

Hiring a Legal Investigator

There are several key characteristics and capabilities to look for in a legal investigator depending on the position to be filled. Is the hire for an ad hoc individual matter, a continuing ongoing source of litigation support or a staff position as a case manager? In my view, each law firm involved in litigation matters should have available on staff or consistently available as a consultant, a legal investigator to oversee and coordinate investigative activities on all cases within the practice. This column will provide the highlights of what you should look for before you hire or retain a legal investigator. (The term "his" is not meant to be gender specific.)

You must first evaluate your needs, identify the case requirements and assess key points of knowledge required of the legal investigator. Clearly defining your real objective in specific terms is a must. The candidate should be prepared to demonstrate examples of having fulfilled a similar assignment(s). How current he is on the law will give you an indication of how well he can fulfill your stated purpose.

The investigator's preparation to discuss the prospective case(s) and his initial analysis of the strategy and tactical approach in obtaining the required information should be thoroughly discussed. This upfront definition and planning establishes the foundation for productive and relevant investigative results.

The legal investigator is a special breed who fills a special niche in the legal community. He seeks only the unvarnished truth, is committed to the facts as they are verified, is competent in eliciting information and gaining cooperation in a hostile environment, has compassion for those that are injured or swindled, and is even a world class locator of people and evidence without doing anything illegal or underhanded. And despite changes in the law or the dynamics of a particular case or professional relationship, he will remain one of the most valuable tools an attorney can have.

Establish an open line of communication with your investigator. A telecon, or encrypted electronic communication reporting process is the best method of auditing the investigative effort. This one simple operational agreement will minimize irrelevant activity, and provide for a rapid response to fast moving changes in newly discovered case evidence. The knowledgeable, skilled legal investigator will draw out of the attorney real evidentiary needs over the course of the communications.

The additional benefit is you have a method of tracking the trends on the case and balancing what others have told about the event to the facts determined by your legal investigator. The competent investigator will rarely tell you what you want to hear, he will always tell you what you must hear. If this kind of candor is offensive to either, it is best to consider someone else.

Maintaining a continuing audit of the development of the case is essential. The legal investigator can work in a vacuum, but that could prove costly. The method and frequency of contact with you should be initiated by the legal investigator. If not, then question how focused and disciplined he will be in knowing when to cease or continue an effort. To everyone that is in contact with your chosen legal investigator, he is you and your firm. Each contact can generate potential new and profitable business. He can not represent your firm well if communication is poor.

One clear and positive indicator is if the prospective legal investigator asks you various probative questions to focus what you say you want to determine so he can facilitate obtaining what you really need. He will need to determine from you how the information he will obtain will be specifically used.

He should want to know the relationship to the litigation purpose, otherwise, he will likely spend valuable dollars on items that are not relevant. It is possible that information documented will not make a favorable differ-

ence in the case, but could very well adversely affect the case. The skilled, knowledgeable legal investigator will be able to explain your options during or before undertaking the matter.

There are many requirements for a legal investigator, and if not on the legal support staff, then he must be licensed by The Bureau of Security and Investigative Services through the State of California Department of Consumer Affairs if a criminal charge is involved. In many instances, the candidate will be crossed licensed by the California Department of Insurance as well. If licensed by only one, you should know the holder of an independent adjusters license can legally investigate third party civil litigation and civil defense but can not handle any area of investigation related to criminality. Criminal and domestic cases are the exclusive domain of the licensed legal private investigator.

In addition, verify all Federal, State and local licensing requirements have been complied with. Request a certificate of errors and omission and professional malpractice insurance of not less than 1 Million dollars in the aggregate. Perhaps naming you or your firm as an additional named insured would be prudent.

There are a number of local, state, national and international professional associations to which an investigator can belong, all of which offer an alphabet soup of credentials and continuing legal education. Many of these associations have web sites and you should verify not only is the subject a member as claimed, but what process was undertaken to obtain the credentials. Some of these organizations award credentials merely by joining and others by taking a written or oral exam.

The exam offered is critical. Several deal with only the bylaws of the association and not the real world of investigative knowledge and skill. Currently, the National Association of Legal Investigators (NALI) offers the best certification program known to this writer and is known as the CLI (Certified Legal Investigator.)

Do not confuse a litany of credentials with the potential for a candidate to obtain the necessary results. There are many instances wherein it is not the ability of the individual investigator, but the scope of his network of resources that can be a measure of potentially great results.

In addition, the number of years in the business and areas of specialization (all investigations are not the same) are important from a standpoint of seasoning and networking. The investigator should want to learn to understand those issues you do not yet understand about the case. His experience with similar matters will enable him to quickly learn this missing information giving it an immediate priority.

He must be current with today's technology and understand the methods required to maximize on-line search results. This one skill alone can save untold frustration and limit cost. However, it is complete folly to believe a thorough investigation can be accomplished on a computer through on-line databases.

He must know the facts of your specific matter and know how to finesse support for those facts. This is an essential skill, otherwise a generic interview will be obtained and a potentially valuable witness, comment or document might slip through the proverbial crack in the woodwork. He must develop from those facts a strong vision of the case. The view must be positive.

The skilled legal investigator will be able to see in a case what no one else might see and develop that view within other theories of the case. He must also know when not to interject his view of the case being handled as well, knowing what is and is not disclosable.

You will want someone that can make a strong commitment, has a level of acceptable competency for the matter at hand, is compassionate to the end clients and has the strength of character to keep you informed of the facts as they evolve, presenting you with the facts as they are, not as you or the end client might wish they were. The

legal investigator is candid and skilled enough to be charming and engaging when eliciting information.

The legal investigator understands and knows how to deal with the unreasonable, illogical or self centered. He will do what needs to be done legally. The legal investigator must be there to make you successful. The legal investigator will give you, his client, his very best personal effort. In some instances you will oppose that believing the best effort is not warranted, depending on how you value the status of possible resolution.

The most common manner in which a legal investigator is compensated is an hourly fee for service, plus out of pocket expense. There are other methods, especially for the sole practitioner. There is a prohibition against sharing in the attorneys contingency fees. There is no such constraint against direct contingency arrangements between the legal investigator and the end client or a hybrid thereof.

Several practitioners can combine resources and retain an investigator to devote a pre determined amount of time handling cases for each practice for a fixed monthly guaranteed fee. A recent trend is for the legal investigator to discount his usual fee until the matter is resolved, thereafter being compensated at a premium for the difference when the matter is favorably resolved. The legal investigation will always do far more than what he is paid to do.

In conclusion, a paraphrase of Theodore Roosevelt puts it best.

"It is not the critic that counts. It's not the man who points out where the investigator stumbles, or how the doer of deeds could have done them better. The credit belongs to the investigator who actually is in the arena, who strives violently, who errs and comes up short again and again, (but) who knows the greatest enthusiasms, the (necessity of) great devotions, and spends (physically and emotionally) himself in a worthy cause, who if he wins knows the triumph of high achievement, but who if he fails, fails (knowing all the facts) daring greatly, so his place will never be with those cold and timid souls who know neither victory nor defeat."

The above is precisely the legal investigator you want to retain.