

# *Virginia*

## *Regulatory Hot Tip 2014 – 5*

*Professional Insurance Agents Association of Virginia and DC, Inc.*

---

### **Tips for Hiring a Professional**

Over the years we all grow a little more experienced, or at least we hope so. One of the things that I insist upon today that I probably wasn't as careful about when I first started practicing law is **require** that all of my business clients have an identified accountant to assist them with their financial, accounting, or tax matters because our firm doesn't have the expertise to provide those services to our clients. It is important that each of us understand our limitations and be truthful with our clients about our limitations. After all, each professional is developing a relationship with their prospective clients whenever they interact. Very few can truly boast of being a one-stop-shop in today's market.

It never ceases to amaze me how often someone tells me that they have never hired a professional to assist them with their business. Though I am not sure why I am surprised. My husband reminds me that his grandfather lived to be the ripe old age of almost 100, ran a farm business, raised 14 children and never consulted a lawyer, accountant or any other professional, except perhaps his minister. Indeed, many of my

---

**The author of this Regulatory Hot Tip endeavors to provide accurate and authoritative information about the subject matter covered as of the date of publication. However, the substantive information and any statutory authority contained in this Hot Tip should be verified as they are subject to change with the passage of time. The author provides this Hot Tip with the understanding that she is not rendering legal, accounting, or other professional advice or counsel. If legal advice or other expert assistance is required, the services of a competent professional should be sought. This publication is authored by JoAnne L. Nolte, JD, CIC, CPCU, FLMI, CLU, who practices at The Nolte Law Firm, P.C., 1427 W. Main Street, Richmond, VA 23220. When not working, Jo enjoys being at the beach with her husband, Bruce and their labrodoodle, Harvie.**

**NolteLaw offers Solutions for Business—Large and Small; just call (804) 658-4518. NolteLaw's practice focuses on general business matters (such as business formation, acquisitions, dissolutions and employment questions) and administrative law issues (such as rulemaking and compliance) affecting regulated entities. Our diverse client base includes restaurants, healthcare providers, contractors, fiber-optic and conduit installers, business entrepreneurs, telecommunications companies, insurance entities, financial institutions, mortgage loan originators, water & sewer providers, and insurance receiverships. Jo has served as attorney for the Virginia State Corporation Commission and as in-house counsel to a privately owned national corporation. She also owned and operated an insurance surplus lines brokerage agency and an insurance consulting business.**

clients have been in business several years and have experienced the same phenomenon. But, up comes a law suit, a regulatory compliance question, a disgruntled client or employee dilemma, and suddenly they are on the telephone to me. It happens in a flash. So, I thought it might be helpful to revisit some tools that you might use when hiring a professional. After all professionals are vendors, sort of like the sodas in the vending machine, it is up to you, the client, to pick the flavor, size and cost of the one you want to have. You control the purchase.

***Your professional should be someone you like and respect.***

Whenever I offer up the names of professionals for consideration by others, I generally provide at least three names, under the rationale that not everyone works well with everyone else. Personalities play a big role in determining who you as a business person are willing to confide in. I myself have been using the same accountant, both personally and professionally for decades. He told me when we began our relationship that I would outgrow him at some time and not vice-versa. None the less, we are still working together.

Of course, the bottom line is the professional that you engage must have experience, and familiarity with the type of problem that you are presenting. You would not go to an auto mechanic to get married, likewise you should make sure that the professional you hire works with businesses of your size and type, has experience in your problem area and is someone you can work with. If the professional doesn't have specific experience in your area of need but feels that they can assist you anyway, make sure you understand how great (translated expensive) the learning curve is going to be. For example, my firm handles issues in the arena of business, regulatory and administrative appellate issues. We do not handle criminal matters, or family law matters such as custody or divorces, for example. We might be able to offer up some names of other lawyers who do focus on these areas, but it is not my firm.

***Ways to contain the costs of a professional.***

Folks are always complaining about the cost of professionals and yet they fail to do the homework in advance that might help contain their costs when they hire help. Why is that? Perhaps they really don't know how to organize themselves to get the biggest bang for their buck. There are many ways for you to contain your costs upon engaging that professional. Some of these cost containment measures will be discussed in this section. ***You may have other thoughts and if you do, please consider sharing them with us, even if it requires a sequel to this Hot Tip. It will be valuable information for others.***

As I said before, this Hot Tip is designed to offer a little thought provoking information for your consideration. Once you decide you need the expertise of a professional, take a moment and map out exactly what you need from them. List all of the deal points or issues on a single sheet of paper. Though the phrase “deal points” often connotes the understanding between parties who are contracting, which is one of the frequent reasons one seeks out the assistance of a professional, internally, it can apply to a list of reasons why you need the professional’s services. For example, let’s say you need an evaluation of your business to learn its value for some reason. You need someone to audit your books and records in a financial manner. Or, you need someone to audit your books and records to see if everything is in order concerning corporate governance. The laws have changed since you formed your business. Have you updated your bylaws or governance documents to reflect these changes, some of which may be in the business’s favor? Even if you don’t know the nomenclature, you know for example, that the IRS is auditing you or that you have someone who is questioning the reporting of their FICA, or whatever the issue is. So, first list in broad terms what you believe you need from the professional. The list goes on and on.

If this seems to you like a daunting task, you could use the initial consultation time usually offered at no charge or a reduced charge by many professionals, to discuss your needs and get assistance in organizing your priorities. Don’t be afraid when you make the initial contact with the professional to see if they offer any consultation time without charging you, be it a half-hour, hour or something else. Alternatively, if you are on the books from the first moment you meet with them to discuss your concerns, you need to know that too. Once you have a path to follow and have your thoughts in place as to what you need, it will be much easier to negotiate a deal and keep costs down.

As alluded above, when you first contact the professional to discuss why you want to meet with them, make sure you understand what they are going to charge you for an initial consultation, as well as on an ongoing basis. Do not be embarrassed to ask the cost. Many professionals will offer payment terms to assist start up companies in making payments to them. Others will accept credit cards. For example, I generally agree to meet with a prospective client and agree not to charge them anything for the first half hour. Sometimes, if it is a particularly complicated matter, I agree to waive any charges for the first full hour of consultation. Don’t be afraid to ask what the terms of the consultation will be. Thereafter, the professional should be willing to freely discuss billing and costs. For example, though I am often reluctant to give a flat fee cost for open ended legal work, I may be able to break a project down into components and offer my best estimate of what each component may entail. Of course, this is with the

caveat that there are no surprises. For example, when I draft documents for a buy-sell, it is much more cost effective for the client who really knows the details of the deal because they have all been negotiated and agreed to before I come into the picture. It runs the bill up if the attorney ends up having to negotiate the details with the other party and his or her lawyer via draft versions of the documents.

***Consider meeting with your professional in advance.***

Since I am a business lawyer, I often get involved in deals of one kind or another. And all too often, the client comes to me only after the terms of the transaction have been negotiated. However, when I begin posing questions during that initial hour of free consultation, it becomes painfully clear that many important terms of the deal have, in fact, not been considered. The result is all too often that my client must now attempt to re-open discussions with the other party. This is often very painful. And can be very expensive.

I tell all of my clients to involve me as soon as possible in potential deals, and not to wait until the deal is “done.” This way, all of the deal points can be on the table and agreed to at one time. Now, I know that many folks try to do deals themselves and involve (and pay for) professional assistance only when it is absolutely necessary. But believe me when I say that proceeding in this manner is quite often a prescription for higher legal bills and the possibility of a broken deal. Talking with your professional BEFORE serious negotiations begin is the single best way I know of to keep your professional costs down.

***Make sure your professional knows what you expect.***

If you are a poor record keeper and need your professional to keep up with your records, you need to advise them of that fact. For example, for some of my smaller in employee count, but national in scope clients, I tend to be the repository for their corporate documents. For others, they keep them quite well on their own. Don't be afraid to discuss your shortfalls with your professional representative if it will impact your relationship with the professional ongoing. No one likes to be surprised when they need to recover a document and no one appears to have retained a copy.

Know your professional's record retention policy, and if you intend for them to retain documents for you longer-----you need to advise them accordingly. For example, my current shred policy is five years subsequent to a matter being closed and a client exit letter mailed. But, I have records for some clients that go back years longer because they have asked us to have those available.

### ***Professional References.***

Most times you locate professionals through friends, family, or business acquaintances, but if you are just web surfing or calling out of the telephone book, don't hesitate to ask about references from clients that the professional has handled similar matters for. Generally, you will receive only references for happy customers, of course, but you can learn whether the professional exceeded cost expectations, whether the client continues to use them for other services or as a referral source, etc. I have found folks to be pretty frank about their experiences over the years.

### ***Keep up with the activities of the professional.***

In the same way that your clients don't let you run off into several tangents, you should keep up with the work of your professional with regular contact until the specific assignment is completed. If you prefer telephone calls to email, let the professional know. I have some clients who never check their email and others who prefer it as the communication method and are difficult to get on the phone. Particularly when I am working on a client document, especially without benefit of a deal points memo (and sometimes even with one), I need to ask my client his/her preferences and I generally compile one list of questions and email the client. Unfortunately it then becomes a waiting game, because I can't move forward without the specific client responses. And of course, some responses generate other questions. From time to time, I also add comment blocks to draft documents for the client's benefit when options are available; for example, do you prefer mediation/arbitration or court; what is the client's full name, etc.?

### **Conclusion.**

The take away from this Hot Tip is to never be afraid to ask questions, but always know how much questions are going to cost you. You simply have to find assessable professionals that you can afford to actually use. The most competent professional in the world can't help you with your situation unless you give them the complete picture of what is going on, including your "hot buttons," so to speak, about the problem you are bringing to them. If you desire a written contract, map out what is important to you as far as the deal is concerned. Make it clear with your professional whether you will be negotiating the deal or whether they will be doing so. And if they

are, make sure you set parameters for them as to when they must return to you for change approval.

Keep in mind that professionals, be they attorneys, accountants, financial advisors, insurance agents, insurance company representatives, etc. want to assist new clients; however they can and they should do so only within the limits of their expertise. Word of mouth is their best advertisement, and they want new clients to be satisfied customers, and recommend their services to friends and family.