

Exploring How to Partner with a Law Firm for a Search Fund Project

Selecting a law firm is an important decision for a paramount relationship

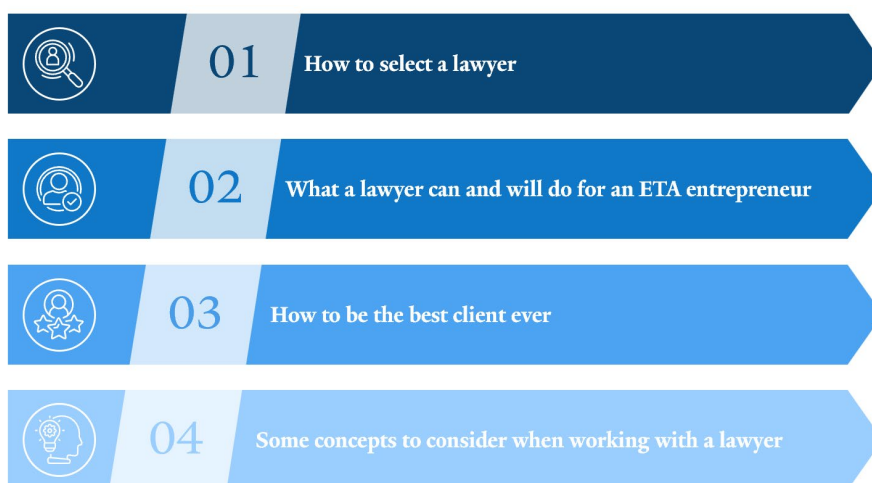
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When engaging in a search fund project, entrepreneurs should surround themselves with a phalanx of key professional advisors to help them better navigate the search fund jungle. These advisors often include, but are not limited to, accountants, investment bankers, technology gurus, and insurance agents. A lawyer is one of the very first professional advisors required to be involved in an entrepreneurship through the acquisition (ETA) journey. Curious search fund entrepreneurs often speak with lawyers when they are still students in MBA programs and are just beginning to learn the ETA ropes. Lawyers are needed this early in the game because they create the searcher's legal entity and organizational documents. They might also advise on the legality of the private placement memorandum, which is technically an offering document used to raise cash by selling unregistered securities (that is a mouthful and certainly sounds like legal gobbledygook).

Because selecting a law firm is one of the earliest critical decisions a searcher will make and is often a relationship that runs through the entire ETA arc, it is worth considering carefully. This note will explore how an aspiring search fund entrepreneur might contemplate selecting a law firm. In this case note, we will examine a quartet of considerations related to lawyers in the ETA ecosystem (**Figure 1**).

Figure 1: Four points regarding lawyers in the ETA ecosystem



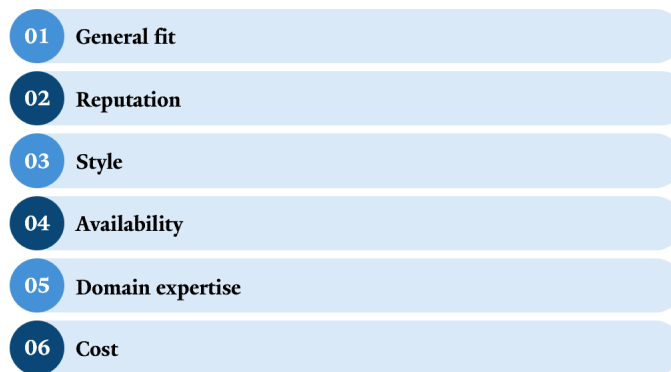
How to select a lawyer

Choosing a lawyer with whom to partner is an essential decision for any entrepreneur. A lawyer will work closely with the entrepreneur at multiple stages of the venture and can help keep the CEO from wading into quicksand and veering toward trouble. Entrepreneurs often collaborate and work with their lawyer in all facets of the business, and the lawyer will be privy to all the muck and golden moments in the business expedition. A sound lawyer can be worth multiples of their pricey fees, and a lousy lawyer can lead a CEO astray with missed opportunities and frustration. Lawyers are unlikely to make or break a business, but they can make the business better. They can be very clever with crafty tax strategies and risk-shifting and mitigating maneuvers. The very best lawyers posture more like peacemaking diplomats who bring together opposing parties and help grease the way to successful transaction closings. It is important to understand that deal lawyers are just that – “deal lawyers” – they can help you get a transaction closed even if the economics of the business, its industry, or other characteristics would militate against consummating the transaction. In other words, they are not business advisors and should not be regarded as such.

While it is certainly helpful to get lawyer recommendations from peer entrepreneurs and ETA investors, it is the search funder’s responsibility to find and select the right firm and person for their search fund. Recommendations can help jump-start the process, but it is the entrepreneur’s burden to perform diligence on the potential firm and lawyer, and if the relationship falters in any way, that is on the CEO, not the folks who might have provided the recommendation. Lawyers are human beings, and every human-to-human relationship is unique, so it is possible that a lawyer who was the right fit for one search fund is not the right fit for another.

When interviewing potential lawyers, most introductory screening calls are no more than 30–60 minutes in length. A lawyer should be able to efficiently explain the entity formation process, search fund capital raising, search phase representation, and acquisitions representation. Usually, the searcher hires the lawyer for the complete project life cycle – not just for search fund formation. Keep in mind that the lawyer also screens the searcher. Many ETA lawyers are well regarded and have plenty of current and potential clients. Searchers can also be low-dollar and high-maintenance clients, which are not a lawyer’s favorite. So, aspiring entrepreneurs should approach potential lawyers with humility and respect for their expertise. They should not fish for free legal advice, even though lawyers do have to prove they have the necessary domain expertise.

We propose that search fund entrepreneurs look for six dimensions when screening for and selecting a lawyer (**Figure 2**). We believe these are the most relevant factors to consider when choosing a lawyer, but there are likely more that we have not mentioned. It might be helpful for aspiring entrepreneurs to develop a grid scoring system with our dimensions (and any they choose to add) and a weighted ranking system to evaluate potential partners objectively. Additionally, **Exhibit 1** details a list of potential questions for prospective lawyers. The particular grid established by a searcher will almost certainly be colored by their history of using lawyers and law firms. For example, a searcher with a background in private equity or investment banking might hold lawyers to a higher standard of responsiveness and availability while also understanding the higher dollar costs associated with that type of legal service.

Figure 2: A sextet of dimensions to consider when selecting a lawyer for an ETA project

01 *General fit*

If we assume that search fund entrepreneurs are considering reputable lawyers at comparable firms with a broad scope of services, domain expertise in ETA, and similar pricing, a real differentiator can be fit. Fit is a nebulous catchall word that encompasses a handful of intangibles, so it might be hard to articulate and measure how fit functions as a screen when selecting counsel. When we use the word fit, we are trying to capture the likelihood of how well a CEO might work with their lawyer. CEOs do not need their lawyer to be their new best friend, but they do need the relationship to be mutually respectful and productive. An active company engaged in many initiatives might require the CEO to speak and interact with their lawyer daily. If the CEO bristles at each email or phone call, fit is absent. If the relationship is warm and tolerant of intellectual debate, there might be fit. Lawyers often act as psychologists through a transaction's ups and downs. Aspiring entrepreneurs and CEOs need someone who has a suitable bedside manner and can offer reliable legal advice.

To be clear, fit does not imply identical genders, ethnicities, or backgrounds. Fit suggests that the two parties are highly attuned to the key issues, and that the lawyer understands how the CEO perceives risk and opportunities and might even know the answers to the questions before they are asked. Fit is best described as a robust, collaborative working partnership that is mutually enjoyable.

02 *Reputation*

A handful of prominent lawyers are floating around in the search fund ecosystem. Several of them have years or decades of experience working with entrepreneurs and investors – and engrained reputations that follow them. If an entrepreneur considers one of these established ETA lawyers, they should unequivocally understand their reputation. This is especially important in the investor community. CEOs will need to make many asks of their investor group and board and even go to battle on a few issues. There is no need to make a lawyer working on legal documentation a point of contention or antagonism with investors. We are not suggesting that entrepreneurs kowtow to their investors, but they must decide when and where to test and push the capital providers. We are not sure legal is a function worthy of consuming investor goodwill.

Entrepreneurs should also check in with peer CEOs and inquire about a lawyer's reputation. These peer CEOs can provide an unvarnished assessment of working with a specific lawyer. If lawyers are slow to return phone calls or are overly confrontational, it is better to pass than to tolerate. Additionally, entrepreneurs should seek legal counsel that is not overly aligned with investors at the entrepreneur's expense. The lawyer represents the legal entity, not the investors or the entrepreneur specifically. We will discuss this more shortly.

03 *Style*

We all have individual work styles and approaches. A lawyer's style needs to fit with the client's objectives. Since the vast majority of a search funder's legal work is plain vanilla corporate law, there is probably no need for a lawyer who is a bull-in-a-china-shop litigator. We have witnessed lawyers who apparently think their mandate is to prove to everybody that they are right, not necessarily to get the deal done. This can be divisive behavior and does not serve the ETA CEO well. The best lawyers are experienced and brilliant, but more importantly, they know how to move a transaction along pleasantly and collaboratively toward a positive conclusion. They are not combative; they are agreeable and focus on the desired outcome, not legal gamesmanship.

Although lawyers are first and foremost charged with being guardians of legal issues, it is helpful if they also have a commercial mindset and the ability to understand the financial matters at play. This does not mean that entrepreneurs delegate financial analysis or tenability to their counsel, but it is helpful if the lawyer understands what the numbers and math actually mean in a working capital true-up arrangement.

Ultimately, the likely best style for a search fund entrepreneur is a lawyer who is a constructive dealmaker who sees how all the puzzle pieces fit together. Getting to the finish line is a skill and part of style. An unsigned bulletproof purchase agreement is inferior to a good enough document with ink.

The lawyer also needs to understand that he or she may not be working with a mergers and acquisitions (M&A) expert on the other side of the transaction. Many search fund entrepreneurs buy businesses from long-time owner-operator CEOs. These sellers may distrust lawyers and view them as a waste of money and as being full of hot air. The seller might try to find the least expensive lawyer available (regardless of skill or expertise), or, worse yet, they might use their long-time friend, relative, or other acquaintance to get an M&A deal done. The lawyer that the searcher CEO chooses may have to not only serve the search fund's best interests and negotiate the best deal but also be coaching and teaching a less experienced seller attorney on the ins and outs of an M&A process, what must happen for financing to occur, and the due diligence required by lenders and investors.

04 *Availability*

Successful lawyers are extremely busy and in high demand. They are likely working on and running dozens of projects simultaneously. Engaging a top-flight lawyer who is not actually available to serve a client is a poor outcome and frustrating. Entrepreneurs must ascertain how available a potential lawyer is for their needs. Furthermore, if the lawyer plans to delegate some work to associates or paralegals, the search funder should know that and scrutinize their availability and time capacity. Additionally, entrepreneurs should

understand what work the primary lawyer will retain and own, and which activities and tasks will be shifted down to a support team.

There is probably some sweet spot for a lawyer and law firm that has the capacity and the ability to manage projects so that the right team members are doing the right work at the right price point. The entrepreneur's lead M&A lawyer does not need to draft every word of every document. In fact, if they are handling that level of minutiae, then the forest may be lost for the trees. However, if the lead lawyer does not intend to be hands-on during the M&A process, that will also be a bad fit. Some lawyers in the ETA space have been working in the ecosystem long enough to achieve a balance of appropriately skilled team members that will allow the lawyer to avoid hitting any capacity constraints.

All deal transactions have a momentum and life cycle. There are ups and downs daily, and holding it all together is challenging for the entrepreneur protagonist. Many things can derail the process, but lawyers should not be one of them. A lawyer's style and availability should facilitate transactions, not jeopardize them. If a lawyer is slow to respond to calls and emails with the entrepreneur or opposing counsel, the deal (lease, key hire, financing) can lose traction and slip away. It is vital to choose a lawyer with the availability and bandwidth to keep projects moving forward with positive momentum. Additionally, the selected lawyer should know how to balance the timeline so that the M&A transaction does not get too far ahead of equity and debt financing, a learned skill acquired through transaction experience.

05 Domain expertise

Lawyers are like doctors in that there are infinite subspecialties within the profession. If a person has a knee problem, a cardiologist is unlikely to be an expert or even helpful. Similarly, buying a small business does not require a lawyer who is a trust and estate expert. The lawyer's domain expertise matters and should be relevant to the task at hand. Most of what a search fund entrepreneur requires is general corporate and transactional law. The lead lawyer should focus on this area with the appropriate sizing. A corporate law expert specializing in Fortune 1000 cross-border transactions in public companies might be overkill to purchase a \$1.5 million cash flow HVAC business. Similarly, a real estate virtuoso is not quite a bullseye either.

Search fund entrepreneurs need someone who is a corporate law and transaction specialist who works in the realm of small businesses and can gingerly operate with a first-time seller being represented by their brother-in-law, who is a divorce lawyer. It is crucial, however, for the lawyer's firm to have the breadth of services the CEO might require, such as tax, intellectual property, employment and benefits, real estate, and litigation.

06 Cost

We intentionally deprioritized cost in our screening list. Although we are not implying that cost has no place in the decision-making process, sound legal representation is not cheap, and quality definitely trumps expense. Rates for lawyers at large law firms can run into the thousands of dollars per hour, so we do not want to make light of the potential costs here. Unfortunately, it is very difficult to fully understand legal costs because one dimension is the rate per hour and the other toggle is hours – which are difficult to predict in various projects. It is fair to ask potential lawyers about billing rates for the lead lawyer, associates, and

paralegals. Additionally, for some projects, like entity formation and bylaws generation, a directional cost estimate is possible, but that can change depending on how many parties chime in with edits and changes.

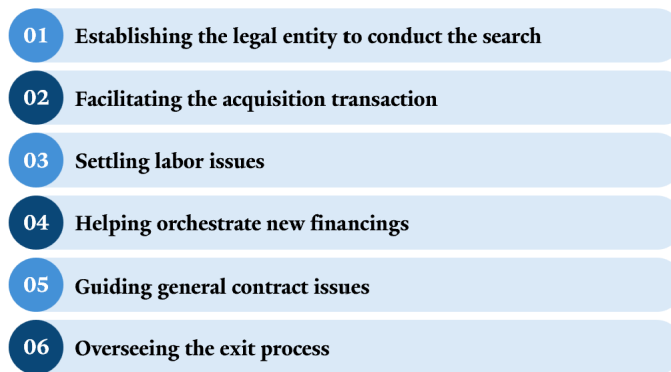
A second question to ask the lawyer is for an overall cost estimate. Those estimates will be in the nature of ranges of fees, including all aspects of the transaction – legal due diligence; structuring, drafting, and negotiation of legal documentation; equity financing documentation and process; and debt financing documentation and process. At the outset of a traditional search fund engagement, it will be impossible to calibrate an estimate precisely, but getting a directional guide is helpful.

The best way to control legal costs is to engage the lawyer judiciously and prudently, when necessary, but not prematurely. Lawyers do not need to attend every bank meeting; they need to get involved once the commercial and business terms have been hashed out and documents have been generated. One way to manage costs is to cut down on document turn iterations. If a searcher offers up a purchase agreement for an initial acquisition, they can wait for comments and edits from the seller and then ask for a single meeting with the lawyer to hammer out the document. This can prevent the back-and-forth ping-ponging that is a grind, causes delays, and drives up costs. In addition, starting with a middle-of-the-road draft purchase agreement can be a way to mitigate fees. There is a fear of negotiating against oneself, and, in addition, searchers from a private equity background may be used to working with incredibly aggressive M&A lawyers who try to win every point. In ETA land, that may not be the best strategy.

What a lawyer can and will do for a search fund entrepreneur

As mentioned, a lawyer will be part of the search fund CEO's inner coterie. They will know about the company's big moves months before they come to fruition because they will be in the weeds making them happen. Perhaps one of the most important roles a lawyer can play for the ETA CEO is that of a confidant and sounding board. The lawyer is not an investor in the enterprise like board members, so they can bring objectivity to a conversation. Their vested interest is in the venture's success, and they can be impartial amongst CEO-investor fracas. While most lawyers have never been CEOs or operators, they have watched the movie endlessly and have some degree of perspective and pattern recognition. Although lawyers do not claim to provide core business advice like investment bankers or investors, their experience and insights are valuable, should be harnessed, and respected. Lawyers can be cardinal partners for CEOs.

In addition to general support and advisory services, lawyers provide a handful of explicit services to search fund entrepreneurs (**Figure 3**). We will now discuss the scope of these services. Remember that the firm is likely delivering this buffet of services and not the individual lead attorney, who usually does not have deep expertise in each functional practice area. Instead, the lead lawyer will serve as the relationship quarterback, help navigate the firm's resources, and tap the best intellectual talent for each unique situation. Although we hope that all CEOs evade litigation, which we have not included in our list, lawyers will likely be involved at some point in some type of litigation services that could include employees, customers, vendors, or other parties. We hope this is not a service our readers need.

Figure 3: A six-pack of essential services a lawyer can perform

01 Establishing the legal entity to conduct the search

The first thing a lawyer does for the ETA aspirant is to set up the organizational documents to raise search funds and conduct the search. This incipient batch of services will generally include reviewing the private placement memorandum to ensure it is legal in every way and conforms with securities laws, creating a legal entity (often a limited liability company) that serves as the search entity, registering that legal entity with the appropriate secretary of state, obtaining tax identification numbers at the federal and state levels, writing the bylaws when needed, producing the operating agreement, and recording a capitalization table once funds are secured.

This round of services tends to be formulaic, without much complexity or negotiation. If the searcher hews to standard terms and conditions, these documents tend to breeze through investor examination. It is important to remember that the lawyer does not explicitly represent the entrepreneur in this context despite being hired by the searcher. The lawyer also does not represent the investor group, even though they probably have worked together dozens of times. The lawyer actually represents the legal entity, the limited liability company. So, entrepreneurs should remember that they are truly operating independently, and the lawyer is not overtly protecting their interests.

Fees for this project tend to be \$5,000–\$10,000. Attorneys who serially play in the search fund space defer a portion of these fees until an acquisition is consummated (and may waive or reduce them if no acquisition occurs). This is a beneficial feature for entrepreneurs because it minimizes up-front cash uses and demands.

02 Facilitating the acquisition transaction

This is the lawyer's moment to shine. A slew of tasks and documents are associated with closing the initial acquisition in a search journey. The attorney will touch every single one and probably draft most of them, while the opposing counsel might draft some of the documents, too. The first document the lawyer will weigh in on is the term sheet or letter of intent. This is the nonbinding offer spelling out the economic terms and conditions of the searcher's proposal to acquire a business. Most of the terms and conditions are business in nature, like the purchase price, diligence period, key assumptions on which the valuation is based, assets that will be included in the acquisition, how working capital will be processed, and other essential facts. The term sheet will also have a few legal sections, such as a confidentiality clause, exclusivity

language, termination procedures, and a declaration of the right to share information if subpoenaed by a court of law. We think it is best to make this document as simple as possible and to use plain English. It is less intimidating for the seller.

Once the term sheet is signed, there is still much more work to do. The lawyer will own legal diligence. This entails ensuring the seller entity is in good standing and compliance, the owners are who they say they are, and their organizational documents allow them to sell the contemplated assets and business. The lawyer will search for tax liens and other potential hidden liabilities. From a documentation perspective, the lawyer will produce a definitive purchase and sale agreement, a legal contract that will include the terms from the term sheet or letter of intent, along with representations and warranties by the seller about the target business and enforcement provisions. Documentation will be required to raise and fund the equity and debt capital. This will include subscription documentation, an amended and restated LLC operating agreement, and loan documents with the creditor.

A seller note payable might be part of the closing documents, and an escrow agreement will govern the rules and procedures behind the representations and warranties provided by the seller. If any employment agreements, including a seller noncompete or consulting agreement, are necessary for the acquired team members, they will be drafted as well. If a real estate lease is being assigned or a new lease is being created, those documents will also be drafted and reviewed.

These are all complex documents and need to be shepherded through a negotiation process that can often be enervating. It is the lawyer's task to keep it all on track for a timely close. Remember, the lawyer owns legal issues – the searcher owns business issues. The lawyer will highlight risk points; it is the searcher's task to decide how to deal with the risks.

03 Settling labor issues

Unless the acquired company has no employees, there will be labor issues to address at some point in the ongoing operations of a search-acquired company. Lawyers will draft equity option agreements for key personnel and craft employment agreements and the inevitable separation agreements. They might review 401K programs and formalized bonus programs. There will be a rash of unpleasant people issues that will inevitably require attention. These, unfortunately, include harassment and discrimination claims, wrongful termination, and injury-workers' compensation issues. If there are employees, there will be a steady stream of legal problems and work associated with those employees. Lawyers can also tackle profits interests documents, issues related to immigration and authority to work in the U.S., and employee-versus-contractor determination decisions.

When considering employee legal issues, it is always best to take every conceivable measure and step proactively to prevent or defend claims. For example, having a robust employee manual and training program on the cornucopia of topics related to harassment and discrimination issues can prevent and mitigate claims. Lawyers can advise in developing these preventative steps. When claims and problems arise, lawyers can help document and negotiate settlements while ensuring legal compliance. Additionally, lawyers will examine compliance issues that revolve around local, state, federal, and international laws and regulations. For example, ascertaining independent contractor versus employee status can be tricky and lawyers are attuned to navigating these nuances.

04 Helping orchestrate new financings

Many search fund projects go through additional equity and debt financings as the company grows and requires fresh capital. The lawyer will be front and center for these projects and spearhead the steps necessary to extinguish legacy debt and initiate new debt. Although the lawyer will not negotiate the business terms with the capital providers, they will captain the legal process, including document review (creditor's counsel usually originates loan documents at the debtor's expense), diligence, and the affirmative and negative covenants typically found in bank loan documents. The lawyer and CEO will work together to ensure that the intended covenants, pricing information, and amortization are accurately captured in the documents. Going from concept and English to legalese can be tricky and is worth careful attention and scrutiny.

Fresh equity from legacy investors tends to be pretty simple, with a new subscription agreement and cap table, but novel equity from new investors can be a heavy lift involving a new operating agreement, a new shareholders' agreement, and a full-blown diligence process. The lawyer is there every step of the way as a scrivener and partner. Again, the lawyer does not represent the ETA CEO personally in a future equity raise transaction, but they will certainly be able to help the entrepreneur think about a range of issues. Some of these issues include what is fair or market terms for new capital coming in, which might have a tendency to either harm the searcher or create incentive hurdles that are different than the original, traditional search fund parameters.

05 Guiding general contract issues

While operating a business, the CEO will encounter a litany of general contract issues that the lawyer will help review and opine on. These documents and contracts tend to be served up by the other party, but CEOs should never sign a material contract without carefully reviewing it and checking in with counsel. We are considering typical arrangements like real estate leases, material vendor agreements, and complex insurance arrangements. It would be unusual for the company's lawyer to scribe these documents, but they should absolutely review them to ensure that what the CEO thinks they are getting is fully and accurately captured in the contract. If it is not in the contract, it does not exist. The lawyer should examine these contracts for notification periods, automatic renewals, liability limitations, service levels, pricing, and increases. Once again, the CEO owns business issues, and the lawyer owns legal issues while presenting risk dimensions to the entrepreneur.

If the company uses contracts, service agreements, or pricing arrangement documents with its customers, it is imperative that the lawyer write and review those documents. We are not proposing that counsel touch every customer contract, just the base one used repeatedly. We cannot emphasize how important this is. An excellent customer contract is the CEO's friend. We like to see language on the term, auto-renewal, pricing escalators, liability limitation, and assignment. Let the lawyer do their magic here. It is very helpful if the lawyer truly understands the business, how the model and cash flows work, and what the CEO genuinely cares about. If the lawyer does not fully comprehend the issues at play, it is harder for them to excel in their role. This means CEOs should invest time and energy in getting their counsel up to speed.

Ensuring that standard commercial contracts are desirable and applicable to the specific business can make an exit process smoother. For example, if an agreement has anti-assignment or change-of-control provisions, the exit process could require myriad third-party consents (causing time delays, awkward

conversations, and plenty of angst). This can catalyze unnecessary headaches and distractions when the CEO should instead be running the business.

06 Overseeing the exit process

If a search fund project is successful, there will come a time when the CEO and investors choose to monetize their increased equity value through a sale process. This is another moment for the lawyer to sparkle. This will feel somewhat similar to the initial acquisition process, with two primary deviations. The first is that the lawyer and the entire team are now on the sell side instead of the buy side. So, everything the lawyer demanded from the seller will now be provided to the new buyer.

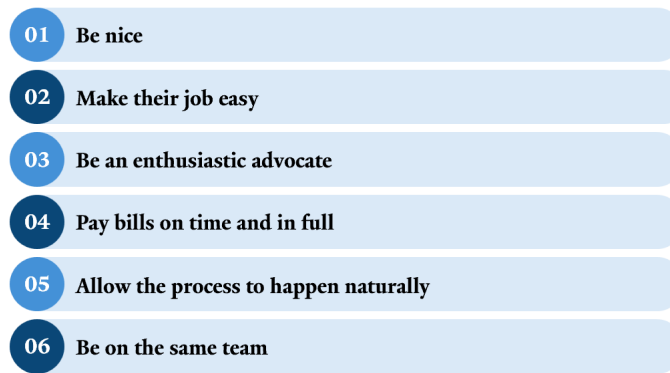
Second, the initial acquisition was probably small ball, with a first-time seller and smaller dollar stakes. With any luck, the exit will be to a significantly more sophisticated buyer who is an expert in the ways of dealing with transactions and acquiring businesses. This will typically be a strategic acquirer or a private equity investor. These professionalized and institutionalized buyers will have more onerous demands, and the lawyer will need to address an array of complex document needs. These documents will include a stock purchase agreement and all of the attendant schedules, an escrow agreement, a noncompete agreement, assignments for specific contracts, and the waterfall distribution.

A searcher exiting a business should keep in mind that running a well-organized business throughout the hold period, utilizing counsel frequently, and then getting the lawyer involved early will help the process proceed more smoothly. After the exit, the CEO likely wants to enjoy their winnings sitting on a beach and not in a courtroom dealing with indemnity claims and other potential risks. While utilizing representation and warranty insurance has now become quite common in search fund exit transactions, the CEO of the business still has to prepare disclosure schedules and ensure that all of the rocks are turned over and the warts displayed to the future buyer to avoid future exposure.

How to be the best client ever

Even though CEOs pay their lawyers handsomely for their time, they need to consider how to be an ideal client. Outstanding lawyers are busy folks. They are juggling scores of projects simultaneously and are subject to the firm's demands and barking clients. Attorneys need to make time allocation decisions, just like CEOs. So, when a lawyer arrives at their office and is bombarded with emails, texts, voice mails, and a laundry list of tasks to plow through, they need to choose what they should do and when. Lawyers inevitably have favored clients who get more prompt service and greater mindshare, as well as some clients whom the lawyer begrudgingly interacts with while rolling their eyes and holding their nose. CEOs should aspire to be the favored clients who get top-of-mind attention, promptly returned phone calls, and complete emotional and intellectual engagement. The question, then, is how to be the best client ever?

We will now discuss a hexad of action steps to be a fantastic client for a lawyer (**Figure 4**). These are all common sense but worth emphasis.

Figure 4: A hexad of action steps to be the best client ever*01 Be nice*

As hard as it might seem to believe, lawyers are people, too, beneath their austere pin-striped suits and wingtip shoes. They want to be treated with respect, appreciation, and kindness. Just being nice to a lawyer will go a long way. In addition, associates and paralegals are the unsung heroes in a law firm. Shower them with kindness and attention and watch the positive reaction. Sadly, the bar is pretty low, and lawyers are used to irate, overbearing, and unrealistically demanding clients. Being gracious and considerate makes a client float to the top of the list. Inquire about the lawyer's kids, weekend activities, and other interesting projects they are tackling. Send them an appreciative note and gift after the big deal closes. The company's silly swag can go a long way as a gift. Make the attorney feel like they are part of the team, that they matter, and that there is gratitude for their valuable services. Genuine compliments are music to an attorney's ears. A more experienced attorney will also want to hear positive and negative feedback about their team in addition to feedback about their own performance.

To augment the relationship, schedule quarterly lunches to catch up if they are geographically convenient. If that does not work, a periodic phone call to say hello and communicate the latest happenings at the firm and company can also work. The point is to ensure that the relationship is smooth and warm before the next crisis or opportunity.

02 Make their job easy

Making a lawyer's job easy is an excellent way to become the best client ever. Closing a transaction can often feel like running through a gauntlet of obstacles. The lawyer juggles many balls between the seller, the bank, non-bank creditors, and other parties who might have a role in the transaction. The best way to make the lawyer's job easy is to promptly respond to their needs in a timely and accurate manner. When schedules are requested for the debt deal, do them quickly and thoroughly. When notes and edits are required in the noncompete, now is a super time to process them. To help the lawyer plow through all the work they need to process, support them in every possible way by giving them what they need when they need it. Failure to do so makes for a less desirable client and slows down the deal.

03 Be an enthusiastic advocate

One of the easiest ways to win points with a lawyer is to advocate enthusiastically for them. Recommend them to friends, plug them when speaking at conferences, highlight their work when visiting a class in an MBA program, and generally be a cheerleader. Warm introductions and endorsements are a proven pathway to new clients and a growing practice. Boasting about the lead lawyer when interacting with the real estate partner is a simple way to help the lead lawyer score kudos internally within the firm.

If the attorney asks for a reference check with a potential new client, respond quickly and glowingly with praise. Helping the lawyer build their reputation and practice is considerate and will help increase a client's status and worth.

04 Pay bills on time and in full

It is poor form to show up on a lawyer's overdue billings register. The simple way to avoid this is to pay legal bills upon receipt, or at least not after the due date. We are huge fans of surgical working capital management and pushing vendors on payment terms. However, lawyers are strategic partners and should not be tested on payment terms. This prevents awkward conversations about why invoices are late. Not paying bills on time is a surefire way to get deprioritized as a client.

Similarly, pushing back on every single invoice and scrutinizing every line item will alienate the attorney. Once again, intensive expense management is part of the CEO's repertoire, but beating up the lawyer will just result in a flagging position in the client sweepstakes. Invoices need to be fair, and if they seem askew, they must be addressed. However, making every invoice a battleground will result in waning attention and less thoughtful advice.

05 Allow the process to happen naturally

Many searchers are type-A, driven workaholics with an ethos of 24/7 responsiveness and availability. Lawyers and team members at large law firms are the same. When a transaction gets into the home stretch – the last few weeks before a closing – the searcher has only one thing on their mind: getting the transaction over the line. The searcher can make themselves available any time, day or night. That being said, it is important to remember that the seller of the target business is running a company full-time. Many times, the entrepreneur is going through this process for the first time, and many times it is with an attorney who is not necessarily a deal lawyer. Sometimes, team members do not even know that a transaction is occurring, so the seller can feel like they are alone on an unfamiliar island. A searcher needs to balance speed and responsiveness with patience and empathy for the seller's perspective.

Allowing counsel to work directly with the seller's counsel will ensure that the seller and the searcher can maintain a friendly relationship while the lawyers work out some of the more intricate and maybe contentious issues. If the searcher starts pushing everything too soon, then certain deal points that would naturally be resolved as the deal progresses can end up being negotiated in a vacuum, and the searcher can end up negotiating against themselves instead of letting the process play out naturally. A savvy seller will just wait out an over-eager searcher.

Lawyers who comprehend search fund transactions also understand how to stage them. Constantly pushing the law firm to keep documents turning may not be in the best interests of the transaction and can lead to a negative relationship between the searcher and the law firm.

06 Be on the same team

There are many different items to negotiate in the context of the purchase and sale of a business. Some are purely legal points, and others are purely business points. Some points can be quasi-legal or quasi-business, depending on one's perspective. Searchers should rely on the advice of counsel regarding the purely legal points and should not rely on the advice of counsel regarding business points, such as the valuation of the business.

Post-acquisition, when there are bumps in the road – and there will be plenty – there will likely be ample blame to go around. Maybe the investors did not review the opportunity and interrogate the searcher enough; maybe the accountant missed items in financial diligence; maybe the lawyer missed items in legal diligence; maybe the lenders were too lax in their underwriting. Perhaps the searcher looked at the transaction through rose-colored glasses as a first-time business buyer running near the end of their search funds. Or the seller might have intentionally or unintentionally misrepresented things about the business. All or some subset of these items occur in many transactions.

Part of an ETA CEO's job is to accept responsibility and look for solutions. Blaming the deal team, including the lawyers, will likely not help move the ball forward. The business needs to continue to run. A purchase agreement is not an insurance policy. When a deal goes awry, there may very well be a claim to make against the seller of the business, but if that seller continues to be a vital salesperson, contact point, or figurehead within the company, then it might not be the right decision to send in the lawyer full bore to seek indemnification. Lawyers, investors, and others have been through these matters before, and the more experienced the lawyer, the more valuable the wisdom. The CEO would be advised to draw on it.

Some additional concepts to consider when working with a lawyer

We will close this note by sharing a few additional concepts to remember when working with a lawyer. We truly believe that lawyers can be terrific partners for an ETA CEO. They have sagacious advice and pertinent experience. A super lawyer can deftly propel a deal forward and gently guide the other side along. Despite this, young search fund entrepreneurs must remember that they control the company and the deal. The lawyer works for the CEO, not the other way around. The entrepreneur should never let the lawyer usurp a transaction. The entrepreneur should craft the deal with their counterpart, and it is the lawyer's task to paper the deal and make sure it is in compliance and that material risks are identified.

Staying on the topic of risks, some lawyers get spooked at any amount of risk. Maybe that is why they are lawyers and not entrepreneurs with capital at stake. There is risk present in every trade. Not every drop of risk can be mitigated, boxed, or shifted. It is the lawyer's job to identify and explain the risk to the CEO. The CEO can then decide what to do about it. Some risks are just part of the process and are acceptable. For example, if a searcher is purchasing a company for \$10 million and believes it is worth \$12 million, \$2 million of risk might be tolerable. In other words, a \$100,000 identified problem is not really a problem

and should not undo the deal. It is not tenable to eliminate all risks; stop trying. Furthermore, lawyers and legal advice are not an insurance policy against risk.

Although we just stated that the lawyer works for the CEO, we want to be a bit more persnickety in clarifying these relationship dynamics. The CEO must recall that the lawyer technically works for and represents the legal entity, not the CEO. The lawyer is not explicitly providing counsel for the CEO. If the CEO needs representation, they should seek their own personal attorney because that is not the role of corporate counsel. Sometimes, CEOs get this tangled since they generally hire a lawyer as an agent of the legal entity. Do not be confused. If the board of directors instructs the corporate attorney to draft a separation agreement for the CEO's dismissal, they will dutifully do so.

Sometimes, lawyers pretend they are businesspeople, and businesspeople pretend they are lawyers. The relationship and system tend to work best when people stay in their appropriate swim lanes. Lawyers can weigh in on business terms, but the CEO must remember that they own all commercial terms and agreements. If something goes sideways, that is on the CEO, not the lawyer.

When working with a counterparty, the goal is to complete a reasonable transaction that is fair enough for both parties. The objective is never to pulverize the counterparty and win on every single deal point. If a lawyer is overly muscular and aims to deflate their counterparty, they jeopardize the project. If a lawyer acts like a tough guy and tries to prove they are the smartest and most aggressive person in the room, it will be exhausting, and they are playing chicken with the entrepreneur's project. Entrepreneurs should avoid this species of lawyer.

Lawyers have a taxicab business model – they get paid as long as the meter is running, regardless of whether the car is moving or not. So, while we would never suggest skimping on legal services, we advise the entrepreneur to be wise about how and when a lawyer is engaged. The lawyer hopes for the entrepreneur's success, but they bill either way, whether fees are deferred until a deal is closed or not.

A mini-profile: a search fund entrepreneur working with a lawyer



Tom Klein (Harvard Business School 2011) was formerly co-CEO of [Morningside](#), a language services company that scaled into a significant global IP operator. Klein and his partner, Roland Lessard, acquired Morningside through a search fund in 2017 and successfully sold the business in 2021 after tripling revenue and growing EBITDA* by six times. Previously, Klein and Lessard were senior executives at Sterling, the world's largest background screening company. Klein reminisces:

When we were looking for a lawyer for our search fund, we were focused on finding someone who was a seasoned player, had a strong reputation in the ETA community, and would be well received by our investor group. However, we also wanted a neutral party who did not have a reputation of being investor-biased at the entrepreneur's expense – we wanted an independent-minded, up-the-middle person. We needed someone who understood the search fund model, pricing mechanics, and fee deferral concepts. Fit

* Earnings before interest, taxes, depreciation, and amortization.

mattered a lot since we would likely work closely with the person for five or ten years. Finally, we wanted a full-service firm offering most of the sub-specialty expertise areas we might need in the future – functions like international offices, human resources, tax, litigation, and debt financing. After interviewing a handful of potential partners, we selected Chicago-based [Raam Jani](#).

The law firm was a crucial partner in our journey. Raam did a great job in a very complex and stressful initial acquisition process. We bought the business from two partners in litigation with each other, and the deal was off and on four or five times over many months. The parties involved were numerous and their behavior erratic. Raam was a calm and diplomatic presence who patiently and unemotionally worked through all the obstacles and was instrumental in getting the deal done. Additionally, Raam helped us straighten out our customer and vendor contracting after the acquisition and get a much tighter set of templates in place. Our human resources function was also a bit messy initially, and Raam helped us clean up a bunch of issues there as well. Lastly, we bought our business right around the time when Europe's General Data Protection Regulation passed and a number of changes were made to independent contractor law. Our new company had to ensure compliance with both of these, and the law firm was able to provide expertise in those areas over the first few years.

No firm is perfect, and despite them doing a generally strong job, our company had some challenges at moments, too. Particular associates we worked with were excellent, but at times, the associates assigned to the team during some of our bolt-on acquisitions were inexperienced. It's important to remember that when selecting a lawyer or a firm, you are choosing a team that includes associates and paralegals. As CEO, you will have a lot of calls and interactions with associates, not just the lead lawyer. You want to get to know everyone on the team as well as the strengths and limits of their skillsets. Communication to work out kinks is critical, and we were able to build this constructively over time.

Search fund CEOs should aspire to partner with their lawyers and not just be clients. Our guiding philosophy is to treat lawyers how we would like to be treated – and not just the lead lawyer, but also paralegals and associates, who do much of the heavy lifting and grunt work. Getting to know the team and treating them kindly and with respect is so important. It's common to see private equity folks treat their lawyers with arrogance and even disdain. Making sure your legal team knows they are genuinely appreciated and valued goes a long way, and it's the right thing to do. Karma on a short deadline may come back to you favorably, too!

Conclusion

There are many superb lawyers in the ETA ecosystem, and as the community grows, we expect to see more. Entrepreneurs should intentionally and deliberately seek out whom they want to partner with and why. The lawyer relationship will hopefully last for years and be fruitful in many ways. This principal professional relationship is worth getting right by using the screening process we propose. CEOs should

fully understand the scope of services a law firm can provide. These services are supportive and will be the foundation of many business activities the operating company engages in.

If a CEO wants to have a vibrant relationship with their attorney, they should work on being the very best client ever. With some simple action steps, CEOs can position themselves as favored clients and receive the most thoughtful and timely attention from their counsel. Finally, entrepreneurs must clearly understand the nuanced dynamics in the client-lawyer relationship.

We wish you good fortune and fulfillment in your ETA trek. An outstanding legal partner will make your pathway smoother and less turbulent. Get the right lawyer for you, nurture the relationship, and maximize the skills and resources the lawyer can provide to your best advantage. Have fun, and with the right attorney by your side, we are confident you are on the way to success!

Exhibit 1: Questions to ask a potential lawyer

- How many active clients do you work with concurrently?
- What is your exact area of expertise and interest?
- Walk me through the role you will play in the acquisition process.
- What work will you do, and what will be delegated to associates and paralegals?
- Will you be my point of contact or will someone else?
- Can I see a sample engagement letter?
- Please provide a complete list of billing rates and any extra items billed.
- Can I have five references for outstanding client relationships?
- Can I have five references for client relationships that did not work well? (These will likely be harder to procure. They should also be taken with a grain of salt, given the human component and the fact that searchers tend to blame everyone other than themselves when something goes wrong.)
- Can you explain why a client relationship falters?
- What makes for a great client–lawyer relationship and dynamic?
- What makes for a poor client relationship?
- What is your sweet spot in terms of client size?
- What is your sweet spot in terms of client annual billings?
- Where and when do you add the most value?
- Is there any way you can help me beyond core legal services?
- Have you ever been fired by a client? Why?
- How long have you been at your current firm? Why did you leave your last firm?
- Do you have any plans to switch firms again?
- What are the easiest and hardest parts of working with your firm?
- What are your thoughts on litigation? Why, when, and how do you use that as a tool?
- How do fees work in busted deals?

This case has been developed for pedagogical purposes. The case is not intended to furnish primary data, serve as an endorsement of the organization in question, or illustrate either effective or ineffective management techniques or strategies.

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Endnotes

¹ Raam S. Jani is a partner at Chicago-based law firm BakerHostetler.

² A. J. Wasserstein is the Eugene F. Williams, Jr. Lecturer in the Practice of Management at the Yale School of Management.