When and How to Use a Lawyer

Lawyer Basics ................................................. 2
What Is a Lawyer? ............................................. 2
When Do You Need a Lawyer? ............................ 3
Help from Nonlawyers ....................................... 4
Types of Lawyers ............................................. 6
Choosing a Lawyer ............................................ 6
Looking for a Lawyer ......................................... 6
Questions to Ask a Lawyer ................................. 9
Legal Fees and Expenses .................................... 12
Types of Fees .................................................. 13
Cost-Cutting Options ....................................... 16
When Things Go Wrong ..................................... 18

Simon has decided to buy a car. Julie and Sam are getting married. Annette thinks she might have been discriminated against when applying for a job. Do these people need to talk to lawyers? If so, how do they find one? What do they say? The law affects almost everything you do—from making a purchase, to driving a car, to interacting with others. There are many situations that you can handle on your own, without the assistance of a lawyer. However, when circumstances and laws are complex—for example, if you’re injured, or if you might lose valuable rights—you may need a lawyer’s guidance.

When do you need a lawyer? How can you find one? How do you work with one? This chapter helps you find the answers to these and other critical questions.
LAWYER BASICS

This section outlines the basics of the legal profession and explains the role of a lawyer. It also helps you to determine when you need a lawyer’s help, and explains the various types and specialties of lawyers.

What Is A Lawyer?

**Q. What exactly is a lawyer?**

**A.** A lawyer (also called an attorney, counsel, or a counselor) is a licensed professional who advises and represents people in legal matters. Today’s lawyer can be young or old, male or female. Nearly one-third of all lawyers are under thirty-five years old.

**Q. I come from another country, and I need to hire a lawyer. Are notaries public also lawyers?**

**A.** A person with the title “notary public,” “accountant,” or “certified public accountant” is not necessarily a lawyer. Do not assume that such titles have the same meaning as in your native country. In some countries, a lawyer is called a “barrister” or a “solicitor.”

**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 should understand the law and be an effective communicator.

**Q. Is most of a lawyer’s time spent in court?**

**A.** No. Most lawyers normally spend 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. What we consider to be the “law” generally derives from three sources: the Constitution (the U.S. Constitution and the constitutions drafted by various states), statutes, and case decisions. The law changes constantly as new laws are enacted and existing laws are amended or repealed. In addition, decisions in court cases regularly alter what the law currently means, as judges interpret and apply the U.S. Constitution, state constitutions, federal or state statutes, and federal, state, and local codes and regulations. For these reasons, a lawyer must devote time to keeping current on changes in the law, and how those changes affect his or her practice.

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

**A.** To understand how laws and the legal system work, lawyers require special schooling. Each state has standards that a person must meet before obtaining a license 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 ABA-accredited law school;
- pass a state bar examination, which usually lasts for two or three days and tests knowledge in selected areas of law;
- pass required tests on professional ethics and responsibility;
- be approved by a committee that investigates character and background;
- swear an oath, usually to uphold the state and federal law and constitutions; and
- obtain a license from the highest court in the state, usually the state supreme court.
Q. Once licensed in one state, is a lawyer allowed to practice law in all states?

A. Not automatically. To become licensed in more than one state, a lawyer must usually comply with each state’s bar admission requirements. However, some states permit licensed out-of-state lawyers to practice law if they have done so in another state for several years and the new state’s highest court approves them. Many states also have provisions for lawyers to participate in specific cases in states where they are not licensed. The lawyer in such a case is said to be appearing pro hac vice, which means “for this one particular occasion.”

Q. If I have a legal problem, do I have to hire a lawyer?

A. Not necessarily—you may represent yourself. Nonlawyers or paralegals may also be qualified to represent you in certain situations, such as in the bringing of a complaint before a government agency—for example, in a dispute over Social Security or Medicare benefits. (Paralegals are nonlawyers who have received training that enables them to assist lawyers in a number of tasks, though they typically cannot represent clients in court.) If you find yourself in this type of situation, ask the applicable government agency what types of representation are acceptable.

There are many matters you can handle yourself, if you know how to go about it. For example, you can represent yourself in traffic or small-claims court, or engage in negotiations and enter into contracts on your own. But if you are not sure about the consequences of your actions or are uncertain about how to proceed, getting some quick legal advice from a lawyer could be very helpful in preventing problems down the road.

Q. Why do lawyers seem to speak and write in a totally different language?

A. Lawyers and others trained in the law often use legal terms as shorthand to express complicated ideas or principles. These words and phrases, many derived from 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, the law has required that federal regulations 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 is a trend in law schools to discourage the use of legalese and to encourage the use of plain, comprehensible English.

When Do You Need a Lawyer?

Q. I think I might benefit from speaking to a lawyer, but I’m not actually involved in a legal dispute. Does this mean I shouldn’t get an attorney?

A. No. In fact, lawyers often help clients in matters that are not legal disputes. For example, a person might consult a lawyer when starting a business or entering into a partnership, when buying or selling a home, or for information and advice on tax matters or estate planning. Some clients receive regular legal
checkups that, like medical checkups, are designed to catch problems early or prevent them altogether.

**Q.** I understand that consulting a lawyer may sometimes be unnecessary. But are there specific situations in which I should always consult a lawyer?

**A.** Yes, some matters are best handled by a lawyer. While such matters are sometimes difficult 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;
- being served with legal papers in a civil lawsuit;
- being involved in a serious accident that causes personal injury or property damage;
- a change in family status such as divorce, adoption, or death; or
- a change in financial status such as obtaining or losing valuable personal property or real estate, starting a business, or filing for bankruptcy.

**TIME IS RUNNING OUT**

Be aware that your right to initiate a legal action will not last forever. Every state has a time limit within which a lawsuit must be filed. The time limits vary for different types of claims. The logic behind such limits, called **statutes of limitations**, is that lawsuits are most easily and fairly resolved when memories are fresh and while evidence still exists. Therefore, it is important to act as soon as you suspect that you may have a valid legal claim.

**Help from Nonlawyers**

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

**A.** There are many ways to solve a grievance without resorting to lawyers. For example, if you believe a business has cheated you, you may get help from a consumer protection agency run by your city, county, state, or fed-

**GET HELP EARLY**

Don't just ignore those invoices or letters threatening legal action. Legal problems won't just go away. When dealing with legal issues, an ounce of prevention is worth many dollars and anxious hours of cure. Contacting a lawyer only after a legal problem has escalated to crisis proportions can lead to unnecessary anxiety, and may make the problem more difficult and expensive to solve. Lawyers should be thought of as preventers of legal problems, not just solvers.

If you call a lawyer as a last resort, it may already be too late. A lawyer may not be able to protect you if you have already lost your rights.
eral government. Many businesses, stores, and utility companies have their own departments to help resolve consumer complaints. In addition, some communities have an ombudsman, a government official whose job is to mediate and resolve minor landlord/tenant, consumer, employment, or other issues. Local television and radio stations may also have programs aimed at resolving consumer-related disputes.

Most states also have dispute resolution centers. These centers, which may be known as neighborhood justice centers or citizens’ dispute settlement programs, specialize in helping people with common problems and disputes. Their services are often available for a small fee, or even at no cost.

Q. Can counseling solve some problems?
A. Yes. Sometimes problems that seem to be legal in nature may actually be solved or prevented by other means. Many groups offer guidance and counseling for personal problems relating to marriage, child rearing, or financial management. Private counselors or members of the clergy also may provide such help.

Q. What is a small-claims court?
A. A small-claims court is a streamlined forum in which people can air a dispute and have a judge decide it promptly. Most states allow people to represent themselves in small-claims court if the total amount of their claim does not exceed a certain dollar amount, such as $2,500. The cost of small-claims court is minimal, the procedures involved are relatively simple, and the resolution of a case is usually prompt. Keep small-claims courts in mind if your problem is not very complicated and your losses are relatively small. Chapter 2, “How the Legal System Works,” provides guidance on how to file and proceed with a small-claims lawsuit.

Q. A friend recommended that I try a local dispute resolution center. What does this type of center have to offer?
A. For the right kind of case, dispute resolution centers can be a quick, low-cost (or free) alternative to formal legal proceedings. These
centers will be discussed further in the next chapter.

Q. Can the other party and I settle a dispute without lawyers?
A. Yes, although you might want a lawyer’s help to put your agreement in writing. When attempting to resolve your dispute, always be open 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 resolve their civil disputes out of court.

Settlement of cases is discussed in more detail in Chapter 2, “How the Legal System Works.”

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, usually employed by firms of various sizes. Almost half of the lawyers in private practice are sole practitioners who work alone. Others practice with one or more other lawyers.

Q. What are the different areas of law?
A. The answer to that question could be never-ending. The law affects virtually every aspect of life, and specialized areas of law exist in virtually every type of subject area. Most lawyers concentrate in one or a few specific areas, such as domestic relations, criminal law, personal injury, estate planning and administration, real estate, taxation, immigration, or intellectual property law.

REMEMBER THIS

• If you have a dispute, you don’t automatically need a lawyer—keep an open mind and be aware of all your options. If you’re not sure, then seek legal advice.

• Having said that, if your dispute is serious, if someone has commenced legal action against you, or if you’re injured, you should see a lawyer without delay. Getting advice early could save you time and money.

CHOOSING A LAWYER

You’ve thought about it carefully, you’ve spoken to friends, and you’ve decided that you need to contact a lawyer. The big problem is—how to find one? This section gives you some tips on what to look for when choosing a lawyer, and leads you through some questions you can ask a lawyer when you first meet. If you do your homework, you can hire a lawyer who has the experience and expertise to help you with your problem.

Looking for a Lawyer

Q. What should I look for when choosing a lawyer?
A. The lawyer will be helping you solve your problems, so the first requirement is that you feel comfortable enough to tell him or her, honestly and completely, all the facts necessary to resolve your situation. When selecting your lawyer, don’t rely on what you hear or read. Judge the lawyer for yourself—only you can determine which lawyer is best for your situation.

Q. What practical considerations should I keep in mind when choosing a lawyer?
A. Yes. A lawyer’s area of expertise and prior experience are both important. Many states
have specialization programs that certify lawyers as specialists in certain types of law. These states include Alabama, Arizona, California, Connecticut, Florida, Georgia, Idaho, Indiana, Louisiana, Maine, Minnesota, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Texas. Some legal specialties also have their own certification programs, such as the National Association of Estate Planners and Councils and the National Elder Law Foundation. In states without certification programs, ask the attorney about his or her areas of specialization. You may also wish to ask about the types of cases the lawyer generally handles. Keep in mind that most lawyers are not certified in a specialty, but this does not necessarily mean that a lawyer is not an expert in a specific field.

When selecting a lawyer, other considerations include the location of the lawyer’s office, the fees he or she charges, and the length of time required to resolve your case.

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

**A.** There are many ways to find a reliable lawyer. One of the best ways is to ask for recommendations from a trusted friend, relative, or business associate. However, 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 useful for finding a lawyer?**

**A.** In some ways, yes. However, always be careful not to believe everything you read and hear—especially with advertisements. Newspaper, telephone directory, radio, and television ads, along with direct mail, can familiarize you with 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. But keep in mind that your case may not have a simple solution. If a lawyer quotes a fee, be certain you know exactly what services and expenses the charge does and does not include.

**Q. What about a local referral service?**

**A.** Most communities have referral services to help people find lawyers. You might be able to find them under “Lawyer Referral Service” or some similar heading in your yellow pages. These services usually recommend a lawyer in the area to evaluate a situation. 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 experience and practice concentration. Many referral services also have competency requirements for lawyers who wish to receive referrals in a particular area of law. You can find your local bar association in the phone book’s white pages either under your community’s name (“Centerville Bar Association”) or under your county’s name (“Cass County Bar Association”). You can also find your bar’s website through your favorite search engine, or through the ABA’s website (see The World at Your Fingertips, page 722 for all website references).

Still, these services are not a surefire way to find the best lawyer or the right lawyer for you. Some services make referrals without concern for the lawyer’s type or level of experience. You may want to seek out a lawyer re-
ferral service that participates in the ABA-sponsored certification program, which uses a logo to identify lawyer referral programs that comply with certain quality standards developed by the ABA.

Q. **My new job offers a prepaid legal services plan. What can I expect?**

A. Legal services, like many other things, are often less expensive when bought in bulk. Some employers, labor and credit unions, and other groups have formed “legal insurance” plans. These plans vary. Many cover most, if not all, of the cost of legal consultations, 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 their employees’ legal fees, with the employee sometimes contributing a small co-payment. Legal group plans have become much more widespread in recent years.

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

A. Many legal-assistance programs offer inexpensive or free legal services to those in need. Look in the yellow pages under topics such as “legal clinics,” “legal aid,” or “legal advice,” or search online. 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. Note that people do not have the right to a free lawyer in civil legal matters.

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

A. If you are accused of a crime, the U.S. Constitution guarantees you the right to be represented by a lawyer in any case for which you could be incarcerated for six months or more. State constitutions may guarantee your right to a lawyer for lesser crimes. If you cannot afford a lawyer, either the judge hearing the case will appoint a private lawyer to represent you free of charge or the government’s public defender will handle your case, also at no charge. See Chapter 2, “How the Legal System Works,” for more information about criminal trials and your right to an attorney.

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. Consider contacting the relevant agency if you have specific concerns, such as environmental protection problems or discrimination in employment or housing.

Your state’s attorney general also may provide free guidance to the public regarding state laws. For example, some states maintain consumer protection departments as a function of the attorney general’s office.

Similarly, counties, cities, and townships often employ government lawyers in their legal departments who may provide the public with guidance about local laws. Some of these local offices also offer consumer protection assistance.
To find such agencies, check the government listings in your phone book.

Questions to Ask a Lawyer

Q. Can I meet with a lawyer before deciding to hire him or her?

A. A lawyer will usually meet with you briefly or talk with you by phone so the two of you can get acquainted. This meeting is a chance to talk with the lawyer before making a final hiring decision. In many cases, there is no fee charged for an initial consultation. However, to be on the safe side, ask about fees before setting up your first appointment.

During this meeting, you can decide whether you want to hire the lawyer. Many people feel nervous or intimidated when meeting lawyers, but remember that you’re the one

**AREAS OF LEGAL PRACTICE**

Here are just a few examples of the different areas in which lawyers specialize, and the types of services they provide within each specialty:

- **Business law.** Advising about starting a new business (such as a corporation or partnership), general corporate matters, business taxation, and mergers and acquisitions.

- **Criminal law.** Defending or prosecuting those accused of committing crimes.

- **Domestic relations.** Representing individuals in matters relating to separation, annulment, divorce, child custody, and child support.

- **Estate planning.** Advising clients in drawing up wills, probate matters, and managing their estates.

- **Immigration.** Representing parties in proceedings relating to naturalization and citizenship.

- ** Intellectual property.** Dealing with issues concerning trademarks, copyright regulations, and patents.

- **Labor and employment.** Advising and representing employers, unions, or employees regarding issues of union organization, workplace safety, job protection, 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, rezoning, and buying, selling, or renting homes or other property.

- **Taxation.** Counseling businesses and individuals in local, state, and federal tax matters.
doing the hiring, and what’s most important is that you’re 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.

**Q. What sort of questions should I ask a lawyer?**

**A.** Ask about the lawyer’s experience and areas of practice. How long has the lawyer been practicing law? What kinds of legal problems does the lawyer handle most often? Are most of his or her 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, this is well within your rights. Ask if staff such as paralegals or law clerks will be used in researching or preparing your 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 lawyer or firm if he or she 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 problem. Perhaps the original lawyer is too busy to give your case the full attention it deserves. Maybe your problem requires another lawyer’s expertise. No one likes to feel that a lawyer is shifting him or her to another lawyer. However, most reassignments and referrals occur for a good reason. Do not hesitate to request a meeting with the new lawyer to make sure you are comfortable with him or her.

**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 even the best legal advice may turn out to be not exactly what you wanted to hear.

**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 explaining how and what fees will be charged, and a monthly 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 my 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 that 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 best interest to participate actively in your case. When you hire a lawyer, you are paying for legal advice. Therefore, your lawyer should make no major decision about whether or how to proceed with your 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 documents pertaining to your case? Can you help minimize fees by gathering documents or otherwise assisting in 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 establish how you and your lawyer will resolve potential problems. You should consider getting in writing any decisions you reach about how you will handle disagreements.

Q. Should I interview several lawyers before settling on one?

A. Yes. Your decision will be more informed if you consider several lawyers. Even if you think that you will be satisfied with the first lawyer you interview, you will feel better about your choice if you talk to several lawyers.

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WHAT TO REMEMBER WHEN SELECTING AND HIRING AN ATTORNEY

- **Get referrals.** Talk to people you know and trust to get referrals and recommendations for an attorney. Also consider contacting a referral program as offered by your local bar association.

- **Set up an initial meeting.** Make sure to ask the attorney if you will be charged for this meeting—and if so, how much.

- **Ask questions.** Make sure all your questions are answered at the initial meeting, including
  - How long has the attorney been practicing?
  - What types of cases does the attorney usually handle?
  - Does the attorney usually represent individuals or businesses?
  - Who in the firm will be handling the case?
  - How are fees determined? How and when are payments made?

- **Find out if you can help.**

- **Stay organized and aware of developments with your case.**
Q. Can I find out about problems or complaints that previous clients have had with a given lawyer?
A. Sometimes, yes. Some states make reports of lawyer grievances available to the general public, especially if such grievances resulted in disciplinary action being taken against the lawyer. If you are worried, contact the organization that licenses attorneys in your state to see if this option is available.

REMEMBER THIS

• It’s worth spending some time finding a lawyer who is appropriately qualified and right for you. You may have to interview more than one lawyer to find the right match.

• Don’t be afraid to ask your prospective lawyer questions—your lawyer is there to help you!

LEGAL FEES AND EXPENSES

Lawyers can be expensive. We all know that. But you can take a few steps to ensure that you avoid any surprises when the bill arrives in the mail. Talk to your lawyer about fees and expenses, and make sure that you understand all the information that your lawyer gives you regarding fees and costs. It’s best to ask for this information in writing before legal work starts.

Q. What billing method do most lawyers use?
A. The most common billing method is to charge a set amount for each hour or fraction of an hour that a lawyer works on your case. What constitutes 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 sometimes charge more for time spent in the courtroom than for hours spent in the office or library.

Q. How can I be sure that my lawyer will not overcharge me?
A. The fee charged by a lawyer should be reasonable from an objective point of view. The fee should be tied to specific services rendered, time invested, the level of expertise

TALK ABOUT FEES

Although money is often a touchy subject, 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 by 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.
provided, and the difficulty of the matter. However, the fee may also be a percentage of the amount recovered on your behalf, called a contingent fee, which is discussed below.

Here are some factors to consider when deciding whether a particular fee is reasonable:

- The time and work required by the lawyer and any assistants
- The difficulty of the legal issues presented
- The fee charged by other lawyers in the area for similar work
- The total value of the claim or settlement and the results of the case
- Whether the lawyer has previously worked for the same client
- The lawyer's experience, reputation, and ability
- The amount of other work the lawyer turned down to take on a particular case

### UNDERSTAND FEES AND EXPENSES

The method used to charge fees is one factor to consider when 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, because unforeseen developments may occur during the course of your case, not all expenses can be estimated accurately.

### Types of Fees

**Q. Someone said that I should ask my lawyer to represent me on a “contingent fee” basis. What does this mean?**

**A.** A contingent fee is a fee that is payable only if your case is successful. 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 relations.

In a contingent fee arrangement, the lawyer agrees to accept a fixed percentage (often one-third to 40 percent) of the amount recovered. 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.

On the other hand, win or lose, you probably will have to pay court filing charges, the costs related to deposing witnesses, and similar expenses. 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. It also gives the client the option of defraying the up-front costs of litigation, unless, and until, there is a settlement or money award. You should clearly understand your options before entering into a contingent fee agreement.

**Q. Are all contingent fee arrangements the same?**

**A.** No. An important consideration is whether the lawyer deducts costs and ex-
expenses from the amount won before or after you pay the lawyer's contingent fee. An example will illustrate this point.

**Example:** Joe hires Ernie Attorney to represent him, agreeing that Ernie will receive one-third of the final amount as a contingent fee. In this case, the final amount recovered is $12,000.

If Joe pays Ernie his contingent fee before deducting 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

However, if Joe pays Ernie his contingent fee after first deducting 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

This example illustrates that Joe will collect an additional $700 if Ernie Attorney agrees to collect his contingent fee after Joe pays the other legal expenses relating to his case. Many lawyers prefer to be paid before they subtract expenses, but this 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 the agreement, clearly stating how he or she will deduct costs.

**Q. Why do some lawyers use contingent fee arrangements? Isn't there a chance they won't get paid at all?**

**A.** Under a contingent arrangement, there is a chance that the lawyer won’t get paid at all. However, there is also a chance that, if you end up recovering a large amount, the lawyer will earn more than under a traditional fee arrangement. The legal field has approved of contingent fees in most cases because they allow clients without much money to access the legal system. However, most states restrict the types of cases for which payment can be made on a contingent basis, and limit the attorney’s fee to a “reasonable” percentage of the total amount recovered.

**Q. If my lawyer and I agree to a contingent fee arrangement, should the method of settling my case affect the amount of my lawyer’s fee?**

**A.** Yes, but only if both of you agree beforehand. If the lawyer settles the case before

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**WHAT IS “UNBUNDLING”?**

Imagine that your case requires your lawyer to provide a “bundle” of legal services. Many lawyers are increasingly willing to open up this “bundle” and share some of the work with you. For example, maybe you could write the letter laying out your side of the case, and the lawyer could simply review it (thus taking up less of the lawyer’s time and as a result, costing you less money). Often lawyers will provide advice in a matter but will become heavily involved only if the matter goes to court.
going to trial, less legal work may be required. On the other hand, the lawyer may have to prepare for trial, with all its costs and expenses, before a settlement can be negotiated.

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. However, many lawyers might not agree to those terms.

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

A. If you pay a set amount of money regularly to make sure that a lawyer will be available for any necessary legal service you might require, then you have a lawyer on retainer. 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.

Prepaid legal services plans, which were discussed earlier, are similar in effect to retainer agreements: a small fee paid periodically ensures that a lawyer will be available to provide legal services at any time.

Most people do not see a lawyer regularly enough to need a lawyer on retainer.

Q. Is having a lawyer “on retainer” the same thing as paying a “retainer fee”?

A. No. A retainer fee is something quite different. Sometimes a lawyer will ask the client to pay some money in advance before any legal work will be done. This money is referred to as a retainer fee, and is in effect a down payment that will be applied toward the total fee billed.

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

A. A fixed fee is a set amount charged for routine legal work. In some situations, this

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**SOME TIPS FOR KEEPING DOWN FEES**

- Be organized. Make sure you bring all relevant documents to any meeting with your lawyer, so that your lawyer’s time isn’t wasted.
- Be brief. If your lawyer is charging you by the hour, you don’t want to waste time with irrelevant conversation or long-winded explanations.
- If your lawyer is working on something for you, don’t call every time you have a minor question. Instead, save up a few questions to ask at the same time.
- Ask your lawyer if there is anything you can do to help. For example, can you write some letters, make some phone calls, or change the title of some assets?
- Ask your lawyer to let you know if the cost of your case starts to escalate beyond the cost discussed.
- Ask for an itemized bill—that way you can see the cost or fees for each service.
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 making such promises as “Simple Divorce—$150” or “Bankruptcy—from $250.” However, do not assume that these prices will be the total amount charged in your final bill. Advertised prices often do 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. For example, 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 expert witnesses, such as doctors. These expenses may not be included in your 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 might refer you instead to Lawyer B at another law firm, who has more experience handling your kind of case. In return for the referral, Lawyer A will sometimes be paid part of the total fee 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 ethics rules for lawyers in most states specify that lawyers in different firms may not divide a client’s fee unless

1. the client knows about and agrees to the arrangement;
2. they divide the fee in a way that reflects how much work each lawyer did, or both lawyers are fully responsible for the case; and
3. the total bill is reasonable.

If one lawyer refers you to another, you have a right to know if there will be a referral fee. If there is, then ask about the specifics of the agreement between the lawyers.

**Cost-Cutting Options**

**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, you will save time that might be spent on the case and will help your lawyer do a better job.

Remember that the ethics of the profession require 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 of 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. 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 making a few phone calls.

You should not interfere with your lawyer’s work. However, you might be able to move your case more quickly, reduce your legal costs, and keep yourself better informed by doing some of the work yourself. Discuss this with your lawyer.

**REMEMBER THIS**

- Talk to your lawyer about fees. Make sure you understand how fees are going to be charged, and get a fee agreement in writing before legal work starts.
- Lawyers’ services can be expensive. Make sure you have a good idea of what your case is likely to cost and be aware of ways you can reduce your fees.

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### WHEN THINGS GO WRONG

When you agree to hire a lawyer and that lawyer agrees to represent you, a two-way relationship begins in which you both have the same goal: to achieve a satisfactory resolution of a legal matter. To 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 case 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. After a

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### SOME TIPS ON TALKING TO YOUR LAWYER

- Before your first meeting with your lawyer, think about your legal problem, how you would like it resolved, and your ideal outcome.
- 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. By being organized, you will save time and money.
- Bring all relevant information and documents with you to any meeting with your lawyer, including contracts, leases, or any documents with which you have been served.
- If there has been a development in your case, don’t wait until your next scheduled meeting to tell your lawyer about it. Tell your lawyer immediately of any changes that might be important. It might mean that the lawyer will have to take a totally different action—or no action at all—in your case.
- Let your lawyer know if and why you are unhappy with his or her work.
- Don’t wait for your lawyer to ask you about something—volunteer information that you think may be useful.
realistic look at your situation, if you still believe that you have a genuine complaint about your legal representation, there are several things you can do. This section outlines those options and some issues relating to disagreements over your legal representation.

**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 discuss my complaints with my lawyer. However, my lawyer will not discuss them. Do I have any alternatives?**

**A.** Yes. If your lawyer is unwilling to address your complaints, consider taking your legal affairs to another lawyer. You can decide whom to hire (and fire) as your lawyer. However, remember that when you fire a lawyer, you may be charged a reasonable amount for any work that he or she has already completed.

Most documents held by your lawyer that relate to the case are yours—ask for them. However, in some states 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 in which he or she is licensed to practice. These rules are usually administered by the state’s highest court through its disciplinary board.

These rules describe generally how lawyers should strive to improve the legal profession and uphold the law. They also give more detailed rules of conduct for specific situations. If a lawyer’s conduct falls below the standards set out in the rules, 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 amount of time); or disbarred (having the license to practice law taken away indefinitely).

The law sets out punishments for anyone who breaks civil and criminal laws, including lawyers. But because of the special position of trust and confidence involved in a lawyer-client relationship, lawyers may also be punished for things that are unethical, even if 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**

Every lawyer must aim to provide high-quality work. This requires lawyers to analyze legal issues, to research and study changing laws and legal trends, and otherwise to represent clients effectively and professionally.

**Following the Client’s Instructions**

A lawyer should advise a client of possible actions to be taken in a case and then act ac-
According to the client’s choice of action—even if the lawyer might have picked a different route. One of the few exceptions occurs when a client asks 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 to 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 a lawyer is unable to spend the required time and energy on a case, whether because of overwork or for any other reason, the lawyer should refuse from the beginning to take that 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 also keep the client informed about any changes relating to his or her case.

**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 generally may not tell anyone else what a client reveals about a case. This strict rule enables a client to discuss case details openly and honestly with a lawyer, even if those details reveal embarrassing, damaging, or commercially sensitive information about the client. A rule called attorney-client privilege helps protect confidential information from being disclosed.

**Conflicts of Interest**

A lawyer must be loyal to his or her client. This means that a lawyer cannot represent two clients on opposite sides of the same lawsuit or related lawsuits. Ordinarily, there also can be no representation of a client whose interests 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 substantial 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 the amount of that money amount promptly and accurately.

**Q. How 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 governs law licenses in your state. Usually this is the disciplinary board of the highest court in your state. In some states, the state bar association is responsible for disciplining lawyers.

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.

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

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. My lawyer’s incompetence meant that I lost my case. What can I do?**

**A.** If you believe that your lawyer has been negligent in handling your case—and that negligence has ended up costing you money or injuring you or your legal rights—you may be able to bring a *malpractice* suit against your lawyer. Chapter 6, “Personal Injury,” can provide you with more information.

**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 be-

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**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 that may affect your case. And let your lawyer know if you change your address or telephone number.

- **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—a banker, a family counselor, an accountant, or a 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.
longs to you, contact the state client security fund, client indemnity fund, or client assistance fund. Your local bar association or the state disciplinary board can tell you how to contact the correct fund. These funds may reimburse clients if a court finds that their lawyer has defrauded them. Lawyers pay fees to maintain such funds. Be aware, however, that most states’ programs divide up the money that is available in a given period of time among all the clients who have valid claims. As a result, there is rarely enough money to pay 100 percent of every claim.

**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. This is a last resort, and you should involve the police only when you feel certain that it is necessary. Do not feel intimidated because your complaint is against a lawyer.

**REMEMBER THIS**

- If things don’t turn out the way you’d hoped, discuss your concerns with your lawyer. He or she might be able to explain what happened in a way that makes sense to you.

- If you have serious concerns about your lawyer’s conduct, don’t be afraid to pursue the matter through your state disciplinary authority.

- Don’t forget that you have responsibilities as a client, too!