

LAWYERS AND LEGAL FEES

Almost everything individuals do - such as making a purchase, starting a business, driving a car, getting married or writing a will - is affected by laws.

This article is intended to help you decide when you need a lawyer and to provide guidelines for choosing and using one.

When do I need a lawyer?

The best time to see a lawyer is before a problem occurs - not when you are in legal trouble. Preventive law is one of the most valuable services a lawyer can perform. It can save time, trouble and money.

There are many situations involving legal rights and responsibilities that can be handled without the assistance of a lawyer. However, if you are about to undertake a major obligation or if circumstances are confusing, it may be helpful to consult a lawyer. An attorney can analyze the legal implications of a situation, offer advice and decide how best to protect your rights.

To help you decide if you need a lawyer, ask yourself these questions:

1. What is at stake - and what are the consequences if the problem is ignored?
2. Are there other ways to solve the matter?
3. How much may it cost to hire a lawyer?
4. Am I knowledgeable about the law governing this problem?

Some of the circumstances that may require professional legal assistance are:

- buying or selling real estate
- any major financial transaction
- signing a lease or contract with major financial considerations
- marriage, divorce or adoption
- if you are involved in a lawsuit
- if you are arrested or charged with a crime
- starting or closing a business
- drafting a will or other estate planning
- if you have tax concerns or financial problems
- when you have a serious accident
- when you make appearances, applications or appeals to government agencies or boards

Why can't I handle my own legal problems?

It is not unlawful for you to represent yourself in court or to handle your own legal matters. Self-help "kits" and preprinted forms do not consider individual needs, differences and complications. They

may not be appropriate for your matter.

Many laws are complex, and subject to various interpretations and frequent change which can result in a great deal of confusion. Lawyers are trained to explain and interpret the law for you, to provide legal assistance and to be aware of all court procedures, filing requirements, deadlines and other details which a non lawyer could easily overlook this role is important, since judges and court personnel are not generally allowed to give you any legal advice as your case proceeds or to relax rules and requirements for you because you are not a lawyer.

How do I select a lawyer?

Selecting a lawyer is a personal matter. You must judge which particular attorney will be best for you. Before making a decision, however, you may want to contact several lawyers or law firms to gather some comparative information.

When choosing a lawyer, keep practical considerations in mind: the lawyer's area of expertise, prior experience and reputation, convenience of office location, amount of fees charged and the length of time a case may take. A lawyer's communication skills are another factor. Willingness and ability to talk to you in language you understand and responsiveness to your questions will influence how well informed you are about the progress of your case.

It is advisable that you select an attorney with whom you feel comfortable. These preferences may guide you in selecting someone with whom you feel most comfortable.

It is important that you trust the lawyer you hire -and that you believe he or she will do the best job possible in protecting your legal rights. But keep in mind that most lawsuits and other legal work are not "sure things." You should be cautious of an attorney who guarantees results. No lawyer can be expected to win every case, and sometimes the best legal advice may not be exactly what you want to hear.

Asking questions and checking different sources can help you in locating and choosing a lawyer. Among the sources to use in finding a lawyer are:

1. **Recommendations** from friends or family, coworkers, business or professional contacts, and others can be helpful. Also, a lawyer may be able to refer you to another attorney with special expertise to handle your particular matter. You should investigate any recommendation and evaluate whether the referral is appropriate for your needs.

2. **Lawyer Referral Services**, sponsored by local bar associations, are available in several metropolitan areas. For a nominal fee to defray the program's administrative costs, an initial consultation with a lawyer will be arranged After the initial consultation, the lawyer will be able to advise you concerning remedies for your problem if further services are needed, you may make arrangements with that lawyer or contact someone else. The lawyers in the program are volunteers and members in good standing of the Oklahoma Bar Association and their local bar association. The Oklahoma Bar Association does not certify their experience or qualifications in particular areas of

the law.

Private referral services are also available in metropolitan areas. The Oklahoma Bar association does not regulate these services or otherwise certify their qualifications.

3. **Legal Services or Legal Aid** offer free or low cost legal assistance, for eligible individuals. Eligibility is usually based on income and the type of legal problem. In general, these agencies do not provide advice or representation in criminal cases or in matters where contingent fee arrangements may be (discussed later in this pamphlet).

4. **Bar associations** in many counties provide free ("pro bono") legal assistance to those who have a financial need. Contact your county bar association or check your telephone directory for local listings.

5. **Public Defender** offices handle criminal cases: If you are accused of a crime but cannot afford a lawyer, a judge will appoint either a private lawyer to represent you free of charge, or a public defender will handle your case.

6. **Directories** are available from many sources. Many telephone directories include yellow pages with listings of lawyers, often classified by areas of practice. Other directories, such as the **Martindale-Hubbell Law Directory**, can be found in many public libraries. Martindale-Hubbell contains listings of lawyers by state and city, biographical details on each lawyer, rating information and summaries of the areas of practice.

The OBA provides an online listing of attorneys at www.oklahomafindalawyer.com: This is a voluntary listing of OBA members in good standing. The list is searchable by county and practice area.

It is the lawyer's own choice to be listed in these directories. The publisher or the Oklahoma Bar Association does not guarantee that those listed have any more knowledge or experience than any other lawyer. The Oklahoma Bar Association does not certify that certain attorneys are specialists in a particular area of law. Ask questions and rely on your own independent investigation before choosing a lawyer to represent you.

7. **Advertisements** may be another source of information. These announcements, paid for by the advertising attorney to solicit business, are no assurance of experience or competence. In view of the above, you should not rely exclusively on advertisements when selecting an attorney.

In addition, advertisements which represent that no fee is paid until recovery is made may not be entirely accurate in that court costs, filing fees, costs of serving certain legal documents, etc., are the responsibility of the client. Make sure you understand the specific minimal service being offered for a specific fee and determine the costs of the "extras" which may occur during representation.

8. **Group and Prepaid Legal Service Plans** offer another source of legal assistance. A prepaid legal service plan is similar to a health insurance program; enrollees (subscribers) pay a fixed fee or

premium, which entitles them to certain benefits to be used when needed.

A variety of programs are now available from different sources to provide access to legal help. Many plans include consultation and "preventive" work, while others offer comprehensive coverage for most legal matters.

What should I expect when I hire a lawyer?

You are hiring a lawyer to work for you as your advocate or adviser. You should expect your lawyer to:

- confer with you to pinpoint the problem
- advise you of your rights and responsibilities
- be candid with you about your problem, your prospects for success, the time it will take and the advisability of accepting any settlement offered
- research and analyze all available facts and information relating to your problem
- represent your interests - in and out of court
- prepare appropriate legal documents
- prepare legal arguments for presentation in court, if litigation is involved
- negotiate a settlement (when possible and advisable)
- act with reasonable diligence and promptness

- keep you reasonably informed about the status of your case
- return your telephone calls and answer your questions or concerns
- discuss courses of action, alternatives or consequences
- follow your decisions, after advising you of possible actions to take
- discuss fees with you at your first visit, and reach an agreement confirming specific arrangements
- hold in confidence your confidential communications
- exhibit the highest degree of ethical conduct

What will my lawyer expect from me?

Upon being retained by you your lawyer shall expect you to:

- be on time for appointments and not take up an excessive amount of time with visits or phone calls relating to minor details or petty matters
- discuss all the facts of the matter and not withhold information about the case
- bring necessary information and documents upon request
- notify the lawyer of changes or any new developments including changes of address or telephone number
- ask questions to clarify anything that may confuse you about your case
- follow your lawyer's advice
- understand that no lawyer can guarantee results in a contested matter
- be patient and understand that legal matters are rarely "open and shut" cases - they require time and research

- pay a reasonable fee for the work performed

Can I change lawyers?

You have a right to expect competent representation. If you are unhappy with the lawyer you chose to handle your case, there are several things you can do:

- Talk with your lawyer to express your concerns. You may want to send a letter that outlines your specific complaints. Allow the lawyer an opportunity to correct the problem.
- If still dissatisfied, you may discharge your lawyer. In most instances, you may simply inform the lawyer of your decision to terminate his or her services, and the attorney must then withdraw from representation. (In some situations, withdrawal may be obtained only by order of the court.)

Note: You and your lawyer have a contractual relationship. Even if you discharge a lawyer, you may still be liable for some fees and costs. For example, you may have to pay a reasonable amount for the work already done on your case, as well as for costs that have already been incurred.

If you believe your lawyer has acted improperly, you may contact the Oklahoma Bar Association or your local bar association for more information about your rights.

When should fees and costs be discussed?

It is appropriate — and important — to discuss fees upon your first visit with the lawyer. You have a right to know how you will be charged, an estimate of how much the case is likely to cost, and when you have to pay.

Various factors and arrangements may influence the costs of legal services. Your lawyer can explain how fees are computed and may outline options available to you. The lawyer can sometimes provide a reasonable estimate of the time and costs involved in serving your particular needs.

Your lawyer will want you to be satisfied not only with the service provided, but also with the fee you are charged. Candid discussions about fees and your ability to pay will avoid misunderstandings, while helping you decide if you want to retain the lawyer.

How are a lawyer's fees determined?

The rules that regulate the ethical conduct of lawyers state that all fees must be "reasonable." Along with fair and competitive fees, lawyers strive to provide service at rates commensurate with the skill required and the results obtained.

Three common methods of determining fees are **time** (usually based on hourly rates), **contingency** (based on the outcome of the case), and **flat fees** (for specific action, such as handling a real estate closing). These typical fee arrangements are explained in the following section.

Although exact fees cannot usually be determined in advance, the factors involved in computing charges are fairly standard. These factors include:

Time spent on a particular problem. Time is a basic element in determining professional fees. For many matters, a straight-time hourly fee agreement will be arranged. Different lawyers value their time at different rates because of variations in experience, training, skills and law office expenses. Most lawyers keep accurate records of time spent on each matter. Assistance from other lawyers, legal aids and clerical staff also affects costs.

Another guideline in determining the reasonableness of a fee is the amount charged in a locality for similar legal services.

Lawyers usually bill for consultation (including phone consultation), meetings, document preparation, client representation in court, research of legal issues and for other work that directly relates to a case. These charges should be itemized or explained to you.

Legal services unlike medical or dental services are often performed when the client is not present. Documents and advice are frequently the products of many hours of analysis, research and preparation.

Ability, experience and reputation. Circumstances or unique problems sometimes require special services. You should expect to pay more for a lawyer with proven abilities whose expertise in a specific area of law is in demand. However, the Oklahoma Bar Association does not have categories to recognize or certify any attorney as a specialist.

Overhead and operating expenses. When hiring a lawyer, you hire all the resources of a law office to work on your behalf. For a typical law office, overhead and operating costs (including such items as rent and utilities, professional and support staff, law libraries, equipment and supplies, taxes and insurance) may comprise 35 to 60 percent (or more) of legal fees.

The results obtained. In some cases, the outcome and the amount involved may determine a fee. A "contingent fee" agreement, often used in personal injury or collection cases, is one example. (*See following section.*)

No lawyer can guarantee results of a court proceeding. If a contingent fee has not been arranged, the lawyer will expect to be paid whether the client wins or loses the case.

Time limitations imposed by the client or by the circumstances of the matter may also influence fees.

The **seriousness and complexity of the legal problem** will also affect fees. If the problem involves established legal principles requiring routine skills and attention, a straight-time fee may be appropriate. However, if the problem raises difficult or novel questions of law, larger fees may apply.

A **client's ability to pay** may influence fees. Payment plans can often be arranged or legal aid might be available. Be sure to discuss these concerns prior to hiring an attorney.

Other factors. The attorney-client relationship must also be considered with a continuing relationship the charge for a particular matter may be less than if employment is on a one-case basis.

A client should also realize the employment for his case may preclude a lawyer and the associates from accepting other representation which conflicts with the client's interest.

What are some typical fee arrangements?

In addition to a straight-time fee, other arrangements include contingent fees, negotiated percentages flat fees, hourly charges, costs and expenses, fees set by a judge or retainers.

With a **contingent fee** arrangement, the lawyer receives no fee unless money is recovered for the client. Upon recovery, the lawyer is paid an agreed-upon percentage, usually ranging from an amount equal to 25 to 50 percent of the amount recovered. A written fee agreement should specify the costs and expenses to be deducted and whether such costs and expenses are to be deducted before or after the contingent fee is calculated.

A contingent fee arrangement is not permitted for criminal cases or certain domestic relations matters.

Even if there is no recovery, however, the client is still responsible for court costs (filing fees, subpoena fees, etc.) and related legal expenses, such as telephone toll charges, investigators' fees, medical reports and other costs.

Negotiated percentages are sometimes used when collecting debts. The fee is based on a percentage of the amount claimed or collected.

Flat fees are occasionally charged for routine services, such as drafting an uncomplicated will or assisting with a simple real estate transaction or in criminal cases. Sometimes their flat fee may be called a "non-refundable retainer." You should insure that you and your lawyer have an agreement regarding the definition and terms of a "non-refundable retainer," as the terms of such agreements may vary. Some courts have found some "non-refundable retainers" improper.

Hourly charges are based on the time spent in handling a matter. Rates will vary depending on a lawyer's experience or the demand for a particular service.

Most costs and expenses are charged at periodic intervals, regardless of the fee arrangement. Filing fees, expert testimony, fees for serving a legal summons and other costs that are advanced by the attorney on behalf of the client are billed separately. Expenses such as long distance telephone charges, photocopies, etc. are also billed.

In some cases, a judge or hearing officer may establish a fee, considering the work and complexities involved in a particular situation. Lawyers' fees for probate services are often subject to court approval.

Should I expect to pay an initial consultation fee?

Policy and practices vary. Don't hesitate to ask about the initial consultation fee when calling for an appointment with a lawyer. Some lawyers have a policy of "no charge for the initial consultation," while others charge for a client's first visit.

If after an initial visit you decide not to take further action, you are under no obligation to proceed, but you will be expected to pay for the initial visit unless you are advised or promised otherwise.

Is a written fee agreement necessary?

A clear understanding of fees is important to the attorney-client relationship. No matter which fee arrangement you agree to, you should ask for a written agreement. An agreement in writing is required for any contingent fee arrangement.

As with any contract, the agreement should be carefully read and understood before being signed, and all parties should keep a copy of it.

Who is responsible for the fee?

As the client you are responsible for paying legal fees and expenses.

In some court cases, a judge may award a partial or full fee to be paid by an opposing party. Such judgments do not release you from the obligation to pay your lawyer, nor do they guarantee payment from the other party. Some judgments are not collectible; other judgments may cover only part of the fees you actually incurred.

When is the fee payable?

In many cases, a lawyer will require a deposit before agreeing to handle your matter. Such payment can assure the lawyer's availability and may be applied to initial work and expenses. (Lawyers follow strict regulations for the safekeeping and accounting of these deposits and all client funds.)

Depending on the circumstances, an initial payment may be considered a *retainer*, an *advance*, a

down payment or a *deposit*. Clients in need of continuing legal services (usually businesses) sometimes pay monthly or annual retainers.

Fee arrangements vary depending on type of service, personal preferences, and lawyer practices and policies, so be sure you understand your options and obligations when your case is first discussed.

What if I think the fee is too high?

If you have questions about a bill, contact your lawyer and discuss it. Most lawyers maintain detailed records of time spent and expenses associated with each case and can itemize or thoroughly explain any charges you think are confusing or improper.

If you believe your lawyer has acted improperly, you may contact the Oklahoma Bar Association or your local bar association for more information about your rights.

Can I do anything to reduce legal expenses?

Lawyers are professionals with many qualifications and years of training. Time and advice are their stock in trade, so they must charge for them. By following a few suggestions, however, you can help reduce legal costs:

- **Gather pertinent information** before meeting with your lawyer. Write down the names, addresses and telephone numbers of all persons involved in the matter.
- **Be organized.** Bring letters, documents and other relevant papers to the first meeting with your lawyer. Summarize essential facts. Write down questions you want the lawyer to answer.
- **Be concise** in all interviews with the lawyer.
- **Answer questions fully and honestly.** Be accurate and objective. Reveal all information, even if it may not be in your favor, and avoid letting emotions color the facts.
- **Avoid unnecessary telephone calls** to the lawyer.
- **Be informed and keep your lawyer informed.** Discuss ways you can help, such as by obtaining documents, lining up witnesses or providing other assistance to reduce costs.
- **Consider “bottom line” or financial aspects** of a legal matter and discuss them with your lawyer. Be sure you understand advantages and disadvantages of a proposed action (for example, would court costs and legal fees be more than the amount of a bad debt you would like to recover?).
- **Try to prevent problems** by contacting a lawyer before committing yourself to a major obligation.

What are other sources of help?

There are many ways to solve legal problems. Government and consumer complaint agencies, counseling, consumer complaint agencies, counseling, consumer advocates at local newspapers,

radio or television stations, small claims courts (for limited amounts) and dispute resolution centers are options that should be considered.