commercial disputes. Jack has been selected to be included in The Best Lawyers of America and he has repeatedly received the Super Lawyer designation. He has been recognized as a DC region Legal Elite and has received a Martindale-Hubbell Peer Review Rating of "AV" since 1995, representing the highest possible ratings for legal ability and ethical standards.

Jack Garson
Garson Law LLC
(301) 280-2700
jgarson@garsonlaw.com