

Preventative Law Aspects of Start-up Enterprises and Extant Small Businesses

Noel Bagwell, February 05, 2013

Preface

There are at least two ways to interpret the question, “How do you advise clients about staying out of legal trouble in starting up an enterprise or continuing a small business.” First, describing “how [I] advise clients about staying out of legal trouble in starting up an enterprise or continuing a small business” might mean describing the process by which I advise clients about staying out of legal trouble in starting up an enterprise or continuing a small business. Second, describing “how [I] advise clients about staying out of legal trouble in starting up an enterprise or continuing a small business” might mean sharing some of the advice I give to clients about staying out of legal trouble in starting up an enterprise or continuing a small business. Please allow me to answer each of these interpretations of the question, in turn.

My Process

Evaluation

When a client or potential client asks me to advise them respecting preventing legal problems with their new start-up enterprise or existing small business, I meet with them, usually for thirty minutes to an hour, and ask them a series of questions evaluating the legal health of their business, the soundness of their business model, the organization and clarity of their business plan, etc. If the business is a new start-up, I offer to review their business plan and business formation documents to assess whether there are likely to be any areas that may subject them to disproportionately high legal liability, and advise them accordingly. If I am drafting business formation documents, I balance the cost of my services against the protection the start-up entrepreneur needs and consult with them to determine an optimal ratio between those considerations.

Custom-Tailored Innovation

Because each client’s needs are unique, I create a plan for ongoing legal services addressing the client’s ongoing legal needs and budget. Clients pay a flat monthly rate for ongoing legal services. I address urgent needs the client may have or “fire and forget” legal solutions from which the client may benefit, and present those to the client, along with flat-rate pricing. I focus on listening to the client and evaluating their strengths and weaknesses – both from a business and a legal standpoint – and then determining what legal tools I can use to “sure up” their business foundations.

Communication

The key to positive client relationships is quality communication. “Quality communication” does not necessarily mean frequent communication. The frequency with which you communicate with clients should be based not only on your subjective evaluation of how much “hand-holding” your client needs, but also on *whether you have something new to say*. If you have nothing new and interesting to say, don’t waste your client’s time by just calling or emailing to check-in.

One little tip I would give to attorneys is not to underestimate the power of billing for things for which you do not charge. Do not underestimate the positive impact in a client’s mind when they see a line item on an invoice that looks like this (second line, *infra*):

Date	Item	Description	Billing Units	Rate	Charge
2/5/2013	Contract	Drafted Contract for Sale of Goods	3.4	\$250.00	\$850
2/5/2013	Phone Call	Spoke w/ Client to clarify K terms	0.3	\$250.00	NO CHARGE

Protecting your relationship with your client as their Outside General Counsel will protect your client, because it will maintain their access to ongoing legal services, like legal consulting services, which, if utilized efficiently and effectively, can help clients avoid legal problems and pitfalls in their day-to-day business dealings by giving them access to fast-response answers to their questions about legal aspects of their business dealings.

The Advice I Generally Give to Clients

Beautiful and Unique Snowflakes

Each business is as different as the people who participate in it, both at the provider level and the client level, which makes it difficult or impossible to establish a one-size-fits-all approach to advising small business clients. Still, there are some things nearly any business can do to reduce the probability legal problems will crop up in the first place.

Implementation

There are a few areas where some general advice is often applicable in nearly any situation: vendor relationships, employee relationships, and customer relationships all are best created and maintained through carefully drafted contracts; clearly written, easily readable employee handbooks and manuals facilitate communicating and enforcing business practices and policies between management and employees; and a well-written business plan gives lawyers, accountants, finance experts, and other professionals a clear picture of the ideal to which you wish your business to conform. I recommend, therefore, that every business “put it in writing,”

when it comes to dealing with all of these different areas, and I strongly urge my clients and potential clients to avoid “verbal contracts” and “handshake deals.”

Consultation

In addition to putting into writing the terms & conditions of business relationships and general business structures & policies pertaining to small businesses, I recommend that every client have some kind of “general counsel” for ongoing legal consulting services and *à la carte* legal services, as needed (e.g., collections work, demand letters, cease & desist letters, etc.). While keeping an attorney on retainer is often perceived to be outside the reach of many, if not most, small businesses, I offer extremely affordable ongoing legal services at flat monthly rates with no long-term contract through my small business legal services firm, Executive Legal Professionals (www.ExecutiveLP.com). With on-demand legal consulting available and the proper *ex ante* business and legal documents (drafted by a proper lawyer, not downloaded from “LegalZoom” or the like) in place, through services like Executive Legal Professionals, entrepreneurs and small business owners and managers can have access to legal services that most consider to only be available to larger companies.

Final Remarks

Let me address my final remarks to any businessperson who may read this.

If I had to summarize my advice and process in one sentence, it would be, “**Have your lawyer put that in writing.**” This advice rests on the assumption that you have a lawyer. So, get one. Don’t trust handshake deals or “verbal contracts” (I am of the school that believes there is no such creature). In the digital age, professional services, including legal services, are available in a variety of new formats. Look beyond traditional law firms and pre-paid legal service providers. Find an attorney who can do what you need at a price you can afford. In Tennessee, I am that guy. In Alabama, you might want to call Josh Andrews of Outsourced Associate (www.outsourcedassociate.com). I am sure in every state, there is at least one legal services provider that can meet your business’s needs. I have a friend who is an Eagle Scout with six Palms who is fond of saying, “Proper Prior Planning Prevents Pitifully Poor Performance.” For the small business legal professional and the small business owner or start-up entrepreneur, those are words by which you absolutely must live.