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How Nonprofits Can Find and Hire a Good Lawyer – Transcript

Jess Birken 00:00:02 Welcome to Charity therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny, nonprofit expert pals. You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions I ain't scared. Ready to rock? Let's dive in. Hello and welcome to this episode of Charity therapy. I'm your host, Jess Birken, and my ringer is always on. And my co-host Meghan, her ringer is always off and we have just decided today this is what divides the generation. Yeah, we got.

Meghan 00:01:01 The classic Gen X and above versus millennial and below. Problem of Jess is always like is your ringer off when we start recording.

Meghan 00:01:10 And I'm like, my ringer is never on.

Jess Birken 00:01:15 Like I'm like, how do you ever get a phone call? I how do you answer your phone? Just not the millennials don't answer the phone. Like, what do you mean, girl? You have to answer the phone. No. When it rings, if you know the number, I mean.

Jess Birken 00:01:30 I'll give you.

Meghan 00:01:31 That. I'll give you that.

Jess Birken 00:01:32 Like, I don't want to answer spam.

Meghan 00:01:34 Very few people sometimes are actually calling me first of all. Second of all, if my if my phone is sitting next to me and facing up and it lights up, I can just pick it up, you know? Okay. But like, I don't want to be.

Jess Birken 00:01:46 Visually monitoring my phone.

Meghan 00:01:48 Screen.

Jess Birken 00:01:48 That hard. I think this is also a generational divide. Like if you have to be sort of like have one eye on the screen of your phone all the time, are you even like, really? I don't know, I'm just like some mindfulness meditation person who's dying here.

Jess Birken 00:02:03 Well, I think mostly the reality is that, you know, if someone calls me, I'm just going to call them back when I see it. Like, I don't need to know right away. It's none of their business. I mean, this is not for work stuff. Obviously, I have my work thing open, and I'm talking to my boss on a public platform right now. I am not ignoring my work calls, obviously, but for personal things, I'm like, yeah, if you call me, I'll just call you back later. Yeah. I mean, I, I turned my ringer off a lot. You know, and then there's family members who I just have to mute because they're not even gonna acknowledge that I might be at work or in a meeting. But I think that that is the difference. You know

it's a generational divide, man. It's like there's so many things that aren't different between the two of us. But then every once in a while, I'm like, what do you mean, turn my ringer off? There's a thing.

Jess Birken 00:02:53 Yeah. Sometimes there's this is one of those. This is one of those. All right, well, what are we what are we doing today? For real? For real. Well, today I do have a listener question for us, but this one is kind of fun because it feels very like we're talking about the nonprofit sector, but we're also talking about the legal industry. So it's the perfect little like cross section. But for Berke and law Office, I talked to a lot of our new clients out front. And one thing that comes up a lot is that folks just don't really know how to find a lawyer. Most of the time, the only time people think they need a lawyer is if like, you know, they're being sued. They're being arrested like something terrible is happening or they're going through some messy divorce. So but we work with people, we're generally nothing terrible is happening. They need a lawyer for other reasons. So just before we jump in, how does even how does someone even find a lawyer? Well, I think realistically in just in day to day life, most people know a lawyer like most people might know a doctor.

Jess Birken 00:04:02 It might be their doctor. It might be their friends, doctor. It might, you know, but like, it's somewhere in their circle. They're like, that's the only lawyer I know. And so then that lawyer ends up getting asked, can you do this? And they say, no, I, I don't do that at all. You know, I'm a family law attorney. You have a criminal law issue, but I can give you a referral. Somebody that I know, like and trust who does criminal law, and they they can help you. I think that's a big, big way that people find lawyers is just through word of mouth. And then really, the other way is just like googling it, looking on the internet. Because if you're a person that you have no lawyer contacts anywhere in your sphere, how else are you going to do it right? You're just going to start googling and maybe you get to a referral service. Maybe somebody like gives you the phone number of a referral service.

Jess Birken 00:05:09 But pretty much I think people are googling it or asking. I think the the doctor comparison is a good one, because it's like when you have this weird medical issue, you don't know what kind of specialist might need to deal with that. So you ask your primary care. Like you just ask someone who can say, hey, you should go here. And it's the same sort of mentality of like, you don't know what kind of lawyer might be the

right one necessarily. You don't know what all these different practice areas are, or even that a lawyer is necessarily the right one to help. So you go to a professional you trust and say, hey, I have this issue and hopefully that professional is able to help get you to the right place, or even just like one step along the path towards the right place. So as much as it kind of sucks that it depends on who you know. Sometimes that is the best way to get where you need to go. So I do have a listener question about this.

Jess Birken 00:06:09 Are you ready to dive in? Do it. All right. I am a board member tasked with finding my small nonprofit a lawyer. I am trying to collect five options for the board to review and have the board interview each lawyer. I've prepared an RFP to get some information from as many firms as possible. Before we narrow down to the interview stage. Is there anything else I'm supposed to do to make sure we did a fair search for candidates? Oh, boy. Okay, so yeah, this does come up. We've had scenarios like this come up. First of all, as a board member, I would be looking and seeing, do we have a purchasing policy, a procurement policy. Because if there's not something that is forcing you to use an RFP. A request for proposal. I would not use an RFP to hire a lawyer. Yeah, most lawyers do not get hired based on responding to an RFP. And frankly, it's just not the way the industry works. And so it may be the case that unless you're a mega nonprofit, who's going to be spending hundreds of thousands of dollars on legal fees, most law firms are not they're not prepared for this.

Jess Birken 00:07:28 They're not trying to do this. And if they have enough work, they're not going to spend time crafting a proposal for you. So I, I don't like this strategy in the beginning, because the people you're going to get are the people who are not busy and have a lot of time to do this. And this is I'm not talking about big firms, hospitals, higher ed, going downtown where they got 100 lawyers and 100 staffers, and there's plenty of time and resource to put in a proposal for your multi-million dollar legal fee contract. I'm talking the small nonprofit who's just trying to figure out how to hire a lawyer. Well, and just to break.

Jess Birken 00:08:12 In before you continue, I think this brings up the thing that nonprofits do a lot, which is believe that they have to follow this overly complicated and onerous process because they are trying to be like government or trying to be like the hospitals and universities who have this insane process. And the reality is they have that

insane process for reasons like most likely because of where they're getting their funding from or different things like that.

Jess Birken 00:08:41 You like the run of the mill charity. There's no legal obligation to behave in this way. Like you don't have to, you know, get five options and go through an RFP process to hire every single professional like you are just a business hiring a professional, right?

Jess Birken 00:09:02 And that's what I'm saying. Unless you have a purchasing policy that requires this sort of process. And the other problem with this for hiring a lawyer is like, what do you think you're going to get in this proposal? Some people charge, like we charge flat billing like it's a it's a set amount based on a scope of work. Well, I can't respond to a proposal because I don't know what the exactly what the work is. So I can never give you a proposal because we would have to meet first so that I could even understand what the work is that you want. Other lawyers charge by the hour and so they can tell you their hourly rate. And then what? You're just going to pick the cheapest one. Well, that's not necessary.

Jess Birken 00:09:42 You don't necessarily want the cheapest one. You want the one that's in the best interest of the nonprofit. Sometimes that might be the most budget friendly lawyer, but sometimes you're going to pay more to get higher quality work or more specialized work. So it's just it's a very like not a good tool to hire a lawyer.

Jess Birken 00:10:05 Yeah.

Jess Birken 00:10:06 Basically.

Jess Birken 00:10:07 Yeah. So let's like say we tell them to throw the RFP out the window and instead they are just finding online or through their network some names. How do they assess like who is a good fit.

Jess Birken 00:10:23 Yeah. So like let's talk about what you should do when you're hiring a lawyer. Right. So first of all, does this attorney have expertise in the thing that you're hiring them for? So is it uncle Larry has a family law practice. And but, you know, Uncle Larry, and, like, you got a bad letter from the IRS about your nonprofit, and you need somebody to represent you before the IRS. Well, that's like saying I need heart surgery, but I'm gonna go to this brain surgeon because he's my uncle and be like, hey, dude, could you open up my chest and operate on me? I know, like, brains is normally what you do, but, like, it's all the same, right? It's like blood and blood out cells.

Jess Birken 00:11:10 Whatever. That seems crazy because it is. And that's the same way it is for lawyers. There are things that we specialize in. There are things that we do. There's things that we really don't do and we probably shouldn't be doing because, you know, we don't really do that and we're not paying attention to what's happening in that area. So does the lawyer actually have any expertise? Now sometimes people go like way overboard. And like I've definitely talked with potential clients who are like, how many trade associations that work in the plumbing heating cooling industry have you done mergers with? Like, dude, come on, are we are we being serious right now? Like Generally. Have you done mergers? Sure. Okay. Have you worked with trade associations? Sure. So you don't need to get, like, super duper granular, but, like, is this the kind of doctor who works on this kind of problem is the first question you should be asking for a lawyer. And then are they able to even tell you what it's going to cost? Because that for me, obviously, as somebody who does all black price billing, it is knowable.

Jess Birken 00:12:25 You know, most of the time, most of the stuff for nonprofits, unless you're literally going to trial and it's going to be a very messy scenario. There is a way to scope out the work. There are ways for a lawyer to say, we will not exceed this much money without your approval. There are all sorts of things that law firms can do. They might not like to do that. They might not want to do that because most lawyers just want to bill by the hour because it's lazy. And frankly, they make more money if they bill by the hour. I mean, think about it. Their interest is aligned in wasting a lot of time

going as slow as possible. And just like chewing up the retainer, because that's how they make money. So is this lawyer able to tell you what it's going to cost with any kind of certainty? Is number two, because as in, all of our clients are budget conscious, there's no nonprofit that doesn't care how expensive something is. And like, then you get into stuff like, what's it going to be like to work with these people? Yep.

Jess Birken 00:13:28 You know, and sometimes you can tell that from, you know, looking at Google reviews, what I would say is if they have any Google reviews, that's a decent sign that they're a person that is running the they're running their firm in a way that they care about the internet, technology, customer reviews, customer satisfaction. If somebody hasn't even claimed their Google business profile that telegraphs to you that this person is not going to be using a lot of modern technology. And, you know, that might be fine depending on the circumstance, but it's just something that you want to know, right? Because is it going to be easy to book with them? Do they use online booking? Are their calls answered? Do they get back to you in a reasonable amount of time? These are things that if it's bad, it's like dating. If it's bad in the beginning, it's not going to get any better.

Jess Birken 00:14:25 The longer you work, red flags on the first date are gonna be the red flags. One year in, like.

Jess Birken 00:14:31 Absolutely right. You know, the other. The other side of this coin is, is it a little too easy to get Ahold of them? Do you call their office? And the firm owner answers the phone and seems to always be available? Because what that tells me I do a lot of continuing ad for lawyers about law firm management. And what that tells me is this person, either they don't have enough work, so they're either they're brand new, inexperienced, or they do have enough work and they're distracted all day long. They're supposed to be working on your file, but instead the phone rings and they pick it up, and that's like you're in the middle of your annual exam. You got your feet in the stirrups and your your OBGYN is like the phone is ringing and they just stop your annual exam and start talking to some other person on the phone in the middle of your procedure. What the heck are you doing? You don't call a doctor's office and you get the heart surgeon on the phone immediately.

Jess Birken 00:15:35 Like that would be concerning. I would be like.

Jess Birken 00:15:38 I don't know.

Jess Birken 00:15:39 Unless you're paying for concierge service with the doctor. You probably aren't going to get them on the phone. So some of these things are an early warning system that I think most people don't know what that means. And so they don't clock it as a potential problem.

Jess Birken 00:15:55 Another one that I think people don't necessarily know is when you have a smaller firm or an individual lawyer who claims to be an expert in, like all of the areas, it's like, I can help you with your divorce and DUI and IRS problem and small business formation. And it's just like at first, as a person looking for a lawyer, it might be like, great, they can help with whatever comes up. Like, I don't have to find a million different lawyers, but, you know, do they actually know what they're doing in all of those realms? Like, what does that actually look like? And particularly in an area like nonprofits where it is rather niche, like, not that many people work in this area, in All Things considered.

Jess Birken 00:16:38 And it is like complicated. Like there's just like a lot going on in the nonprofit world. Like they're not going to be able to do a quick Google search and figure it out for you necessarily. Like you want someone who knows what they're talking about, about nonprofits, not just a generalist who can, you know, take do a quick search and give you a good enough answer.

Jess Birken 00:16:57 Yeah, and a couple of caveats there. If it's a larger firm and they have ten lawyers and this firm says they do ten different practice areas. Okay. That makes sense because they got a bunch of people. And it's just like going to a multi practice medical clinic. You know not everybody does the same thing. Also if you're you know I'm thinking of my friend who lives out in the Montana North Dakota area. There's four lawyers in 300 miles. Well you know what. She's going to be doing a lot of stuff

because she's one of the only people around. But if you're in a metropolitan area or you have a video meeting connection, you can work with a lawyer who specializes in the thing that you need.

Jess Birken 00:17:39 So absolutely. Yeah. What else does it feel like? That's most of the things.

Jess Birken 00:17:43 The last one that really matters is just like, pay attention to how you feel when you're talking to their staff or to the attorney themselves of just like, do you feel like they are listening to you? Do you feel like they are understanding what you're saying and are, you know, actually paying attention to you and are willing to meet you where you're at? I think there's this overall impression of lawyers that they're hard to talk to. They're, you know, fast talking. They're out to get you and scam you. And if you feel that way when you're talking to a lawyer, like maybe they're not the right person to work with, like you keep.

Jess Birken 00:18:25 An open mind and.

Jess Birken 00:18:26 You are coming to them to help with a problem, whether it's like a big, scary, horrible, messy problem or just, hey, I have this like paperwork that I need to get filed. Either way, you're coming to them to help you get something done and you don't want to feel distrustful, scared, and like, uncomfortable the whole time you're working with them.

Jess Birken 00:18:50 Like there are lawyers out there that will help you feel heard and understood and like you can trust them to keep your best interests at heart.

Jess Birken 00:18:59 Yeah, and I'll throw in one more, because I think a lot of what this listener is getting at is like trying to understand the fit reputation. Right. Those are kind

of like the elements that you're going to put in your RFP. Here's the thing. The lawyer is going to tell you they're the best thing since sliced bread. So it is totally okay to research the firm or the person that you're trying to hire, you know, Google them and go past page 2 or 3. Because if they've had an ethics problem and there's been a finding at the Supreme Court that they did something unethical, it's online. It might not be on the first couple of pages, but it is online. Go ahead and ask around. You know, hey, do you think that this firm or this lawyer is good? Have you had good experiences with them? Most of the time in the legal industry.

Jess Birken 00:19:54 People don't ask for references because of attorney client confidentiality. It's very difficult for us to give references because it's confidential. But you can ask other lawyers, you can dig down into the Google results. Read their reviews, see if they're responding to reviews. Like you can do a little bit of sleuthing to just do that check to make sure that there's nothing like glaring because of course, the, you know, the lawyer is not going to say like, well, I'm, you know, actually terrible, right?

Jess Birken 00:20:27 I'm two seconds from getting my license revoked. Yeah, like 100%. It's just. And that's where I think that there is a more intangible element of you have to trust your gut a little bit and listen to how you feel and what the person is saying. Also, do some checking up on the back end, you know, like there's a little bit of everything, but once you get to the point where you're reasonably sure this is going to work out. It's a little bit of a leap of faith.

Jess Birken 00:20:56 Like you can't know everything before you start working with someone and so do your due diligence. But don't go crazy about finding the absolute right fit, the perfect unicorn that will do everything. Exactly. You know, like you can drive yourself crazy with all of the options out there to.

Jess Birken 00:21:12 Yeah, and to you get what you pay for. You know, if you get Uncle Larry, the family law attorney or the, you know, transactional commercial property lawyer on your board to do your stuff for you, you're, you know, you're making a choice about the the expertise and the quality of the work, and you're taking a gamble there. Good work is expensive. And that's just the I'm it sucks, but that's the reality. All right.

Jess Birken 00:21:38 So the takeaway is.

Jess Birken 00:21:39 In conclusion.

Jess Birken 00:21:40 Meghan. So first I will just say it is an overwhelming task to try to find a lawyer for the first time. If you don't know how, that's okay. But there are ways to effectively suss out who might be a good fit.

Jess Birken 00:21:55 So you end up with a lawyer that can help you. So to do that. Use your resources, use your network, use the internet, all of those kinds of things to do some looking for some lawyers in your area or in the area of expertise that you are seeking. Second, don't overcomplicate your process unless you have to. If there is some sort of legal requirement or a purchasing policy that you have to follow to do something like an RFP, or to have a minimum of X number of options for the board to review or whatever. Don't overcomplicate it. It's okay to do your due diligence as a person and then just make a choice. And finally, I would say trust yourself and your own feelings about how you are being helped and handled through the process. These are all just people. And if you don't feel like you are being, if you feel like you can't trust the people that you're talking to. listen to that and keep keep looking.

Jess Birken 00:22:55 Yeah, folks, if you need a referral, you know, let us know.

Jess Birken 00:22:59 We're happy to.

Jess Birken 00:23:00 Help. It has a huge network. I will I will personally confirm this that Jess is, first of all, one of the most social people I know, but also is very good at the

keeping good connections with other lawyers out there. So she most likely knows someone who might be able to help.

Jess Birken 00:23:15 Yeah, don't hesitate to reach out. And if you would do me a kindness and rate us on your podcast app, that would be amazing. If you've got a non-profit that needs a lawyer, you know we're always accepting new client.

Jess Birken 00:23:31 Plug us here for a minute and plug us. Yeah.

Jess Birken 00:23:34 And as always, thank you so much for listening. We'll see you next time.

About the Author



Hi, I'm Meghan Heitkamp.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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