

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.



## **HIRING A PRIVATE ATTORNEY**

The United States is the world's leading legal superpower; it has more attorneys than any other country, both on an absolute basis and on a per capita basis. The only problem is finding the one who will provide the best professional service at the fairest price. This information paper provides information to assist you in deciding whether or not you need an attorney and how to select one. It also offers some tips on working with your attorney to get the most out of every dollar you spend on legal advice.

### **WHEN TO LOOK FOR LEGAL ADVICE**

The best time to consult an attorney is before, not after, you have legal problems. It can often save you money in the long run and keep any legal difficulties to a minimum. An attorney can help by offering you legal counseling and advice, preparing and filing documents and, if necessary, representing you in court and other legal proceedings.

Many problems, however, can be resolved without an attorney. Consider the following common questions when deciding whether or not you need to hire an attorney:

#### ***Can I handle this problem myself?***

To answer this question, estimate the value of the property or issue in dispute and how complex the procedures and paperwork are. After that, compare your estimate to the cost of hiring an attorney. Obviously you don't want to spend thousands of dollars in attorney fees for a dispute worth only a few hundred dollars.

Even matters involving substantial sums of money or valuable property may be handled without an attorney, if the procedures involved are simple. People buy and sell used cars and settle insurance claims every day without attorneys, for example, because the procedures and paperwork are so simple.

You may benefit from professional legal help, however, in these cases: accidents involving bodily injury or some question about who was at fault; bankruptcy; preparing a complex will; contracts for substantial sums of money; a contested divorce; or estate or tax problems involving significant sums of money or property.

### ***Can I get help from anyone besides an attorney?***

There are legal resources that may be able to help you resolve your legal problem without hiring an attorney. Depending upon the situation, you might consider the following alternatives to hiring an attorney:

- Consulting on-post agencies. For example, Red Cross, Emergency Relief, Community Service Agencies, and the Housing Office can assist with some landlord/tenant matters.
- Discussing the problem with the people involved and trying to work out a mutually acceptable compromise. If you have a problem with the AAFES Garage, for example, ask to see the Garage Manager. If that doesn't resolve the problem, then talk to the AAFES Manager.
- Asking an impartial, experienced person, such as a chaplain or family counselor, to mediate the dispute. You may also find mediation services at a Better Business Bureau or similar agency.
- Contacting your local or state consumer protection agency.
- Taking the matter to Small Claims Court, where, depending upon the state, claims from \$100 to \$5000 may be considered.

### ***Is there anywhere I can go for free legal help?***

As a Soldier, overseas civilian employee, or family member, you can get **free** legal advice and assistance from the legal assistance office (LAO) at your base or installation. Unfortunately, military legal assistance is not available for every case due to regulatory limitations.

For example, military regulations prohibit military attorneys from providing advice and assistance in cases involving private, income-producing activities, such as copyrights, patents, and off-post employment; litigation against the United States; and most employment-related issues. In these cases, you may need to retain a private attorney.

If you cannot afford to hire an attorney at the full fee, and if a Legal Assistance Attorney is not available, consider the following reduced-cost options:

- The federal Legal Services Corporation, <http://lsc.gov/>, has offices across the nation to serve low-income clients. State and local agencies may also have legal assistance programs. Some law schools, state and local bar associations, and other private organizations also offer free or reduced-cost legal assistance. Virtually every city has a child support enforcement agency, which will help obtain and enforce child support orders, usually for little or no cost.
- The local consumer protection agency or agency on aging may be able to assist you or provide an appropriate referral.

- Hire a general practitioner attorney for one hour and let him or her advise you about alternatives.

## **HOW TO SELECT AN ATTORNEY**

Your goal is to find an attorney with whom you are comfortable as *both* a person and a professional. Your case may involve very personal information and your attorney will often need to know confidential details about you, your family, and your finances to be effective in assisting you.

One of the best ways to find an attorney is to seek a recommendation from people whose opinions you respect: an employer, attorney at your workplace, teacher, minister, doctor, relative, neighbor or friends. Your local Legal Assistance Office can help you find a competent private attorney and may have a referral list of private attorneys in your area.

The nature of your legal problem will help define the type of attorney you will want to hire. Often attorneys have one or more specialties, and you want to make sure your attorney has experience in your type of case. The attorney who did a terrific job with your friend's divorce may not have the expertise to take on your auto accident injury matter.

Another excellent means of obtaining a referral to an attorney is by calling your state's Attorney Referral Service (LRS). Depending on your matter, an LRS representative may recommend an attorney or suggest alternatives such as contacting a state agency.

Before meeting with an attorney, make notes about your problem and gather all of the related documents to take with you. This will allow you to present your legal problem in the clearest and most organized manner possible. It will also allow you to focus on evaluating the attorney's response to your case and your questions.

## **WHAT CAN YOU EXPECT FROM YOUR ATTORNEY?**

All attorneys, whether military or civilian, are bound by a code of ethics in their respective jurisdictions. A good attorney will treat you as a valued client, and will conduct himself or herself professionally toward everyone connected with your case. Attorneys who sacrifice standards of decency in the name of zealous representation can actually make things worse for their own clients by creating unnecessary fights.

The duty of confidentiality is common to all attorneys. With limited exceptions, this duty means that an attorney cannot divulge any information obtained in the course of representing you unless you give permission.

Your attorney should give you the information you need to understand your options. A good attorney can give you the benefit of many people's experiences, pointing out strengths and pitfalls, and making suggestions that might help you get what you need without having to fight. He or she will listen carefully to your concerns, and offer meaningful perspectives.

Your attorney must also keep you informed about the status of your case and be honest with you about your case, including the chances of success, the good and bad sides of your position, the time needed, and the fee required. Your attorney should give you a basic description of your legal matter and let you know what problems to expect, how they'll be handled, and when things will happen. And of course, your attorney should promptly return phone calls and emails and answer your questions

## QUESTIONS TO ASK THE ATTORNEY

During the initial consultation, you should ask about the following issues. Keep in mind, some attorneys charge a fee for your first consultation, some don't.

- The amount of experience the attorney has in your type of legal matter;
- A preliminary outline of how the attorney believes the case should be handled and the time frame for its completion;
- Whether or not the attorney carries malpractice insurance;
- How you can or will be expected to participate in your case;
- How you will be kept informed about the status of the matter;
- Whether or not the attorney will provide you with a fee agreement that details fees, expenses, billing and payment;
- The attorney's hourly fee (if applicable); and
- An estimate of the attorney's total fee.

After meeting with the attorney ask yourself the following questions:

- Will I be comfortable working closely with this person?
- Am I confident that the attorney has the experience and skill to handle your case?
- Do I clearly understand the attorney's explanation of what my case involves?
- Do I understand the proposed fee agreement?

## NEGOTIATING FEES

Disputes regarding attorneys' fees are perhaps the most common problem that clients have with their attorneys. Fee schedules vary widely. The major types are flat rates, contingency fees and hourly billing.

Attorneys may use a **flat fee** in cases where the work involved is predictable and routine, for example in uncontested divorces, preparing simple wills and contracts, adoptions, traffic tickets, misdemeanors, and name changes. A flat fee is usually paid in advance and does not vary depending on the amount of time or work involved. No refund is due if the work takes less time than expected and no additional charge is made if the case is longer or more complex than usual.

Under a **contingency fee** arrangement, the attorney receives a percentage of any money received if you win the case. If you do not win, the attorney does not receive a fee. Since the attorney is paid out of the money collected during the case, this arrangement is normally used only in civil matters involving demands for a sum of money, such as

personal injury or breach of contract cases; and some attorneys won't take a case on a contingency fee basis, unless there is clear liability and damages.

A typical contingency fee might be 25-33% for cases settled out of court, and 33-40% if the case goes to trial. However, some attorneys charge a single rate, whether a trial is necessary or not; and others use a sliding scale in which the percentage changes depending on how long it takes to settle the case and/or how much the award is. If a sliding scale is based upon how long it takes to settle, for example, the attorney may collect 25 percent if you settle before trial, 30 percent if there is a trial, and 40 percent if there is an appeal. If a sliding scale is based on the size of the amount, the attorney generally gets a lower percentage as the amount increases.

In negotiating the size of the contingency fee, you should keep in mind how complicated the case is. Suing a doctor for malpractice where you had an unusual, unexpected reaction to a common drug is probably a much more complicated case than suing the same doctor for amputating your left leg when it was the right leg that was diseased. The fee for the second case probably should be a lot less than for the first case.

In all contingency fee cases, ask your attorney to compute the fee "after expenses." You will collect much more money if you deduct the court costs, witness fees, etc., before calculating the contingency fee.

For claims against the United States, the Federal Tort Claims Act and Military Claims Act limit attorney fees to a maximum of 20% for any claim settled without going to trial, and a maximum of 25% for claims after filing a lawsuit. Make sure your attorney doesn't file a lawsuit just to collect the extra 5%.

An **hourly rate** is most common when the amount of work required is difficult to estimate. For example, an attorney might charge an hourly rate for a contested child custody case, criminal defense work, or preparing a complex trust document. Depending upon the experience and reputation of the attorney, the hourly rate could be anything from \$75 to \$400 or more. If you can't negotiate a flat fee, the hourly rate and estimated number of hours you agree to pay for should be understood at the outset, and ask your attorney to call you prior to doing any work beyond the original estimate.

It is common for attorneys to charge in intervals of 6, 10, or 12 minutes. This may save the client money, especially if the case involves many phone calls. For example, if your attorney charges by the quarter-hour and you are on the phone for only five minutes, you still have to pay for a full quarter-hour of the attorney's time. Since smaller intervals may add up to less total cost, clients should ask about the interval length.

It is also common for the attorney to require a retainer to be paid before starting on the case. The retainer is a deposit or down payment to make sure that the client is serious about the case and is prepared to cover the costs that may be incurred. The size of the retainer and whether any of it is refundable will vary from case to case and from attorney to attorney. Be sure you know exactly what services are covered by the retainer and ask that

it be applied to the balance owed and that you receive a refund if the case is resolved quicker than expected.

Another cost to consider is court costs, such as filing fees, witness fees, and sheriff's costs. These costs are usually not included in the attorney's fee and have to be paid separately. Since you may have to pay court costs, be wary of statements that there will be "no charge" if you do not win.

Most fees are agreed upon through discussions between clients and attorneys. If you cannot afford what the attorney asks, say so. Fees are negotiable. You may also want to discuss working out a payment plan, if you do not think you can afford a lump sum fee.

The bottom line here is to shop around to find an attorney who will work within your budget. Especially in big cases, such as those involving serious injuries, a little comparison shopping may save you many thousands of dollars in attorney fees.

### **GET IT IN WRITING**

The best way to protect yourself and avoid misunderstandings is to have a written fee agreement signed by both parties before any other work is done. If a term in the fee agreement is unclear to you, ask the attorney to re-write it in a way that is clear and understandable to you. Even if your state does not require a written fee agreement, it is still a good idea to have one. In addition, if you do not want to have your fee dispute end up in court, be sure that a mandatory arbitration clause is included in the fee agreement so that the dispute can take place in front of a neutral, third party instead of in an imposing courtroom.

Among the most important documents required in all dealings is the written estimate. The attorney should provide an estimate that includes not only the fees, but also the filing and court costs, letters, copying, time on the phone, and other expenses that may be connected with your case.

Ask that all billings be itemized and sent to you on a regular basis. If you wish, you may include limitations or a ceiling on costs that cannot be exceeded without your written permission.

***The USARAF/SETAF Legal Assistance Office number is DSN: 634-7041, Com: 0444-71-7041. If you need more information, please call for an appointment with one of our attorneys.***