

Fridays at the Corridor Series: ***When Do I Need to Engage an Attorney at my Business?***



***Presented by Greg Finch of FirstPoint IP, LLC
and John Farrell of Bush Law Group, PC***

Introductions and Disclaimers

Greg Finch, First Point IP

- Business Consultant, US Patent Agent
- JD & LLM Intellectual Property from UNH
- Focus on start-up operations and strategic planning; and development, management, and licensing of corporate intellectual property portfolios

John Farrell, Bush Law Group

- Attorney with Bush Law Group PC
- JD Michigan State University College of Law
- Focus on business transactions and litigation

The following presentation is for educational purposes only.

- Not Comprehensive
- Requirement versus Recommendation
- Operational and Organizational related topics

Overview

- As a general matter, can do anything that does not involve the “practice of law,” or is otherwise statutorily mandated.
- Pro se representation; businesses are separate legal entities
- Though someone may represent himself or herself pro se, this exception applies only to individuals. A non-lawyer (officer, agent or employee) can only represent a corporation in civil magistrate's court. A corporation must be represented by a licensed attorney in circuit and appellate courts.
- Attorney not required for alternative dispute resolution

Practice of Law?

- **Sole proprietorship** – owned and operated by one individual
- **Partnership** – two or more individuals own and operate
 - Limited partnership – one general partner, limited partner similar to a shareholder
 - Limited liability partnership – general partnership where one partner is not liable for the other partner's negligence
- **Limited liability company** – can be formed without an attorney, members own the company, not required to file annual report, flexible, tax options as a sole proprietorship or partnership or corporation
 - Single member – no operating agreement required
 - Multiple member – operating agreement needed
- **Corporation** – attorney must form, owned by shareholders, annual report must be filed, annual meetings, board of directors, bylaws and governing documents required
 - Statutory close corporation
 - Closely held corporation

Corporate Formation

- Most of the legal steps involved in starting a business can be handled without the help of a lawyer. This includes applying for the right licenses and permits, registering your business for tax purposes, and applying for an Employer Identification Number (EIN).
- **Resource:** SBA.gov- includes step by step instructions on everything you need to set up a business

Corporate Formation

Corporations

- By-Laws

LLC

- Operating Agreement

Buy-Sell Agreements

- Partnerships and LLCs (attorney recommended)

Hiring Independent Contractors and Employees (attorney recommended)

Business Litigation (attorney required)

Buying/Selling Business (attorney required)

Corporate Governance

- Independent Contractors
- Wages
- Termination
- Non-Competes

Employment

- Leases (no attorney required)
- Purchase of Real Property (attorney required in South Carolina)

Real Property

- Can be specific to business – i.e. mechanics liens

Collections

Fridays at the Corridor: When Do I Need to Engage an Attorney at my Business?

- Customer contracts, partner or vendor agreements, and NDAs can all be prepared without the assistance of a lawyer.
- Contracts in the ordinary course of business can generally be drafted without an attorney.

Contracts

Legal Services Required

- Formalizing investor agreements
- Private Equity Agreements
- Before you raise money
 - Borrowing money can be considered a “sale” of a security and can get you into trouble if you are not doing it properly.
 - Improper sale of securities, i.e. selling interest in your company or borrowing from investors, negates the limited liability of the founders.

Contracts

Trademarks

- Mark Choice – business and products
- Conflicting Marks
- Filing Registration (Recommended)
 - Federal
 - State
- Enforcement (Required)

Intellectual Property

Patents

- No attorney required if you are an inventor (highly recommended)
- Provisional Patents
- Non-provisional patents
- Ownership and Assignment

Intellectual Property

- Recognize when you have a legal problem versus a strategy problem.
- Remember lawyers provide a service- they are not running your company- find a lawyer that talks about solutions and not problems
- Prepare a draft
- Research your questions

Tips and Considerations

- Spending a little money now may save money in the future
- Are attorney's fees recoverable – by statute or the contract
- Cost/benefit analysis

Tips and Considerations

- Use online resources- NOLO.com; SBA.gov
- Secretary of State, SCORE- free local/state government small business advice
- Small Business Development Center- The SBDC offers free business services and counseling to existing and start-up small businesses at a new office at The Citadel. The SBDC assists local small businesses with marketing, business plan writing, government procurement, business loan packaging and financial analysis assistance.
- SC Business One Stop www.scbos.sc.gov

Tips and Considerations