

Northern Colorado BUSINESS REPORT

PRINT | CLOSE WINDOW

8/24/2011 - 10:42:10 AM

Collect all information before you call your lawyer

By Alan F. Blakley

Section - column

Your secret recipe for a microbrew is missing or you find someone manufacturing an invention you've patented. The law protects both, even information that doesn't seem "official" because it's not patented. What to do?

You have work to do before you call your lawyer.

- Collect information. Beware who you talk to: You may prejudice their thoughts by what you say, or give away suspicions to someone involved in the problem, like an employee selling information to a competitor. Collect related documents, internal memos, emails, contracts, letters, notes.
- Organize it to tell your story. Don't leave anything out — sometimes what you think is unimportant is essential. Don't omit "bad facts." They may not be "bad facts," but if they are, we need to know them and deal with them. Then define your goal: Is it money? To get someone to stop doing something? To get "justice?"

When you see your lawyer, take everything you've collected. We love documents. Be ready to give contact information for everyone who may have information. There may be no need to contact them yet, but get the names together while they're fresh in your mind. And, if they're employees, your lawyer may need to have them "hold" any documents they have so the good evidence is not destroyed.

Unfortunately, unless you have a working relationship with your lawyer already, you should plan to bring your checkbook to the initial meeting. Most lawyers require retainers from new clients or existing clients with new problems.

Ask questions

Lawyers ask a lot of questions, but you should ask questions, too. Get some answers that you're comfortable with before you leave the law office:

- What needs to be done and when?
- What do I do? What do you do?
- What is a reasonable time frame for each step?
- What are the fees and costs I'll have?
- What's the best way to communicate?
- What should I expect next?

Remember that unless your lawyer is working for a set fee, the fees and costs quote will be an estimate that can change depending upon what the opponent does and what the lawyer discovers.

My pet peeve: Clients who don't realize the importance of the job of collecting information and checking documents for accurate facts. Even in business litigation, emotions run high and clients may want to do the lawyer's job or the court's job - arguing what is "just," what the law "ought to be," what arguments should be made - based on emotion.

Try to remember that you're hiring your lawyer to stand between you and the problem. Try not to make the lawyer's job harder (and your bill higher). Set a reasonable goal - and "justice" is not a reasonable goal in business disputes.

After you leave the office, the lawyer will probably reorganize your material - your organization wasn't bad, just not the way we might need it. The lawyer may contact others involved to gather more information, then review the law - we don't always know everything off the tops of our heads.

The lawyer will then advise you of the likely risks and rewards of proceeding. At this point, you need to work together to define clearly your goal - remember, it's not "justice" - and it must be something attainable under the law.

Then, you decide whether (in order of increasing "violence") to "walk away;" to negotiate; to mediate; to arbitrate; or to litigate. There are benefits and drawbacks to each course of action. The decision is not an easy one, nor one that should be made in haste.

If you decide to arbitrate or to litigate, it will be expensive and slow (arbitration is expensive and slow). Furthermore, if you have a business relationship with your opponent, you will surely damage, if not destroy, that relationship in the process. Moreover, if you win, will you ever be able to collect what the arbitrator or court awards you?

Some disputes need to be litigated in court. If you have one of those, realize that it will somewhat disrupt business. Find a lawyer you trust and enjoy working with, because you will spend a lot of time together, and with skill (and some luck), you'll achieve your goal (but not "justice").

Before litigation, try working out your problems. Then communicate often with your lawyer to get informed about the potential risks and rewards of litigation.

For the lawyers reading this, remember the dispute may be the most important thing in your client's life. Let him or her know what's happening during the litigation; return phone calls.

Next time: What to expect if you choose litigation.

Alan F. Blakley, Esq. is a lawyer with CR MILES PC in Fort Collins. He may be reached at afblakley@crmiles.com. The information included in this column is general information. You should contact your own lawyer before making any legal decisions.