

HOW TO CHOOSE A TRANSACTIONAL ATTORNEY

By Vaughn J. Buffalo, Esq.

I believe there are four steps to finding a transactional attorney to fit your needs. First and most important, you need to know what service you need. Second, obtain attorney referrals from friends. Third, meet with the attorneys in person. Not on the phone, not on skype, but face-to-face. Fourth, choose your attorney. And here's the secret—the attorneys you meet during this process will counsel you on which attorney to choose.

Step 1: Understand and Define Your Need

This is the most difficult step. This requires you to know what issues you face, when one issue will lead to another and another, causing one to either underestimate the complexity of the matter or focus on the end result rather than the initial steps necessary to get there. You aren't a lawyer, how would you know what service you need?

Once I was contacted by an old friend who needed an attorney to help him "negotiate and draft a contract" with a potential collaborator. He received a poorly drafted contract from the other side and didn't know where to start. I was retained and started by analyzing each provision of the contract, detailing how I would change it and why. I wrote all this in a memo and sent it to him, thinking we would continue by discussing each provision and then I would negotiate with the other side on his behalf. Nope. Nothing. No return phone calls. Never heard from him again. It was sad, but I blame myself for that one. I should have been crystal clear with him about what services he needed.

One suggestion to narrow down your needs is to describe your perfect lawyer to yourself. Another would be to specifically write down your legal concerns as they relate to particular matter. If you know what results you want, then often you can work backwards to find what kind of lawyer you need. Remember that specialists usually charge more than others for a particular legal work product. Another suggestion would be to actually ask any attorney—often attorneys have a good idea of the area of practice a matter falls within and may be able to quickly discern what kind of attorney you need.

Step 2: Obtain Referrals for Attorneys

I can't stress enough how important it is to get an actual referral from an attorney. Or a referral from a friend who knows an attorney. An attorney may have a better sense of the type of deal structure you may need and the type of attorney that may be the best fit. Remember: the more specialized the attorney and the larger the firm he or she is with, the more expensive the cost. I always recommend obtaining 3 referrals: one from a large firm, one from a small firm and one from a medium sized firm or 3 attorneys from a particular specialization. I say 3 because no matter what, after speaking with all of them, you will know MUCH more about your particular issue than before. After interviewing 3 attorneys, you will know the right questions to ask. Third, these attorneys will serve as attorney referral sources for you in the future. Finally, if you receive conflicting advice from the first two, the third will break the tie.

Step 3: Meet with Them in Person in Their Office

This is something I am adamant about. You will learn a great deal about an attorney just by visiting their office and meeting them. A lawyer is only as good as the communication and collaboration between her and her client. But to know if you two will click, you need to meet with them in person. If they charge an initial consultation fee (I never do and I think charging one is

not appropriate for a transactional attorney), then factor that in with who you will meet with in person.

Tell them about the facts of your business or transaction and then let them lead. No need to come up with difficult hypotheticals to test their on the spot tax structuring knowledge, or to ask them how they think this will turn out or what the cost will be. They are already doing that, but they need to ask *you* questions and gather information first. As the attorney leads and you both converse, ask yourself these questions: Do I like this attorney? Are they clear in their thinking and explanation? Do they have the type of experience I want? Can I spend a great deal of time with this person? Will my transaction receive the type of attention I want or will it be delegated to others?

At the end of the conversation, the attorney will probably address the question of cost. Make a note of that and then spring the biggest question of the interview. “As you may know, I am speaking with a few attorneys regarding this matter. Can you tell me what special benefits you will bring to this transaction? Or stated another way—why should I hire you?” As the attorney answers this question, you will use their response to create a pros/cons list for each attorney you meet.

Step 4: Choose Your Attorney

You will need to weigh the pros and cons to make your decision. One factor you need to consider is how well you will work together. Most of the time, by the end of three interviews, you will have a very good idea of which attorney fits your needs best. At that point, engage the attorney quickly and start work, dragging your feet cools the interest in your deal, which the attorney has fresh in their mind.

One final point, always sign an engagement letter as it protects you more than the attorney. If there is something problematic in the retainer and the deal goes wrong, you will have a record of it.

Vaughn Buffalo is a partner at his firm, Buffalo & Associates in New York City. His firm specializes in Mergers & Acquisitions.