

6 Habits Of A Successful Tech Lawyer

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As with any type of industry expert, tech lawyers vary in their strengths and weaknesses. Most reputable lawyers with their own practices are competent and can handle the typical corporate work of a young startup, or a straightforward venture capital financing. But for tech entrepreneurs, “competence” should be a given for your lawyer and only part of the equation. Tech entrepreneurs deserve lawyers that not only execute at a competent level but can operate as true partners in your business. By that, I mean someone who understands core principals of your business, can anticipate your needs, and is highly responsive — particularly when thorny issues arise (and they will).



Caine Moss

Having practiced in the Valley for 18 years, I’ve witnessed firsthand the habits of the most successful lawyers servicing the tech industry, and I’ve tried to incorporate them into my practice. Below are a few of the practice points that the top lawyers incorporate into the services they deliver, and that you should expect from your lawyer as an entrepreneur of a tech startup.

1. Provides Business Solutions

One of my early mentors was Larry Sonsini, the renowned technology companies lawyer involved in the deals and companies that shaped Silicon Valley. Larry used to attribute the incredible success he’s had in his career to being a “business solutions provider,” first and foremost, to his clients. The companies we work with move incredibly rapidly, are on tight budgets, and are run by high achieving, highly intelligent entrepreneurs. They don’t have time to sit through hours of wasteful negotiations, to read legal memos that don’t point to concrete plans of action, or to have their lawyer defer to them on every “business” issue. They want simple, clear answers to complex issues. They want to know what to care about in deals, as well as what not to care about. They also want to benefit from the pattern recognition of a partner who’s sat through thousands of board meetings and closed hundreds of venture and M&A deals. What have other CEOs in similar situations done to resolve the problem? The most successful ones have found people at every level whose expertise and judgment they can leverage to solve the problems that they themselves have neither the time nor inclination to address — including legal services. Those partners are business solutions providers, and you should expect your partner to be one for you.

2. Handles Big Picture Strategy

Even if your partner isn't turning the documents on your venture financing or drafting your founder stock purchase agreement, she should be "present" for your company. Ideally, she will have negotiated the term sheet for your venture financing or merger and be familiar with the key deal terms, and ensure that those key terms are reflected in the documents. In almost every deal, there bubble up key open business points to resolve with your transacting party. Your partner should be front and center in the resolution of those issues. She should know the market for important deal terms, and also have a handle on creative solutions to sticking points. Similarly with general corporate and equity matters — founder vesting and acceleration, board composition, founder equity splits and new "technology" such as supervoting stock or Founders Preferred Stock — your partner needs to be well versed in the pros and cons of each feature, when they are appropriate, and when they should be avoided. This high level of expertise is what you are paying high billing rates for, and you should demand it from your partner.

3. Delegates Appropriately

You may have a great relationship with a partner at a firm in the Valley, someone you trust, who seems savvy and who may even come highly recommended from other clients. But that's not necessarily the person who will (or should) be doing the bulk of the day-to-day work for your company. And that's OK. You don't want the partner handling your relationship to be drafting board resolutions and stock plan amendments. It's not an efficient use of that person's skill set and expertise, and you don't need to be billed at \$800 per hour or more for those kinds of tasks. Junior associates who bill out at half the price are more than capable of handling these diurnal tasks under the supervision of senior associates or partners. That said, your partner should review everything that goes out to you or opposing counsel. Your partner is ultimately responsible for the quality of her team's work product, even if she didn't originally create it.

4. Leverages Firm Resources

Most partners in Silicon Valley work within larger, full-service law firms with expertise that is or likely will be relevant to your startup. At our firm, for example, we have experts that specialize in tax, equity compensation, debt financing, IP transactions and commercial disputes. Often, clients draw the wrong conclusions when their partner leverages the expertise of a specialist in an area to problem-solve for that client, thinking it unnecessarily drives up costs. In my experience, the opposite is true: leveraging experts is usually the most efficient way to arrive at a solution to a legal problem. I've seen lawyers at smaller shops spin their wheels (and drive up legal fees in so doing) to arrive at an incomplete or even incorrect answer, simply because they don't have a subject-matter expert at their fingertips. Issues of first impression to a general corporate lawyer often involve subject matter that specialists advise on daily. Make sure you know the pockets of expertise within your law firm, and encourage your partner to use that expertise as needed.

5. Offers Project-Based Billing

A great way to avoid billing disagreements is to insist that your partner project-based bill whenever practicable. This is a feature I include in most of my engagement letters and endeavor to implement whenever I'm not handling a matter of first impression. Here's what I mean: at the start of any project (for example, forming your company, drafting a privacy policy, negotiating your Series A financing, etc.), ask your partner to give you an estimate of how much the project is going to cost, within a reasonable band. Have the law firm commit to performing the project within that range, and to absorb any billable hours that come in above that range (absent unforeseen circumstances that occur during the course of the project that you and your partner have communicated about previously). Project-based billing gives

you great visibility over your legal spend, forces your partner to manage her team to execute within budget, and minimizes a primary source of friction between a lawyer and her client.

6. Remains Flexible With Billing

Even when a partner utilizes the tools available to her to predict billing, inevitably over the course of your relationship, you will receive bills with time recorded that seems high for a particular task, is the result of an error made by an associate, or that you simply didn't expect or authorize. If you don't feel comfortable paying for this time, raise the issue with your partner. This can be a sensitive subject among law firms, but the bottom line is that your partner should be flexible when it comes to billing discrepancies, and be willing to write off time. I'm not saying that your partner should write everything off that you don't want to pay for — law firms, like any other enterprise, are a business. But she should be willing to at least explain each time entry and show willingness to write off time that should not reasonably have been billed. Good partners realize that the goal is to build long-term relationships with their clients, not nickel and dime them every month.

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