

EAGA Business Builder

July 28, 2020

Aaarg! Pandemic orders remain as the restrictive dining, everyone masked and social distanced version. School via online only until Labor Day

Today's presenter was Tom Briones — Briones Business Law Consulting



Mr. Briones is a native of Farmington, New Mexico. He was probably pre-destined to be a lawyer, having been around legal issues all of his growing up years. It is not that his family was subjected to regular court actions, but that his father was, and still is, a well known, and very well respected attorney in the home town. The elder Mr. Briones remains active in the legal community and is still a part time judge. Tom has been a lawyer now for about 27 years. He has a great wife, Stephanie, who is obviously very intelligent. OK. Deciding to marry Tom was probably a good decision, but right now we are speaking about her decision to leave her position as Office Manager (at Tom's law firm) to become a doctor. After a lot of study and hard work, Dr. Stephanie Briones, MD is currently in residency at UNM Hospital. During his nearly three decades as an attorney, Tom has amassed a great amount of knowledge and experience about the legal world - particularly in the area of business law. In today's presentation, Mr. Briones provided some very beneficial information concerning a few legal areas that often present more than the ordinary amount pit-falls for business owners. **Forms from the internet:** There is a plethora of legal forms available on the world wide web, but it can be very difficult for you to figure out just which one is best for your particular situation. Using the wrong form can cause a lot of problems. Tom has seen instances where an LLC was formed using internet forms actually designed for a Partnership (nope, not the same thing). Those online forms are most often written to comply with the legal requirements of either Delaware, New York or California. Those states each have their own set of business laws. Those rules not only differ among those three states, but quite often, differ from those of your state of operation. **Employee handbooks:** Handbooks are very beneficial and should be used by all businesses. But, don't just use a 'cookie-cutter' version that seems to be less expensive than a custom one. The contents of your handbook become a statement of your policies and procedures, so it is very important to make sure that what is written in the book is exactly what you intend. Once you present your handbook to an employee, it is difficult, if not impossible, to later claim that some employee rights noted in the document were accidentally included and should not construed as your actual policy. One example is the FMLA rules. They are written to only pertain to businesses with more than 50 employees. If you have a business that doesn't meet that quantity requirement, you need not include FMLA in your policies. Once you do have a handbook, make sure that you follow the policies on every occasion. Do not fall into the indefensible habit of only enforcing them for a problem employee. Policy enforcement on a sometimes basis provides that disgruntled employee with ammunition for a claim that you are discriminating against them. **Independent contractors:** Often a company will use the services of an independent contractor instead of hiring an employee to perform particular duties. Also as often, the decision is made in order to reduce costs in the areas of taxes and benefits. If an independent contractor is ultimately determined to actually be an employee, the hiring business will be responsible for back taxes, benefits, and penalties. Using non-employees to do jobs can be a wise decision, just make sure that you are able demonstrate that they really are independent operators. That is not as easy to do as it may sound. There are various governmental agencies that have an interest in knowing whether or not a worker is an employee. Workers Comp agencies have their set of guidelines for determining the classification; but unemployment agencies have their own set; and so does the IRS. Be sure that you can demonstrate compliance with all of them. Some of the things that are considered: Do you direct the workers about just how, when and where to do the work? Do you provide necessary equipment? Did you required a non-compete agreement for them to get the work? Do they wear clothing with your company's logo? **Payroll Taxes:** These taxes carry a very high level of liability potential. Payroll taxes HAVE to be paid. Business owners and executives are personally responsible for payroll tax payments that haven't been made by the business. And there is not a way to escape that liability. It cannot even be discharged by Bankruptcy. **Withholding Wages:** An employer cannot withhold wages in any amount unless the employee signed a pre-employment agreement allowing that to happen. Even if that agreement exists, the amount of wages being withheld cannot bring the net payment below minimum wage. **Contracts:** Don't ever sign a contract without reading it. The time to negotiate the terms would be before the agreement is signed. Whether or not you realized that a provision was there; and whether or not you like the provision; if it is in a signed contract, it is enforceable. Contracts written by in-house staff (non-lawyers) can be a problem. That type of document often contains incorrectly used terms and concepts. Legalese is actually something to be considered when creating a contract. Over time, certain terms and phrases have been set to have specific, universally understood, meanings. Courts consistently interpret those phrases when issuing rulings about contract terms. Phrases like "time is of the essence"; which indicates that various deadlines definitely matter. There are also other standard provisions that allow for immaterial, versus material violations of the contract terms. Immaterial violations will not necessarily cause a breach of the contract. And the venue for resolution of contract disputes should also re reviewed. If possible, the venue should be somewhere favorable to you. Beware of any 'contract creep'. Often an already acceptable contract form is used, with slight modifications, for a similar agreement some time later on. As additional iterations are made, the modifications flow with the document so, over time, the modifications 'creep' into the overall terms. That can definitely be a problem. Detailed reading of each contract will solve that; as will not just reusing a contract form over and over. Having an attorney prepare each contract is the best way to prevent 'contract creep'. The attorney will also offer suggestions for including terms that you may not have thought of. **Don't ignore judgements:** Whether or not you feel that a lawsuit against your company is justified, don't ignore it. If you do, it is likely that a default judgement will be awarded to the plaintiff. And those can morph into bigger problems...all the way up to jail time. **Insurance:** Make sure that you have a sufficient amount of the right insurance including: EPLI (Employer Practices and Liabilities insurance); D&O (Director and Officer insurance); Cyber Security Insurance; and both personal and business Umbrella Insurance. **Business exit plan:** It is pretty much a given fact that you will exit the business at some point. It may be via a scheduled event, or via an unscheduled event that will be dealt with by your estate. Right now is a good time to start planning for either scenario. **Initiating litigation:** There are some good reasons for filing a lawsuit against some person or entity, but, as a general rule, "lawsuits are the worst investment that a company can sink money into". Before filing a lawsuit you should determine that it appears to be the best investment. Do not get caught up with using litigation because of emotions, or to sooth an ego. In Tom's experience, whenever a client says "its not about the money", sooner or later, the money becomes the issue. Mr. Briones obviously has a tremendous amount of knowledge in business law. If you think that any of the above categories discussed today should be reviewed by your company (here is a hint—ALL of the items should be reviewed by your company), give Tom a call at 505-246-0120. He might also have some stories to share about how a future lawyer would go about negotiating with an experienced and well revered future judge about borrowing the car, or attending social events during the era of 1980's Farmington, New Mexico.

Reciprocity:

Want to give a big Thank You to Randy Baker at DRB Electric. Had problem today. Turned a light out. When touched switch box got a big pop and the lights went out - everywhere. Plus lost the garage door opener and the refrigerator. Randy came through for me in record time. Greatly appreciated.

- John Baerman—Susie N Cleaners and Alterations

- ◆ Don't forget that the next meeting (August 4th) will be a socially responsible, in person event at Rio Bravo.

A note from Mario: We will be hosting a breakfast on Tuesday August 4th at Rio Bravo Brewing. Please bring and wear your face mask when arriving and be courteous with social distancing with your fellow EAGA members. Breakfast will be provided on a first come first served basis for the first 60 members.

The meeting starts at 7:00 am. Rio Bravo's address is 1912 Second Street NW.

- ◆ Our speaker for the August 4th meeting will be Bobby Aragon—Amazing Jumps, Tents & Events.
- ◆ The next Board Meeting will be on August 11th at 8:00 am. It will be via the virtual format and will follow our regular membership meeting (also via the virtual format) that day.
- ◆ We are still in need of presenters. It would be great to hear the story of your business journey, your interesting hobbies, a particular expertise you have, and/or some of your great experiences. Please contact Mario if you can make a presentation at one of our meetings. He will be glad to reserve your date of choice.
- ◆ The annual Jim Fanning Memorial Trap Shoot is scheduled for Friday, September 25th. More information to follow.
- ◆ We still have copies of the printed version of our membership directory available. There will be some to hand out at breakfast on August 4th. Also, there is an electronic version attached to the bulletin email this week.

EAGA Tuesday, August 4th, 2020 7:00 AM

There is no need for an internet link or for a call in code. This meeting will be an in-person event. Please be sure to bring, and use, your mask and to practice the social distancing requirements. We very much appreciate our host for providing the venue.

Contact information for Executive Director: Mario Hernandez

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