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You and Your Lawyer



If after you have spoken with your lawyer you have not resolved the problem, or if your lawyer has failed to respond to your calls and letters, then, depending upon the circumstances, there are a number of things that you can do. If you are simply dissatisfied with your lawyer's representation, or if you wish to change attorneys for some other reason, then you have the absolute right to do so. You always have a right to change lawyers for any reason, but you should be aware that a change could delay your case, and that you still have to pay the first lawyer for the work that has already been completed.

Lawyers are held to the highest level of professional and ethical conduct as prescribed by New York's Rules of Professional Conduct. If you have a question about the ethical conduct of an attorney, contact the New York State Bar Association (www.nysba.org), which can give you the telephone number for the appropriate Appellate Division grievance committee (also accessible at ww2.nycourts.gov/attorneys/grievance/complaints.shtml). Please keep in mind that a lawyer cannot guarantee the outcome of your case, and that the fact that the results are less than what you may have hoped for or expected does not mean that there was unethical conduct.

This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Committee on Attorney Professionalism.

Early consultation with a lawyer could prevent serious problems later on.

Who needs a lawyer?

At some point, almost everyone. Many people think they should see a lawyer only after they encounter a legal problem, but the best time to consult an attorney is before, not after, you have a legal problem.

When do you need a lawyer?

Early consultation with a lawyer can sometimes prevent serious problems later on. Common situations when you should consider having a lawyer include (but are not limited to):

1. Before signing a contract to buy or sell a home, other real estate, a business or property of any kind.
2. When making wills and trusts, and otherwise doing estate planning.
3. Before signing written contracts with major financial provisions or consequences.
4. When domestic/marital or other family problems arise.
5. When organizing a business. Legal services do not end with the formation of a business. There are many ongoing concerns.
6. When tax issues arise.
7. When accidents occur, especially if involving personal injury or property damage.
8. When you are sued or want to sue someone.
9. When dealing with an immigration issue.
10. As soon as you are asked questions by police or other law-enforcement or government officials concerning your conduct, or if you are issued a citation for a traffic violation or arrested. If you are arrested or charged with a crime, or you are questioned about your possible involvement in a crime, you should see a lawyer at the earliest possible moment and make no statement of any kind until you have received legal advice. If you cannot afford a lawyer, you may have the right to have a lawyer provided for you free of charge.

Attorney-client privilege

The attorney-client privilege is a legal concept that protects certain communications between a client and his or her lawyer and keeps those communications confidential. It is one of the oldest recognized privileges for confidential communications. However, there are limitations to the privilege, so please discuss any and all privilege issues with your lawyer.

The basis for a legal fee

Abraham Lincoln once emphasized the value of a lawyer's services when he said, "A lawyer's time and advice are his stock and trade."

Often the key elements in any fee charged by a lawyer are the amount of time spent and the overall value of the service rendered on a particular problem. A lawyer's professional services differ from those of a doctor or dentist in one important way: much of the work is done when the client is not present.

Many clients are often unaware that a document drawn for them, or the advice given to them in a few minutes, is actually the product of a lawyer's education, experience and many hours of work. The end result may also have involved time spent by others in the lawyer's office, such as legal assistants, the lawyer's associates and legal secretaries.

Remember, when you engage the services of a lawyer, you generally are hiring an entire law office to work for you.

Elements of the fee

In charging fees, a lawyer considers a number of elements which may vary in significance depending upon the services performed and the applicable arrangements:

Time: This is often a basic element in determining a fee, in cases in which fees are based on hourly rates. Sometimes, fees are project-based or fixed.

Operating expenses and overhead: The cost of operating the average law office — including items such as rent, equipment, law library, supplies, staff and insurance — is often significant.

Ability, experience and reputation: You should expect to pay a higher hourly rate or fixed fee for a lawyer who has a lot of experience and knowledge in a specific area of the law or who is particularly in demand.

This is not to imply that a lawyer less experienced in a certain area of the law is not able to cope with typical legal problems. The law is no different in this respect from any other professional area, such as medicine, where there are specific fields of practice (or sub-practice).

Time-based and other methods of computation

Generally, the key element in any fee charged by a lawyer is the amount of time spent on a particular matter. There are various methods used for computing legal fees, a combination of which may be used, such as:

1. A lawyer will frequently base the fee upon an hourly rate. This rate will depend on the circumstances of the case and the experience and expertise of the lawyer.
2. For some types of legal matters, a lawyer may charge a fixed fee. When you and your lawyer are discussing a fixed fee for such a matter, be sure to discuss what circumstances or situations may arise that may result in the charge of additional fees.
3. In some cases, the result itself may determine the fee. This is called a contingency arrangement, which is



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the norm in New York State in personal injury cases, and is prohibited in criminal and most matrimonial cases. The lawyer receives no fee unless money is recovered for the client. If money is recovered, then the lawyer is paid an agreed-upon percentage of the recovery, depending upon the type of case.

Remember, no matter what fee arrangement is used, the client may be expected to advance or to reimburse the lawyer for out-of-pocket disbursements, such as filing fees, medical reports, depositions, etc., and that, unless a contingency-fee or similar arrangement has been made, the lawyer may expect to be paid regardless of the outcome. You should keep in mind that no lawyer can ever guarantee the results.

You should discuss the cost of legal services at your first interview with a lawyer. The lawyer may not be able to determine the exact amount of time and effort required to handle your case but in a variety of situations may be able to give you an estimate based upon past experience. A lawyer may quote a total charge for the work involved or may provide you with hourly rates and an estimate of the time required on a particular matter.

You should always discuss fees with a lawyer before you ask to have any work done. You should never hesitate to discuss fees at any time during the handling of your legal matter, including asking your lawyer for an itemized explanation of fees and expenses charged. If you receive a statement and believe that the fee isn't proper, talk it over with your lawyer promptly.

Misunderstandings about fees frequently result from the fact that the client is not aware of the extent of the lawyer's substantive work on the case. Prompt, frank discussion between you and your lawyer is the best way to correct any mistakes and to clear up any misunderstanding that they may have caused. In addition, periodic updates regarding accumulated and expected fees can sometimes be helpful.

If you are asked (for example, as may occur where there is so-called "litigation funding") to finance the cost of your litigation (in addition to paying legal fees), please make sure you fully understand all of the relevant legal and financial details before you proceed.

How to work best with your lawyer

1. Write down the names, addresses and telephone numbers of all persons involved, and all the facts you can recall that pertain to your case. By doing this yourself at home, you will cut down on the time your lawyer will have to spend gathering the information.

2. Have access to all papers relating to the case during the first interview.
3. Be as concise as possible in all interviews with your lawyer.
4. Be honest and tell your lawyer all the facts — good and bad. Your lawyer must generally keep them in the strictest of confidence and should be made aware of everything relevant to your matter in order to be able to represent you to the best of his or her ability.
5. Have your lawyer analyze your matter and give you the pluses and minuses. Have your lawyer explain the various steps involved in handling your matter and ask for an estimate of how long it will take. Ask your lawyer to keep you informed about the progress of your matter.
6. Keep your lawyer appropriately informed of any new developments that might affect your matter.
7. See a lawyer before signing documents or taking legal action. Be sure you understand all of the ramifications of what you are signing or doing, and then follow the advice of your lawyer.
8. Remember, no lawyer can guarantee the outcome of any particular case.
9. Good and open communication between you and your lawyer is key to a good attorney-client relationship.

Should you handle your own legal affairs?

A number of do-it-yourself "kits" are offered for sale from time to time. Kits are available, for example, for getting a divorce, avoiding probate, declaring bankruptcy or forming a business. You may use these for your own affairs; however, you risk proceeding without the valuable expertise that a lawyer may be able to bring. Depending on the costs and benefits of proceeding with or without a lawyer, you could wind up concluding that you are best-served to err on the side of hiring a professional.

Statement of Client's Rights

Your lawyer may provide you with a Statement of Client's Rights as approved by the Administrative Board of the Courts. It is intended to tell what you as a client are entitled to by law or by custom.

Reciprocal trust, courtesy and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the responsibilities as outlined by your attorney.

Your lawyer is available to answer any questions you may have about these rights, or about the way your case is being handled. Don't hesitate to call. He or she should be readily available to represent your best interests and to keep you informed about your case.

The client's rights are as follows:

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and nonlawyer personnel in your lawyer's office.
2. You are entitled to have your attorney handle your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to discharge your attorney and terminate the attorney-client relationship at any time. Court approval may be required in some matters, and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge.
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged reasonable fees and expenses and to have your lawyer explain before or within a reasonable time after commencement of the representation how the fees and expenses will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any arrangement for fees and expenses that you find unsatisfactory. In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.
5. You are entitled to have your questions and concerns addressed promptly and to receive a prompt reply to your letters, telephone calls, emails, faxes, and other communications.
6. You are entitled to be kept reasonably informed as to the status of your matter and are entitled to have your attorney promptly comply with your reasonable requests for information, including your requests for copies of papers relevant to the matter. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter and make informed decisions regarding the representation.

7. You are entitled to have your legitimate objectives respected by your attorney. In particular, the decision of whether to settle your matter is yours and not your lawyer's. Court approval of a settlement is required in some matters.
8. You have the right to privacy in your communications with your lawyer and to have your confidential information preserved by your lawyer to the extent required by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the New York Rules of Professional Conduct.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, gender identity, gender expression, age, national origin or disability.

Attorney Ratings

You may be aware of publications and services that provide "ratings" of lawyers and similar lists. You may have become familiar with one or more of these services, and, in addition, you may be informed that a lawyer has been rated or otherwise recognized for inclusion. To our knowledge, none of these services represents an official endorsement by the government or by an organized bar; they are all private compilations based on a variety of sources and methodologies. Before making use of any ratings or lists of attorneys, you may wish to seek information that may help you to understand whether and how best to use the ratings or lists. If you are interested in this topic, more detailed information may be found in a 2015 report of the New York State Bar Association Committee on Attorney Professionalism, at www.nysba.org/AttorneyProfessionalism.

If you have a problem with your lawyer

In the event of a dispute or other problem with your lawyer, good communication can be the key to preserving a good relationship. No matter what issues develop between you and your lawyer, speak with him or her as soon as the problem arises, first by telephone and then, if necessary, in person. Perhaps the problem has arisen due to a simple misunderstanding that can be cleared up in a short, frank telephone conversation. If you communicate in writing, keep a copy of your letter, email or other written communication. Tell the lawyer exactly what is bothering you and request that the lawyer address the matter with you.