

## **HOW TO SELECT, WORK WITH OR FIRE YOUR LAWYER**

**John B. Reilly, Esq.**  
**John Reilly & Associates**  
**100 North Main Street, 4<sup>th</sup> Floor**  
**Providence, R.I. 02903**  
**(401) 272-2800**  
**[www.lawyers-online.us](http://www.lawyers-online.us)**

Winston Churchill entitled his Last Will and Testament and made plans for his funeral under the name “Operation Hope Not”. Despite his use of such dark humor the great statesman recognized the value of planning ahead for the inevitable. The value of foresight and proper planning is no less valuable today than it was in Churchill’s time. It is the rare person who thinks of needing, hiring, working with or firing a lawyer before the need to do so arises. Yet for most (many lawyers included) the whole experience is clouded in uncertainty, much like playing the game “pin the tail on the donkey”. This article is intended to help consumers of all types (individual and businesses) approach this important decision in a constructive way.

**I. When do I need an attorney?** Sometimes this question is a “no-brainer”, such as when you have been arrested for a crime, sued, threatened with arrest or with being sued, or learn that you are the focus or a person that an investigator seems to suspect has done something wrong or suspicious or is a “person of particular interest” to state or federal agencies or law enforcement officials. Many other situations are not as immediately obvious. If there is any doubt about this, it would probably be best to consult an attorney before you proceed too far with your personal or business actions. Even lawyers themselves have restated time and again that “he who has himself for a lawyer has a fool for a client”. After all, as H.R. “Bob” Haldeman (himself a lawyer) noted in giving an analogy of how events can unravel in a most devastating way during the 1970s Watergate investigations, it’s best to remember that “(o)nce the toothpaste is out of the tube it’s going to be very hard to get it back in”. And consulting with an attorney does not necessarily mean that you will need ongoing assistance. Sometimes being pointed in the proper direction is going to be sufficient.

**Consultations:** In the long term, it pays for individuals to consult attorneys before deciding to accept many types of documents that you are presented by banks, real estate agents, potential partners, contractors, and even relatives. Listing all of these and their variations is virtually impossible, but would include things such as loan or financing agreements, personal guarantees, letters of intent, purchase and sales agreements, lease or rental agreements, option agreements, construction agreements, partnership proposals, non-competition agreements, franchise agreements, non-disclosure agreements, threats of claims or litigation, paperwork when you are deciding whether to incorporate, deciding whether to form a limited liability company, trying to interpret documents you don’t readily understand, and when you need information concerning how to comply with regulations related to your business or profession.

## **Who Do I Turn To For An Initial Consultation?**

**THE INTERNET:** In the twenty-first (21<sup>st</sup>) century we are experiencing a continued growth of world population and (with the internet) a seemingly unending explosion of advertising and other information. The internet has become one of the more popular methods of shopping for everything, including legal services. When using the internet to determine whether to contact a lawyer for an initial consultation, careful examination of the firm's webpage is a good place to start. Is the firm speaking in generalities or giving actual information about its cases and areas of practice. Lawyers are not generally shy or bashful about touting their accomplishments, so if their alleged "track record" is truthful, one may be suspicious if those successes are not listed with a degree of particularity. You may also find news articles about lawyers on the internet that may be helpful. It must be kept in mind, however, that businesses of all types (law firms included) are often able to pay or make other arrangements to be listed among the first ten or twenty "hits", that placement not necessarily being a guarantee of their being able to provide the best services, products or pricing.

The internet offers much more than lawyer advertising and websites. The prospective client can access state Bar Associations to confirm licensing information about lawyers who practice in the state in which you need assistance. Many lawyers are members of the bar in more than one state and this information will also be available, potentially making competent consultation available nearby for problems or issues that may affect things miles away. The internet also contains websites for lawyer rating agencies. Some of these are industry specific (for example, Best's Directory of Insurance Defense Counsel). Others are more general, some having existed for many years and others for only a few. The best known of these more general directories is perhaps Martindale-Hubbell. It has been in existence for more than 140 years and relies on confidential ratings by lawyers and judges to establish its ratings criteria. Several larger insurance companies and national companies insist that any law firm representing them have an "AV"® Martindale-Hubbell rating. This type of internet information can be useful since it reflects the confidential thoughts and opinions of contemporaries of the lawyers who are rated. Further, it has less potential for "block" voting (e.g. larger firms potentially promoting their own members through sheer number of votes) than some other print and/or online publications have allowed in the past.

**THE YELLOW PAGES:** As should be obvious, this (like the television) is basic advertising at its best (and sometimes at its worst). While it is certainly a tool available to businesses and the consumer, it should be used with caution and in association with the other methods described in this article. Competence is not a prerequisite for advertising, but that is not to say that some very competent lawyers and law firms are not to be found among those who advertise.

**BAR ASSOCIATIONS:** Contacting state bar associations for recommendations on lawyers who handle specific types of cases is another potential source of information. It should be kept in mind, however, that Bar Associations will generally give a listing of several lawyers and will not suggest which would be preferable for you to use. The members of these Associations are lawyers and favoritism would be viewed in a very negative way if they engaged in making suggestions of that type. For example, most states have decreed that lawyers can only truly “specialize” in patent and maritime law (upon passing recognized national exams). Therefore, the Bar Association will generally be unable to confirm specialized skills in other areas of the law. Many of the more experienced and seasoned lawyers no longer have or feel the need to be included on volunteer or other referral lists of their state Bar Associations. Therefore, the listings and names that do exist and are offered may reflect mostly less experienced lawyers. Some of them may be in the initial stages of what will be exceptional careers, others not destined for great achievement.

**PERSONAL REFERRALS:** Referrals by family, friends, bankers, insurance agents, accountants, business associates, other lawyers, or other trusted advisors may be one of the best ways of finding an attorney for an initial consultation. When asking for and receiving referrals, ask what (if any) relationship the person you are asking has or has had with the lawyer or law firm. Do they know anyone else who has used this lawyer or firm? Did the type of representation relate to the same or a similar type of matter for which you want to seek advice? What was the outcome? Were they and anyone else they know who used the lawyer or law firm satisfied with the results? The cost of services received? The communication that they had with the lawyer or firm about their situation? And, if this referral does not work out for you, do they have any other firms or lawyers that they can suggest?

**INTERVIEWING PROSPECTIVE COUNSEL:** It never hurts to consult with (talk to) a lawyer or more than one lawyer before making a decision about whether to hire them for your legal needs. Before doing so, it is best to try to analyze and try to understand your potential legal needs, your expectations, and have questions about these things ready. During the consultation, try to determine whether the lawyer seems to understand and have experience with your situation. If you are not sure of what rights you may have, ask and listen carefully to the response. Don’t try to “talk over” the lawyer and convince him or her of the validity of your position. There may be several courses of action that you should be thinking about and if nothing else the initial consultation may be a great opportunity to become aware of these additional possibilities. This is also the time to discuss the type and method of compensation for services and costs that hiring this lawyer and/or firm will involve. Often, initial consultations are free of charge, but if they involve technical issues or unique situations, you may be charged for the visit. Sometimes, this initial consultation fee will be applied to a more sweeping retention agreement if you subsequently hire the lawyer or firm. Resist the temptation to forego a second interview or get a second opinion merely because there may be a charge for the session. Finally, you will find that honest lawyers will tell you if they feel they lack the expertise to help you but may offer excellent referrals to specialists who can be of assistance.

**THE RETENTION AGREEMENT:** Once you have completed the consultation process and decided to hire a lawyer it is extremely important for both you and the lawyer to reach agreement on the scope of services that will be provided as well as the costs and expenses you will have to pay as a result of the engagement of the lawyer or firm. Some cases may be handled on a contingency basis (that is, a percentage of the total ultimate recovery, usually in addition to out-of-pocket expenses incurred by the lawyer or firm). Other cases or matters are handled on a “flat rate” basis (such as a given amount for a will, trust, or incorporation). Some matters may be billed on a straight hourly basis, the fees charged by the lawyer or firm members varying depending on several factors such as the location of the practice, the matter or specialty involved, the size of the firm (e.g., its overhead) and other factors. Finally, some matters may be handled on a “hybrid” basis wherein reduced hourly fees and percentages are combined for a unique situation. In any event, this should be spelled out in writing and you should take the time to read and understand the written fee agreement. Remember, however, that this is a proverbial “two-way street” and your cooperation and assistance in the handling of the matter will not only help achieve the best possible result but can reduce the amount of time spent by the attorney or firm, thereby lowering your total costs.

**WHAT HAPPENS IF I FIND I HAVE SELECTED THE WRONG ATTORNEY?** Unfortunately, your best efforts to find the “right” attorney can “backfire”. This can become evident when your telephone calls stop being returned, when your emails are not answered, when the firm’s secretary begins to sound as if she is running out of excuses, when your lawyer or his or her assistant repeatedly asks you to provide answers or documents that you have already furnished more than once, when promised paperwork, documents or filings do not take place as promised (or within a reasonable time after you bring this to the lawyer’s attention), if you do not receive periodic status reports on the progress of your case or matter, if you find yourself continually arguing with your lawyer, if you go examine a court docket and find that there are orders on record dismissing your case for failure to comply with rules, and/or if you learn from others something that causes you grave concern about the lawyer or firm in which you have placed your trust.

Under these circumstances, the good news is that in most cases you will not need to continue utilizing this attorney. You are free to select a new lawyer and have the file transferred without having to give any reason(s) whatsoever. You will obviously want to take great care in selecting a new attorney and it is best to implement this decision as quickly as possible so that your new lawyer will have ample time to “get up to speed”. Additionally, please understand that some lawyers are reluctant and may refuse to take a case that has been mishandled by a previous lawyer. Changing lawyers often is also considered a “red flag” that might dissuade a new lawyer from taking your case.

Assuming you find a new attorney willing to handle the matter, it is easiest to sign a file transfer authorization, demanding that your previous lawyer cease all further activity on your case or matter. When this happens, the now former attorney is required to transfer your file (but not his or her own personal notes or “work product” about the file) to your new attorney. You may be charged copying costs, but unpaid balances on legal bills are not generally a reason to withhold transmittal of the file. If the prior attorney refuses to comply with the Rules of Professional Conduct governing transfers of files, you should ask your new attorney about filing an appropriate complaint with the office having disciplinary authority over the practice of law in the particular state in which the case is being handled. This can be a painful (even traumatic) process, but ending up with competent representation is the most important objective that you should have.

**THE BOTTOM LINE:** Finding a good, competent, reasonably priced lawyer and/or law firm with which to work (either for years in repeated business dealings or for a particular case or project) is possible due to the number of good, honest attorneys fitting that criteria. But history shows us that decisions of this type can also go terribly wrong. Investing thought and some time in the process will help make your choice the best that it can be and we hope that the foregoing discussion will be helpful and kept in mind throughout this somewhat challenging process.

Should you wish to consult with counsel concerning a particular issue, referral and/or question of this nature, please call or contact the lawyers at John Reilly & Associates, 4<sup>th</sup> Floor, 100 North Main Street, Providence, Rhode Island 02903 by telephone at (401) 272-2800, facsimile (401) 272-2811 or email [jreilly@lawyers-online.us](mailto:jreilly@lawyers-online.us).