

Hiring a Consultant Are You on the Same Page? *

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For most organizations—for-profit and non-profit alike—the decision to hire a consultant is made with a great deal of thought. There's a specialized project to be done and the price tag is likely to be high. Funding and reporting relationships can be a worry. Timing is often critical. Yet, clients who come to me needing legal help because things didn't work out as they'd hoped tell me they never put their agreements with consultants in writing. "We didn't think we needed anything formal." "We thought we all saw things the same way." "Other people we know worked with this guy and everything went fine."

It's understandable. We may be afraid that putting an agreement in writing will interfere with flexibility, upset everyone's good feelings, or suggest we don't trust each other. In my experience, the opposite has been true.

Strengthen the Relationship to Improve the Project

There are real benefits to be gained by putting a written agreement in place before the project begins. When I have worked with clients to prepare a description of the services they need and ask their prospective consultants for input, the clients and consultants invariably discover that they have not been envisioning the project in quite the same way. With underlying assumptions aligned and a vision shared, a stronger relationship is established, trust is increased, and the likelihood of a successful project improves.

The Details Will Follow

Once you've clarified with your consultant what you both want to accomplish, other details of your agreement will follow more easily. For example, you may realize that a payment schedule that tracks work as it is completed makes more sense than the ½ up front, ½ upon completion arrangement you'd initially considered; it may occur to you that preliminary drafts need to be reviewed before the final product is completed; costs may become apparent that you hadn't noticed. You may discover, through the process of

crafting the agreement, exactly when and where flexibility is most needed.

What Else Should Be Included?

A consulting agreement should contain additional legal and business provisions such as the following:

Intellectual property rights: Who is going to own the products developed by the consultant? How can you assure you'll keep the rights you expect? The consultant may insist on retaining certain rights.

Representations: Do you need confirmation from the consultant that he has the requisite license to perform the work? Will he or she need to comply with anti-discrimination laws or other workplace requirements?

Confidentiality: Will you be disclosing any sensitive or proprietary information to the consultant during the course of the project? You'll need to address confidentiality concerns.

Liability: Are there any risks associated with the consultant's work or the products the consultant will be developing? You should consider how best to minimize your liability.

Independent contractor: Have you clarified with the consultant that no employment benefits will be provided? You'll need to assure that the conditions under which the consultant will be working meet both state and federal criteria for an "independent contractor."

Termination: What will you do if things aren't working out? What if the consultant cannot complete the work? What if your economic situation changes and you can no longer afford the project?

Dispute resolution: Disputes are a part of life. Is there a process you can put in place to resolve a dispute if it arises?

Having a detailed agreement with your consultant—and making sure you're both on the same page—can do more than protect your legal interests. It's an opportunity to create a real collaboration that produces better results.