

**A Practical Guide
for Choosing an Attorney**

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Bradley Winston, Esq.

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A C K N O W L E D G E M E N T

Much appreciation and admiration for long and hard hours are extended to Sharon Greenberg, Esquire.

F O R E W O R D

This monograph is designed to help people choose the right attorney. It is not a directory or a list of names of recommended attorneys but rather an educational resource to teach readers how to choose the best attorney.

This book contains information that is not for the most part readily available to the general public but is nonetheless crucial in making an informed decision as to which lawyer will likely be best able to meet your legal needs.

After reviewing this, you will learn of certain necessary resources and where they can be found and, more important, you will understand how to use them.

I N T R O D U C T I O N

There is no shortage of attorneys who are more than willing to take your business. However, simply because someone has a law degree and is willing to discuss your case with you does not mean that he or she is competent to handle your particular legal situation. One of the main goals of this monograph is to debunk the commonly held belief that anyone with a law degree is capable of handling every existing legal problem. Most lawyers today specialize.

Just as you would not seek the assistance of a podiatrist when your medical needs concern something other than a foot problem, you should not hire an attorney who primarily practices criminal law to draft a will for you. While this may seem obvious when stated so bluntly, many people are not aware of the complexity of most areas of the law and the fact that it takes a considerable amount of time and effort to keep abreast of one area of law let alone many.

When a lawyer claims to be proficient in a variety of legal fields, you need to be concerned and should question the attorney's experience prior to retaining him or her. The state of the law today is much different from several decades ago when a lawyer could handle any legal issue that a client might face. The days of the general legal practitioner are gone.

In virtually every state, when a lawyer graduates from law school and passes the state bar exam, he or she is for all intents and purposes deemed qualified in the eyes of the state to handle any legal issue. While ethical constraints supposedly prevent lawyers from handling cases in areas in which they are not competent, the fact that the lawyer himself or herself determines personal competency makes this rule in reality meaningless. Too often it is not until a client has lost a case that a lawyer's ineptitude becomes apparent.

In order to avoid a huge headache later, it is vital to always remember when you are hiring a lawyer that it is your burden as a consumer of legal services to determine whether a lawyer is qualified to handle your particular legal issue. The fact that a person is licensed to practice law does not in itself mean that he or she is competent.

It is also very important to remember that as is the case with any other field or profession, some attorneys are excellent and some are not. You, a potential client, simply need to make sure that your attorney is one of the excellent ones. This can be easily established if you are willing to invest a little time and effort in the process of choosing your counsel.

**MAKING THE
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CHAPTER 1

Preventative Legal Care

In the life of the average person, many scenarios arise that could have been better handled had an attorney been consulted prior to taking action—like signing a real estate contract. But for one reason or another many people are apprehensive about consulting a lawyer and as a result avoid it until they are already involved in a legal crisis.

This tendency to delay seeing a lawyer until faced with an emergency is a definite problem. In the first place, people who are desperate and in a panic to find *any* attorney are not likely to find the *right* attorney. As with anything else, it pays to do research and take time when hiring someone to act on your behalf.

You should feel comfortable with an attorney's skills and qualifications. Too many people do not trust their instincts when hiring a lawyer. Remember, no matter what your legal issue is, a lot is at stake. Before you allow an attorney to advise you, you need to do everything in your power to ensure that he or she is qualified. If you have trouble understanding what your lawyer is talking

about, it is likely that a jury will too. Don't think that because you are not a lawyer you can't understand what is going on. Any good lawyer will tell you that the best lawyers are those who write and speak clearly and explain things in plain English.

Another problem with waiting until you are in the middle of a legal nightmare before hiring an attorney is that it will likely cost you a lot more. It is generally far more expensive to hire a lawyer to bail you out of a problem than it is to consult an attorney and seek advice aimed at avoiding that problem in the first place.

Just as many people practice preventative medicine by going to the doctor or the dentist for a checkup before they get sick, so too should people think about consulting a lawyer before legal problems arise. For example, you might attempt to draft a contract by yourself that may or may not be binding. You might find that it is far cheaper to hire an attorney at the outset to put in several hours drafting an enforceable contract than it is to hire that same attorney to represent you when you find that you cannot enforce the contract you drafted.

Consult with an attorney prior to taking any action regarding the purchase or sale of real property, drafting or signing documents that affect substantial personal and property rights, divorcing a spouse or cohabitant, opening yourself to severe financial exposure, moving to or from one nation to another, taking a new job, taking administrative action against a governmental entity, or engaging in an activity that could get you arrested.

The foregoing list is by no means exhaustive; it simply illustrates the variety of scenarios that may require legal advice. But the list does reveal that there are many situations in which you could benefit from consulting an attorney to learn your legal rights and how to protect them.

Basically, any time you seek to engage in a course of action that is unusual for you and you think that there might be some sort of legal consequences (no matter how remote they might seem), consult with an attorney to make sure that you understand all your rights.

An added benefit to consulting an attorney on a preventative basis is that it allows you to take the time to find a lawyer who you like and feel confident with in case you ever do need legal services.

Moreover, once you've established a relationship with an attorney, it is more likely that if and when you need an attorney, the one you have selected will give you excellent service since you've already met and established a business relationship.

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CHAPTER 2

A Fool for a Client

Resist the temptation to represent yourself. There is a good chance that your desire to save money will cost you more in the long run. There is much truth to the old saying, “A lawyer who represents himself has a fool for a client.”

Even if you have some legal experience, you should not represent yourself because you are not likely to be objective or open-minded about your situation. Emotion will rule your decision-making and color your judgment. One important function of a lawyer is to truthfully and impartially assess a case and provide a client with a meaningful appraisal of the likelihood of a case’s success. One who is personally involved in a case cannot do this. Without legal experience, you will not be able to properly assess the strengths and weaknesses of your case. You will not know which facts are important, nor will you have any experience upon which to ballpark your claim or your chances on liability. Consequently, in almost every legal affair you will probably be better off to at least consult with an attorney if not retain one to represent you.

CHAPTER 3

Jack of All Trades and Master of None

Many people go to a lawyer thinking that their situation is “routine” and “uncomplicated” and that any lawyer can handle their matter. Unfortunately, rarely is a legal problem uncomplicated. Usually the variables that affect every case can make the problem more complex than it appears on the surface. Something is routine only to one who works with it all the time. The diagnosis of a joint injury would be routine for an orthopedic surgeon but not for a psychiatrist. Similarly, the ease with which an attorney handles a “routine problem” is dependent upon the regularity with which the attorney handles such situations.

CHAPTER 4

You Need a Specialist

A specialist is someone who regularly and consistently practices in a particular area of the law, is well versed in that area, has extensive experience, and keeps abreast of changes in the area of law. The attorneys' bars in many states provide certification and specialization plans for lawyers who want to hold themselves out to the public as specialists in any one area of law. While a state bar specialist designation can definitely help you in determining a lawyer's competence in a particular area, it should not be your only consideration. On the other hand, simply because a lawyer is not certified as a specialist may not necessarily mean that he or she is not well versed in the law and qualified to represent you.

CHAPTER 5

Ask and Ye Shall Receive — Information

To help you determine whether an attorney can handle your matter, come right out and ask how often he or she handles cases in your area of the law. Don't believe attorneys who tell you that though they never handled a specific type of case but can easily research everything they need to know. Go elsewhere. You should carefully listen to how an attorney discusses issues with you and whether he or she seems knowledgeable about the law and is able to answer your questions. Attorneys not familiar with your particular area of the law may not even recognize issues that lie under the surface of the facts but are nonetheless critical to your case. Many areas of the law are procedural mine fields that require an experienced handler.

Often, and especially in the context of lawyers who draft documents such as wills, business agreements, or real estate documents, a client goes into a lawyer's office thinking that he or she needs one thing done but comes to learn that there is a better way to accomplish the task. For example, someone starting a business

with another person may simply assume that a partnership is the only way to proceed and seek an attorney's services to draw up a partnership agreement. In reality, however, there are a variety of business entities besides partnerships, and many of them are likely to be better for the parties in terms of limiting liability and getting preferable tax consequences.

An experienced business lawyer will be able to draw up the documents you need to start a business and, perhaps more important, to advise you as to which business structure will best suit your particular needs.

On the other hand, lawyers who do not specialize in business law may draw up a simple partnership agreement without ever informing you of the other available alternatives simply because they don't know them.

The situation is similar when it comes to trusts and estate law and divorce law, areas that can have very significant tax implications. The actual drafting of a will and the procedural requirements to establish an enforceable document are very simple. However, the decision as to how an estate should actually be set up in order to get the best results is a very complex issue. As a result, the area of trusts and estates, like tax, is one of the few areas in which a considerable percentage of lawyers who concentrate in this field have a JD (*juris doctor*), the standard law degree, and an LLM, a more specialized master's degree. If you have considerable assets, the lawyer you hire to set up your estate and draft your will must be a specialist. Unfortunately, people who do not check

credentials prior to retaining counsel oftentimes find out too late that the lawyer who drafted their will did not have specialized expertise in this area.

Similarly, divorce law, especially when one or both parties have significant assets, can be an extremely complex area of the law. However, many lawyers hold themselves out to the public as qualified in this area even though they are not aware of the field's complexities. I cannot tell you how many times I have heard of people going to a lawyer to try to set aside marital settlement agreements because they later learned that they should have been entitled to more under the law. In most states, once you voluntarily enter into a marital settlement agreement, it is very, very difficult to set it aside. The fact that you got bad advice from your lawyer is no excuse.

As soon as you decide that divorce might be in your future, find a family law specialist who knows what your rights are and how to best protect them.

Furthermore, when you have legal issues that concern your children, it is vital that you hire a family law attorney who is experienced in children's issues.

In almost every situation you will be better off hiring a specialist even if it costs more. There are lawyers in every state who specialize in every area of the law.

Out-of-State Litigation

A lawyer can practice law only in the states where he or she is a member of that state's bar. A lawyer not licensed in a particular state cannot generally practice law there. However, an attorney who is a bar member in one state may petition another state's court to allow him to appear before that court on a one-time basis. While it is likely that an attorney will be able to get permission from the court to handle your case, you need to think carefully about whether it would be better to retain a local lawyer.

The issue of hiring an out-of-state lawyer may become relevant where the parties to a lawsuit live in different states or an accident occurs in a state different from where you live. While it may be tempting to hire an attorney who lives in your area, in reality this is not the best way to proceed. You should hire an attorney who is familiar with the area of law your particular problem involves. For example, if you live in California and are being sued or are considering suing someone in another state, you should hire a lawyer who practices in the state where the lawsuit is going to be filed. Laws from state to state vary immensely. The fact that a lawyer

is a specialist in one field in one state does not mean that he or she knows everything about that same field in another state. In fact, he or she probably doesn't know anything. Even though a lawyer may be familiar with the general area of law, if he does not know that the statute of limitations is two years instead of four in another state, the suit could be finished before it even starts. So consult a lawyer who is familiar with the state law that will apply in your case. You can communicate with and transmit information almost instantly to a lawyer far away via phone, fax, e-mail, and overnight delivery.

CHAPTER 7

Local Knowledge

Another advantage to hiring a lawyer in the state where the suit is filed is that a local lawyer will often have good relationships with other local lawyers and judges. This can be important in settlement negotiations in which two lawyers are acquainted with each other and have worked together before.

Also, if your lawyer knows the judge and has a good relationship with him or her, half the battle is won. Many cases, especially those that involve questions that the judge could use his discretion on or rule either way without departing from the essential requirements of the law, will turn on the credibility of your cause. If the judge knows and respects your lawyer, then he or she will likely believe what your lawyer has to say about your case and the law that is to be applied.

As well, a local lawyer whose career is dependent upon his or her reputation within a community will likely provide you with the best representation he or she can in that community's court. It's to your advantage to retain a local lawyer who possesses the

utmost integrity and whom everyone respects. That is not to say that you should go out and hire any lawyer within the community because the opposite can also be true: a lawyer who is not well thought of within a community can damage your case.

The Relevance of Specialization Certification and Membership in Certain Legal Organizations

The importance of using a lawyer who is a specialist cannot be stressed enough. There are many ways an attorney can demonstrate specialist status in a particular area of the law.

Specialization Certification by State Bar

One indication that a lawyer is a specialist in a particular area of the law is that lawyer's certification as a specialist by the state bar. Though plans vary from state to state, most states offer specialization certification in such areas of the law as appellate law, aviation law, business litigation, civil trial, criminal, local government, marital and family law, immigration and nationalization law, tax, real estate, wills, trusts and estates, and worker's compensation. While this list is representative of most states, it is not exhaustive. Call your state bar association or check its website to find out the specialization categories for your state.

In order to become a specialist, an attorney has to meet a variety of minimum requirements. For example, most states require an attorney to be a member of good standing with the state bar, to have practiced law for a minimum number of years (usually around five), to have demonstrated substantial experience in the specialty area, and to have received favorable evaluations from other lawyers and judges regarding his or her abilities and experience in that area.

Moreover, many states require lawyers to pass a written examination and keep current on new trends in their specialties through continuing legal education programs.

The fact that a lawyer is certified as a specialist can be an important consideration when you are researching an attorney's qualifications. After all, it ensures that the state bar considers the attorney as having at the very least moderate competency in his or her area of specialization. Attorneys who have taken the effort to become certified specialists are likely proficient in their areas.

But because not all lawyers qualified in a particular area of law are certified in that area, you could possibly overlook an attorney simply because he or she is not certified as a specialist. An attorney's membership in a variety of other merit-based organizations can say a great deal about the lawyer's ability.

Legal Honor Societies

Many specialized areas of the law have legal honor societies or similar organizations that offer membership only by invitation

or by a screening process based on merit and accomplishment in that area. These organizations are usually made up of the foremost attorneys in any given area of law.

While these legal organizations may not be approved by the state in the same way that the bar specialization certification programs are, they are still a valuable way to assess an attorney's competence because for the most part membership is based on merit. Frequently, membership is a sign of accomplishment since it is often offered as recognition by distinguished attorneys in the legal community.

Examples of groups that choose their membership based on accomplishment are the American Academy of Matrimonial Lawyers (www.aaml.org), the Million Dollar Advocates Forum, and the American Association for Justice (AAJ, www.justice.org). In order to become a member of any of these organizations, an attorney must be invited to submit an application.

Moreover, the categories of membership are divided into different categories based on an attorney's experience and expertise. In AAJ, for example, there is a membership classification called "Life and Sustaining Members." Among the qualifications to be a Life and Sustaining AAJ member, an attorney must have practiced for ten years or more and have tried ten or more jury cases.

Interest-Based Groups

Lawyers may also be members of various interest-based groups composed of attorneys who share an interest in specific areas of the law. In almost every state there are subsections of the bar based upon a variety of different areas of the law, including appellate law, business law, criminal law, elder law, family law, health law, international law, administrative law, labor and employment law, trial law, and workers' compensation law. A lawyer's membership in a particular bar subsection is likely to be indicative of an area of concentration.

In addition to bar-related groups, there are an assortment of other privately sponsored groups whose members are lawyers interested in a particular area of the law.

Moreover, a variety of ethnic, cultural, religious, and gender-based lawyer groups exist. If you want a lawyer of a particular ethnic group or gender, contact that group's local organization in order to get the names of lawyers who practice in the area in which you need services.

While the majority of these interest-based groups do not require any type of competency requirements for membership, they are nonetheless a good way to for you to obtain the names of lawyers interested in particular issues or areas of the law.

CHAPTER 9

Finding the Right Lawyer: Important Qualities to Look For

Once you have determined that you need legal services and have a pretty good idea of the area your legal problem encompasses, the next issue becomes finding the actual person who will represent you. While this may seem like an overwhelming task at first, it is no more difficult than hiring someone to do any other type of work. Basically, the same characteristics and qualities that would attract you to or repel you from someone in any other circumstance should apply in this case. Trust your instincts, and if you get a bad feeling about someone no matter how highly recommended that lawyer is—listen to your gut feeling and walk away.

Trustworthiness and Integrity

Look for certain characteristics in any lawyer you're thinking of hiring. For example, whether you are hiring a lawyer to draft documents or to represent you in litigation, you want one who is trustworthy. After all, you will be sharing information, perhaps

intimate details about your life, with this person, and you need to feel satisfied that he or she will keep the information confidential.

A lawyer should also have integrity. The lawyer you hire will act and speak on your behalf. To this extent it is important that you share the same views and visions of your case.

Communication

Hire a lawyer with whom you feel comfortable and who treats you with respect. Don't forget—once you hire an attorney, it is likely that you will be dealing with him or her on a regular basis for quite some time. While your lawyer does not have to be someone with whom you would like to spend your Christmas holiday, you do need to feel comfortable calling his or her office to give information or ask questions. If a lawyer makes you feel that you are a burden for trying to keep up-to-date with your case or that you can't ask a question, you should ask yourself whether this is the person you want handling your case.

Organization

Regardless of the type of work that you need done, any lawyer you hire should be organized. After all, an organized desk is likely to indicate an organized mind, and a messy desk could indicate the opposite. If at your initial consultation you find nowhere to sit because papers are scattered everywhere, you should wonder how the lawyer keeps everything straight. Chances are he or she doesn't. Even though there is an immense amount of paper flowing into and out of a lawyer's hands in every case, this is no excuse

for failing to keep each case organized and its documents easily found and retrieved. Nothing is more frightening than to have your lawyer ask you for the same document three or four times because it keeps getting “lost.” No matter how smart your attorney might be, if he or she can’t pull everything together, he or she can’t help you.

Experience

Another very important factor is a lawyer’s experience. General experience in the practice of law is not enough. An attorney should possess experience in the specific area in which you need help. You will generally be better off hiring a lawyer who has been practicing law for only two years but primarily in your area of the law than a lawyer who has been practicing twenty years but has never handled a case in your area.

This brings up the issue of hiring a young or relatively inexperienced lawyer. The initial appeal of this idea is that an inexperienced lawyer is likely to handle your case for less money than a more experienced lawyer would. In the context of a case handled on an hourly fee, this claim can be misleading. An inexperienced lawyer might take twice as long as a more experienced lawyer to perform the same work.

Additionally, if a younger lawyer does not do the work properly or later realizes that it is too difficult to handle alone, you will end up paying a more experienced lawyer to do the work anyway.

Moreover, if your case is at all complex or involves considerable negotiation or litigation, you really need someone who has handled comparable claims and will be able to use his or her prior experience to help you to obtain the best results.

CHAPTER 10

Law Schools Don't Teach Lawyers How to Practice Law

Before you hire an inexperienced lawyer, understand that lawyers do not learn to practice law in law school. Instead, a lawyer is taught how to think in a different way. Any new lawyer will tell you that the practice of law—very procedural and practical—is completely different from what is taught in law school. It takes years for a young lawyer to learn how to practice law.

CHAPTER 11

Allowing Associates to Work on Your Case

There is a big difference between hiring a solo-practicing new lawyer to handle your case and hiring a law firm that will have an associate handle your case. The latter is completely acceptable as long as you are confident that a more experienced lawyer is at least checking over the less experienced lawyer's work. In reality, because young lawyers are new and unsure of themselves, they will be more careful and put much more time and effort into your representation than would an older attorney. So long as a young lawyer has a safety net and can look to more-experienced attorneys for guidance, there is nothing wrong with having an associate handling certain aspects of your case.

CHAPTER 12

How Would You Feel if You Were on the Jury?

If you are hiring a lawyer to represent you in a case that might result in a jury trial, you need to think very carefully about the impression your lawyer conveys. You should place great trust in your initial impression. If you feel that a lawyer is talking down to you or is having trouble explaining legal concepts to you, you can pretty well bet that the jury will think the same thing. Remember, juries are made up of non-lawyers like you, so your opinions and beliefs about a potential lawyer are likely to be shared by others.

CHAPTER 13

Do You Need a Lion or a Mouse? It Depends...

If you are in a contested divorce case, you need a lawyer who will be aggressive and not back down from confrontation. But if you are hiring a lawyer to draft your will, the fact that he or she may not be the most assertive or have the most commanding presence may not be as important. Instead, other characteristics such as the ability to write clearly and concisely and explain to you the relevance of tax laws will be much more important. You need to feel confident that your lawyer will be able to effectively and competently handle the particular matter that you bring to him or her.

Getting Actual Names of Potential Attorneys: Personal Referrals

Once you decide to hire a lawyer, the first thing you need to do is figure out what type of lawyer you actually need. This is important so that when it comes time to ask people whether they know an attorney who practices in a particular area of law or to look up a lawyer's credentials in a legal directory, you will know exactly what you need.

Lawyers tend to classify their positions very broadly. When you ask an attorney what type of law he or she practices, you might get the answer, "I practice commercial litigation" or "I'm a trial lawyer." These descriptions are very broad categories that encompass many different areas of law. You should define your needs much more narrowly in order to assure yourself that a lawyer has the specific experience you need.

Once you yourself have narrowed down your legal issue, you should get referrals from people who have actually used an attorney for similar matters. Ask friends, family members, business

colleagues, or anyone else whose judgment you value if they know any attorneys who practice in the area of law you need. While it can be helpful to get the names of people who have secondhand information about attorneys, the best referral will come from someone who has personally worked with an attorney as a client or in another capacity. Ask these people what they thought of their attorneys and whether they would use them again.

When a person whose judgment and opinion you respect recommends a lawyer based on personal experience, you should take this endorsement seriously. Alternatively, if you hear that someone had a very bad experience with a particular lawyer, you will know to stay away.

There is no higher praise for an attorney than to be recommended by someone who has had a positive experience with that lawyer. Believe it or not, many times a person who has been on the opposite end of exceptional lawyering will refer an attorney who was the opposing counsel in a case. I can't tell you how many times I have heard someone refer the "ex-spouse's lawyer" to someone asking for a divorce lawyer. I myself have been approached several times by opponents' clients for representation in unrelated matters because they were impressed with the job I had done.

Don't Take the First Attorney Offered

Asking friends and family is only the first step in finding the right attorney. You should never take someone's recommendation at face value and hire the first attorney recommended. If you do, you are likely to be disappointed. This is especially true if the recommendation is coming from someone who has not dealt with the lawyer on a professional basis. Often you will ask people if they know a lawyer, and they will tell you that their grandchild is a lawyer or their boss's niece just graduated from law school. Nothing is wrong with writing down a name in order to research someone's qualifications, but by no means should you assume that they are competent.

Lawyers Refer Work to Each Other

Most lawyers not practicing in the area you need will be more than happy to provide you with references or referrals to other attorneys in the area. If the referring lawyer is someone with whom you are close on a personal or professional level, it is unlikely that he will recommend you to someone whom he does not trust or respect. Moreover, a recommended lawyer will be anxious to do well for you because of the other attorney's recommendation, and doing a good job for you will likely lead to more referrals in the future. So by all means ask an attorney for a referral—it's often a good place to start.

CHAPTER 17

Court Personnel

People you know who work in a court—maybe as a court reporter or a bailiff—might be able to recommend a good lawyer. It is worthwhile to ask their opinion since they often spend a good part of their day watching lawyers in action and can provide an accurate assessment of a particular lawyer’s capabilities. For the same reason they just might be able to tell you attorneys to avoid.

Doctors, Engineers, Accountants, and Other Expert Witnesses

Another useful resource is people who work with lawyers as expert witnesses or in other capacities. These people have worked with a number of lawyers and can give worthwhile opinions. For example, if you need a personal injury attorney, you can ask your doctor for the name of a good lawyer practicing in this field. Similarly, if you need a divorce lawyer, your accountant may be able to refer you to a good lawyer. In many areas of the law, attorneys work with a variety of people, many of whom work in other fields but nonetheless have had the opportunity to see how different attorneys operate. Be creative and think carefully about anyone you know who might be able to provide a sound referral.

Finding a Name through a Book or Computer: The Pros and Cons

A number of written resources are available that allow you to find attorneys.

Yellow Pages and Television Advertisements

It might seem that the Yellow Pages are the best place to start your search for an attorney. But before you give too much credibility to this resource, understand how people get themselves into the Yellow Pages. Quite simply, it is a paid advertisement, so the fact that a lawyer is in the Yellow Pages does not mean a lot because a lawyer can write virtually anything in the ad and no one will check to make sure that it is true. Thus, as with many aspects of the search for the right attorney, you yourself need to verify an attorney's experience and competence without simply accepting blindly what is placed in a Yellow Pages ad.

Don't waste your time looking in the telephone book because of all the better and more-useful resources available. Use the Yellow

Pages to find the phone number and address of a recommended attorney.

As anyone who listens to the radio or watches even the slightest amount of television can attest, a new trend in lawyer advertising has been the purchase of television or radio air time in order to promote law firms. However, like the Yellow Pages, simply because a commercial says that a particular law firm is the best does not mean that it is true. In fact, judging from the caliber of law firms that tend to use this form of advertising, it is most likely not to be true.

Law firms, as with any other business, advertise on television or radio because those media reach a large audience. We all know, however, that you can't take an advertiser's word at face value. If you choose a lawyer simply because of an advertisement on television or radio, you are likely to end up very dissatisfied. Lawyers who advertise this way don't have enough work and are looking for more business. I don't advertise much but am still overwhelmed with requests to review matters for new clients referred by colleagues and other clients.

Lawyer Websites

Similar to the Yellow Pages are websites that advertise a lawyer or a law firm. They are just another type of advertising, so simply because an attorney advertises on the Internet is no guarantee of competence or even that the information on the website is true.

On the other hand, unlike the Yellow Pages where any Tom, Dick, or Harry can buy an ad, a law firm's presence on the Internet may be a sign that it is a little more sophisticated. However, simply because a firm is more sophisticated in computers and technology does not mean that it is any more qualified to represent you in your legal matter. After all, you are retaining an attorney to perform legal services and not to create websites. A very attractive Internet presence may not mean anything except that the firm hired a very qualified website designer.

Lawyer Referral Services

Another resource available in many states is the state bar's legal referral service. There are several important things to understand. The first is the difference between a lawyer referral service sponsored by a state bar association and a privately sponsored lawyer referral service. For the most part, the latter is a business created in order to benefit someone else and thus is not a recommended resource.

On the other hand, a state-sponsored lawyer referral service is run by the organization that regulates lawyers within the state and is not a for-profit business. However, don't be fooled into thinking that the only goal of these services is to help you, because it is also true that they exist in order to serve the needs of the attorneys who volunteer their services, oftentimes in hopes of getting clients. Nonetheless, as opposed to the private referral system, you should feel more confident in dealing with a state bar referral service.

In terms of qualifications, most state bar–sponsored referral services will require participating attorneys to meet certain minimum qualifications such as a minimum number of years of experience and proof of carrying a certain amount of malpractice insurance. Before taking advantage of this type of resource, look at the website for your state’s bar association and/or call the person in charge of the lawyer referral service at that association. That person can tell you the specific qualifications that are required to be a participating attorney and give you the details of the specific system. You should ask as many questions as are necessary for you to feel comfortable about the program—what it does and how it works. Once you understand exactly what is provided by your state’s bar referral service, you can determine if it is a worthwhile resource.

When considering this resource, you need to be aware that often-times the attorneys who volunteer are young lawyers just starting out in practice and in need of clients. If you have an extremely specialized and complex legal problem, this is definitely not the right place to go. However, if you simply need some preliminary legal advice, this may very well be a good place to start.

The main goal of these services is to provide you with an initial consultation at an affordable price in order to help you understand your legal rights. With this in mind, you may be wise to use this resource as a way to get some fairly inexpensive advice so that when you go to other attorneys you can compare their advice. If they tell you essentially the same thing, you can be confident that the information you are hearing is accurate. If they do not tell you

the same thing, you know that someone, somewhere, is wrong, and you better keep looking.

Legal Directories

A variety of legal directories are put out by a number of publishers. Some can be extremely helpful in the search for the right attorney, but others are virtually worthless. Since it would be impossible to name every directory, I will talk about directories in general in order to point out how and why such directories come about and what their purpose for you might be and then spend the majority of this section explaining Martindale-Hubbell, the main law directory, in detail.

General Legal Directories

Most legal directories are published not for the general public but rather for attorneys who are looking for other lawyers who practice in a different location or in a different specialization. Attorneys often need to consult other attorneys, so many legal groups sell their membership lists separated into fields of practice and/or geography as a resource for other lawyers. Simply because these directories may not necessarily be intended for use by the general public does not mean that they cannot be useful to you in making your list of potential lawyers.

Other specialized organizations sell their membership lists. It can be extremely useful to call up the organization that is applicable to your needs and get its membership list. For example, if you are contemplating divorce, you can get the membership list for the

American Academy of Matrimonial Lawyers (www.aaml.org). If you have a personal injury case, you will want to look at the American Association for Justice (AAJ) membership list or the state-affiliated association of trial lawyers list. Beyond these two examples, virtually every legal specialty field has a local and/or national section comprising attorneys who practice primarily in these areas. These membership lists can be an asset to you in your search for an attorney.

Other directories of lawyers are put out by private publishers, but understand how any one attorney got his or her name in there. Was it merely by paying to be a member, or was it based on merit and experience? When you understand the significance of the attorney's name appearing in the directory, you will know how much attention to pay to it.

To understand how an attorney gets to be listed in a directory is to know the significance of that directory. Make no mistake about the fact that attorneys participate in these directories mostly to expand their client base. However, simply because it may be a marketing tool does not necessarily mean that the attorneys listed are not competent. To the contrary, because those listed in a directory have been selected by their peers as the best in their fields, it is likely that the majority of the listed attorneys are very qualified. Just remember, it is important to understand how a lawyer is selected to be listed in a particular publication and to know whether the only requirement is a payment. If it is, don't use it!

Martindale-Hubbell®

Martindale-Hubbell, the largest and most comprehensive directory of lawyers in the world, is organized geographically by county, city, and state. Its twenty volumes (available in book form, on CD, and on the Internet) contain approximately 800,000 lawyers and law firms worldwide.

For varying costs, any lawyer can be listed by name, location, date of birth, year of admission to practice, place of undergraduate education, law school education, law degree, and a Martindale-Hubbell rating if the lawyer has one. A lawyer who buys an ad also appears in a biographical section that details his or her areas of practice, the names and biographical information of the other lawyers in the firm, and the organizations and associations of which the lawyer is a member.

Thousands of lawyers are in Martindale-Hubbell's biographical section. Because so many lawyers and law firms are part of this directory, it can be a great resource in helping you find a lawyer anywhere in the world. As a general rule, the firms listed in Martindale-Hubbell tend to be good, responsible firms. However, simply because a law firm does not advertise in Martindale-Hubbell does not mean that you should automatically exclude it from consideration. For one reason or another many good firms choose not to take a listing.

Martindale-Hubbell uses a rating system that evaluates lawyers for their legal skills, ethics, and professionalism. The ratings are obtained by a confidential survey of lawyers and judges within the

legal community. Law firms are rated separately from the lawyers within them so that it is possible for a lawyer to carry a rating that is different from that of his or her law firm. If a law firm carries a rating, it will be in the biographical ad section of the directory. If an individual lawyer has a rating, it will be in the individual listing in the directory.

Lawyers and firms are rated A-V, B-V, or C-V, with A-V being the highest. An A-V rating means very high to preeminent in terms of legal ability and a very high legal recommendation. About thirty percent of rated lawyers carry the A-V rating.

Martindale-Hubbell also publishes the Bar Register of Preeminent Lawyers, which lists only those lawyers who have been given an A-V rating.

Martindale-Hubbell serves another very important purpose by listing the legal organizations and affiliations in which an attorney participates. These listings are in the section of the directory that discusses the area of law in which the firm concentrates; they also provide biographical descriptions of each firm's lawyers that can be an invaluable asset as you research lawyers' qualifications.

Making a List of Attorneys and Calling for an Appointment

Once you have made a list of attorneys, you are ready to begin calling them. When you call a lawyer's office for an initial consultation, you should briefly explain your legal problem and verify that the firm handles legal matters in that area. If you have been referred by someone, mention the person's name and explain that the firm came recommended. If you have been referred to a particular lawyer in a multi-lawyer firm, you should explain that you want to speak with that particular lawyer about your problem.

Do not be surprised if the lawyer is not available or does not speak with you on the phone. Many lawyers will not do consultations over the phone and will insist that you come in for an office consultation. Some lawyers charge a fee for an initial consultation, and some do not, so before setting up an appointment, ask if there is a charge for the meeting so that you are not later surprised. If your research reveals that the attorney is highly experienced and qualified, you should not let a consultation fee prevent you from meeting the attorney.

You should not have to wait long for your appointment. If a lawyer cannot meet with you within a week or so, you should be concerned that the attorney might be too busy to give you proper representation. Obviously, if an attorney is on vacation or involved in a long trial or tied up in some other extraordinary situation, the one-week rule will not necessarily apply, but otherwise an attorney should be available within a reasonable amount of time. Many lawyers will meet with clients after normal business hours if necessary.

Even before you speak with or meet the lawyer, you can learn about the firm by speaking to the person who answers the telephone. Listen to the way the people who take your calls conduct themselves on the phone. Are they courteous? Do they seem to know what they are talking about? You can't expect a receptionist or a secretary to give you legal advice or discuss the specifics of your case with you, but you can expect that person to be polite and professional when making an appointment.

If you get the sense that the person on the other end of the phone is confused or has a bad attitude, keep this in mind when you go to the office for your consultation. There is a good chance that if you retain that law firm, a considerable portion of your communication with the lawyer will be through the secretary or other support staff, so it is just as important that you get along with and have confidence in the abilities of the secretary and other office support staff as it is that you get along with the attorney. For this reason you need to pay attention to the way that the entire office

functions. It is often indicative of the quality of the legal services you can expect to receive.

The Initial Consultation: What You Need to Find Out

The purpose of an initial consultation is for you to meet the attorney face to face and discuss the specifics of your legal problem. During this consultation you will have the opportunity to gauge whether the attorney has the necessary expertise and to determine whether you think you can form a comfortable working relationship with him or her. There is no reason for you to feel anxious or nervous about an initial consultation because you are the one doing the hiring, and the most important thing is that you are satisfied with the person you are hiring.

You should bring to the initial meeting everything that pertains to your legal concerns, including documents, correspondence, photographs, police or accident reports, or medical records—in short, all the information that will allow you to tell your story to the attorney.

In order to do this, it may help you to write down prior to the meeting all of the facts of the case, including the names of witnesses; this will help you remember so you can fully explain everything during the meeting.

You should discuss the possible outcomes of your case during the initial consultation. Obviously, a lawyer is not a fortune-teller and cannot guarantee what will happen (beware of any lawyer who assures you of results), but an experienced lawyer will explain the

process to you and the various alternative paths that your litigation may travel.

Ask the lawyer about the strengths and weaknesses of your case. A good lawyer will tell you the truth even if it is not necessarily what you want to hear. When you leave a lawyer's office, you should end up with a basic understanding of what will be involved in your case.

In addition to telling your story and discussing your case, you should ask the lawyer questions about himself or herself. If an attorney does not want to answer your questions, don't hire him or her. You have a right to know about your attorney's experience. Most lawyers who have a record to be proud of will gladly talk about it.

You can learn a lot about an attorney in Martindale-Hubbell prior to an initial meeting, but there are other questions you will need to ask in order to know the extent of his or her experience. How many similar cases has the attorney handled? Is the attorney currently handling such cases? What percentage of the cases an attorney handles are similar cases?

Also, you should ask who will actually be doing the work on your case. Will it be the person with whom you are meeting or an associate or paralegal? Will you be billed based on who does the work? You have a right to know the answer to these questions and should use the information as a factor in your decision as to which firm to hire.

You should also ask how you can participate in the case. Will you be informed about the progress of your case? Will you receive copies of documents and correspondence?

Remember that when you hire a lawyer, you are paying for legal advice, but it is you who should make all the important decisions in the case. In order to do this you need to be updated as your case progresses.

Understanding How Your Attorney Will Be Paid

A common cause of dispute between lawyer and client is how and when the lawyer will be paid. There are many types of fee structures in today's legal arena. Once you understand the different types of legal fees, you will be able to consider which type you are willing to pay.

Always remember—you should never under any circumstance retain an attorney until you are completely certain that you understand the billing technique that the lawyer will be using. If a lawyer tells you that you can “figure it out later,” do not believe it. You need to have the billing arrangements figured out in advance and clearly stated in a retainer agreement.

The importance of settling all issues pertaining to fees prior to retaining an attorney cannot be stressed enough. No matter how good an attorney is, he or she will not be able nor have the desire to provide you with the best representation if he or she is spending time trying to get you to pay. You have an obligation to pay

your attorney what you agreed to pay. If you think that the fee being charged is unreasonable, you need to make it clear before agreeing to pay it. If you can't work out a suitable fee arrangement with a lawyer, you need to keep looking for another attorney.

Furthermore, you should be aware that, under the law, if you agree to pay an attorney for work and then fail to do so, the attorney has the right to withdraw from your representation regardless of what phase your case is in. Attorneys have no obligation to represent you through any particular stage of litigation, nor do they have any responsibility to incur the cost of pursuing your legal issues. The court will not make a lawyer suffer any financial hardship in order to continue representing a client who does not live up to his or her promise to pay.

Keep in mind also that the chances of finding a good lawyer after a prior attorney has withdrawn because of your failure to pay are slim, so be certain that you are willing and able to pay your attorney what you agree to pay.

To know whether a fee arrangement is reasonable, you need to understand the different fee structures available and in what circumstances each is used.

Contingency Fee

A common fee arrangement is the contingency fee, under which an attorney's fee is based on the results achieved. Essentially, the lawyer will take a percentage of a verdict or settlement as a fee.

If you are not successful in obtaining a verdict or settlement, the lawyer will not get any fees.

Oftentimes the specific percentage to which an attorney will be entitled will depend upon the stage of the litigation that the judgment is obtained. For example, it is not unusual for an attorney to take twenty-five percent of a settlement if a case is settled prior to an answer being filed in a lawsuit, one-third once an answer is filed and up to thirty days before trial, and thereafter forty percent, regardless of whether the case settles or goes to trial.

The reason that the rate increases as the case proceeds is because the time and effort expended by an attorney increases as the case progresses. While you may think that forty percent is a large percentage, remember that a lot of time is put into preparing a case to go to trial. It is not unusual for an attorney to put hundreds and hundreds of hours into trial preparation.

If a lawyer is willing to handle your case on a contingency-fee basis, it is likely that the case, in the lawyer's estimation, has a good likelihood of success. After all, an attorney would not agree to put time and effort into something that did not have a good chance of paying off.

One benefit of the contingency-fee arrangement is that it allows people who could not otherwise afford an attorney to have representation by competent counsel because the lawyer's fee has nothing to do with the client's ability to pay.

Oftentimes the types of cases handled on a contingency basis are those that require expert witnesses and other people to be involved in the litigation. These people need to be paid. It is not unusual for expert fees to be well into the thousands of dollars even before a case goes to trial. A law firm handling a case on a contingency-fee basis will often agree to advance the costs of litigation.

Be aware that when a law firm tells you that it is willing to advance costs, this does not mean that it will pay for the costs. Instead, it will pay them up front in order to retain the necessary experts, but at the end, when the case is finished, the firm is entitled to repayment of the costs in addition to the fee out of any settlement or verdict that is obtained. Moreover, most lawyers who handle cases on a contingency-fee basis will have a clause in their retainer agreement stating that in the event that the suit is unsuccessful and no money is obtained on your behalf, they will nonetheless be entitled to recoup costs from you. So even though you won't be responsible for fees under a contingency-fee arrangement, there will likely be costs involved with litigating an unsuccessful case.

Fixed or Flat Fee

Under a fixed or flat-fee arrangement, the client pays a predetermined amount to an attorney for specified services. Traditionally, this billing method has been used by transactional lawyers performing such services as drafting wills or handling real estate closings. This arrangement has been used recently in a number of situations, especially those in which an attorney can make an

educated guess as to the number of hours that a legal task will require. This is a common billing method for an appellate attorney handling an appeal or a corporate lawyer handling a particular assignment from a corporate client.

One advantage to this method is that if the matter becomes more complicated, as it often will, or requires more time than the lawyer anticipated, you will not have to pay for that extra time. However, if, for some reason, the matter is handled in less time than the lawyer anticipated, unless the arrangement specifically states that you will be entitled to a refund, you will not be entitled to get your money back.

If you retain a lawyer on a flat-fee basis, the retainer agreement you sign should clearly and definitively state that the fees being paid are payment in full for the services agreed upon and that no matter what unanticipated events occur, no additional sums will be required.

Hourly Fee

Under an hourly-fee arrangement, the client pays the lawyer for the time spent on a case according to an hourly rate. An attorney's hourly rate can be anywhere from \$75 per hour to upwards of \$400 per hour.

An attorney's hourly rate is often based upon his experience and reputation. Those who are well known in their fields of specialty often charge a substantial hourly rate. Within a firm, differ-

ent lawyers will often have different hourly rates. An associate's hourly rate will likely be less than that charged for a partner.

In order to assure that you retain an experienced and qualified lawyer, avoid the temptation to retain the lawyer who is willing to accept the lowest hourly rate. While obviously you can't agree to pay an hourly fee that is considerably in excess of your ability to pay, you need to put the situation in perspective and think whether you might be better off in the long run paying a little higher hourly rate for considerably better representation.

Percentage Fee

The percentage-fee arrangement is based on the amount involved in the matter being handled. This technique is used typically in real estate transactions in which the fee will be a percentage of the value of the property or in a probate case in which the fee is a percentage of the estate being probated, or in collections work where the attorney's fee will be based on the amount of money collected.

The specific amount of the fee can either be predetermined or may relate to an amount ultimately determined. In the event that the percentage and amount of the transaction are predetermined, the arrangement is essentially the same as a fixed- or flat-fee arrangement. On the other hand, in the event where the percentage is known but the transaction is not predetermined, the arrangement is essentially a contingency-fee arrangement.

Unit Fee

The unit fee, a relatively new method some law firms use, is a hybrid of a fixed- or flat-fee technique and is normally combined with the hourly billing arrangement. Under a unit-fee arrangement, each task an attorney performs is charged at a fixed fee regardless of the amount of time that it actually takes to perform the task. For example, a client will pay a fixed amount for each letter written, phone call made, deposition taken, etc. Oftentimes a firm that utilizes this method will provide a client with a “menu” of services and the cost of each service.

Make Sure Billing Method is Stated Clearly in Retainer Agreement

Whatever billing method you agree to, make sure that it is stated clearly in a retainer agreement, the written document that you and your lawyer sign that sets out the terms and conditions of the lawyer's representation. Be aware that this agreement is a binding contract and can be enforced as one, so it is important that you are comfortable with the information that it does and does not include.

After coming to a mutual oral agreement for representation, most lawyers will require you to sign a written retainer agreement before starting work on your case. This requirement is a good idea in order to protect you and the lawyer in the event of a disagreement down the road. If for any reason a lawyer does not request that you sign one, you should nonetheless suggest that one be written up and signed by both of you prior to beginning an attorney/client relationship.

The retainer agreement should contain specific information about the billing arrangements. Make sure that an arrangement for incurred costs is stated clearly. In order to assure that no exorbitant or unexpected costs are incurred, you may want to put in a provision stating that the lawyer agrees to get your approval and consent before incurring any individual cost over a certain amount.

The bottom line with regard to the retainer agreement is that it is imperative that you read the agreement carefully and make sure that you understand everything in it before you sign it. If you have questions about anything in it, ask for clarification. This agreement will take precedence over any oral representations that an attorney makes to you. So if your lawyer tells you something different from what is in the agreement, make sure to get it in writing. Never under any circumstances hire a lawyer based on an oral representation.

CHAPTER 23

Conclusion

Make no mistake about it: in today's world where there are so many lawyers, finding the "right lawyer" is a great challenge. However, if you are willing to put a little time and effort into choosing your counsel and don't forget to use your instincts, you are likely to have a very positive experience with your lawyer and will hopefully obtain the best possible result.

Disclaimer

This document is not intended to and does not provide legal advice or a legal opinion for your particular situation. This document is intended purely to help you make an informed decision about hiring a lawyer. You should not rely on any information in this document in making decisions that could affect your legal rights. For actual legal opinion and advice, consult with a licensed and qualified attorney.

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Bradley Winston is a South Florida personal injury attorney who is Board Certified in civil trials. He has over two decades of legal experience handling a wide variety of personal injury matters. Throughout his career, Mr. Winston has fought hard to protect the rights of his clients and to ensure that they receive all the financial compensation they are entitled to under the law.

Mr. Winston is recognized by and active in many leading legal organizations, including: Super Lawyers®, 2006-2011; Million Dollar Advocates Forum; American Board of Trial Advocates; American Bar Association; and the American Association for Justice.

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