

THE HONEST
GUIDE TO HIRING THE BEST
CRIMINAL DEFENSE
ATTORNEY



**WESTENDORF
& KHALAF, PLLC**

HOW TO FIND THE RIGHT CRIMINAL DEFENSE ATTORNEY (The Truth Behind The Marketing)

By Westendorf & Khalaf, PLLC

HOW TO FIND THE RIGHT CRIMINAL DEFENSE ATTORNEY FOR YOUR CASE

If you're searching for a criminal defense attorney, it can be a dizzying experience. If you google "best criminal defense attorneys in my area," you're going to see the names of dozens of attorneys. Some of the attorneys appearing on your screen will be excellent. Some will be far less than excellent. The lawyer fresh out of a bottom tier law school and the seasoned courtroom veteran with decades of trial experience often look the same in a google result. How do you even begin to find the right attorney for your case?

The answer is not as simple or straightforward as some might think. The truth is that there is no such thing as the best lawyer for every case. The seasoned and brilliant trial attorney with decades of experience in front of juries might be your best bet for a murder case. That same brilliant attorney might not know the first thing about DUIs. Every lawyer, no matter how celebrated or successful, has strengths and weaknesses.

Our purpose is to help you find the right attorney for your specific circumstances. If you've started looking for attorneys with a google search, it's important to realize that being on the first page of google tells you nothing about the quality of an attorney. Anybody can post a website with his scowling photo in front of the courthouse and claim to be "aggressive" and "experienced." The

stakes for someone charged with a criminal offense are extremely high. Your choice of attorney can potentially determine whether you are convicted, whether you are convicted of a felony, whether you go to prison, and for how long you go to prison. This is a big life decision. If you're doing it right, you need to put serious time and effort into finding the right attorney for your specific case.

LESSON # 1: HERE'S WHAT TO IGNORE

Most lawyers advertise in some form including us. We all need clients in order to make a living. That being said, it's important to realize that advertising tells you nothing about the quality of an attorney. Some of the most effective marketers are the loudest advocates in the courtroom. So here are some things you should ignore:

1. Avvo Rating, Super Lawyers, Etc.

Avvo is a web company based in Seattle that has received well over \$100 million dollars in venture capital money with the aspiration to be the "Yelp" of the legal services world. We live in an age where everybody looks at star ratings and reviews before purchasing anything, so Avvo's appeal is understandable.

However, the reality is that their rating system is a meaningless gimmick. The rating is based on an algorithm that can be easily gamed so that many less than excellent lawyers gain a 5-star rating.

Let me be clear: there are great attorneys with high Avvo ratings (including us), and there are lousy attorneys with high Avvo ratings. The point is that one has nothing to do with the other.

The same goes for organizations like Super Lawyers which claim to have secret patented processes for identifying legal super stars. It's all nonsense. These organizations never actually watch attorneys in action; they don't read transcripts of their closing arguments and cross-examinations; and they don't interview former clients. It's kind of like an organization claiming that they've selected the best quarterbacks in the NFL without ever watching them play. The reality is that Super Lawyers was created by a giant company (Thomson-Reuters) for a very simple reason: it makes a bunch of money by charging attorneys to advertise.

2. Awards

There are some criminal defense attorneys who claim to be “award winning.” Their websites are festooned with little gold stars and ribbons. It certainly sounds impressive. Sorry to ruin the lovely image, but most lawyer awards are a joke. We don't hand out trophies in this business. Almost all of these “awards” are marketing scams. The attorney sends a check every year to a P.O. Box, and in exchange gets a certificate proclaiming that he or she is a “Superstar Rising Premier Attorney Deluxe!”

These scams endure because clients don't know any better, and because some attorneys are so pathetic that they actually think these things are worth something.

3. Don't Believe Promises That Are Too Good to be True

“What's going to happen in my case?” That's usually one of the first questions that we're asked by clients in the initial consultation. And we understand why they ask. Being charged with a crime is stressful, and they're anxious for answers.

However, there is usually no reliable answer in the first client interview. There are many, many variables in every case. The strength of the evidence, your prior record, the particular prosecutor, the particular judge, whether there are suppression issues, etc, etc. etc. Anybody who talks to you and tells you that they're going to get your case dismissed or promises a specific outcome during the first interview is lying to you. If an attorney tells you that your case is “easy” or promises you a specific result the first time you speak to them, move on.

We can't count how many cases we've had where a client was duped into hiring someone else based on false promises, only to come back to us later (a couple thousand dollars lighter) on to clean up the mess.

4. Don't Base Your Decision Entirely On Fees

Everybody would prefer if an experienced and competent attorney fell into their lap for free. Sorry, it's not going to happen. When you hire a good defense attorney, you're paying for wisdom, perspective, and seasoning developed over thousands of cases and decades of work. Good representation costs money. If an attorney is quoting you the lowest price in town, they're probably either desperate, or not very good.

You should absolutely call around to compare fees, but if your only criteria is hiring the cheapest lawyer you can find, you're doing it wrong.

5. Don't Believe That Former Prosecutors Have An "In"

You will likely find attorneys who market themselves as former prosecutors. Some are legitimately experienced former prosecutors, who have become outstanding defense attorneys. Others were in the prosecutor's office just long enough to get a cup of coffee.

We're not saying that you shouldn't hire a former prosecutor (some of whom are among the best defense lawyers out there), but rather that you should be cautious of this sales tactic. If the attorney's sales pitch is that they have extra influence in the prosecutor's office, they're probably full of it.

The truth is that all defense attorneys know the prosecutors. Most of us have friendly working relationships with the prosecutors, and consider many of them to be friends. But the reality is that prosecutors don't dismiss cases because they like or used to work with the defense attorney.

6. Don't hire a lawyer who says that it's urgent that you hire them immediately.

We've encountered some attorneys who will pressure clients to hire them by suggesting that time is of the essence in getting some sort of amazing result. This is almost never true. If you've already been charged, another few days isn't going to make or break your case. If an attorney is putting the pressure on you to hire them right away, they're not the right attorney for you. The best attorneys will encourage you to shop around because they're confident that you'll come back to them in the end.

So attorney marketing is mostly B.S. Then how do I find a real deal criminal defense attorney?

LESSON # 2: HERE'S WHAT MATTERS

So we've told you some things to avoid when looking for a criminal defense lawyer. Now we're going to tell you what actually does matter. When you find a lawyer you're considering, the first step is to schedule a face to face meeting with him or her before hiring them. You should never hire a lawyer blindly before you've spoken to them. At a very minimum, you need to do a phone consultation with the lawyer. Not their secretary, not their associate, the actual lawyer. When you you're talking with the attorney, we suggest asking some of the following questions that will show you whether they're the real deal:

1. What percentage of your practice is criminal defense?

Unless the answer is close to 100%, you should look elsewhere. The lawyers who handle nothing but criminal cases are going to be the ones who know the judges, the prosecutors, and the relevant law. They're going to know which defenses fly and which ones don't. They're going to know if there are alternative punishments that can keep you out of jail. You can't afford to be represented by someone who is "moonlighting" as a criminal defense attorney.

2. How much of your practice is in the city where I'm charged?

Practicing in different cities can be radically different. We practice primarily in Virginia Beach where there are over forty-five prosecutors and twenty different judges. We've been to several other jurisdictions where there are literally one or two prosecutors and a single judge hears every case. Even within the same city, different judges can have very different perspectives on what constitutes reasonable doubt and reasonable punishment.

That's why it's important for you to have an attorney who practices frequently in the city where you've been charged. Those attorneys know how the local judges and prosecutors think better than anyone.

3. Do you have experience as either a public defender or a prosecutor?

For a young attorney, being a public defender or prosecutor are easily the two best ways to becoming a real deal criminal attorney. These are the people who work in the criminal court trenches every day and try more cases than anyone. In our experience, the best criminal defense attorneys overwhelmingly practiced as one or the other early in their career.

4. What kind of trial experience do you have? When was the last time you had a jury trial?

There are a shocking number of lawyers who market themselves as experienced criminal defense attorneys who have almost no serious trial experience whatsoever. You may find that hard to believe but it is absolutely true. There are so-called defense attorneys who would be completely out of their depth if actually forced to take a case to trial. I've even had poseur attorneys brag to me that they make fabulous money without ever going to trial.

Believe me when I tell you that you want an attorney with significant trial experience. If an attorney lacks trial experience, he/she is operating at a tremendous disadvantage. The obvious problem is that the attorney can't competently represent you if your case goes to trial. But the problem is just as large when your case isn't heading toward a trial. What motivation does the prosecution have to give one inch in plea negotiations when faced with an opponent who never takes cases to trial? None. If the evidence against you is overwhelming, your only leverage is often a defense attorney who is willing and competent to take the case to trial.

5. Do you have jury trial experience?

Not all trial experience is created equal. An attorney might make bold claims that he/she has tried hundreds of cases. That sounds impressive but can be highly deceptive. I could make the claim of having tried over a hundred cases within a handful of months as a public defender. Of course, almost all of those trials were for district court misdemeanors. Was it an invaluable tool for gaining experience and sharpening trial skills? Absolutely. Would it have qualified me to handle a serious felony case after a few months of being an attorney? No.

You need an attorney with the right skill set for your situation. If you're charged with reckless driving, your case probably isn't heading toward a jury trial. If you're charged with a serious felony, you don't want an attorney whose primary practice is traffic cases. The best attorneys have significant jury trial experience. Ask your prospective attorney how many felony cases they've taken to trial? How many of those were jury trials? Do they have any transcripts of their work at trial?

6. What motions experience do you have? Do you see the possibility of filing any motions in my case?

Many cases involve motions being filed. For instance, a successful motion to suppress evidence can sabotage a prosecution's entire case. Even losing motions can be highly effective. A motions hearing can provide the opportunity to hear the testimony of

witnesses prior to trial. A motion can set the stage for a successful appeal. A motion can make the prosecutor more likely to make a favorable offer. If an attorney ever tells you something like “motions always get denied” or that “motions never work,” you should run out of his or her office. I would also recommend asking if they have any samples of their written motions.

7. Can the attorney have an educated conversation about state sentencing guidelines?

If you're convicted of a felony in Virginia, the state sentencing guidelines recommend what your punishment should be. The general idea is that the guidelines promote consistency in statewide sentencing so that people charged with similar crimes who have similar records receive similar punishments. The result is that state sentencing guidelines are often one the most important factors in how much time someone convicted of a felony ends up serving. That's why it's extremely important to have an attorney experienced with the nuances of guidelines. If you're charged with a felony, you should absolutely talk to any prospective attorney about sentencing guidelines. If he/she can't have a highly educated conversation about state sentencing guidelines, they don't know what they're doing.

8. Do you have experience using expert witnesses?

The majority of criminal cases are not going to involve expert witnesses, but a credible defense expert can be the make or break factor in certain cases. We've worked with computer forensics experts, video enhancement experts, SANE nurse experts, firearms experts, DNA experts, fingerprint experts, forensic pathology experts, alcohol blackout experts, eyewitness identification experts, and marijuana cultivation experts among others. While certainly not relevant to every case, a good expert witness can be the difference between guilt and innocence. Has your prospective attorney worked with expert witnesses? Can they give you examples? Is an expert witness possibly relevant in your case?

9. Do you have any appeals experience?

Our experience is that the smartest attorneys on the law usually have significant appeals experience. These are the lawyers who have battled at trial and argued the most complex legal issues. We would suggest asking your prospective attorney for samples of their appeal work.

10. Is your fee a “flat fee” or are there other potential costs?

Some criminal defense attorneys charge a transparent one time flat fee that covers the cost of your entire representation from start to finish. Other criminal defense attorneys quote different fees for the separate portions of the representation. For example, you

might be quoted separate fees for representation at the preliminary hearing, motion to suppress, and trial. Other criminal defense attorneys might quote based on an hourly rate.

We typically offer a flat fee that covers everything other than possible additional costs for a jury trial and expert witnesses. In our experience, that is the simplest and most transparent fee structure in most criminal cases. That way it doesn't matter if the case ends up being complicated, gets continued four times, or requires extra work out of the courtroom. And we never want money concerns to be a factor in the decisions that our clients are making.

So I've found an attorney who I like? How do I get them to take my case at a reasonable fee?

LESSON # 3: BE A REASONABLE PERSON

When you talk to attorneys, there are some things you'll want to avoid saying.

- Don't say that it's going to be an easy case.
- Don't say that you will only accept a total dismissal.
- Don't say you want to sue the police.

These are hallmarks of difficult and unrealistic clients that every criminal defense attorney can identify a mile away. Most attorneys

won't touch your case with a twenty-foot pole or they will double the fee quote because you come across as unrealistic and difficult.

Instead, this is how you should handle yourself:

- Show up to your appointment on time and dress nicely. It immediately sets you apart from 90% of the people consulting with the attorney and sends a strong positive signal that you are someone worth taking on as a client.
- Be painfully honest with the attorney about the facts of the case. We've heard it all. Defense attorneys don't make judgments. It's refreshing to hear a client tell us the full story, warts and all. We'll probably give you a better fee quote.
- Let the attorney know that you're realistic about your expectations. Obviously different cases have different achievable outcomes. If you were caught red handed with five kilos of coke and three AK-47s, don't come to the meeting talking about how you won't settle for anything less than a misdemeanor with no jail time. Realistic clients get better fee quotes.

Final Thoughts

We hope that this information was useful to you. Being charged with a crime is incredibly stressful. No matter how much research you do, it is never going to be easy to choose a criminal defense attorney. If you take away one message from all of the information we've provided, it is that you should take your time. The extra few

days of talking to more than one attorney will be worth it in the end. If you're charged in Virginia Beach or anywhere else in the Hampton Roads area, feel free to give us a call. We give free consultations, and we're always 100% honest, even when it means that we end up turning away business.



Taite Westendorf



Bassel Khalaf

757.961.3311

info@wkdefense.com

1 Columbus Center, Ste. 600

Virginia Beach VA 23462