

# Considerations in Hiring an Attorney

Most people will need an attorney sometime in their lives. There are many situations where legal assistance is necessary, such as preparation of contracts, wills, and other legal papers. Other matters, such as estate planning, incorporation, and property transfers, also merit legal advice.

When a dispute occurs, the first thought of many people is to go to a lawyer. Many disputes, though, can be resolved by direct and constructive communication between the parties. Negotiation is by far the cheapest, simplest and easiest way to settle conflicts.

However, if you are sued (including divorce) or charged with a crime, it is very important to consult with an attorney about your rights and options. Of course, one may more easily represent oneself in minor matters, such as small claims court or traffic court, but even then legal advice is prudent for preparation.

A good working relationship must be based on mutual trust and respect. The role of an attorney is to advise, give options and represent your interests, as well as to perform specific legal services. You are responsible to define your interests and what you want the attorney to do to achieve those interests.

The first question for many people is "how do I choose a lawyer?" and then "how do I work with my lawyer?" Carl F. Lansing, author of *Legal Defense Handbook*, suggests ten commandments for hiring and working with an attorney.

**1. Choose the right lawyer.** There are two dangerous mistakes to avoid. One is not conferring with an attorney when you need to, thus trying to act as your own lawyer. The old adage "*he who represents himself in court has a fool for a client*" points to the need for competent knowledge of both the rules of the legal system, as well as the law. Second, refrain from using a lawyer who is a friend or a member of your church and expecting this person to work for free. Even if the attorney friend were willing, he or she may not have the experience you need and the relationship could be damaged if difficulties arise.

**2. Ask questions before you hire a lawyer.** All attorneys are not created equal. It's important to get as much information as possible before you hire the attorney.

*Questions to ask yourself first:*

- What exactly are your legal needs right now and in the future?
- Do you need a one-time service or are you looking for a long-term relationship.

- Do you desire personalized attention and/or customized work, or will "any competent lawyer" do?
- Does your problem or need have a spiritual or religious dimension? or is the issue truly secular in nature?

*Questions to ask the lawyer over the phone:*

- Do you handle the type of need or problem I have? (Give a brief general description, such as "bankruptcy," "adoption" or "landlord/tenant," not the detailed story unless you're asked.)
- Do you charge for an introductory one-hour conference to discuss employing you as my attorney? (30 minutes is not enough.) If so, how much, and will this amount be credited toward the overall cost of handling my case?
- Do you or your firm have any *professional* conflicts of interest? Do you represent or have you ever done work for my adversary?
- Do you currently have the time in your schedule to take on my case?

*Questions to ask the lawyer at the interview conference:*

- What kinds of clients do you typically represent?
- Are there any areas of law in which you have expertise?
- Can you provide the names of former clients who would recommend your services?
- Do you have a resume that I can have?
- (For litigation) How many trials have you conducted in the past five years?
- What are the various alternative ways in which my case or problem might be handled?
- Do you anticipate any special problems? If so, how will they be handled?
- Will you be doing all the work? If not, will you introduce me to the other people who will be working on my case or problem?
- How long do you estimate the case will take? What variables would affect your estimate?
- What are the alternative fee arrangements for handling my case? What fee arrangement do you recommend? If you recommend that my case be handled on an hourly basis, what is your hourly rate and what fraction of an hour do you use in billing?
- What is your billing procedure? Will your bills itemize the legal work done, giving a description of each service, the date the service is rendered, the name of the person rendering the service, and the

charge for the service?

- How much do you estimate the total fees will be? What variables can affect what the fees will be?
- Will you provide a contract or engagement letter describing the fee and billing arrangements on which we have agreed?
- How might I assist you in handling my case or problem in order to minimize legal expenses and stay within budget?
- Have you and/or your firm ever had a malpractice claim or professional grievance been made against you? If so, please explain.

**3. Prepare and revise fee budgets in advance.** You and your attorney should always keep in mind the original legal fee estimate. In litigation particularly, it's easy to go off budget, and even forget that there was a budget until it's too late. Monthly billing is a must for reassessing both the budget and your financial resources. Remember that you're paying the bill, so you're entitled to know the likely costs of any legal service or activity the attorney performs for your case.

**4. Be involved in your case.** The surest way to receive a shocking (but reasonable) bill is to hand your problems over to the lawyer and walk away without participating. There may be some tedious tasks normally done by the lawyer that you could do which can save on expenses. Conversely, being involved does not mean pestering the lawyer with frequent and unnecessary phone calls, for which the attorney must bill you.

**5. Don't tolerate personality disputes between your lawyer and the opposing lawyer.** Sometimes attorneys may develop conflicts that result in little direct communication and a lot of letters being passed back and forth. These adversarial games can cost you money. If necessary, you can request to receive copies of letters sent to and from opposing counsel so that you can monitor whether such conflicts are occurring. Be sure that your attorney is representing you in a manner consistent with your values and goals.

**6. Review invoices and ask questions.** Before you hire the lawyer, ask if you can call the lawyer for free to discuss each monthly bill. Ask for at least 15 minutes per month. This conversation is not to be confrontational, but to insure that you understand everything in the bill. As you review the bill, remember that the attorney's fee goes toward paying many different expenses besides a personal salary, such as secretarial time, telephone, postage, expert testimony, etc.

**7. Negotiate the fee arrangement that is best for you.** Billing by the hour is the most common arrangement, but you may have a difficult time budgeting from month to month what the bill will be. For routine tasks, like reviewing a contract, the fixed (or flat) fee may be most advantageous to you. Many cases may also be handled on a "contingent" basis, which means that the lawyer earns a fee by winning or settling the case and receiving the money from the adversary. The fee agreement should specify whether you will be expected to pay expenses if the lawsuit does not yield a monetary award and whether the expenses of the case will be deducted before or after calculating the attorney's fees.

**8. Use mediation or arbitration whenever possible as an alternative to civil litigation.** These dispute resolution methods can be considerably cheaper and faster than the conventional lawsuit of two attorneys negotiating a settlement. These processes involve neutral persons who meet with opposing parties to help them settle the dispute. In mediation the parties make the final decision and in arbitration the arbiter makes the final decision.

**9. Settle, Settle, Settle.** In many cases there is more at stake than your "rights." For example, how much in the long run are you willing to pay just "for the principle of it." How much of your life do you want to spend in a personal war? Will your action have potentially damaging consequences on innocent third parties. How much emotional turmoil can your life handle? Be sure to count all the costs before embarking on a course that could leave you seriously disappointed.

**10. Speak up if you are not pleased.** If you are confused, ask questions. Don't sign anything you don't understand or agree with. If you're not sure of your lawyer's advice or actions, get a second professional opinion.

**A word about your responsibility.** When you decide on the attorney you wish to hire you need to be prepared to cooperate with the attorney. It is important to clarify in advance the attorney's expectations of you to assure optimum service. Keep appointments you make or notify the attorney in advance if you can't keep an appointment. Do not call an attorney at home without express permission and do not expect the attorney to be available at other than stated office hours. Keep current on your legal billing account to insure that any complaints you may have about the lawyer don't boomerang. Remember, you are "employing" the attorney and employees deserve to be paid when promised.