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THE PRODUCER'S SACRED

WHY A TRUSTED UPM, ACCOUNTANT, AND ATTORNEY CAN BE THE DIFFERENCE BETWEEN SUCCESS AND DISASTER

Moviemaking is tough, especially for the producer. When you're responsible for making sure the entire picture runs efficiently, sometimes you feel more like a punching bag than a team leader.

That's why a good producer recognizes the importance of aligning himself with key people to help defend against the blows.

The truth is, three positions can make or break a producer's ability to deliver a movie on time and on budget: the **Unit Production Manager (UPM)**, **Production Accountant**, and **Attorney**.

It's essential that you select a **UPM** you trust and who has experience working within your budget range. Your first question should be, "Is the UPM in the Directors Guild of America?" If so, your next question should be, "Am I prepared to pay DGA rates and jump through DGA hurdles?" If not, you'll need to select a non-union line producer. But if you're prepared to sign on with a DGA UPM, you'll need to understand the additional crew requirements (including a DGA director) and work rules, residuals, and union-required "reserves" that becoming a DGA signatory entails. You'll also need to know how those requirements will affect your cash flow, and what effect that will have on your investors.

Make sure your UPM is philosophically aligned with how you plan to shoot your film. A UPM who works mostly on major studio films is not going to get you the best prices on the things you need, because he has never been in a position where cost really matters. A UPM will determine your Day of Days and budget needs; a good one can perform scheduling and budget magic to your advantage. A bad one will rob you blind, and you'll never even know what he did. The UPM makes sure that your orders and vision are being followed. That's why it's such a critical, trusted job. And unless



you already have an established relationship with a UPM, you should take a little bit of time to get to know multiple candidates and check their references before making your selection.

While the UPM creates the budget and employs the crew, the **production accountant** is the individual who writes the checks and keeps a tally of your cash flow. Checks get cut fast and furious during production; a good, well-organized production accountant is essential for maintaining paper trails that ultimately you, your investors, taxing authorities, film commissions, and unions will want to see. Honesty, work ethic, math skills, organizational skills, and a familiarity with low-budget, independent filmmaking are essential to this position. To further enhance checks and balances, the producer, not the UPM, should select the

production accountant. If a production accountant and UPM don't know each other, it's more likely that they'll view reporting to you as their ultimate duty.

Finally, there's the **attorney** (or attorneys). When the producer/attorney relationship works, it's a beautiful thing. A skilled attorney can be that true *consigliere* and prove to be your most cherished asset during the filming process. Sometimes one attorney or law firm can wear many different attorney hats. At others, different attorneys fill different purposes during the different stages of production.

During the entity formation and financing stages, you will need skilled legal finance counsel. Such work is separate and apart from production counsel. Apparently simple things like entity selection can be deceiving. For example, generally speaking,

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a Limited Liability Company (LLC) provides the optimal choice of entity for film production. However, an LLC is not *always* the right choice. If you film in New York, a C-corporation (as opposed to the often-utilized S-corp) is actually the entity necessary to best recover NY tax credits and to obtain those credits in a timely way to meet your cash flow needs. Out-of-the-box online corporate formation services won't provide you with that information. Without that in-

formation at the very beginning, you won't realize how screwed you are until it's far too late to make corrections. You are not paying your legal finance counsel just to file a form and set up the production entity, you're paying the legal finance counsel to ensure that the entity and the Articles of Organization are customized for your specific production. Even more importantly, legal finance counsel will lay out the strategies for your particular financing needs, ensure that

you properly comply with the lawful ways to accept money, and negotiate the best terms with financiers.

Once you're funded, you'll need **production counsel**. You don't pay production counsel just for fill-in-the-blank cast and crew contracts. You pay production counsel to ensure that those forms are tailored for your production (the way a physician ensures your prescriptions will not result in an allergic reaction when mixed with other medicines). In determining how much production counsel should cost, you will need to do a breakdown of your script in much the same way that you do a breakdown for any other line item.

“A GOOD UPM CAN PERFORM SCHEDULING AND BUDGET MAGIC; A BAD ONE CAN ROB YOU BLIND, AND YOU’LL NEVER KNOW WHAT HE DID.”

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“INSIST ON KNOWING WHAT YOU’RE GETTING FOR THE PRICE YOU’RE PAYING. A GOOD LEGAL TEAM IS WITH YOU TILL THE END.”

How many actors? How many locations? What unique clearance issues exist in the script (are there a lot of name brands that are essential to the script)? Are there stunts? Is there nudity? How many unions are involved, and which ones? Are any of the actors children? What type of post-production activities touch upon legal issues? Is there a composer? Will there be a soundtrack? Will you want production counsel to assist in delivering the film to the distributor? All of these questions—and many more—translate into specific legal needs, and therefore, specific attorney time.

Any UPM who fails to do a legal breakdown of the script, and instead just slaps down \$10K on the legal line of the budget, or merely allocates a percentage of the overall budget for legal, is a UPM who you should quickly fire (or better yet, not hire in the first place). Prefixed, percentage-of-budget legal cost allocation is a red flag indicator for a UPM who’s failed to do a script breakdown, who’s probably never worked previously in a meaningful way with qualified production counsel, or worse, who thinks he can ameliorate your concerns by scribbling down the number he thinks you want to hear so his cookie-cutter budget works on paper. I assure you that if you don’t recognize that red flag, your actual costs will be extremely out of whack with the improvised “budget” you were provided. With such a UPM, you’re more or less guaranteed to encounter overruns during production, and massive extra expenditures during post-production—a time when the UPM has long since left the picture.

Now, if you only have a certain small dollar amount for production counsel, you’ll first need to consider what type of film you’re making. Certain scripts demand heavy lawyering. Just as each location adds a certain extra layer of costs to a film, so too does the addition of more legal issues arising from the unique needs of the particular script and the specific production. If you have kids in your script, but your budget is too small to pay for a studio teacher and for court ratification of their contracts, then you shouldn’t be producing this particular

movie. And if you’re willing to give a less-experienced attorney a chance, you might get a modicum of legal know-how, but you pay for the learning curve.

Once your picture is complete and you’re fortunate enough to obtain distribution, employing **distribution counsel** to negotiate your deal with the distributor can be some of the best money you spend at a time when money is at its scarcest. Distribution contracts can be complex, and the simple ones can often be more deceiving than the complex ones. Your distribution counsel will guide you through that shark tank.



Article written by David Albert Pierce
reprint courtesy of MovieMaker

While finance legal, production counsel, and distribution counsel have three very specific functions—often performed by different lawyers—some law firms (and even a few lawyers) are genuinely skilled in all three areas. Just as you need to take time selecting your UPM and accountant, you need to perform the same careful evaluation of potential attorneys. Ask questions. Check references. Inquire as to whether they have malpractice insurance and whether that insurance covers the particular facet for which you are employing them (many do not carry film finance coverage). And insist on knowing what services you're getting for the price you're paying. Quite often, the producer can pay less and receive better service if she selects a full-service, quality firm and pays for all three branches of counsel at the outset. Remember, a good legal team is with

you from the earliest stages of development to distribution—and beyond. **MM**

David Albert Pierce, Esquire is Managing Member of Pierce Law Group LLP, a boutique entertainment law firm that has provided production legal services for marquee entertainment production companies (such as Morgan Creek, Lionsgate, Nu Image, Starz!/Encore, and Harpo Productions), as well as first-time filmmakers. He has served as production counsel on the critically acclaimed Academy Award winning film The Artist, and has provided legal services on the blockbuster hit The Hunger Games (and is currently working on The Hunger Games 2). David regularly teaches at the UCLA-Extension program, as well as Loyola Marymount University. He is also Vice President and General Counsel at MovieMaker.



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