

You and Your Lawyer

A Guide to Your Legal Relationship

- What are your rights as a client
- What does your attorney expect of you
- What can you expect of your attorney and his staff
- How are legal services charged, and when is payment expected
 - What are the general procedures for a lawsuit
 - Commonly used legal terms

Oftentimes, people are intimidated and afraid of lawyers. By gaining an insight into the respective roles of attorney and client, the attorney/client relationship can be positive and rewarding. This handbook is designed to assist you in dealing with your attorney and the law firm, and to familiarize you with some basic legal terminology. With a better understanding of the legal process, your encounter into the legal arena can be more productive.

A Lawsuit, defined 100 years ago by Ambrose Bierce, a newspaperman, is: "A machine which you go into as a pig and come out as a sausage." Admittedly, being involved in a lawsuit is rarely a pleasant experience. However, by being better informed and aware of what to expect, you can participate more fully in the entire process and minimize the probable stress and anxiety.

The world of law and lawyers is foreign territory for many people - so foreign in fact that legal terminology and procedures are totally unknown. The information contained in this brochure can eliminate many common questions and concerns felt by clients. The following topics are discussed:

1. Your role in the legal relationship with your attorney;
2. Your attorney's role in dealing with your legal needs, and what you can expect from that attorney and staff;
3. What your attorney expects from and of you;
4. The steps involved in a lawsuit or legal proceedings; and
5. Basic legal terminology used by lawyers and legal staff.

Your Role In The Legal Relationship

You have a valuable role in the legal proceeding in which you are involved. With your information, your attorney will apply his/her knowledge, skills and experience to produce and end result. Your assistance with that effort can greatly enhance your chances of success. You should never hesitate or be embarrassed to ask questions of your attorney or staff. They recognize you may not be familiar with legal procedures and will assist you in understanding your case.

Honesty and Candor

Your attorney relies on the facts and documentation you provide. Be specific and truthful with your attorney. You should not make decisions about whether to disclose a fact or document to your attorney. Rely on your attorney to determine the importance of documents and facts. You cannot be effectively represented if you are less than candid with your attorney. These hidden facts could be discovered later by the opposing party, and potentially harm your case. If the attorney knows the facts beforehand, he or she will be better prepared during all phases of the case.

Keep Your Attorney Informed of Your Address and Phone Number

Keep your attorney informed of your correct home address and telephone number. If the attorney cannot contact you, you risk missing important communications. It is not enough that you contact the attorney periodically to "check in." The attorney must be able to contact you as necessary.

Partnership

The relationship you have with your attorney is one of partners in the legal process. Much as you would ask your medical doctor questions concerning your health diagnosis, you should inquire of your attorney concerning aspects of your case. You can also call and ask the attorney's secretary questions about the case. The secretary is prohibited from advising you on the law, but may be able to answer basic procedural questions for you. It is important that you take part in the legal process so that you will understand what is expected of you should your case go to trial.

Courtesy

You can expect to be treated courteously by the law office staff. In turn, your courtesy to the law office staff and lawyer is appreciated. You are one of the many clients the lawyer has, and other client also deserve the lawyer's time and efforts. While it is true that as a client you are in essence one of the bosses, it is extremely difficult for legal staff to deal with people who are discourteous. If you feel the staff is being discourteous to you, promptly bring it to the attorney's attention so that the problem can be corrected.

It is always a good idea to schedule an appointment with the attorney ahead of time, rather than appearing at his or her office and expecting to see the attorney without an appointment.

Ethics

Your attorney will expect you to respect his/her obligation to adhere to the Code of Professional Ethics. A violation of the Code subjects the attorney to punishment . If you would like further information on the requirements of the Code of Professional Ethics, you can ask your attorney, check out a copy from your local library, or contact your state Supreme Court.

Timeliness

When asked to provide information or documentation within a specific time, be prompt in your response or ask the attorney to extend the time period. Portions of your case have deadlines and you could risk adversely affecting the outcome of the case by procrastination.

In addition, you should always be on time for all legal proceedings, such as depositions, court dates, appointments, interview, etc.

Communication

Sometimes during a case the attorney will write or call and request that you make a decision about some aspects of your case. For example, the attorney may have a settlement proposal to discuss. The attorney will ask you if you agree to the settlement proposal, if you want to counter-propose, or if you want to reject the proposal and continue on with the case. You should make your decisions after deliberating with your attorney. If you call the attorney and advise him by telephone of your decision, it is in everyone's best interest to confirm that decision in writing and mail it to the attorney, keeping a copy for yourself. This reduces the chances of mis-communication and misunderstanding between you and your attorney.

Billing

The attorney's ability to operate a business depends in large part upon prompt payment by clients of fee bills. If you have any questions concerning the fees and costs for which you are being billed, contact the attorney to discuss the matter. Accounting departments occasionally make mistakes and you wouldn't want to pay for someone else's legal work.

Fee Agreements

At the beginning of your engagement of the attorney, the determination of how fees are to be paid will be agreed upon. An engagement letter prepared by the attorney stating the terms of your relationship with the attorney is standard and preferable to both you and the attorney. The most common types of fee arrangements are:

- A. *Hourly.* You will be billed on a monthly basis (unless otherwise agreed to) and charged the attorney's hourly rate, along with the hourly rates of those members of the firm who are also working on your case. This may include legal assistants, law clerks, investigators, etc. You may also be billed for costs expended on your behalf, such as photocopies, telecopies, mileage to and from the courthouse, computer research, delivers, postage, etc. Be aware that telephone conversations with your attorney are billed at an hourly rate. You can minimize the amount of the bill by writing your questions down before talking to the attorney.
- B. *Contingent.* Contingent fees are charged at the conclusion of the case. You may be billed on a monthly basis for costs as they are incurred. A specific percentage of the amount collected in the case will be paid to your attorney as fees, either before or after deducting the cost expended by the attorney. The following example shows how this might work using a one-third contingent fee agreement:

Amount awarded	\$100,000
Expenses related to the case	-10,000
Subtotal	90,000
Attorney percentage (one-third)	<u>-30,000</u>
Final amount to you	\$60,000

If this case is lost or the monetary award is nothing, the attorney is entitled to no fees, unless otherwise agreed upon. Be aware, however, that you are expected to reimburse the attorney for cost expended on your behalf. Therefore, if the case is lost, you are responsible for payment of the attorney's out-of-pocket costs (which, in some circumstances, can be substantial). You may want to receive an estimate on costs from your attorney prior to starting an estimate on cost from your attorney prior to starting the case, or even request the attorney seek your authorization for single expenditures over a certain dollar amount.

- C. *Flat for Fixed Fee.* This usually applies only to one-time transactions, such as the preparation of a Will or representation in a simple traffic matter.

Special Note: Please remember that attorneys are not miracle workers. They will endeavor to obtain the best results for you. Attorneys depend on word of mouth for a substantial portion of their business. If you are happy with the services you have received, refer your attorney to others.

Your Attorney's Role in Dealing With Your Legal Needs, and What You Can Expect From That Attorney And Attorney's Staff

Your expectations of the attorney and attorney's staff should include the following:

- The right to be represented competently. You have the right to retain an attorney who is an expert in the field appropriate to your case. For example, a real estate attorney may be ill-equipped to handle a personal injury case. You should ask the attorney what cases appropriate to yours he or she handled in the past and what the outcome of those case were.
- The right to receive copies of all correspondence and court documents concerning your case. (You may ask to receive other documents as well, i.e., exhibits, depositions, appraisals, title commitments, etc.) You can expect to receive a copy of correspondence and court filings from your attorney on a regular basis. You may wish to receive only certain types of documents rather than each minor piece of correspondence from the attorney, but it is up to you and the attorney to decide this together. Remember you will probably be charged copying charges for documents provided to you.
- The right to be charged a reasonable fee and be told in advance what that fee will be.
- The right to be treated with respect by all employees of the law firm with whom you come in contact. No one likes to be treated rudely. You should be treated with respect that you deserve as a client of the firm. If you do not receive proper treatment, discuss the matter with the attorney or personnel department of the law firm.
- Prompt responses to each of your phone calls and written inquiries. The attorney should promptly return your phone calls. Otherwise, someone on the staff should contact you and advise you when the attorney will be available to talk with you.
- The right to have the attorney explain to you what steps and procedures will be taken in your case, as well as an estimated time schedule for each step of the case. It may be difficult for you to understand the steps of the case in which you are involved; therefore, it may be necessary for you to discuss with the attorney or a member of his or her staff the procedures to be taken in your case. A legal secretary may be able to tell you the basic procedural steps regarding your case, but it is unethical for anyone except the attorney to give you legal advice.
- The right to have the information pertaining to you kept strictly confidential. There are

some things pertaining to your case that you may wish to keep confidential. The law firm and all of its staff are obligated by the Code of Professional Ethics to keep all matters concerning your case confidential. Although it is proper for an attorney to discuss your case with associates in the office or someone who might assist with your case, it would be improper for him/her or his/her staff to share that information with anyone outside of the law firm who is unrelated to the case.

- The right to an efficient and accurate work product. The work product which is filed with the court or prepared on your behalf is a reflection of the professionalism of the services you are receiving from the law firm. An accurate work product reflects the staff's interest and dedication to you as the client.

Remember that you, the attorney and staff are working together as a team on your case. An attorney's staff is just as eager for a good result as you are. The teamwork approach is a positive one and the end result is rewarding to all those involved.

Steps Involved In a Lawsuits

Among the most common types of lawsuits are criminal and civil. Criminal suits are those brought by policing agencies as the result of the commission of a crime. Civil lawsuits are usually between individuals or companies seeking to rectify a private problem, i.e., collection of money owed, or personal injury suits. There are definite paths which a lawsuit must follow. Each case is subject to applicable state or federal court rules. Those rules must be followed or the case risks dismissal. The following discussion takes you through the basic litigation process. (To assist you, basic terms are defined in the back of this brochure.) Each state has its own procedural rules, but the basic procedure is as follows:

1. The Complaint or Petition is filed with the clerk of the court.
2. Service of process of all initial documents is made upon the defendant (s). See definition of "service of process.")
3. The Answer is filed by the defendant (s) OR a Motion to Dismiss is filed. If a Motion to Dismiss is filed, a response brief and reply brief are filed. If the Motion to Dismiss is granted, the case is dismissed. If the Motion to Dismiss is not granted, the case proceeds.
4. After Answer is filed, the discovery process begins. This includes Interrogatories, Request for Production of Documents, Request for Admission, and depositions.
5. At some time during the discovery process, the case will be set for trial. The date of trial will determine other important deadlines. For example, a deadline will be set for the completion of discovery.

6. A disclosure statement (or pretrial statement) will be filed after the discovery process has been completed. This document details to the court the issues of the case, the dispute of the parties, the status of the case, anticipated witnesses and exhibits for the trial, as well as other information useful to the court.
7. At this point, a motion for summary judgment may be filed. A motion for summary judgment requests that the court review the relevant law and determine if specific issues (or all issues) should be dismissed by the court. A response brief and reply brief will also be filed. If the court determines that summary judgment is appropriate, the specific issues will be dismissed from the case and, in some instances, the entire case will be dismissed.
8. If a motion for summary judgment does not eliminate the issue, the trial will go forward. At the conclusion of the trial, either the jury or the court will determine the outcome of the case, and the judgment will be entered in the records of the court.
9. Either party can appeal the case if they are dissatisfied with its outcome and there are appealable issues. The attorney can advise you on any appealable issue. There are specific time frames within which an appeal must be filed or it will not be considered by the appellate court.
10. If judgment is not voluntarily paid, a transcript of judgment can be obtained from the court. A transcript of judgment can be used in various ways to insure payment of the judgment. Your attorney can advise you on any specific collection procedures. Once the judgment has been paid, a satisfaction of judgment will be filed.
11. At any time during this case progression, a settlement can be voluntarily reached between the parties and the case dismissed.

Legal Terminology

Most legal terms are either derivatives of Latin words or are Latin words using English pronunciations. Some frequently used legal terms are listed below. If your attorney or a member of his/her staff uses a term you are unfamiliar with, you may wish to either consult your dictionary or ask your attorney for an explanation of the term.

Affidavit: A written statement, signed by the person making the statement, and notarized by the a notary public.

Appeal: When the initial court decision is unsatisfactory, the case can be brought before a “higher” court for review.

Arbitration/Mediation: A first step (which may or may not be utilized) before the court process. Arbitration is the process of choosing an independent person to hear the facts of a case and make

a determination. Arbitration can be binding or non-binding. Mediation is the process of choosing an independent person to hear the facts of a case and urge conciliation or concession on either or both sides. The result can later be tried in court if the parties are not satisfied with the result. This process can be much less expensive than a hearing in court.

Caption: A caption is the heading at the top of a pleading referencing the court, the case number, and the parties named in the lawsuit.

Complaint: A complaint is the initial document in a lawsuit, setting forth the complaint of the plaintiff. A complaint is generally accompanied by a summons. The complaint details the issues involved in the lawsuit. NOTE: In dissolution of marriage (divorce) case the initial document filed is referred to as a petition.

Contingent Fee: Fees can be charged on either an hourly basis or on a “contingent fee” basis. A contingent fee means any monetary award or judgment received by the client as a result of the lawsuit is split between the attorney and his/her client. This is generally done on a percentage basis. Costs are deducted first from the total amount of the judgment (unless provided otherwise), and that figure is then split according to the percentage agreed upon. If no monetary award results from the lawsuit or the case is lost, the attorney receives no fee. However, be aware that costs are the responsibility of the client and are expected to be paid by the client. A contingent fee agreement should be in writing.

Default: If the summons and complaint are not answered in a timely manner, the defendant may be considered in default and judgment for the full amount requested in the complaint may enter against the defendant.

Defendant: A defendant is the person being sued by the plaintiff. Note: In dissolution of marriage (divorce) cases, the responsive party is referred to as the respondent.

Deposition: An oral question and answer session, usually held in a law office. Questions are posed to a deponent (the one being asked the questions) while under oath, and in front of a court reporter. The court reporter then transcribes the deposition and the transcript becomes a part of the court file and may be used in court.

Discovery: Discovery is an all-encompassing term meaning to discover additional information or documents relating to the lawsuit. Discovery documents are Interrogatories, Requests for Production of Documents, and Requests for Admissions.

Docket: The process of filing a document with the court is called docketing. The court's docket is the list of court cases assigned to each courtroom. Attorneys also keep a docket or calendar of upcoming hearings, meetings, trials, etc.

Executor/Executrix: Executor is a male person or entity appointed to administer the terms of a Will; Executrix is the female counterpart of executor. Also referred to as a Personal Representative.

Garnishment: When a judgment is obtained from the court, and the debtor is unable or refuses to pay, a garnishment can be served. A bank for example, can be served with a garnishment in order to seize all the money in the debtor's accounts. The bank is then required to turn over to the court any funds it has in the name of the debtor. The court then has the authority to direct the funds be paid to the person who garnished the account. A garnishment can also be served on the debtor's employer who is obligated to pay to the court a specific percentage of the debtor's wages.

Interrogatories: Interrogatories are written questions served on the opposing party. Interrogatories require answers within a specified time-frame, which is set out in the court rules of procedure.

Judgment: An official decision of the court concerning the resolution of the case. The judgment of the court can be an award of damages (money) to a party, or it can be an official determination on rights or claims of a party.

Judgment Debtor: The person against whom the judgment enters in a lawsuit.

Jurisdiction: The subject matter of a lawsuit determines which court will hear the matter. That court is said to have jurisdiction. For example, a district court can hear cases which involve monetary claims over a certain dollar amount.

Lessee/Lessor: A Lessee rents property; also known as a tenant. A Lessor is the owner of rental property, also known as the landlord.

Litigation: Litigation refers to the lawsuit itself. To litigate means to engage in a lawsuit. A litigant is a participant in a lawsuit.

Mitigation: The reduction or abatement of a penalty or punishment imposed by law. To mitigate damages is to reduce them.

Notary Public: A person granted authority by the state who can administer oaths, attest, certify and acknowledge documents.

Plaintiff: A Plaintiff is the person initiating the lawsuit. In dissolution of marriage (divorce) cases, the person initiating the lawsuit is referred to as the Petitioner.

Pleading: A pleading is a legal document containing the caption and the legal requests or responses requested. A pleading typically is filed with the court.

Restraining Order: An order issued by the court forbidding a party from specific action as outlined in the restraining order. Disobeying a restraining order can be punishable by fines and/or imprisonment.

Request for Production of Documents: A Request for Production of documents is a pleading requesting that specific documents (or copies) be produced to the opposing attorney by a specific date.

Requests for Admission: Requests for Admission are statements set out in a pleading which require a yes or no response. Failure to respond to the statements by the date specified in the

pleading are perceived by the court as an admission of the statements.

Rules of Procedure or Civil Procedure: The basic court rules which govern the conduct of a case which are established by state and federal laws.

Service of Process: Service of process is the phrase used when documents are personally delivered or served on a person or entity in a lawsuit. A process server is the person who delivers the documents and can be either a police officer or an independent agent hired by the attorney.

Subpoena: A pleading issued by the court or attorney which commands the appearance of an individual to testify at a date and time indicated in the subpoena. A subpoena duces tecum is a request for a person to appear and bring specific documents which are stated in the subpoena.

Summons: A summons is a legal paper which notifies the defendant that a lawsuit has been commenced naming him as a defendant. The summons also requires the defendant to appear in court or file an appropriate response with the court within a specified time stated in the summons.

Transcript of Judgment: A document issued by the court which lists the parties to the case, the case number, date of entry of the judgment, and the amount of the judgment, among other things. Generally, this document can be used in collecting the judgment. For example, it can be recorded in real estate records against the property of the judgment debtor to insure payment of the judgment upon sale of the property.

Testator or Testatrix: Testator is a male person signing a document. Testatrix is the female counterpart of Testator.

Venue: Venue is the location of the court which will preside over the matter at issue. For example, a case might be filed in the county where you reside.

Voir Dire: The term used for questions posed to potential jurors by attorneys in the courtroom. These questions help the attorneys determine whether to keep a potential juror on the jury panel.

With Prejudice: Generally used in settlement documents. This phrase means no action or claim may be filed relating to the cause being settled.

Without Prejudice. Also used in settlement agreements, this phrase means the right to bring a subsequent suit regarding the same claim or cause.