

Reaching Out to Small Businesses



Generating new business is a constant challenge for attorneys in general, but this is especially true for attorneys representing small businesses because:

- small businesses often require and certainly can afford less legal assistance than larger companies;
- there is a high failure rate among new businesses; and
- successful small businesses are often acquired by larger companies with their own counsel.

The good news is that small businesses account for a huge portion of the U.S. economy. Therefore, it is important for an attorney working with small businesses to take advantage of every reasonable opportunity to help people understand what they do and to remain in the forefront of people's minds.

The objective, of course, is to have people to think of you whenever they come across someone in need of a business lawyer. Perhaps not surprisingly, it is often the people who know you best on a personal basis that understand the least about what you do. These are people who already like and trust you—two huge hurdles for obtaining a referral or business from anyone—but don't know enough about your business to recognize when they should refer someone to you or, worse, when they need your services themselves.

Many of the letters in this chapter contain examples of how to relay both a primary message, such as a new address, and information or a reminder of

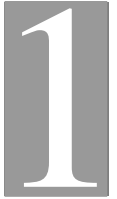


the attorney's area of practice or expertise. The point is not to miss an opportunity to include that secondary message.

“Snail mail” is still probably the preferred method for these types of correspondence because these letters often remain on people's desks for a period of time after they are received when delivered in tangible form (e.g., season's greetings). With rapport, trust, and an understanding of your practice, every one of a small business lawyer's contacts becomes a potential referral source for business.

Marketing Letter Featuring an Attorney and Reception

CHAPTER



Reaching Out
to Small
Businesses

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: FIRM Welcomes ATTORNEY

Dear {Salutation}:

Please join us in welcoming ATTORNEY to the FIRM as a Partner in the CITY office, where she will continue to focus her practice on general corporate, securities, and commercial transactions.

ATTORNEY serves as outside General Counsel to a variety of companies and individuals engaged in a broad range of industries, including Real Estate Development, Financial and Professional Services, Manufacturing, Software, Retail, Biotechnology, and High Technology. She has lectured and written on a number of topics of interest to the business community, such as Venture Financing and Finding Practical Solutions to Common Business Problems.

[ATTORNEY leadership positions, memberships, and awards.]

ATTORNEY is a graduate of the LAW SCHOOL (J.D.) and UNDERGRADUATE UNIVERSITY (B.A. in Political Science).

We invite you to meet ATTORNEY at the following informal reception welcoming her to FIRM:

DATE:

TIME:

LOCATION:

RSVP:

Thank you.

Very truly,

FIRM NAME

Lawyer Name

Marketing Letter Inviting Contract Review

{Date}

{Name}
 {Company Name}
 {Address}
 {City, State, Zip Code}

RE: Contract Evaluation

Dear {Salutation}:

I'm sure you are familiar with the term "boilerplate," used to refer to certain provisions in contracts or entire agreements as standard, acceptable terms not warranting much time or legal consideration. However, not all boilerplate is created equal. A client of ours recently received a mutual Non-Disclosure Agreement (NDA) from a prospective strategic partner in which the recipient of confidential information was given the right to free use of "residuals" of such information. As defined in the agreement, "residuals" included ideas, concepts, know-how, and techniques, so that although patented ideas would be protected, trade secrets would not. This is an example of a type of agreement often entered into and accepted as "boilerplate," but this particular NDA warranted extreme caution in entering and relying on as protection in connection with the disclosure of proprietary information.

This is a reminder to carefully draft your own set of boilerplate provisions for contracts and to specifically review and consider the boilerplate provisions in agreements presented to you by others. As always, we are pleased to assist you in this regard.

Please give me a call to schedule a meeting to discuss your preferences for standard contract provisions (e.g., dispute resolution) and devise a strategy for bringing your contracts into conformance.

Very truly,

FIRM NAME

Lawyer Name

Enclosure

Marketing Letter Featuring Reminder Re: Corporate Tax Returns

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Corporate Tax Returns Due March 15

Dear {Salutation}:

The deadline for corporate tax returns comes earlier than the individual tax return due date. It can sneak up on you if you are an entrepreneur or founder dealing with corporate returns for the first time or just wrapped up in the whirlwind of running an early-stage business. If this one caught you off-guard, consider requesting an automatic extension for the filing of your federal and state corporate tax returns, and contact a tax preparer who can assist you with your tax-filing obligations. Please note that an extension of time to file the return does not extend your time to pay.

Please do not hesitate to call me with questions about corporate returns or any other matter. I hope you and the business are doing well.

Very truly,

FIRM NAME

Lawyer Name

Marketing Letter Featuring a Change in the Law or Recent Decision

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Non-competes Get New Life in Texas

Dear {Salutation}:

Texas has historically refused to enforce non-competition agreements, except in rare cases where the agreement was made contemporaneously with a disclosure of confidential information by the employer. However, the Texas Supreme Court changed direction on October 20, 2006, by holding that an at-will employee's non-competition agreement becomes enforceable if the employer imparts confidential information to the employee at some point during employment. *Sheshunoff Mgmt. Servs., L.P. v. Johnson*; No. 03-1050, slip op. at 1 (Tex. 2006).

As a result of this opinion, the Texas Supreme Court has resurrected the enforceability of non-competes in Texas. Of course, non-competition agreements remain largely unenforceable in the state of California.

Please do not hesitate to call me directly with any questions with regard to the above or for assistance in reviewing or drafting an appropriate covenant not to compete.

Very truly,

FIRM NAME

Lawyer Name

Marketing Letter Congratulating a Small Business

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Feature in NEWSPAPER

Dear {Salutation}:

I read the recent feature on you and your business in the NEWSPAPER and found your background and business model quite compelling. Congratulations on the successful launch of a business that is certain to have a positive impact on the community and much financial success.

Enclosed please find a brief description of the types of services we provide to small businesses such as yours. I would be pleased to meet with you for an initial consultation, free of charge, to determine whether we could be of any assistance to you as you continue to grow your business.

Please feel free to call me directly at your convenience. Once again, congratulations—and I wish you every success in your new venture.

Very truly,

FIRM NAME

Lawyer Name

Enclosure

Seeking Referrals for Other Services for a Client

{Date}

{Name}

{Company Name}

{Address}

{City, State, Zip Code}

RE: Seeking a Litigator for a Business Client

Dear {Salutation}:

I am looking for an employment law litigator for one of my small-business clients, COMPANY, as it may soon find itself in litigation with an executive who has been given notice of his termination and relieved of his duties. COMPANY is not currently planning to initiate litigation against this employee, although it has numerous issues regarding the executive's mishandling of company funds and property, in addition to his dereliction of duties and questionable loyalty to the company. However, the executive has demanded a severance payment and threatened to bring suit. We're not sure what the theory of liability might be.

We represented COMPANY in connection with its incorporation in Delaware five years ago and have assisted it with three rounds of financing and a variety of corporate transactional matters in the intervening years. It is a valued client of FIRM and will likely require the assistance of other legal specialists in the years to come. Please let me know whom you can recommend for its current situation.

As always, if you know of anyone who may benefit from our counsel on any corporate or securities law matter, please send that person our way. Thank you!

Very truly,

FIRM NAME

Lawyer Name

Seasonal Greetings

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Happy Holidays!

Dear {Salutation}:

This is the time of year we reach out to friends, family, and colleagues to let them know how much we appreciate them and to give our warmest wishes for the holidays and the New Year. We don't say it often enough—thank you!

It has been a busy year for many of you forming new entities, learning to grow, forging strategic partnerships, and closing financing transactions, both at home and at the office. We're proud to have been at your side each step of the way.

Best wishes for an enjoyable holiday season and a very happy New Year!

Warmly,

FIRM NAME

Lawyer Name



Notice Regarding New Office Location

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: We Moved!

Dear Clients, Friends and Family,

I am very pleased to announce the completion of the new FIRM headquarters in CITY. Please keep an eye out for an invitation to our office-warming party currently scheduled to take place on DATE. In the meantime, we will vacate our current location after hours on Friday, DATE, and be ready for business as usual at the new offices on Monday morning, DATE, where we will continue to serve clients in the areas of corporate and business transactions, with a focus on providing general counsel services to emerging companies.

Effective DATE, I can be reached as follows:

{Name}
{Firm Name}
{Address}
{City, State, Zip Code}
{Telephone}
{Mobile}
{E-mail}

Enclosed please find a business card with my new contact information. I look forward to seeing you soon and working with many of you in the years to come.

Very truly,

FIRM NAME

Lawyer Name

Enclosure

Estimating Legal Expenses for a Start-up

{Date}

CHAPTER

1

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{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Estimating Legal Expenses for Your New Venture

Dear {Salutation}:

I enjoyed reading your Executive Summary. I see a lot of potential for your business concept. For what it's worth, I have attached a copy of the template I give to my clients for their Executive Summaries.

Below is a discussion of the some of the types of legal expenses you may encounter in your new venture. But first, I have to give you my disclaimer about estimates (which you'll see again in our engagement letter, if we get to that stage):

Any estimate of fees and costs associated with our engagement is only an estimate, not a fixed fee or an agreed limit. The actual fees and costs incurred will depend on a variety of factors, some of which are beyond our control. At the same time, we understand that you may wish to establish a budget for your legal expenses and will work with you to establish such budgets on request. We will also work with you to help make the most efficient use of our time as practicable. Although we will perform our professional services to the best of our ability, we trust you understand that we cannot guarantee, and we have not guaranteed, any outcome.

We should probably talk further about what type of entity makes the most sense for this business. However, based on your stated goal of taking the company public, and the likelihood of having to raise venture capital on the way to an IPO, it probably would be best to form a corporation, and it may be beneficial to form it in Delaware rather than California. Legal fees, filing fees, filing service, and agent for service of process costs will vary depending on where the company is formed and the number of states in which you must qualify to do business, among others elements.

A Shareholder Agreement among founders is highly recommended. Budget some cost for a basic agreement to document rights of first refusal, buy/sell provisions, etc. This can take a lot of time and cost a lot more if the founders don't readily agree on a valuation method, vesting requirements, or transfer restrictions in general—or don't really know what they want to cover. However, I think it is worthwhile doing, even if it becomes pricey, because I have seen companies fail over disputes among founders in the absence of an agreement (not that an agreement is any guarantee, but it can be a big help).

Investor documentation and securities law compliance in connection with early-stage fund-raising can be done relatively inexpensively if you limit yourself to “Accredited Investors” as defined in Rule 501 of Regulation D under the Securities Act, a small number of investors, and raise money in California only. An Accredited Investor has individual income (exclusive of the income of his spouse) in excess of \$200,000 for each of the two most recent years, or joint income with his spouse in excess of \$300,000 in each of those years, and reasonably expects the same income level for the current year; or has (either individually or with his spouse) a net worth in excess of \$1 million. Some entities also qualify as Accredited Investors. Accredited Investors are generally deemed to be capable of protecting their own interests in making an investment decision and should be given full access to company information and management in the conduct of their due diligence, subject to an appropriate confidentiality agreement.

Your costs will also be lower if all of your investors are in California, as you will avoid having to file multiple securities law notices and pay multiple filing fees. However, having investors in a number of states is not a real problem (as compared to accepting non-Accredited Investors); it will just mean we'll have to file notices with the SEC and each state in which you sell shares, and pay the applicable state filing fees, as opposed to a single notice and a single fee if everyone is in California. Therefore, your legal costs in connection with early-stage fundraising can vary dramatically. Based on our telephone conversation the other day, if you're only raising funds from one or two Accredited Investors in California, investing in Common Stock (as opposed to Preferred), your legal budget for the offering can definitely be on the lower end of the spectrum. However, if it turns out your investors want venture capital-style documentation (e.g., preferred stock, shareholder agreement, voting agreement, legal opinion, etc), which more and more high-net-worth investors (or “Angels”) require, your legal costs will be much higher.

Trademark registrations are recommended, and the cost varies depending on the number of marks and the number of classes of goods in

which each mark is to be registered. The USPTO filing fees for applications completed online are currently \$275 for each class of goods or services for each mark being registered. Our fees will depend on the amount of time spent. Professional search costs (to determine availability) can be expensive, but a lot of my clients do their own searches using online resources and skip right to the application itself if the mark appears to be available. Of course, relying on your own research could result in an investment in a mark that you are ultimately not able to register.

There will, no doubt, also be other contractual arrangements to document along the way, such as for production, manufacture, distribution, etc. Also, if you don't already have one, you should be using a Nondisclosure Agreement (NDA) before you reveal any details of the proposed product/business to third parties. I can prepare a form NDA for you if you need one. Also, I have sample agreements for a wide variety of circumstances that I can use to prepare whatever types of agreements you may need along the way. However, it should be noted that third parties often insist on using their own forms, in which case you'll want me to review and/or revise them before you sign. I'd suggest including room in your budget for these sorts of ongoing legal drafting and review projects that inevitably arise along the way. Some months may go by without using the budget, and some months may burn up several months' worth of the budget. Simple form contract preparation or review can take as little as one-half hour, while complex contractual arrangements can cost a fortune to complete. I don't imagine you'll encounter anything too complex in the beginning, but since you don't know exactly what you will encounter, you would be wise to have something in your budget on an ongoing basis.

Rather than going on and on, let me just say that I am very efficient with my time, having practiced in this area of law for many years, and will work with you to attempt to keep your legal costs well within your budget.

Please do not hesitate to call me with any questions with regard to the above. I hope to have the opportunity to work with you on this exciting new venture.

Very truly,

FIRM NAME

Lawyer Name

Enclosure

Following Up on an Initial Phone Call

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: Legal Services

Dear {Salutation}:

Thank you for your telephone call on DATE. I enjoyed speaking with you. Your proposed venture is intriguing.

[I would like to discuss the matter with you further to determine whether it makes sense for us to work together on this project. Please give me a call at your convenience to schedule an initial meeting. The first hour of consultation will be free of charge.]

[I look forward to discussing the matter with you further at our meeting on DATE at TIME. This confirms that the first hour of our consultation will be free of charge. In the event you decide to retain us for legal services, I will send you our engagement letter and retainer request.]

[Unfortunately, as we discussed, FIRM will not be representing you in this matter. Best wishes for success in your venture.]

Please do not hesitate to call me with any questions with regard to the above.

Very truly,

FIRM NAME

Lawyer Name

Engage or Decline After an Initial Meeting

{Date}

{Name}
{Company Name}
{Address}
{City, State, Zip Code}

RE: [Contract for Legal Services] [Declining Representation]

Dear {Salutation}:

It was a pleasure meeting you on DATE.

[Pursuant to our discussion, I have enclosed our engagement letter for your review and consideration. To retain the firm to assist you in moving forward with your venture, please sign the engagement letter and return it to me with your retainer.]

[Thank you for considering FIRM for your legal needs. However, as we discussed, the matter for which you were considering retaining the firm is outside our area of expertise, and it does not make sense for you to retain us to provide legal services to you at this time. This confirms that our discussions concerning this matter are covered by the attorney-client privilege, even though you did not ultimately decide to engage us as counsel.]

Please do not hesitate to call me with any questions.

Very truly,

FIRM NAME

Lawyer Name

Enclosure