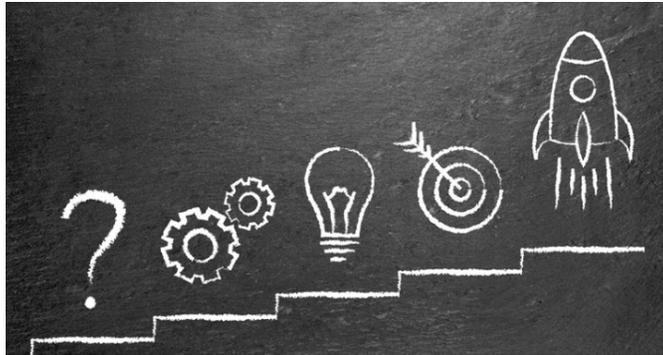


# Media Mention: Jeremy Wilson's 'Insightful' Legal Advice to Small Business Owners

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**Small business owners face a lot of challenges, and probably never think about seeking advice from an attorney until he or she needs one.**



The Greater Wilmington Business Journal asked four lawyers why ongoing counsel can be important for entrepreneurs. This article focuses on the responses given by Ward and Smith litigation attorney Jeremy Wilson.

From the "Insightful Discussion:"

## **What can a client do to prepare for an initial meeting with an attorney?**

First, think through all the questions you have for the attorney. Second, prepare to be brutally candid and open. And third, bring all relevant documents to the meeting.

Remember, there are no bad questions. And, often, issues that are not the subject of the initial representation will overlap, from a legal perspective. Those areas are important to talk through with the attorney. In my personal injury practice, for instance, issues that may seem minor to a client can have a real effect on their case – whether involving insurance coverage, employment, or other issues.

Before an initial meeting, the client should make a list of all potential legal issues and related questions on their mind. A good attorney will ask the right questions at that meeting to identify the important issues, even those not initially raised. But brainstorming these at the beginning will help this process. Organizing and bringing any documents involving the topics at issue is also important.

Finally, a client should consider their immediate and long-term budget for legal services, so they can put together a strategy to get all necessary work done in an efficient and predictable manner.

## **How can an attorney assist an entrepreneur in starting his or her business?**

The most important role an attorney can play for a new business is that of a trusted advisor – to be there with the business to provide advice, identify legal issues and provide quality legal service as the business grows. Each business is different, and there is a wide variety of legal issues a new business may face. Having a committed attorney or law firm that is responsive and experienced will be helpful to any entrepreneur.

For a new business, such as a start-up, attorneys can help the business protect its intellectual property and formalize the relationship among the business's founders by establishing some sort of business entity with formal organizational documents and agreements in place.

Failing to protect a business's intellectual property [IP] is failing to properly invest in a business. The type of IP protection needed varies based on the type of business – whether it is trademark, patent, copyright protections, or all the above. Protecting the business's intellectual property will allow the business to grow effectively and prevent another company from suddenly and unfairly benefiting from your great ideas and hard work, leaving your business with limited recourse.

Further, a new business simply must put the right business structure in place – whether an LLC, corporation, or some alternative entity – with the right documentation that addresses numerous related legal issues. Doing so protects the owners from personal liability and prevents other situations that may jeopardize the business, such as a 50/50 deadlock over the business's future and similar issues.

Having an attorney help to protect a new business's IP and formalize the relationship among the owners also has other important benefits involving future investors – it shows investors that the new business has its act together, makes the investment more attractive and protects investors from unintended risks.

### **What issues could have been prevented by ongoing legal counsel?**

Failing to explore the protectability of the company's potential intellectual property can be a big mistake. This may involve a business brand that unintentionally infringes on another company's trademarks, or an invention that infringes on another's patent. Not analyzing these issues early can mean significant investments are lost, or, at best, a lot of work and money is required to mitigate the problem.

Additionally, failing to have sophisticated organizational and governing documents in place has resulted in numerous problems, including an owner facing personal liability or a business being derailed by an owner's life-changing event, such as death, incapacity or divorce. The right foundational documents can address all these issues, as well as unanticipated issues, but many businesses do not execute such documents.

Ongoing legal counsel can also make a real difference in employment-related matters. Many businesses try to address all employment issues themselves, but problems arise when they are confronted with an employment-based complaint or controversy and did not have the proper policies and procedures in place.

Simply having an ongoing employment attorney that a business can call on before taking any official employment-related actions can help save a company from expensive litigation and government investigations.

### **What should an entrepreneur know about the patent process?**

Our firm's patent attorneys often find that new clients are surprised by how complex the patent process can be, particularly once you get past the initial application. Our country's patent procedures are not a mere registration process; there is a complete examination of whether the proposal is patentable and what patent protections are appropriate. The initial work to prepare and file the application is fairly predictable, but the examination stage is difficult to predict.

There also can be meaningful differences in the process based on the type of patent sought. Electrical or software applications can take much longer than some mechanical arts areas, for instance. A good lawyer with experience in the particular patent area at issue can help advise a client on what to expect from timing, costs, and results perspectives.

Entrepreneurs should remember that they are dealing with a fairly complicated process that is controlled by the federal government. Getting a lawyer involved early, and starting the process early is important. This is particularly true now that the U.S. patent system has adopted its first-to-file approach.

### **What new issues and concerns has technology created in terms of patents?**

New areas have opened up to patenting that include artificial intelligence, software, and other computer-based implementations. The patents and prospective patents around these specific technological areas are more crowded, with more individuals seeking nuanced patent protection.

With limited or no precedent around some emerging technologies, there also is less predictability in terms of what the U.S. Patent and Trademark Office (USPTO) may deem patentable. Some of these areas include individuals seeking patents for a process historically done manually that now can be accomplished using software or some other technologically advanced process.

Interestingly, technology also has transformed how inventors and attorneys interact with the USPTO. Patent applications are now analyzed through electronic filing, videoconference, and other technology-based processes, as opposed to traditional mail and lengthy in-person meetings in Washington, D.C.

### **Why are trademarks important to a business, and what should be done to protect them?**

The root of trademark law is consumer protection – by protecting trademark rights, we reduce consumer confusion, and consumers accurately can understand the source of a particular good or service.

However, trademarks have major benefits for a business. A distinctive name or logo creates a meaningful brand that will identify a business and distinguish it from others. A good trademark is an effective marketing tool that can provide a consistent and ongoing image to customers. It also prevents imitators from trying to unfairly profit off a business's hard-earned brand.

First, a business must determine if it actually has a true trademark. Overly descriptive names, such as "Wilmington Store," are not trademark-able; only distinctive marks are. Further, it may be that a business's great idea for a name infringes on another company. While there may not be any overlap in sales initially, what happens when a business grows to other states or develops an online presence? It, therefore, is important to consult an attorney early on to help identify actual, protectable trademarks.

From there, the process is fairly straightforward. Federal trademark filings provide a business with the right to use that mark nationwide. And compared to some other legal services, such as patents, they are

fairly inexpensive and easy to obtain.

Simply put, a business must identify whether it has potential trademarks early and register them appropriately – and invest the resources to do this the right way. Otherwise, the business may find itself paying later when it is confronted with claims of infringement from another business or must completely rebrand itself with a different name, logo, URL and/or other identifying marks. This happens more frequently than you might think!

### **How should employers draft a social media/internet policy?**

Having a bad social media/internet policy is worse than not having one at all. A business should consider what it would like to regulate based on the type of work involved and the roles of its various employees. Whether or not the company provides access to company computers or other company-owned systems that might access social media – and what the desired policy for company property may be – also should be considered.

Given the complexities involved, the business should then consult with an attorney. Our law firm's employment attorneys, for example, routinely draft social media and/or internet policies that address issues like: use of company equipment/systems and company intellectual property when posting; protections for confidential information; and the use of photo and/or video from the workplace.

### **What can business owners do to manage the cost of legal services?**

The client and lawyer need to be clear on the required scope and expectations for this legal work. If the budget cannot accommodate the scope, can the project be phased? Can the outcome be attained in other ways?

Legal work for a business reflects an incredibly important investment in the business, so it should be done correctly by experienced attorneys who will do an excellent job. An open dialogue on the front end can help a business have much more predictable legal costs.

Finally, consider alternative fee arrangements. There are other ways to bill for legal services than the billable-hour approach. Some litigation files may benefit from a contingency fee arrangement. Personal injury cases that I routinely handle typically utilize this model, but so do some business litigation cases. Also, a monthly retainer and project-based billing arrangements can help establish predictability for the business while rewarding efficiency for the law firm.

At the end of the day, communication between the client and the lawyer is key to addressing potential legal costs and managing them appropriately.

You can read the entire article online here, or download a copy here.