

Chapter One

When and How to Use a Lawyer

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Introduction

ALMOST EVERYTHING WE DO--from making a purchase, to driving a car, to interacting with others--is affected by the law in some way. While it often seems hard to live with the law, it would surely be harder to live without it.

In our country, the law is, in a real sense, the people's law. It is part of the democratic heritage of Americans.

The availability of the law does, however, reveal a bewildering variety of choices. When do you need a lawyer? When can (or should) you handle a matter on your own? The purpose of this chapter is to help you make the best choices.

There are many legal situations that you can and should handle on your own, without the assistance of a lawyer. However, when circumstances and laws are unique, complicated, or confusing, you may need a lawyer's guidance. You also may need a lawyer's services when you are so close to a problem that you are unable to see your way through to a proper solution. While this chapter does not examine specific situations, it can help you determine when you should hire a lawyer, what a lawyer can and cannot do for you, and what you can do to help yourself.

When You Need Assistance

Q. Does needing a lawyer's help always mean that I have a legal problem?

A. No. In fact, lawyers very often help clients in matters that have nothing to do with disputes or legal cases. For example, with their lawyer's help, people are advised about the legal aspects of starting a business or engaging in a partnership, assisted in buying or selling a home, and counseled on tax matters or estate planning, to name just a few possibilities. Often, clients receive a regular legal check-up that, like a medical check-up, is designed to prevent problems or nip them in the bud.

Q. Do I need a lawyer every time I have a legal grievance?

A. Although the law enters into many aspects of daily living, you certainly do not need a lawyer every time you become "involved" with the law. Some Americans have become too inclined to hire lawyers and proceed to court to resolve problems. For example, sports fans have sued to have a referee's controversial decision reversed, and a jilted suitor has tried to recover the cost of an evening's entertainment. Of course, lawsuits like these are not common (that is why they make news), but they illustrate that many problems are not really the business of the law or our courts.

Q. What should I do if I have an argument with a neighbor over the boundary line between our properties?

A. First attempt to talk to your neighbor. After all, you probably will have to go on living next to each other. If that fails, you may wish to seek mediation or some other form of informal dispute resolution to help the two of you resolve the problem. Perhaps you can get some guidance from public records, already existing surveys, or title searches that have been done. Maybe prior owners can cast light on the subject. If these options fail, the two of you might want to jointly pay for a survey, or jointly ask a court to decide the matter (see discussion of "quiet title" in the chapter on owning a home). As a last resort, you might want to seek legal advice on other options you can pursue.

Q. If I buy a new stove and it stops working just as the warranty expires, should I contact a lawyer?

A. No. First read the warranty and see what rights you may have, notify the merchant and see if you can negotiate a satisfactory solution. If that does not work, contact the manufacturer. Though the Better Business Bureau does not resolve disputes, perhaps a complaint to them will stir the merchant or manufacturer to action. As a last resort, you can file suit in a small claims court. ([See the next chapter.](#)) You can do all this without a lawyer.

Q. Should I always wait until a problem becomes serious before I contact a lawyer?

A. No. In certain matters, if you call a lawyer as a last resort, it may already be too late. For example, it is difficult for a lawyer to protect you after you have signed away your rights or if you have waited too long to assert your rights. And some legal matters are so important or so complex that you will need a lawyer from the beginning. In such cases, having legal help early will probably save expense--and anxiety.

Q. Why can't legal documents be in a language that I understand?

A. Lawyers and others trained in the law often use legal terms as shorthand to express complicated ideas or principles. The words and phrases, many rooted in Latin, are often jokingly referred to as a foreign language--"legalese." Although some legalese may be necessary in order to communicate certain ideas precisely, a document that is understood by very few of its readers is just plain poor communication.

Since 1978, federal regulations are required to be "written in plain English and understandable to those who must comply" with them. Many states also have laws requiring that insurance policies, leases, and consumer contracts be written in plain English. Of particular importance here is the trend among law schools to discourage the use of legalese while encouraging writing in plain, comprehensible English.

Help From People Other Than Lawyers

Q. If I do not use a lawyer, who else can help me?

A. Unless your problem is so serious that only a lawyer can resolve it, you should first consider another source of help. If you believe a business has cheated you, help can be obtained from a consumer protection agency run by your city, county, state or federal government. Many businesses, stores, and utility companies have their own departments to help resolve consumer complaints. Some communities have an ombudsman to mediate and resolve minor landlord/tenant, consumer or employment issues. Local television and radio stations may have programs to resolve consumer-related disputes.

Q. Are there other professionals who can be of assistance?

A. Yes. Do not overlook the obvious. If you have a problem with insurance, for example, discuss it with your insurance agent. Bankers, accountants, real estate agents, and stock brokers are others who may be able to help with problems in their specific fields. Of course, if your dispute is with them they may not be a source of unbiased information. Even so, it costs nothing to ask and they may provide free advice that can help you evaluate whether your problem needs the attention of a

lawyer.

Q. Can counseling solve some problems?

A. Yes. Sometimes problems that seem to be "legal" may be helped or prevented by other means. Many groups offer guidance and counseling for personal problems arising in marriage, child rearing, and managing finances. Private counselors or members of the clergy also may provide such help.

Q. What is a small claims court?

A. Disputes over money are common, but often the amount of money at issue does not justify hiring an attorney or using scarce judicial resources. Small claims court is a streamlined forum where people can air their dispute and have it decided promptly and fairly. Most states have procedures that allow people to represent themselves in court if the total amount of their claim is under a certain dollar amount. The cost is minimal, procedures are simple, and there is usually little delay. Keep small claims courts in mind if your problem is not very complicated and your losses are relatively small--in the hundreds or low thousands. The next chapter provides guidance on how to file and pursue a small claims lawsuit.

Q. A friend recommended that I try a local dispute resolution center. What does this offer?

A. For the right kind of case, these centers can be a quick, low-cost (or free) alternative to formal legal proceedings. These will also be discussed in the next chapter.

Help From Lawyers

Q. I understand that, under certain circumstances, going to a lawyer may be unnecessary. Are there specific cases when I should see a lawyer?

A. Yes, there are matters best handled by a lawyer. While these matters are sometimes hard to recognize, nearly everyone agrees that you should talk with a lawyer about major life events or changes, which might include:

- being arrested for a crime or served with legal papers in a civil lawsuit;
- being involved in a serious accident causing personal injury or property damage;
- a change in family status such as divorce, adoption, or death;
- a change in financial status such as getting or losing valuable personal property or real estate, or filing for bankruptcy.

Q. Is there another way to determine whether I need to hire a lawyer?

A. Yes. One way is to look at how other Americans have answered the question. In a recent study of Americans over the age of 18, researchers for the American Bar Association found almost half had used a lawyer in the past five years. The most common legal matters taken to lawyers involved

- real estate transactions (12%)
- drawing up a will (11%)
- as a party to a lawsuit (11%)
- divorce/separation (9%)
- probate/estate settlement matters (6%)
- child support/custody matter (5%)

- draw up an agreement/contact (5%)

Other fairly common matters requiring a lawyer's help included traffic matters, insurance claims, bankruptcy, auto accidents, and being a complainant or defendant in a criminal proceeding.

Source: *Perceptions of the U.S. Justice System* (Chicago: American Bar Association, 1999).

Q. Is the use of lawyers growing?

A. Apparently. A 1993 survey of 815 adults nationwide showed that use of a lawyer for both personal and business matters had increased significantly from 1986. Researches found that more middle and low income people were reporting that they used lawyers' services.

Q. If it is obvious that I will need a lawyer for a certain circumstance, should I save money and wait until I absolutely need the lawyer's services?

A. No. Lawyers should be thought of as preventers of legal problems, not just solvers. When dealing with legal issues, an ounce of prevention is worth many dollars and anxious hours of cure. Once you have determined that you need professional legal help, get it promptly. You can get the most help if you are in touch with a lawyer as soon as possible.

Q. What exactly is a lawyer?

A. A lawyer (also called attorney, counsel, counselor, barrister, or solicitor) is a licensed professional who advises and represents others in legal matters. When you picture a lawyer, you probably think of an elderly gentleman in a three-piece suit. That picture is no longer accurate. Today's lawyer can be young or old, male or female. Nearly one-third of all lawyers are under thirty-five. Almost half the law students today are women, and women will probably ultimately be as numerous in the profession as men.

Q. Is most of a lawyer's time usually spent arguing cases in court?

A. No. A lawyer normally spends more time in an office than in a courtroom. The practice of law most often involves researching legal developments, investigating facts, writing and preparing legal documents, giving advice, and settling disputes. Laws change constantly. New law is enacted and prior law is amended and repealed. In addition, judicial decisions in court cases regularly alter what the law currently means, whether the source of law is the United States Constitution or a state constitution; federal or state statutes; or federal, state, and local codes and regulations. For these reasons, a lawyer must put much time into knowing how the laws and the changes will affect each circumstance.

Q. What are a lawyer's main duties?

A. A lawyer has two main duties: to uphold the law and to protect a client's rights. To carry out these duties, a lawyer must know the law and be a good communicator.

Q. What are the professional requirements for becoming a lawyer?

A. To understand how laws and the legal system work together, lawyers must go through special schooling. Each state has enacted standards that must be met before a person is licensed to practice law there. Before being allowed to practice law in most states, a person must:

- have a bachelor's degree or its equivalent;

- complete three years at an accredited law school;
- pass a state bar examination, which usually lasts for two or three days; it tests knowledge in selected areas of law and in professional ethics and responsibility;
- pass a character and fitness review; each applicant for a law license must be approved by a committee that investigates his or her character and background;
- take an oath swearing to uphold the laws and the state and federal constitutions;
- receive a license from the state supreme court; some states have additional requirements, such as internship in a law office, before a license will be granted.

Q. Once licensed in one state, is a lawyer automatically allowed to practice law in all states?

A. No. To become licensed in more than one state, a lawyer must usually comply with each state's bar admission requirements. Some states, however, permit licensed out-of-state attorneys to practice law if they have done so in another state for several years and the new state's supreme court approves them.

Q. If I have a legal problem, may I hire someone other than a lawyer?

A. In some specialized situations, such as bringing a complaint before a government agency, nonlawyers or paralegals may be qualified to represent you--and their services may cost less than a lawyer's. Ask the government agency what types of legal representatives are available.

Q. I come from another country, and I need to hire a lawyer. Aren't notary publics actually lawyers?

A. A "notary public," "accountant," or "certified public accountant" is not necessarily a lawyer. Do not assume that titles such as notary public mean the same thing as similar words in your own language.

Types of Lawyers

Q. Do lawyers normally work alone or do most of them work for companies or the government?

A. About two thirds of all lawyers are in private practice; many others work for corporations or the government. Firms of various sizes employ lawyers in private practice. Almost half of the lawyers in private practice are sole practitioners who work alone. Others join with one or more lawyers in partnerships. As the table shows, about a quarter of lawyers are in partnerships that have ten lawyers or fewer.

Private Practitioners (1995)

Total practitioners: 634,475

Population/practitioner ratio: 410/1

Practitioners by Practice Setting and Sex

	Males		Females		Both Sexes	
	No.	%	No.	%	No.	%
Solo	225,584	45.9	72,139	50.3	297,724	46.9
...						
2 lawyer firm	30,369	6.2	5,557	3.9	35,926	5.7
...						
3 lawyer firm	21,706	4.4	3,775	2.6	25,480	4.0
...						
4 lawyer firm	15,731	3.2	3,239	2.3	18,970	3.0
...						
5 lawyer firm	12,270	2.5	2,616	1.8	14,887	2.3
...						
6-10 lawyer firm	37,720	7.7	9,242	6.4	46,962	7.4
...						
11-20 lawyer firm	34,249	7.0	9,007	6.3	43,256	6.8
...						
21-50 lawyer firm	35,522	7.2	10,431	7.3	45,954	7.2
...						
51-100 lawyer firm	21,928	4.5	6,895	4.8	28,823	4.5
...						
101 or more lawyer firm	55,860	11.4	20,633	14.4	76,493	12.1
..						
Total	490,940	100.0	143,535	100.0	634,475	100.0

Source:

The Lawyer Statistical Report: The U.S. Legal Population in 1995 (Chicago: American Bar Foundation, 1999)

Q. How are lawyers split between rural and metropolitan areas?

A. 88 percent of American lawyers work in metropolitan areas, and about one third of all lawyers work in large cities. Especially in rural areas and small cities, there are many general practitioners who, by themselves or with the help of other lawyers, handle most types of cases. However, the family lawyer/general practice lawyer is becoming harder to find.

Q. On what areas of practice do lawyers normally concentrate?

A. Most lawyers concentrate on one or a few specific areas, such as: domestic relations, criminal law, personal injury, estate planning and administration, real estate, taxation, immigration, and intellectual property law (see chart).

Areas of Legal Practice

Business Law

Advising about starting a new business (corporation, partnership, etc.), general corporate matters, business taxation, and mergers and acquisitions

Criminal Law	Defending or prosecuting those accused of committing a crimes
Domestic Relations	Representing individuals in separation, annulment, divorce, and child custody matters
Estate Planning	Advising clients in property management, drawing wills, probate, and estate planning
Immigration	Representing parties in proceedings involving naturalization and citizenship
Intellectual Property Law	Dealing with issues concerning trademarks, copyright regulations, and patents
Labor Law	Advising and representing employers, unions and employees on questions of union organizing, workplace safety, and compliance with government regulations
Personal Injury	Representing clients injured intentionally or negligently, and those with workers' compensation claims
Real Estate	Assisting clients in developing property; re-zoning; and buying, selling, or renting homes or other property
Taxation	Counseling businesss and individuals in local, state, and federal tax matters

Looking for a Lawyer

Q. How do I go about choosing a lawyer?

A. The lawyer will be helping you solve your problems, so you must feel comfortable enough to tell him or her, honestly and completely, all the facts necessary to resolve your problem. No one you listen to and nothing you read will tell you which particular lawyer will be the best for you; you must judge that for yourself. Most lawyers will meet with you briefly to "get acquainted," allowing you to talk with your prospective lawyer before making a final hiring decision. In many cases, there is no fee charged for an initial consultation. However, don't assume that an initial consultation is free. To be on the safe side, ask about fees before setting up your consultation appointment.

Q. Are there any practical considerations to keep in mind when choosing a lawyer?

A. Yes, the lawyer's area of expertise and prior experience are important. Eighteen states have specialization programs that certify lawyers as specialists in certain stated types of law. These states are: Alabama, Arizona, California, Connecticut, Florida, Georgia, Idaho, Indiana, Louisiana, Maine, Minnesota, New Jersey, New Mexico, North Carolina, Pennsylvania, South Carolina,

Tennessee and Texas. To find out which areas are certified in which states, access www.abanet.org/specialization/ In states without certification programs, you may want to ask about your lawyer's areas of concentration. You also may wish to ask about the type of cases your lawyer generally handles.

Other considerations are the convenience of the lawyer's office location, the amount of fees charged, and the length of time a case may take. Although they are not always wise guidelines, consider your personal preferences about the lawyer's age, gender, and personality. These preferences may guide you in locating someone with whom you feel most comfortable.

Q. Where should I start to look for a lawyer?

A. There are many sources for finding a reliable lawyer. Some of the best are recommendations from a trusted friend, relatives, or business associates. Be aware that each legal case is different and that a lawyer who is right for someone else may not suit you or your legal problem.

Q. Are advertisements a good place to look for a lawyer?

A. In some ways, yes, ads are useful. However, always be careful about believing everything you read and hear--and nowhere is this more true than with advertisements. Still, newspaper, telephone directory, radio, and television ads, along with direct mail, can make you familiar with the names of lawyers who may be appropriate for your legal needs. Some ads also will help you determine a lawyer's area of expertise. Other ads will quote a fee or price range for handling a specific type of "simple" case. Keep in mind that the lawyer may not be a "specialist" in the advertised field, and that your case may not have a simple solution. If a lawyer quotes a fee, be certain you know exactly what services the charge does and does not include.

Q. What about a local referral service?

A. Most communities have referral services to help the public find lawyers. These services usually recommend a lawyer in the area to evaluate a situation--sometimes at a reduced cost. Several services offer help to groups with unique characteristics, such as the elderly, immigrants, victims of domestic violence, or persons with a disability. Bar associations in most communities make referrals according to specific areas of law, helping you find a lawyer with the right concentration. Many referral services also have competency requirements for lawyers who wish to have referrals in a particular area of law.

Still, these services are not always a surefire way to find the "right" or even a "good" lawyer for you, since some services make referrals without concern for the lawyer's type or level of experience. In the end, you must make your own decision in order to feel confident about your selection. To contact a referral service, look in the telephone book's yellow pages under "Lawyer Referral Service," or look under any local or state bar association listing. or access www.abanet.org/referral for a list of 300 lawyer referral services across the country,

Q. My new job offers a pre-paid legal services plan. What can I expect?

A. Legal services, like many other things, are often less expensive when bought in bulk. Employers, labor and credit unions, and other groups have formed "legal insurance" plans. Many plans cover most, if not all, the costs of legal consultation, document preparation, and court representation in routine legal matters. Other programs cover only advice and consultation with a lawyer. Before joining a legal plan, make sure you are familiar with its coverage and know whether you will be

required to make out-of-pocket contributions. These group plans follow the same pattern as group or cooperative medical insurance plans. Employers or unions set up a fund to pay the employees' legal fees, just as they contribute to group insurance plans to cover medical costs. Legal group plans have become much more widespread in recent years. Some retail department stores and credit card companies even offer such plans to their customers.

Q. I have heard about legal clinics, but I am not sure if I can use their services. What kind of help do they offer?

A. Legal clinics primarily process routine, uncomplicated legal business. They generally use standard forms and paralegal assistants. Paralegals are those who have received special basic legal training and have learned skills through their jobs.

These clinics often charge less than traditional law firms for their services. They mainly work on wills, personal bankruptcy, divorces, and traffic offenses.

Q. I may want to hire a lawyer, but I do not have much money. Where can I find low-cost legal help?

A. People do not have a right to a free lawyer in civil legal matters (they do in most criminal cases). However, several legal assistance programs offer inexpensive or free legal services to those in need. Most legal aid programs have special guidelines for eligibility, often based on where you live, the size of your family, and your income. Some legal aid offices have their own staff lawyers, and others operate with volunteer lawyers. To find free or reduced-cost legal services in your area, call your bar association or county courthouse. You also may look in the telephone book's yellow pages under "Legal Aid," "Legal Assistance," or "Legal Services." Sometimes the telephone book will list a legal aid office under "Lawyers" or "Attorneys."

Q. I have been accused of a crime, and I cannot afford a lawyer. What can I do?

A. If the government accuses you of committing a crime, the United States Constitution guarantees you the right to be represented by a lawyer in any case in which you could be incarcerated for six months or more. If you cannot afford a lawyer, the judge handling the case will either appoint a private lawyer to represent you free of charge or the government's public defender will handle your case, also at no charge.

Q. Besides court-appointed defenders, is there any other form of government assistance available?

A. Departments and agencies of both the state and federal governments often have staff lawyers who can help the general public in limited situations, without charge. The United States Attorney's Office might be able to provide guidance about federal laws. It also might guide you to federal agencies that deal with specific concerns, such as environmental protection problems and discrimination in employment or housing.

The state attorney general also may provide guidance to the public on state laws, without charge. Some states, for example, maintain consumer protection departments as a function of the attorney general's office.

Similarly, counties, cities, and townships often have staff lawyers who may provide the public with guidance about local laws. Some of these local offices also offer consumer protection assistance through their law departments. However, government lawyers may not, at the

government's expense, advise or represent anyone in private legal matters.

Questions to Ask a Lawyer

Q. How will I determine whether I want to hire a specific lawyer?

A. Many lawyers are willing to meet with you briefly without charge so the two of you can get acquainted. During (or soon after) this first meeting, you can decide whether you want to hire that lawyer. Many people feel nervous or intimidated when meeting lawyers, but remember that you are the one doing the hiring, and what's most important is that you are satisfied with what you're getting for your money. Before you make any hiring decisions, you might want to ask certain questions to aid in your evaluation.

Sidebar: Have Faith

It is important that you trust the lawyer you hire, believing that he or she will do the best job possible in protecting your legal rights. However, remember that lawyers cannot work magic. No lawyer can be expected to win every case, and the best legal advice may turn out to be not exactly what you wanted to hear.

Q. What sort of questions should I ask?

A. Ask about the lawyer's experience and areas of practice. How long has the lawyer and the firm been practicing law? What kinds of legal problems does the lawyer handle most often? Are most clients individuals or businesses?

Q. Is it proper to ask the lawyer if anyone else will be working on my case?

A. Since you are the one paying the bill, it is well within your rights. Ask if nonlawyers, such as paralegals or law clerks, will be used in researching or preparing the case. If so, will there be separate charges for their services? Who will be consulted if the lawyer is unsure about some aspects of your case? Will the lawyer recommend another attorney or firm if this one is unable to handle your case?

Q. I met with a lawyer who referred me to another lawyer. Should I be angry?

A. Probably not. Occasionally, a lawyer will suggest that someone else in the same firm or an outside lawyer handle your specific problem. Perhaps the original lawyer is too busy to give your case the full attention it deserves. Maybe your problem requires another's expertise. No one likes to feel that a lawyer is shifting him or her to another attorney. However, most reassignments within firms occur for a good reason. Do not hesitate to request a meeting with the new attorney to make sure you are comfortable with him or her.

Q. What, in particular, should I ask about fees and costs?

A. How are fees charged--by the hour, by the case, or by the amount won? About how much money will be required to handle the case from start to finish? When must you pay the bill? Can you pay it in installments? Ask for a written statement showing specific services rendered and the charge for each.

Q. When I first meet with my prospective lawyer, should I ask about the possible outcome

of the case?

A. Certainly, but beware of any lawyer who guarantees a big settlement or assures a victory in court. Remember that there are at least two sides to every legal issue and many factors can affect its resolution. Ask for the lawyer's opinion of your case's strengths and weaknesses. Will the lawyer most likely settle your case out of court or is it likely that the case will go to trial? What are the advantages and disadvantages of settlement? Of going to trial? What kind of experience does the lawyer have in trial work? If you lose at the trial, will the lawyer be willing to appeal the decision?

Q. Should I ask if and how I can help with my case?

A. Yes. It is often in your interest to participate actively in your case. When you hire a lawyer, you are paying for legal advice. Your lawyer should make no major decision about whether and how to go on with the case without your permission. Pay special attention to whether the lawyer seems willing and able to explain the case to you and answers your questions clearly and completely. Also ask what information will be supplied to you. How, and how often, will the lawyer keep you informed about the progress of your case? Will the lawyer send you copies of any of the documents that have to do with your case? Can you help keep fees down by gathering documents or otherwise assisting the effort?

Q. During our first meeting, should I ask what will happen if the lawyer and I disagree?

A. Yes, your first meeting is the best time to ask about resolving potential problems. Find out if the lawyer will agree to binding arbitration if a serious dispute arises between the two of you. Most state bar associations have arbitration committees that, for a fee, will settle disputes that you and your lawyer may have, say over expenses. By agreeing to binding arbitration, both you and the lawyer consent to present your cases to an outside panel and abide by its decision.

Legal Fees and Expenses**Q. How can I be sure that my lawyer will not overcharge me?**

A. The fee charged by an attorney should be reasonable from an objective point of view. The fee should be tied to specific services rendered, time invested, and level of expertise provided.

There are some broad guidelines to help in evaluating whether a particular fee is reasonable:

- the time and work required by the lawyer and any assistants, and the difficulty of the legal issues presented;
- how much other lawyers in the area charge for similar work;
- the total value of the claim or settlement and the results of the case;
- whether the lawyer has worked for that client before;
- the lawyer's experience, reputation, and ability; and
- the amount of other work the lawyer had to turn down to take on a particular case.

Sidebar: Talk About Fees

Although money is often a touchy subject in our society, fees and other charges should be discussed with your lawyer early. You can avoid future problems by having a clear understanding of the fees to be charged and getting that understanding in writing before any legal work has

started. If the fee is to be charged on an hourly basis, insist on a complete itemized list and an explanation of charges each time the lawyer bills you.

Legal advice is not cheap. A bill from a lawyer for preparing a one-page legal document or providing basic advice may surprise some clients. Remember that when you hire a lawyer, you are paying for his or her expertise and time.

Q. Someone said that I should ask my lawyer to use the billing method that is based on contingent fees. What does this mean?

A. A client pays a contingent fees to a lawyer only if the lawyer handles a case successfully. Lawyers and clients use this arrangement only in cases where money is being claimed--most often in cases involving personal injury or workers' compensation. Many states strictly forbid this billing method in criminal cases and in most cases involving domestic (i.e., family) relations.

In a contingent fee arrangement, the lawyer agrees to accept a fixed percentage (often one third) of the recovery, which is the amount finally paid to the client. If you win the case, the lawyer's fee comes out of the money awarded to you. If you lose, neither you nor the lawyer will get any money, but you will not be required to pay your attorney for the work done on the case.

On the other hand, win or lose, you probably will have to pay court filing fees, the costs related to deposing witnesses, and similar charges.

By entering into a contingent fee agreement, both you and your lawyer expect to collect some unknown amount of money. Because many personal injury actions involve considerable and often complicated investigation and work by a lawyer, this may be less expensive than paying an hourly rate. You should clearly understand your options before entering into a contingency fee agreement, which is a contract in itself.

Q. Are all contingent fee arrangements the same?

A. No. An important consideration is whether or not the lawyer deducts the costs and expenses from the amount won before or after you pay the lawyer's percentage.

Example: Joe hires Ernie Attorney to represent him, agreeing that Ernie will receive one third of the final amount--in this case, \$12,000. If Joe pays Ernie his fee before expenses, the fee will be calculated as follows:

\$12,000 Total amount recovered in case
-\$4,000 One third for Ernie Attorney
\$8,000 Balance
-2,100 Payment for expenses and costs
\$5,900 Amount that Joe recovers

If Joe pays Ernie after other legal expenses and costs, the fee will be calculated as follows:

\$12,000 Total amount recovered in case
- 2,100 Payment for expenses and costs
\$9,900 Balance
-3,300 (One-third for Ernie Attorney)
\$6,600 Amount that Joe recovers

The above figures show that Joe will collect an additional seven-hundred dollars if the agreement provides that Ernie Attorney collects his share after Joe pays the other legal expenses.

Many lawyers prefer to be paid before they subtract the expenses, but the point is often negotiable. Of course, these matters should be settled before you hire a lawyer. If you agree to pay a contingent fee, your lawyer should provide a written explanation of this agreement that clearly states how he or she will deduct costs.

Q. If my lawyer and I agree to a contingent fee arrangement, shouldn't the method of settling my case affect the amount of my lawyer's fee?

A. Yes, but only if both of you agree beforehand. Lawyers settle most personal injury cases through negotiations with insurance companies; such cases rarely require a trial in court. If the lawyer settles the case before going to trial, this requires less legal work. You can try to negotiate an agreement in which the lawyer accepts a lower percentage if he or she settles the case easily and quickly or before a lawsuit is filed in court, though many good lawyers might not agree to those terms.

Q. What billing method do most lawyers use?

A. The most common billing method is to charge a set amount for each hour of time the lawyer works on your case. The method for determining what is a "reasonable" hourly fee depends on several things. More experienced lawyers tend to charge more per hour than those with less experience--but they also may take less time to do the same legal work. In addition, the same lawyer will usually charge more for time spent in the courtroom than for hours spent in the office or library.

Sidebar: Types of Fees and Expenses

The method used to charge fees is one of the things to consider in deciding if a fee is reasonable. You should understand the different charging methods before you make any hiring decision. At your first meeting, the lawyer should estimate how much the total case will cost and inform you of the method he or she will use to charge for the work. As with any bill, you should not pay without first getting an explanation for any charges you do not understand. Remember, not all costs can be estimated exactly because of unforeseen developments during the course of your case.

Q. A friend suggested that I might want to have a lawyer "on retainer." What does this mean?

A. A retainer fee is a set amount of money paid regularly to make sure that a lawyer will be available for any necessary legal service you might require. Businesses and people who routinely have a lot of legal work use retainers. By paying a retainer, a client receives routine consultations and general legal advice whenever needed. If a legal matter requires courtroom time or many hours of work, the client may need to pay more than the retainer amount. Retainer agreements should always be in writing.

Most people do not see a lawyer regularly and do not need to pay a retainer fee. Sometimes, however, a lawyer will ask the client to pay some money in advance before any legal work will be done. Although often called a "retainer," this money is really a down payment that will be applied toward the total fee billed.

Q. I saw an advertisement from a law firm that charges fixed fees for specific types of work. What does this involve?

A. A fixed fee is the amount that will be charged for routine legal work. In a few situations, this amount may be set by law or by the judge handling the case. Since advertising by lawyers is becoming more popular, you are likely to see ads offering: "Simple Divorce--\$150" or "Bankruptcy--from \$50." Do not assume that these prices will be the amount of your final bill. The advertised price often does not include court costs and other expenses.

Q. Does the lawyer's billing method influence the other costs and expenses that I might have to pay?

A. No. Some costs and expenses will be charged regardless of the billing method. The court clerk's office charges a fee for filing the complaint or petition that begins a legal action. The sheriff's office charges a fee for serving a legal summons. Your lawyer must pay for postage, copying documents, telephone calls, and the advice or testimony of some types of expert witnesses such as doctors. These expenses, often called "costs," may not be part of a legal fee, and you may have to pay them regardless of the fee arrangement you use. Your lawyer will usually pay these costs as needed, billing you at regular intervals or at the close of your case.

Q. What are referral fees?

A. If you go to "Lawyer A," he or she may be unable to help but refers you instead to "Lawyer B," at another law firm, who has more experience in handling your kind of case. In return for the referral, Lawyer A will sometimes ask to be paid part of the total fee arrangement you pay to Lawyer B. The law may prohibit this type of fee, especially if it increases the final amount to be paid by a client. The ethical rules for lawyers in most states specify that two lawyers may not divide a client's fee unless:

1. the client knows about the arrangement;
2. both lawyers do some actual "work" on the case;
3. they divide the fee to show how much work each lawyer did; and
4. the total bill is reasonable.

If one lawyer refers you to another, ask whether there will be a referral fee and, if so, ask about the specifics of the agreement between the lawyers.

Q. Should I "shop around" for the cheapest lawyer I can find?

A. With legal advice, as with other products and services, you often get what you pay for. Although you should not expect to get good legal advice without paying for it, you should not pay for anything that you don't actually receive. After you and your lawyer have discussed fees, make sure to follow through by examining each bill carefully. If you feel that any charge is too high or if you do not understand a billed item, ask your lawyer to explain it before you pay.

Q. Is there anything I can do to reduce my legal costs?

A. Yes, there are several cost-cutting methods available to you. First, answer all your lawyer's questions fully and honestly. Not only will you feel better but you also will save on legal fees. If you tell your lawyer all the facts as you know them, it will save time that might be spent on the particular case and will help your lawyer do a better job.

Remember that the ethics of the profession bind your lawyer to maintain in the strictest confidence almost anything you reveal during your private discussions. You should feel free to tell your lawyer the complete details in your case, even those that embarrass you. It is particularly important to tell your lawyer facts about your case that reflect poorly on you. These will almost certainly come out if your case goes to trial.

Q. Should I wait for my lawyer to say what he or she needs from me?

A. No, some things should be obvious to you. Before the first meeting with your lawyer, think about your legal problem and how you would like it resolved. If your case involves other people, write down their names, addresses, and telephone numbers. Also jot down any specific facts or dates you think might be important and any questions you want answered. Bring the information with you to the first meeting, along with any relevant documents such as contracts or leases. By being organized, you will save time and money.

Q. If something related to my case has occurred, should I wait until my next scheduled meeting to tell my lawyer about it?

A. No, situations can vary from one day to the next. Tell your lawyer immediately of changes that might be important to your case. It might mean that the lawyer will have to take a totally different action--or no action at all--in your case. This could greatly affect your lawyer's fee.

Q. Can I reduce my legal costs if I get more involved in my case?

A. Sometimes. Stay informed and ask for copies of important documents related to your case. Let your lawyer know if you are willing to help out, such as by picking up or delivering documents or by making a few telephone calls. You should not interfere with your lawyer's work. However, you might be able to move your case quicker, reduce your legal costs, and keep yourself better informed by doing some of the work yourself. Discuss this with your lawyer.

What to Do if Your Lawyer Does Not Satisfy You

Sidebar: Expectation About Your Lawyer

When you agree to hire a lawyer and that lawyer agrees to be your legal representative, a two-way relationship begins in which you both have the same goal--to reach a satisfactory resolution to a legal matter. To reach this end, each of you must act responsibly toward the other. In a lawyer/client relationship, acting responsibly involves duties on both sides--and often involves some hard work.

You have a right to expect competent representation from your lawyer. However, every lawsuit has at least two sides. You cannot always blame your lawyer if your case does not turn out the way you thought it would. If you are unhappy with your lawyer, it is important to determine the reasons. If, after a realistic look, you still believe that you have a genuine complaint about your legal representation, there are several things you can do. The accompanying questions and answers discuss your alternatives.

Q. I lost my case, and I still had to pay my lawyer's bill along with costs and expenses. I am not very happy with my lawyer. What can I do?

A. First, talk with your lawyer. A lack of communication causes many problems. If your lawyer appears to have acted improperly, or did not do something that you think he or she should have done, talk with your lawyer about it. You may be satisfied once you understand the circumstances better.

Q. I have tried to talk with my lawyer. However, my lawyer will not discuss it. Do I have any alternatives?

A. Yes. If your lawyer is unwilling to discuss your complaints, consider taking your legal affairs to another lawyer. You decide whom to hire (and fire) as your lawyer. When you fire a lawyer, you may be charged a reasonable amount for the work already done. Most documents relating to the case are yours--ask for them. In some states, however, a lawyer may have some rights to a file until the client pays a reasonable amount for work done on the case.

Q. What if I feel that my lawyer has acted unethically?

A. How a lawyer should act, in both professional and private life, is controlled by the rules of professional conduct in the state or states where he or she is licensed to practice. These rules are usually by the state supreme court through its disciplinary board.

These codes consist of rules that describe generally how lawyers should strive to improve the legal profession and uphold the laws. They also give more detailed rules of conduct for specific situations (see below). If a lawyer's conduct falls below the standards set out in the codes, he or she can be disciplined by being "censured" or "reprimanded" (publicly or privately criticized), "suspended" (having the license to practice law taken away for a certain time), or "disbarred" (having the law license taken away indefinitely).

The law sets out punishments for anyone who breaks civil and criminal laws, and that includes lawyers. But because of the special position of trust and confidence involved in a lawyer/client relationship, lawyers may also be punished for things which are not unlawful--such as telling others confidential information about a client or representing clients whose interests are in conflict.

Q. What are some specific examples of the ethical duties of lawyers?

A. Among the highest responsibilities a lawyer has is his or her obligation to a client. A number of strict rules and common sense guidelines define these responsibilities.

- Competence. This requires the lawyer's ability to analyze legal issues; research and study changing laws and legal trends; and otherwise represent the client effectively and professionally.
- Following the client's decisions. A lawyer should advise a client of possible actions to be taken in a case and then act according to the client's choice of action--even if the lawyer might have picked a different route. One of the few exceptions is a client asking for a lawyer's help in doing something illegal such as lying in court or in a legal document. In these cases, the lawyer is required to inform the client of the legal effect of any planned wrongdoing and refuse to assist with it.
- Diligence. Every lawyer must act carefully and in a timely manner in handling a client's legal problem. Unnecessary delays can often damage a case. If, because of overwork or any other reason, a lawyer is unable to spend the required time and energy on a case, the lawyer should refuse from the beginning to take the case.
- Communication. A lawyer must be able to communicate effectively with a client. When a client

asks for an explanation, the lawyer must provide it within a reasonable time. A lawyer must inform a client about changes in a case caused by time and circumstances.

- Fees. The amount the lawyer charges for legal work must be reasonable, and the client should be told the specifics of all charges.
- Confidentiality. With few exceptions, a lawyer may generally not tell anyone else what a client reveals about a case. The reason for this strict rule is to enable a client to discuss case details openly and honestly with a lawyer, even if those details reveal embarrassing or damaging information about the client. A rule called the "attorney/client privilege" helps protect confidential information from being disclosed. Ask your lawyer to explain the privilege to you.
- Conflicts of interest. A lawyer must be loyal to his or her client. This means that a lawyer cannot represent two clients who are on opposite sides in the same or related lawsuits unless both clients give permission. And ordinarily, there can be no representation of a client whose interests would conflict with the lawyer's interests. For example, a lawyer may not be involved in writing a will for a client who leaves the lawyer money or property in that will.
- Keeping clients' property. If a lawyer is holding a client's money or property, it must be kept safely and separately from the lawyer's own funds and belongings. When a client asks for the property, the lawyer must return it immediately and in good condition. The lawyer must also keep careful records of money received for a client and, if asked, report that amount promptly and accurately.

Sidebar: A Client's Responsibilities

As in any successful relationship, a good lawyer/client relationship involves cooperation on both sides. As a client, you should do all you can to make sure you get the best possible legal help. This includes:

- **Being honest.** Be honest in telling all the facts to your lawyer. Remind yourself of important points or questions by writing them down before talking with your lawyer.
 - **Notifying the lawyer of changes.** Tell the lawyer promptly about any changes or new information you learn which may affect your case. This responsibility is a broad one and covers things from a change of your address or telephone number to letting your lawyer know if and why you are unhappy with his or her work.
 - **Asking for clarification.** If you have any questions or are confused about something in your case, ask the lawyer for an explanation. This may go a long way toward putting your mind at ease--and will also help your lawyer do a better job of handling your case.
 - **Being realistic.** A lawyer can only handle your legal affairs. You may need the help of another professional--banker, family counselor, accountant, or psychologist, for example--for problems that have no "legal" solution. After you have hired a lawyer you trust, do not forget about that trust. The lawyer's judgments are based on experience and training. Also, keep in mind that most legal matters cannot be resolved overnight. Give the system time to work.
 - **Paying.** A client has the duty to promptly pay a fair and reasonable price for legal services. In fact, when a client fails to pay, in some situations the lawyer may have the right to stop working on the case. Still, the lawyer must then do whatever is reasonably possible to prevent the client's case from being harmed.
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Q. I am upset with the way my lawyer handled my case. Can I file a complaint?

A. Yes. As noted above, lawyers can be disciplined for violating ethical guidelines.

Q. Where can I file a complaint against my lawyer?

A. If you believe you have a valid complaint about how your lawyer has handled your case, inform the organization that grants or withholds licenses to practice law in your state. Usually this is the disciplinary board of the state supreme court. You'll find it under the government listings for your state. You can also obtain its location from the local bar association. Or access www.abanet.org/cpr/disciplinary.html for a listing of lawyer disciplinary agencies.

In some states, the state bar association handles lawyer discipline. The board or the bar will either investigate the complaint or refer you to someone who can help. If your complaint concerns the amount your lawyer charged, you may be referred to a state or local bar association's fee arbitration service.

Making a complaint of this sort may punish the lawyer for misconduct, but it will probably not help you recover any money. Filing a disciplinary complaint accusing your lawyer of unethical conduct is a serious matter to the lawyer. Try to resolve any differences or disputes directly with the lawyer before filing a complaint.

If you have a case pending that your lawyer has mishandled, be sure to also protect your rights by taking steps to see that your case is now properly handled.

Q. Then how can I get money to compensate me for my lawyer's misconduct?

A. You will have to file a malpractice suit against your lawyer. The discussion on medical malpractice in the "[Personal Injury](#)" chapter will provide useful information on malpractice in general.

You may also have the right to receive compensation from a client security fund (see below).

Q. My lawyer settled my case out of court and refuses to pay me my share of the settlement. What can I do about it?

A. If you believe that your lawyer has taken or improperly kept money or property that belongs to you, contact the state (or sometimes, local) "client security fund," "client indemnity fund" or "client assistance fund." The state or local bar association or the state supreme court disciplinary board can tell you how to contact the fund that serves you. Under any name, these funds may reimburse clients if a court has found that their lawyer has defrauded them. Lawyers pay fees to maintain such funds.

Q. If I am having a problem with my lawyer, is there any reason that I would want to call the police?

A. Yes. If you believe that your lawyer has committed a crime such as stealing your money or property, you should report that crime to the police. This is a last resort that should be taken only when you feel certain of your position. However, if you are certain, do not feel intimidated because your complaint is against a lawyer.

Alternatives to Lawsuits

Q. I am considering filing a lawsuit against someone. Is there anything I can do to avoid this?

A. Yes, you can try to negotiate. Before you even think of going to court, try to talk with the other person in the dispute. Most potential suits are settled long before they go to court. The next chapter discusses steps to take in settling your case.

You can also explore other low-cost, informal alternatives that probably exist in your community--mediation, arbitration, and small claims court. The next chapter also provides practical information about each of these options.

Sidebar: Listen to the Other Person

Keep an open mind to possible solutions and listen to the other person's side of the story. Remember that, with or without the help of lawyers, most people settle their legal disputes out of court.

Q. I have already hired a lawyer and filed a lawsuit. Is it too late to negotiate a settlement?

A. No. It's almost never too late to settle. Judges and lawyers encourage those involved in a lawsuit to reach an agreement between themselves. If you reach an agreement after filing your case, let the court know you have settled the matter, and the case will be removed from the court's calendar. If you have hired a lawyer, he or she should do this.

Sidebar: After You Settle

It is important to get your settlement in writing, and it is best if you and the other person involved sign the final agreement. Suppose that, after filling a lawsuit, the two of you are able to work out the main problem such as who owes how much to whom. It still may be necessary to appear before a judge to determine a method or schedule of payment. It is usually best to get the advice of a lawyer about any settlement before you put it into writing and sign it.

Q. Can my case be thrown out of court because it is too old?

A. Yes, every state has a time limit within which a case must be filed. The logic behind such limits, called statutes of limitations, is that most lawsuits are more easily and more fairly resolved within a short time. This is another reason that it is important to act as soon as you and your lawyer feel that you may have a valid legal claim. The time limits vary for different types of cases.

Where to Go for More Information

Practical Information About the Law.

There are many good sources of information about everyday law that will help you understand legal matters better and may give you a sense of your options. Many groups such as bar associations and consumer groups offer free or inexpensive brochures on various aspects of everyday law. A few of the many good practical law websites include

- the ABA's Division for Public Education (www.abanet.org/publiced)
- FindLaw (www.findlaw.com)

- For consumer issues, the Federal Trade Commission (www.ftc.gov) and the Better Business Bureau (www.bbb.com)
- For concerns of older persons, AARP (www.aarp.org/)
- For tax issues, the IRS (www.irs.ustreas.gov)

Alternative Dispute Resolution

- For information about mediation and arbitration in your community, check those listings in the Yellow Pages or contact your bar association or court system. For a national list of Internet sites on mediation and arbitration, access www.abanet.org/dispute/drlinks

- For information about small claims courts, contact your bar association or court system, or access www.abanet.org/jd/jdlink or www.ncsc.dni.us/COURT/SITES/Lawsites for links to court systems across the country and national groups

Finding a Lawyer.

- For your local lawyer referral program, call your bar association, look in the Yellow Pages, or access www.abanet.org/referral for a list of 300 lawyer referral services across the country,
- For a list of national and state organizations that certify lawyers in particular specialties, access www.abanet.org/specialization/source
- For a listing of all state and major local bar associations with an Internet presence, access www.abanet.org/barserv/stlobar
- For prepaid legal services plans, check under the heading legal services in your Yellow Pages; for a listing of prepaid legal services plans that make certain legal services available at reduced or no costs to their members, access www.abanet.org/api/apiabout
- For legal services for the poor in your area, contact your bar association or look in the Yellow Pages under legal clinics or legal services; for a listing of legal service programs for the poor in every state, access www.abanet.org/legalservices/probono/home

To Complain About a Lawyer

Call you bar association, which will tell you how to proceed, or access www.abanet.org/cpr/disciplinary for a listing of lawyer disciplinary agencies services in every state.

[Click here to go to Chapter 2](#)