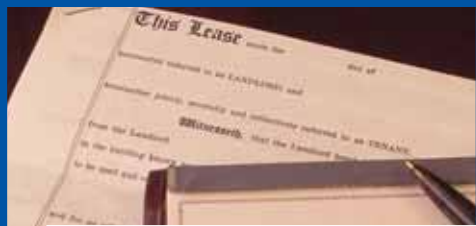


A Practical Guide to

Hiring a LAWYER



A PRACTIAL GUIDE TO HIRING A LAWYER

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I. Introduction

The Lawyer's role in society is to provide people with legal counsel and to help resolve situations that arise in their business and personal lives. As we move through life, it is normal to require the services of a lawyer from time to time. For individuals, situations that most often require the services of a lawyer include drafting a will, selling or purchasing a home, obtaining a divorce or handling a dispute regarding children, or automobile related matters. Lawyers best serve their clients by being vigorous but objective advocates and advisors. Lawyers receive special training to be able to see "all sides" of any situation because only by being able to see things from all sides can a fair and lasting resolution be achieved.

In Michigan, hopeful lawyers must complete at least 60 semester hours or 90 quarter hours toward an undergraduate degree from an accredited school, and then earn a law degree at an accredited law school. After all that formal education, they must also pass an examination to test their knowledge of law and be subject to an investigation into their moral character and fitness to practice law.

II. When do you Need a Lawyer?

In today's society where seemingly harmless acts, like downloading music files, can land you in a messy legal battle, you may ask yourself if we have reached a point where a lawyer is as necessary as a mobile phone. There is no right or wrong answer to the question, nor is there a set formula for figuring out the answer.

Legal representation can be divided into two main categories: criminal law and civil law.

In criminal law cases, because the defendant is generally faced with the prospect of going to jail or prison, the assistance of a

lawyer is so strongly recommended that the courts sometimes take over the financial burden and appoint a lawyer for those who cannot afford to hire one. There may be occasions where an individual decides that he or she does not need a lawyer, but those instances are rare. Generally, hiring a lawyer is highly recommended in criminal cases.

Civil law includes every other type of law such as contracts, divorces, wills, personal injury, landlord/tenant, probate, litigation, etc. Factors to consider in determining whether to hire a lawyer include: the complexity of the matter, the effect it could have on the life or lives of those involved, and the cost of the lawyer, among others. It is a good idea to consult with a lawyer to determine whether his or her services are required.

III. How to Find a Lawyer

A. Referrals

Finding a good lawyer is like finding a good doctor; the best way is to ask people whose judgment you trust for the name of a good lawyer. You should ask people who are in business and regularly interact with lawyers – people like your accountant, doctor, or financial advisor. Other good sources to ask for referrals are your pastor or priest, a realtor you know or other businessperson. The important thing is to keep asking – you might find that a few names keep coming up and you will learn something about the lawyers from everyone you ask.

Once you have a few names, do not be afraid to interview several lawyers. Many lawyers offer a free or reduced fee consultation to prospective clients.

Look for a lawyer who regularly practices in the area you need; however, it is important to know that in Michigan

lawyers are not certified as specialists in particular legal fields.

You may determine whether a lawyer is authorized to practice law by contacting the State Bar of Michigan at (800) 968-1442 or by visiting the Member Directory on its website at www.michbar.org. You may also contact the Attorney Discipline Board at (313) 963-5553 or visit its website at www.adbmich.org to view a listing of all Michigan lawyers who have been subject to professional discipline.

B. Lawyer Referral Service

Several organizations offer lawyer referral services, including some local bar associations. The State Bar of Michigan also has a lawyer referral service. A Lawyer Referral staff member will give you the name and telephone number of one lawyer in the county in which you need a lawyer (only one referral per call). Your first half hour of consultation with the lawyer will be \$20. After the first half hour the amount of the lawyer's fees charged for the consultation and further representation is a matter of negotiation between you and the lawyer.

The State Bar Lawyer Referral number is (800) 968-0738. You should contact the local bar associations in your area for their lawyer referral information. Neither the State Bar of Michigan nor other lawyer referral services endorse that the lawyer is well qualified and competent to handle your matter.

C. Unauthorized Practice of Law

Any time you are asking someone to give you advice about legal issues or to assist you in preparing legal documents you should ensure that the person is qualified to assist you. It sometimes happens that non-lawyers will tell you that they can handle your matter or lead you to believe that they are lawyers. It is the practice of law when a person or company

says or does something on behalf of another person that involves taking a general legal principle, applying the principle to the facts of a case and making a decision about the legal issue or issues concerning the case. It is the unauthorized practice of law for a person to use legal discretion on behalf of another person, or draft legal documents or practice law for another person, when they are not legally authorized to do so.

Hiring a non-lawyer may actually put you in a worse position. You end up having to pay a lawyer not only to handle the original matter, but also to fix additional problems caused by the non-lawyer. To avoid losing your money to someone who is not authorized or qualified to provide legal services, ask for the lawyer's bar number. In Michigan, all lawyers are issued a bar number which begins with the letter "P." You can call the State Bar at (800) 968-1442 or visit our Member Directory on our website at www.michbar.org to confirm the validity and identity of the lawyer and his or her bar number.

D. Legal Services

Legal services organizations may be an option if you need assistance with certain issues, such as housing, eligibility for government services, consumer problems and sometimes family law problems. Legal services organizations, or "legal aid," provide free or reduced cost legal advice and representation. Generally, there are income and other eligibility criteria that you must meet in order to qualify for services. If you qualify, these legal services organizations may give you legal advice, information to help you represent yourself, or represent you in court proceedings. Your first contact with a legal services organization will usually be over the telephone in a preliminary screening or through an initial office visit. You may find out about your local legal service organization in the phone book, through the State Bar of Michigan, or through Michigan LawHelp, whose website is www.mi.lawhelp.org.

IV. Hiring a Lawyer

A. What to Expect

The first meeting with a lawyer is frequently called a “consultation.” This is an opportunity for the client and lawyer to get to know one another and to discuss the client’s legal matter. Some lawyers will offer a free consultation or a discounted rate for a short consultation. You should ask if there will be a charge for your first meeting with the lawyer when you call to set up the appointment.

A good lawyer will be honest, and may tell you things that you do not want to hear, such as “you do not have a case.” A good lawyer will also take the time to meet with you. You should not feel rushed to complete the meeting.

If you are not satisfied with your meeting, you always have the option to talk to other lawyers about your case. You should be completely comfortable with the lawyer you hire.

B. What to Ask

Do not shy away from asking “tough” questions.

- Ask about the lawyer’s experience in handling matters similar to yours and how long the lawyer has been in practice. While it is okay to ask the lawyer to provide examples of prior matters, you should keep in mind that the lawyer cannot share other clients’ secrets and/or confidential information. The information provided in response to inquiries regarding prior matters will, in all likelihood, be general in nature.
- Ask whether the lawyer has ever been professionally disciplined, and if so, whether he or she is now in good standing with the Bar.
- Ask how long it will take to complete the services. But always remember that things can happen which will affect the length of time that may be required for your case to be completed and lawyers cannot guarantee a particular result.

- Ask whether there are alternatives to the course of action recommended by the lawyer. For example, if you are meeting with an Estate Planning lawyer, you may wish to ask about the differences in cost and function between a simple will and a more complicated trust.
- Ask whether the lawyer carries malpractice insurance. You are entitled to ask this question. If the lawyer does carry malpractice insurance, you may ask that the name of the insurance company be included in the written retainer agreement and that the limits of the policy and the type of policy be disclosed to you. Michigan, like the majority of states, does not require lawyers to maintain malpractice insurance.
- Ask the lawyer any question that you have regarding your matter. There are no stupid questions. Legal matters can be complicated and confusing. They are very important and can have a great impact on your life. Do not hesitate to ask someone with knowledge to help explain things to you.

C. Get it in Writing

Make sure that your lawyer gives you a written retainer or fee agreement. While a written agreement is not required in all circumstances, it is highly recommended. Before signing the agreement, read it carefully. If you have questions, discuss each question with the lawyer before you sign the agreement. Make sure you get a copy of the signed retainer agreement.

At a minimum, the retainer agreement should set forth the legal work to be provided, the amount of legal fees to be paid and how and when fees are due. The retainer agreement should also spell out which costs will be your responsibility (court filing fees, transcript fees, photocopying, long distance charges, postage, etc.). Do not be afraid to ask for an estimate of what the total amount billed to you will be; however, remember that circumstances can change and they may affect what the total fee will be.

You should receive signed and dated receipts for all money paid to your lawyer and the purpose of each payment. No formal receipt is necessary. The lawyer's acknowledgment in writing on any paper is sufficient. As with any transaction, never pay cash without getting a receipt.

Always get a receipt for any property that you entrust to anyone, including a lawyer, for safekeeping.

D. Establishing the Ground Rules

Make sure that you understand how you will be charged for communicating with your lawyer. Charges may vary for telephone calls, personal office visits, and after business hours contacts.

Keep a calendar, or log of all contacts with your lawyer's office, with dates and times spent discussing your case or other legal matters. This will help you understand some of the charges reflected on the bill.

Ask for an itemized monthly billing statement. If you have questions regarding any of the charges in the bill discuss them with your lawyer immediately. Frequently, charges make more sense after a brief explanation.

Ask the names and hourly rate charged of other persons in the law firm who will be involved in specific phases of your matter, such as drafting of papers, court appearances, trial or appeal.

Ask your lawyer to send you copies of all correspondence sent or received on your behalf, as well as copies of each legal paper or pleading. It is well worth the cost of postage and photocopying. If you have questions or concerns regarding any of the documentation, promptly discuss these issues with your lawyer.

Be cautious about signing any document that authorizes someone else to endorse or cash a check that is payable to you.

E. Your Rights and Responsibilities

In order for a lawyer-client relationship to work effectively, you must be truthful in all discussions with your lawyer even if, and especially when, you think the information is hurtful to you and your case. You must give the lawyer all relevant information and documents in a timely manner. You must also inform the lawyer of any changes in your situation. After all, the lawyer is there to help you. If the lawyer is missing part of the picture, he or she cannot effectively represent you.

You are expected to pay the legal fees earned by the lawyer and other expenses that are outlined in the retainer agreement in a timely manner. If questions arise during the course of your relationship, you are expected to ask your lawyer for help in resolving them. A lawyer cannot address an issue you have if he or she is unaware there is a problem.

F. The Lawyer's Rights and Responsibilities

The primary responsibility of a lawyer is to provide knowledgeable, objective advice and to make sure that your legal rights are fully protected. The lawyer must work diligently on your matter.

If the lawyer does not provide you with a retainer agreement, ask that he or she do so. This is the framework governing the lawyer-client relationship. You have the right to be kept informed of the status of your case or legal matter and are entitled to copies of all correspondence and legal documents prepared on your behalf or that your lawyer received from other parties.

You are entitled to make the final decision on the objectives to be served by the legal representation and to the final decision regarding any settlement or plea bargain. You also have the right to consult with your lawyer about the means to be used in achieving those objectives. However, a lawyer is not required to pursue objectives or employ means simply because you may wish that the lawyer do so, as the lawyer has the discretion to make technical legal and tactical decisions, and as the lawyer is bound by ethical conduct standards. A lawyer is forbidden from pursuing objectives or employing means that would violate law or ethics rules. Finally, lawyers cannot guarantee particular results in any matter.

Generally, lawyers must maintain the confidences and secrets you reveal to them in the course of your relationship. However, lawyers are under an independent ethical duty to reveal certain illegal or fraudulent acts committed by a client or the intention of the client to commit a crime.

G. How to Transfer to Another Lawyer?

A client always has the choice of who will represent him or her. However, there are practical considerations to keep in mind when considering a change in lawyers, such as increased costs. The new lawyer may require a retainer fee, despite the fact that you have already paid a retainer fee to the original lawyer. The new lawyer will most likely charge you for the time it takes him or her to become familiar with your matter.

As a rule, before you fire your lawyer, you should first talk to a different lawyer. The new lawyer may advise you to try to work out your problems with your current lawyer. If you decide to hire the new lawyer, remember your prior attorney is entitled to payment for services rendered up to the time of dismissal, in accordance with your retainer or fee agreement.

You should also be aware that, after a lawsuit has been filed, transferring to a new lawyer usually requires the court's

permission. If the case is pending in court, the court may not grant permission for the lawyer's dismissal if it will delay the proceedings.

H. Concluding your Matter

At the conclusion of your matter your lawyer will retain your file for a period of time. Your lawyer must notify you and give you an opportunity to have any "client property" returned to you before destroying the file. Client property includes any document or thing you provided to the lawyer as well as any original documents such as deeds, wills, trusts, etc. The lawyer may charge a reasonable fee for copying or accessing files.

If you have not paid your bill, under certain circumstances, your lawyer may retain your file until you pay your bill. This is called a "retaining lien." Generally, a lawyer may not ethically use a retaining lien if you need the property to pursue your legal rights or when a refusal to turn over the file would prejudice your case.

V. Lawyer Regulation

Lawyers must adhere to certain ethical rules. In Michigan, these rules are called the Michigan Rules of Professional Conduct. The rules set certain requirements the lawyer must meet in dealing with clients, opposing counsel and courts. These rules may be found at the State Bar of Michigan's website at www.michbar.org under "Admissions, ethics and regulations," subsection "Michigan Rules of Professional Conduct."

If you believe that a lawyer has committed an ethical violation you may file a complaint against the lawyer by writing to the Attorney Grievance Commission. The Attorney Grievance Commission is the agency created by the Michigan Supreme Court to handle

complaints against lawyers and charge them with misconduct when appropriate.

The commission's mailing address is:

Attorney Grievance Commissions
Marquette Building, Suite 256
243 W. Congress
Detroit, MI 48226

Anyone can file a grievance; a lawyer-client relationship is not required.

The Attorney Grievance Commission suggests that you:

1. Provide the name of the lawyer you wish to have investigated.
2. State only the facts regarding what happened and why you believe that the lawyer did something wrong.
If possible, write the statements in the order in which events occurred and include dates.
3. Attach copies of any necessary document not the entire file; you should not attach originals documents.

The filing of a grievance does not affect your case in any manner. It will not cause the case to be stopped. It will not extend the time for filing legal actions. You still need to take care of matters in your individual case. You may wish to consult with a new lawyer regarding the consequences of filing a grievance.

For more information about filing a grievance, contact the Attorney Grievance Commission at (313) 961-6585 or visit their web site at www.agcmi.com.

A. Local Mediation Programs

Sometimes local bar associations have mediation programs that handle disputes between lawyers and clients. You should contact the local bar association in your county to determine

whether it offers such a program. The Attorney Grievance Commission has a voluntary arbitration program for fee disputes. Both parties must agree in order to participate.

B. Client Protection Fund

The Client Protection Fund is a voluntary program established by the State Bar of Michigan Board of Commissioners for the purpose of reimbursing clients who have been victimized by the few lawyers who violate the profession's ethical standards and misappropriate funds entrusted to them.

The Client Protection Fund is not a substitute for malpractice insurance, which covers the negligent provision of professional services. The Client Protection Fund only addresses the rare situations where a lawyer intentionally misappropriates a client's funds.

For more information see the Fund website at:
www.michbar.org/client/protectionfund.cfm

You may also contact the Client Protection Fund at:
(800) 968-1442 ext: 6379
hours 9:00 a.m. to 5:00 p.m.



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