

# **10 Biggest Mistakes Businesses Make in Choosing Their Lawyer**

A Practical Guide to Saving Your Company  
Time, Money, and Headache When You Need  
An Attorney

**Report for Small Business Owners/Managers  
Prepared by Vision Law Corporation  
Publication Date: September 1, 2006**

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- ◆ This Report is intended to give some practical guidance on avoiding mistakes when choosing a lawyer for your business. This report does not constitute all the considerations a business should evaluate in choosing, and continuing to work with, their business lawyer.
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### 1. Not knowing how to find or qualify a good lawyer.

With everything going on in your life, who has time to search out and build a relationship with an employment and labor attorney who will serve your company's legal needs with a positive and professional attitude and the highest level of service? Unless you are one of the lucky few who know a good lawyer or know someone who knows someone who does (and even that can take some digging), good lawyers are sometimes difficult to identify. Word of mouth (from your CPA, other business advisors, business colleagues, etc.) is often times one of the best ways to obtain a referral to a lawyer. Other than that, keep an eye out for prospective lawyers who are attuned to your business needs and start building a relationship.

### 2. Not having a relationship with a good lawyer until you need one.

After your business is hit with a lawsuit, whether it be an employee or a business dispute, is not the time to start looking for a good lawyer. Proactive businesses realize that utilizing an attorney to hopefully prevent time consuming and expensive litigation is less time consuming and expensive in the long run. This concept also applies to day-to-day legal issues that arise. Often times in litigation, a lawyer finds out that if the company had handled things differently the litigation might have been avoided or the company would be in a more defensible position. If you meet an employment and labor lawyer or firm you relate to, consider building a long term relationship with him, her or the firm so you already have an established relationship with your lawyer before something catastrophic happens.

### 3. Not demanding access to and responsiveness from your lawyer.

A recurring complaint about lawyers (or business in general it seems) is that many of them do not promptly return telephone calls. Failing to return telephone calls within a reasonable time tells the caller they, or their call, is not important. With urgent legal matters, the need to return calls promptly obviously takes on even more meaning. If your lawyer or law firm doesn't take the time to return phone calls within a reasonable time, it may be time to consider another one.

### 4. Allowing the lawyer to nickel and dime you to death.

Traditional large law firms bill for everything. In addition to expensive hourly rates, they often will charge for faxes, photocopying, long-distance telephone charges, postage, overnight mail charges, electronic legal research time, mileage, and secretarial time above and beyond hard costs relating to out of town travel or litigation expenses. Many firms will not seek reimbursement at actual costs, but will include a mark up, sometimes as high as 100% to 150%. Find a law firm that keeps it simple and either absorbs soft costs in its

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standard attorney fees or charges a flat administrative fee designed to recoup certain soft costs at approximately cost. Doing so will save your company substantial time in reviewing and approving legal bills. Also, you are buying legal advice and service, not administrative services and expenses.

### **5. Using lawyers who are not in the information age and lack technology efficiency.**

We are in the information age. Moore's Law says that the number of transistors (ability to store information) on an integrated circuit (chip) will double every two years. Gordon Moore made this statement in 1964 four years prior to co-founding Intel. Lawyers who know, understand and can use technology can perform more efficiently than lawyers who do not. Technology such as wireless communications, e-mail and the Internet allow you to stay connected to your attorneys and provides better access to them if your business desires to take advantage of the technologies itself. Seek a law firm that at least has a reasonable grasp on technology and appreciates the efficiency it creates.

### **6. Using lawyers who lack business sense and who fail to apply cost/benefit analysis.**

Most lawyers are trained in the law, not business. The practice of law is a business, but many lawyers are either unaware of that concept or forget it from time to time, particularly when it comes to assisting business clients. A lawyer must provide value or benefit to the business. The value or benefit of the legal advice or representation must bear a rational and reasonable relation to the cost expended. In litigation, many business clients lose control over fees and costs because of a lack of communication between the lawyer and the business client and a failure to establish clear goals and expectations of the litigation. If the lawyer is told to win at all costs without a budget, the likely result is an open checkbook and "scorched earth litigation," where no stone will be unturned in order to "win" the litigation. The same concept applies to prelitigation advice and legal work. For any project or litigation matter, use a competent lawyer who understands the concept of "cost/benefit" and is willing to work with your company to achieve its desired objectives and tailor the effort and associated costs accordingly.

### **7. Using lawyers who care more about themselves rather than client needs.**

A law firm should be in business for one reason: to satisfy client needs or wants and achieve their goals and objectives. If you ever feel your lawyer fails to listen to what you want and/or fails to look for creative ways to achieving what you want, you might consider a different lawyer.

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### **8. Working with lawyers who charge by the hour with no incentive to work efficiently and who require a certain amount of billable hours per year.**

Traditional law firms generally charge by the hour and are very hesitant to provide estimates of the time it will take to complete a project or matter. This encourages over billing or overworking a case, particularly when the law firm may be short on work. Most lawyers are honest and do not bill for time unless it is legitimate. Working with lawyers who are willing to flat rate projects and/or who take a cost/benefit approach to your project or litigation matter, especially when your company is being billed by the hour, tend to work more efficiently and/or are willing to share in some of the risk of performance. Reasonable flat rates for projects or other matters promotes efficiency in legal services and also allows businesses to budget more appropriately for legal expenses.

### **9. Allowing the “tail to wag the dog.”**

Don't ever forget that your business hires the law firm and makes ultimate decisions concerning legal matters impacting your company. Look for lawyers who demonstrate respect towards your business and you. Lawyers are needed to provide sound legal advice, opinion and counsel. To do so effectively, the lawyer must listen to a company's problems, issues, goals or needs before he/she can adequately advise and seek appropriate legal solutions. You are solely responsible for your company's direction and its decisions. Lawyers are important advisors to help your business succeed, but don't let the “tail wag the dog.”

### **10. Not using a lawyer.**

This could be the biggest mistake of all. In a recent small business survey, over 65% of small businesses reported they rarely used or did not have a lawyer. Juxtaposed with that statistic are those relating to the litigious nature of California business. In California the average wrongful termination jury verdict between 1992 and 1996 was \$449,150 for compensatory damages and \$674,843 for punitive damages. Another survey reported that the number of civil lawsuits across the nation is increasing at a rate three times faster than the adult population. In California, that rate is likely to be much higher. A major reason small businesses do not use a lawyer is likely to be the cost. However, the more appropriate question is whether your business can afford not to have a business legal advisor on its team. Most small businesses fail within 10 years. At least in part the reason is a lack of experienced and competent business advisors, including attorneys.