

AAPA Executive Management  
Seminar

Napa, California

May 18, 2010

**Learn to Like Your Lawyer and Other  
Works of Non-fiction**

Tom Tanaka

Senior Port Counsel

Port of Seattle

# I. Why you need a lawyer.

- A Legal issues permeate everything a business undertakes on a daily basis.
- B. Your lawyer is the team member who will help identify legal issues and how best to deal with them as they arise.

# Why you need a lawyer

C. An incomplete list of legal issues a port manager could see in a single week: Buying and selling land, leasing land, granting easements and licenses, eminent domain, environmental cleanups, environmental reports and studies, dealing with environmental regulatory agencies, implementation of environmental regulations and laws, bond financing issues, state and federal tax issues, federal regulation of shipping and airports, federal security regulation of transportation facilities, labor/management issues, hiring, firing, lay offs, discrimination (gender, harassment, race), construction and bid issues, intellectual property, public disclosure of documents, open public meeting issues, and general powers issues.

# I. Why you need a lawyer.

C. As a manager, it's not your job to be the expert on everything. A good manager knows how to create and rely on a team to help. A lawyer is a critical part of that team.

## II. The proper role of the lawyer.

- A. The lawyer is an advisor. Know the difference between legal issues which are properly the province of the lawyer and business decisions which belong to the business manager.
  
- B. Don't look to the lawyer to make a business decision. It's OK for a lawyer to give advice or perspective on a business decision—that kind of advice can be helpful and should be welcomed. However, if you're going to ask the lawyer to make a business decision, why do we need you?

## II. The proper role of the lawyer

- C. A key role of the lawyer is to provide an assessment of legal risk. It's the business people who need to make a decision based on weighing that risk against other factors.
- D. On the other hand, be aware of the rare situation where the lawyer is pushing him/herself into business decisions. A lawyer should respect the boundary between business and legal issues. Those that can't should either be reminded or replaced.
- E. Have your lawyer involved at the early stages because it can save early missteps that can be costly in terms of time and money invested. The worst feeling in the world is creating what you think is a great plan only to find out later that there is a fatal legal flaw.

# III. The mechanics of working with your lawyer

A. Hiring a lawyer (assuming you don't have an in-house lawyer who would be in charge of hiring outside counsel).

1. How to find a lawyer?—The best way is to ask around. Lawyers themselves are the best source of information. Don't use the Yellow Pages. Ask for references. Outside ratings are of limited value. Interview several prospects.

# III. The mechanics of working with your lawyer

2. Engagement of your lawyer.—Helpful to have an engagement letter that spells out a number of issues, including who's authorized to work on the project, what rates they will charge, and the scope of their work. See attached example of an engagement letter.
3. Rates—Lawyers generally charge by the hour. Don't be afraid to ask for at least a 10% discount, especially in this economy.

### III. The mechanics of working with your lawyer

1. Create a team on which the lawyer is member. They don't necessarily have to be there at the beginning, but certainly make sure legal review has occurred at key milestones.
2. "We have an agreement in principle." Famous last words—the devil's in the details.

# III. The mechanics of working with your lawyer

3. Make certain your communication with your attorney is clear. You can be candid with your attorney as your communication, if done so for the purpose of soliciting legal advice, is protected and privileged from disclosure (although not necessarily true in a few states).
4. Treat your lawyer like you would any other respected team member. It's OK to raise questions about the bill if they're legitimate, but if it's petty or otherwise not justified, you risk alienating the attorney. Outside attorneys have been known to fire difficult clients.

### III. The mechanics of working with your lawyer

5. If you're in litigation, never speak to the other side's lawyer without your lawyer present. If you're in a business negotiation, don't allow the other side to bring a lawyer unless you have your lawyer present or unless you agree in advance.

Questions?