

# Choosing a Private Attorney

*Introduction: as a service to our legal assistance clients, we have prepared this handout with frequently asked questions on issues involving choosing a lawyer, how lawyers charge for their services, court orders for attorney's fees, and other issues involving private attorneys. It is, of course, very general in nature since no handout can answer all your specific questions. Read over these questions and answers carefully in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your legal issues.*

## **When would I need a civilian attorney instead of a legal assistance attorney?**

A legal assistance attorney may not be able to help you in every situation, due to military regulations and available manpower. For example, you will probably need to hire a lawyer to represent you if you have been sued or if you wish to file a lawsuit. You may also need to retain an attorney if you need a complex will to be drafted. Sometimes a regulation will prohibit advice or representation, such as in cases involving a conflict of interest or an income-producing property of a client. In these situations, you will need to retain a private attorney to advise and represent you. Your legal assistance attorney will let you know if your case requires referral to a civilian attorney.

## **How do I choose a private attorney?**

There are many ways to select a private attorney.

- You may have been represented previously by an attorney who could help you in your present situation.
- You may have a friend or relative who has been represented by a good lawyer in a case similar to yours.
- Many bar associations maintain a lawyer referral service. Your legal assistance attorney can provide these numbers to you.
- Internet sites for locating an attorney: <http://www.martindale-hubbell.com> or <http://lawyers.findlaw.com/>

The important thing is that you choose a lawyer that is able to handle your case and able to work with you. Any way of selecting a lawyer is satisfactory if it achieves these goals, for it is very important for the client to have confidence in his or her attorney. Make sure he or she answers all of your questions and is upfront about fee requirements.

## **What are my lawyer's duties to me?**

The best summary is contained in a "Declaration of Commitment" published by the American Bar Association, which asks that all lawyers live by these principles.

- To treat you with respect and courtesy.
- To handle your legal matter competently and diligently in accordance with the highest standards of the profession.
- To exercise independent professional judgment on your behalf.
- To charge you a reasonable fee and to explain in advance how that fee will be computed and billed.
- To return your telephone calls promptly.
- To keep you informed and provide you with copies of important papers.
- To respect your decisions on the objectives to be pursued in your case, as permitted by law and the rules of professional conduct, including whether or not to settle your case.
- To work with other participants in the legal system to make our legal system more accessible and responsive.
- To preserve your client confidences learned during the lawyer-client relationship.
- To exhibit the highest degree of ethical conduct in accordance with the Code of Professional Responsibility and the Model Rules of Professional Conduct.

## **Will my civilian lawyer treat everything I say confidentially?**

Your civilian lawyer is bound by the same ethical obligations as a legal assistance attorney. This means that what you say to your lawyer is "privileged information." With certain limited exceptions, such as the intention to commit a crime or to give perjured (untruthful) testimony in court, what you tell your attorney must be held in confidence unless you give permission otherwise. In addition, your civilian attorney has the duty to:

- Let you make the major decisions in your case, such as pleading guilty in a criminal case or accepting a compromise or settlement in a civil case, and
- Remain open and honest with you in all aspects of your case, including the chances of success, the pros and cons of your position, the time needed, and the fee required.

## **How do American civilian lawyers charge for their services?**

Lawyers set fees in a number of ways, such as: flat rates, contingency fees, and hourly billing.

- **When is a flat fee used?** Lawyers may use a flat fee in handling certain civil and criminal cases where the work involved is usually straight forward, predictable, and routine. Thus, many lawyers use a flat rate or set fee for uncontested divorces, simple wills, traffic tickets and misdemeanors, adoptions, and name changes. Court costs (such as filing fees, witness fees, and sheriffs costs) are usually not included in the flat fee. A flat fee is usually paid in advance and does not vary depending upon the amount of time or

work involved. No refund is due if the work takes less time than expected, nor are there additional charges if the case takes longer or is more complex than anticipated.

- **What is a contingency fee?** A contingency fee (or contingent fee or percentage) is one, which is paid by the client only if the lawyer is successful. It is paid out of the sum of money that is collected by the lawyer and thus is available only in civil lawsuits which involve suing for a sum of money, such as auto accident cases and malpractice claims. A typical fee charged by a lawyer might be one figure (25-33%) if the case is settled without trial and another (33-40%) if it is necessary to go to court. On the other hand, some lawyers charge a single percentage regardless of whether trial is necessary or not. Since the lawyer collects no fee if the case is lost, you will usually need to have a case with clear liability and damages before a lawyer will agree to a contingency fee.
- **When do lawyers charge on an hourly basis?** An hourly rate is most common when the client's work will be substantial, but it is difficult to estimate how much time it will take. Thus, for example, a lawyer might charge on an hourly rate for a contested custody or contract case, or for the preparation of a family trust document. It is fairly common for the lawyer to require a retainer to be paid before starting on the case. This amounts to a deposit or down payment to make sure that the client is serious about the case and is financially prepared to cover the costs that may be incurred. The size of the retainer and whether any part of it is refundable will vary from case to case and lawyer to lawyer.

### **Does the court ever award attorney's fees?**

Sometimes -- here are some general examples of situations in which courts sometimes award attorney's fees:

- When the attorney acts as a trustee or agent for the court to manage money, property or other assets, the court can usually grant the lawyer a fee to be paid out of the assets managed. Thus, a lawyer who acts as the executor or administrator of a deceased person's estate, or who is the trustee for the bank in a foreclosure sale, can ask the court to award him or her a fee.
- In certain family law cases, the court may order one party to pay some or all of the other's legal expenses. For example, the court can make such an award in cases involving alimony, child support, custody, and paternity. It is important to remember, however, that the award of attorney's fees in these cases is not mandatory or automatic. It depends on a variety of factors, such as good faith, need, and lack of adequate support. Courts see these awards as a way to reimburse people for attorney's fees already paid or presently due. It is very difficult to retain an attorney in the beginning with only the promise or hope of court-awarded attorney's fees at a later date. This is especially true because often a person will refuse to pay the other party's attorney. Therefore, further court work may be necessary.
- In some cases, a contract provides for payment of attorney's fees by one who breaks the contract. The court will enforce the contract (if it is valid) and can award attorney's fees to the winning party from the breaching party if this clause is inserted in the contract.

- A final example of court-awarded attorney's fees is the "nuisance lawsuit" -- one that has no basis or justification. If the judge finds that a lawsuit is frivolous, groundless and without justification, an award of attorney's fees may be made by the court against the person bringing the suit. The same is true if the opposing party uses a frivolous defense, counterclaim or answer that is frivolous.

### **What if I can't afford to hire a lawyer?**

There may be a legal aid society or public defender office that can help you. You may be able to handle the case yourself, as with small claims court (or its equivalent in the place where you live). State child support enforcement agencies (located in each state) can help obtain an initial order for child support without charge. Once child support is ordered, you can obtain help in enforcing payment from the agency, or from the court through which the payments are made, or you can ask the court to appoint a lawyer to enforce payment. It may be that you don't need a lawyer but need to be referred to another office, such as the installation housing office, the inspector general, the county health department or the district attorney. Just remember -- don't give up!

### **What should I watch out for when dealing with my civilian lawyer?**

Here are some tips on the important matters that involve your lawyer and some areas where complaints are common:

- Be sure to insist that your lawyer explain specifically (1) what will be done in your case, and (2) how much it will cost. If you wish, you can ask the lawyer to put this in writing. This includes the contract that binds you and the attorney -- make sure you get a written contract and then read it!
- Clients should receive frequent case updates and regular communications from their attorneys; the rules of most state bars require this. Be sure to ask about this if you want to ensure that your lawyer knows you want to be kept current regarding your case.
- You should also get copies of the "pleadings" -- motions, complaints, counterclaims, petitions -- that have been filed in your case, as well as any order or judgment that the judge signs.
- The lawyer should release your file to you upon request and with reasonable notice.
- Do not tolerate unreturned phone calls; nothing makes a client angrier (and justifiably so) than a lawyer who won't answer a phone call or a letter from a client requesting information.
- Consider hiring a lawyer who specializes in your particular kind of case. Many states allow lawyers to become specialists and list themselves as such if they meet certain

qualifications. A specialist is usually more likely to know the "ins and outs" of your case than an attorney who is a "general practitioner."

### **Are there any other tips about lawyers that I should know?**

Yes. You should be sure to ask early and often about attorney's fees. Here are some suggestions:

- Find out from your lawyer if the attorney's fees you incur can be assessed by the court against the other side (in other words, if your soon-to-be-ex can be made to pay your lawyer's bill).
- Be sure you ask your lawyer at the outset how much he charges. Get this written down in a contract that both you and your lawyer sign. Read the contract closely before signing; you might even want to take it home with you before signing to read it closely and to allow yourself to think about it before you commit yourself to what might be thousands of dollars of legal expenses. Be sure to keep a copy of the contract.
- Ask for an estimate of the total charges and ask what services are included in this estimate. Ask what your attorney expects to be the steps you must go through and how much time (or expense) they might involve. If you hire an experienced lawyer, he should be able to at least "outline" the process for you with a fair degree of accuracy.
- At the same time, please be aware that it is hard to tell what might happen or how long something might take. It's impossible to predict with any degree of accuracy what will happen, for example, in a divorce and separation case. While many of these are resolved as standard "uncontested divorces" with no alimony, property or child-related issues involved, there are a great many cases that are completely unpredictable in this field of law. So don't expect a specific dollar amount to be quoted to you as "the entire fee" in anything but a standard uncontested divorce. In fact, be wary of attorneys who promise to handle your entire case for a fixed sum, since it is impossible at the outset to tell what will occur in all except the most routine of uncontested divorce cases -- one in which both parties want to get divorced, there are no issues of alimony, property division, custody or child support, and there is no problem serving the other party with the divorce papers.
- Be sure you understand the hourly rate of your lawyer, how the billing takes place, when you're expected to "refresh the retainer" and so on.
- Be sure to ask lots of questions if you want answers and to know how you will be charged in your case – after all, it's your money.

### **What if I have other questions about attorneys and their fees?**

Don't be afraid to ask questions at your very first meeting with a civilian lawyer. And remember the following:

- Always insist on signing a contract with the lawyer if you want the advantage of having your agreement in writing. Be sure to read the contract before signing to make sure it sets out accurately your entire agreement.
- Feel free to "shop around" and compare various attorneys, but don't just shop for the lowest fee. The cheapest lawyer is not necessarily the worst or best, and the most expensive one may not be the right one for you. Be sure to consider such factors as location, accessibility, personality, time available and experience in your problem area. There are lots of lawyers in most communities. It is your job to find the right lawyer for your case.

### **IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?**

- See a legal assistance attorney. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. The Netherlands Law Center stands ready, willing and able to help you in these matters. When you go to your appointment with the legal assistance attorney, ensure you **bring a copy of all documents** or court papers that relate to your legal issue.
- **Contact the Netherlands Law Center at DSN 360-7688 or Commercial 046-443-7688.** We are located at Building 37, USAG Schinnen, the Netherlands.