



The North Carolina State Bar

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THE LEGAL EAGLE

YOU AND YOUR LAWYER

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 your specific questions. We do ask, however, that you 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 family law problem. Comments, corrections and suggestions regarding this pamphlet should be sent to the address at the end of the last page.

1. Q. HOW DO I CHOOSE A PRIVATE ATTORNEY?

A. There are many ways to select a private attorney if you do not have one in mind already. In some cases, you may have been represented previously by an attorney who could help you in your present situation. Then again, there may be a friend or relative who has been represented by a good lawyer in a case similar to yours. It might be a good idea in either of these cases to see if that lawyer might be able to handle this matter for you. You can also ask a legal assistance attorney to help with a referral.

2. Q. ARE THERE OTHER WAYS OF PICKING A CIVILIAN ATTORNEY?

A. Yes -- many bar associations maintain a lawyer referral service. You can also choose a lawyer based on advertising or any number of other ways. The important thing is that you choose a lawyer 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.

3. Q. WHEN WOULD I NEED A CIVILIAN ATTORNEY INSTEAD OF A LEGAL ASSISTANCE ATTORNEY?

A. 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 income-producing property of a client. In any of these cases, 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.

AMERICAN ATTORNEYS

4. Q. WHAT ARE MY LAWYER'S DUTIES?

A. 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 and provide copies of them to their clients.

MY DECLARATION OF COMMITMENT TO CLIENTS

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 a reasonable fee and to explain in advance how that fee will be computed and billed.

To return 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 the client confidences learned during our lawyer-client relationship.

To exhibit the highest degree of ethical conduct in accordance with the Code of Professional Responsibility/Model Rules of Professional Conduct.

5. Q. WILL MY CIVILIAN LAWYER TREAT EVERYTHING I SAY CONFIDENTIALLY?

A. 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 good and bad sides of your position, the time needed and the fee required.

6. Q. HOW DO AMERICAN CIVILIAN LAWYERS CHARGE FOR THEIR SERVICES?

A. Lawyers set fees in a number of ways. The major types of fees are flat rates, contingency fees and hourly billing.

7. Q. WHEN IS A FLAT FEE USED?

A. 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 in uncontested divorces, simple wills, traffic tickets and misdemeanors, adoptions and name changes. Court costs (filing fees, witness fees and sheriff' s costs) are usually not included in the flat fee. A flat fee is one, which is paid in advance (ordinarily) 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.

8. Q. WHAT IS A CONTINGENCY FEE?

A. 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 in handling the case.

9. Q. WHEN DO LAWYERS CHARGE ON AN HOURLY BASIS?

A. 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 downpayment 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.

10. Q. DOES THE COURT EVER AWARD ATTORNEY'S FEES?

A. Yes -- 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 based on the price obtained in the foreclosure sale or the value of the debts paid and the personal property in the estate.
- In certain family law cases, the court may order one party to pay some or all of the other's legal expenses. The court can make such an award in cases involving alimony, child support, custody and paternity, by way of example. It is important to remember, however, that the award of attorney's fees in such cases is not mandatory or automatic. It depends on a variety of factors, such as good faith, need, lack of adequate support, and so on. The courts see these awards of attorney's fees as a way to pay back or reimburse people for attorney's fees already paid or presently due. It is very difficult to retain an attorney from the outset based on the promise or hope of court-awarded attorney's fees at a later date. This is especially true because many times a person will not obey the court's order to pay the other party's attorney and so further court work may be necessary.
- In some cases, a contract provides for payment of attorney's fee by one who breaks the contract. In such a case, 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 such a 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 it is a defense, counterclaim or answer that is frivolous.

11. **Q. WHAT IF I CAN'T AFFORD TO HIRE A LAWYER?**

A. First of all, talk to a legal assistance attorney. 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). The state Child Support Enforcement Agency (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. See a legal assistance attorney as early as possible so he or she can listen to the facts and help you avoid or solve the problem.

12. **Q. WHAT SHOULD I WATCH OUT FOR WHEN DEALING WITH MY CIVILIAN LAWYER?**

A. 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."

13. **Q. ARE THERE ANY OTHER TIPS ABOUT LAWYERS THAT I SHOULD KNOW?**

A. 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 or she 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 go through and how much time (or expense) they might involve -- if you hire an experienced lawyer, he or she 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 in a legal difficulty. 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 you want to know how you will be charged in your case -- after all, it's your money.

14. [here insert information on local courts and choosing a lawyer. Example follows.]**Q. HOW DO I GO ABOUT HIRING A LAWYER IN GERMANY?**

A. Attorney fees in Germany are usually much higher than in the United States, particularly for an uncontested divorce. German attorneys do not charge their client on an hourly rate. Their fee is based on the so-called "value of a case". The latter is determined by the amount of money in dispute or it is assessed by the judge himself, who attributes a certain value to a certain legal question. A strictly binding ordinance will inform the client how much "one share of the total fee" is. Depending on the work that is done, the attorney can get one, two or three shares (for counseling and paperwork, for filing the petition and for court representation). This system permits a fairly exact estimate on the future costs right from the first consultation. It

also means that attorney's fees are going to be the same no matter which attorney you hire. It is the attorney's ethical obligation to counsel his or her client on the total costs of the legal dispute. Of course, any attorney will request a retainer if the client wants to fight the case. The attorney must make a deposit for court fees when the case is filed in the first place. In small towns (and also depending on the competition between attorneys in the specific locality) it is not uncommon, however, for the first divorce counseling session to be given at no charge to the client.

15. Q. WHAT IF I HAVE OTHER QUESTIONS ABOUT ATTORNEYS AND THEIR FEES?

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

>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.

16. Q. ARE THERE ANY SPECIAL TIPS TO REMEMBER ON HIRING A LAWYER FOR A "MILITARY DIVORCE CASE?"

A. Attorney Peter Cushing of Orlando, Florida, advised the following considerations in choosing an attorney regarding "the military divorce":

If you are an active duty member, retired from active duty, or the spouse of an active duty or retired member, it is very important that you select an experienced attorney if many years of military service are involved. This is so because the military pension and related insurance benefits are the major assets in a military dissolution. For example, a senior enlisted person is likely entitled to \$1,500.00 or more in monthly pension benefits for life. These benefits, if earned during the marriage, are marital property and subject to equitable distribution in Florida. If, however, the retired member dies, these benefits stop. So, insuring the military pension is very important. Accomplishing a division of a military pension and establishing or preserving insurance benefits requires a knowledge not only of state law, but also familiarity with the Uniformed Services Former Spouses' Protection Act [USFSPA], a federal statute. Court orders must be properly drafted to comply with both state and federal law. In interviewing a prospective attorney, consider asking the following questions:

> Does the attorney have a military background? Was the attorney a former military attorney?

> *How many military-related divorces has the attorney completed?*

> *Are military personnel (or military spouses) regular clients of the attorney?*

> *Does the attorney have a copy of the Former Spouse Protection Act?*

> *Has the attorney written or lectured about military-related divorce?*

17. Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

A. See a legal assistance attorney as soon as possible. He or she can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters. Be sure to bring along with you to the interview a copy of any documents or court papers that might be helpful to your attorney.

Location and hours of your Legal Assistance Office:

Information on local agencies, offices and resources:

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