



# Differences that Make a Difference (choosing a lawyer)

June 2009 from James M. Kane, Attorney

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How do you know you are getting a good lawyer? That a lawyer completes law school and ultimately passes one or more state bar examinations says little about the lawyer's skills, judgment, intelligence, integrity, ability to handle controversies, and day-to-day communication skills.

Bear in mind that no lawyer is a wizard; as with most tax and legal matters there are no guarantees a lawyer will obtain a particular result for a client. However, when a client's legal burden is shouldered by a competent, skilled and effective lawyer, it can help by tipping the scale towards greater success.

## Be Candid and Direct with Your Lawyer

Regardless of which lawyer you choose, this point is essential.

Clients who are willing to be completely candid with their lawyer about dislikes, disagreements, differences of opinion, and so forth, enhance the effectiveness of lawyer-client relationship.

Too many clients appear overly deferential to their lawyer with a level of polite distance that can shortchange the benefit of the representation. These clients often bite their tongues and withhold what they otherwise wish to state frankly to their

lawyer.

The lawyer needs also to have the ability to be forthright with clients.

## Choosing a Lawyer

Here are some important considerations to take into account:

## The Lawyer's Integrity

Fortunately, most lawyers seek to maintain the highest level of honesty and integrity in their work (contrary to their depiction in popular culture).

A client should avoid, under all circumstances, any lawyer who suggests doing anything even remotely improper, even with a non-verbal "wink-wink."

As Oscar Wilde stated, "No man is rich enough to buy back his own past."

## Legal Fees

No one likes to pay legal fees. And a client can always find a cheaper lawyer. However, hourly rates alone do not provide an adequate measure of what will be the total end-cost for a client.

Hourly rates are typically tied to the

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lawyer's expertise and experience. A lawyer with more seasoned experience generally will have better judgment and be more efficient in getting to a point of determining what differences make a difference for the client. Thus, to the heart of what is relevant.

Also, it is not always immediately apparent to the client when choosing a lawyer whether a legal matter has the potential, or is likely, to escalate to a much larger and expensive problem. An experienced lawyer can, as the situation progresses, more quickly and better assess the level of complexity and the ramifications and options available to the client.

### Time Sensitivity

Good lawyers are typically very busy. Also, in my experience, lawyers have very little control of when their work comes in the door, and most often client and litigation matters surface on an unexpected, urgent, or emergency basis.

Thus, although non-emergency work for a busy lawyer sometimes will take longer than most clients prefer, this slower non-emergency work is an inevitable part of a good lawyer's busy schedule.

Here again, the client must candidly discuss with the lawyer the scheduling and turn-around of non-emergency matters that may not be moving along as fast as the client desires.

### Is the Lawyer a Decision-Maker?

Clients are not paying the lawyer merely to display an encyclopedic knowledge of the law, particularly if the display does not help the client in the decision-making process.

It is essential that a lawyer provide the client with specific recommendations for the optimal course of action in a given

situation. By contrast, some lawyers are tentative in this regard, thus heaping too much of the decision-making weight on their clients' shoulders.

When a lawyer merely provides the client with a slate of options without pointing to a specific recommendation, the client ends up shouldering what should have been the lawyer's responsibility. The client will often react by postponing or delaying any decision as a result of this overload.

### Constantly Pleasing Others is Not the Task of a Lawyer

Clients should avoid lawyers who appear to be more interested in glad-handed salesmanship rather than independently-spirited lawyering.

The man who makes an appearance in the business world, the man who creates personal interest, is the man who gets ahead. Be liked and you will never want.

From *Death of a Salesman*; Willy Loman, Act 1 (underlining added)

Willy Loman would not have made a good lawyer. A lawyer, in order to advance a client's interest, cannot be overly concerned about pleasing others and always being well-liked.

Good lawyers, in my view, are independently minded. This independent spirit, when strategically targeted at the right person, at the right moment, and in the right place, is an art in lawyering.

This independence also needs to be held in check. Succumbing to the often strong knee-jerk temptation to antagonize or provoke an opposing lawyer – for no reason other than anger -- can lessen the chance of a successful result for the client.

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### Does the Lawyer Use Plain English?

Many lawyers believe the use of plain English equates to inferior intellectual status in the legal profession.

Even Thomas Jefferson complained in the early 1800s that his fellow lawyers who drafted legal statutes made "every other word a 'said' or 'aforesaid,' and saying everything over two or three times, so that nobody but we of the craft can untwist the diction, and find out what it means. . . ."

Lawyers must be able to communicate in a non-lawyerly fashion. Some lawyers fail here simply because the lawyer does not have a sufficient grasp and understanding of the matter and, therefore, cannot distill it to its essence for the client.

### Finally, You Don't Have to Love Lawyers

This newsletter is not intended to make you love lawyers. Rather, it offers tips to help you choose the best lawyer.

Whether or not our society is too deeply entrenched in the rule of law, we live

under the impact of numerous laws and regulations that inevitably create conflict and a need for lawyers.

Even people who love to make lawyers a constant source of jokes and criticism will seek out the best, most aggressive, lawyer when the need arises.

We understandably have a love-hate relationship with our legal system and its lawyers. This relationship, though, still has its benefits. We no longer settle disputes with six-shooters or dueling swords.

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