
CHOOSING

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LAWYER...



A CLIENT'S GUIDE

MERCER COUNTY BAR ASSOCIATION
*Celebrating
Years of Service
Ethics and Integrity*

SINCE 1901

(609) 585-6200
www.mercerbar.com

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ADDITIONAL CHARGES:

Generally, part of the fee arrangement is that you reimburse the law firm for costs it advances on your behalf. These charges should be spelled out in your written fee agreement and may include, but are not limited to: fees for experts, accountants, appraisers, investigators, process servers, court reporters and messengers, court costs, filing fees, subpoena costs, mileage, parking, photocopying charges, telephone toll calls and faxes, postage and/or special mail delivery charges. If you have any questions about which costs will be billed, address this with your lawyer. If you are willing to perform certain services yourself, like delivering packages in lieu of a messenger service, tell your lawyer.

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It is our hope you have found this brochure useful and informative. If you need more information, do not hesitate to contact your local county bar association lawyer referral service and ask for a referral to an attorney who can assist you.

2. Contingency: A contingent fee agreement means that the lawyer will only recover a fee if they are successful and receive funds for their client. Matters often billed in this way include personal injury, medical malpractice, products liability, collection and other cases when recovery is likely, but the amount of the recovery is uncertain. The client will be responsible for the costs even if they are not successful on the claim.

In a personal injury case in New Jersey, the percentage of recovery that they lawyer obtains is usually 33 1/3% and 25% in the case of a minor. Depending upon your agreement with your lawyer, their fee can be taken before or after the deduction of costs and expenses paid out of the proceeds of this settlement. Make sure that this arrangement is clear to you.

EXAMPLE: Recovery \$10,000.00; Lawyer to receive a fee of 33 1/3%

Costs and expenses (filing fees, expert reports, outstanding medical bills): \$1,200.00

(a) Fee after deduction of costs

Recovery:	\$10,000.00
Deduct costs:	\$1,200.00
Subtotal:	\$8,800.00
Lawyer Fee:	\$2,933.33
Amount to client:	\$5,866.67

(b) Fee before deduction of costs

Recovery:	\$10,000.00
Deduct costs:	\$3,333.33
Subtotal:	\$6,666.67
Lawyer Fee:	\$1,200.00
Amount to client:	\$5,466.67

3. Set or fixed fee: In certain matters, a lawyer may agree to set a price or fixed fee. This means that no matter how much time is spent on your work, the fee will be the same. Make sure to find out whether there will be any conditions to the set fee (e.g., that this price is one for the court appearance, that there is no additional charge for travel out of the area, etc.) and whether there will be additional charges (e.g., costs, expenses and/or disbursements: filing fees, municipal court discovery information charges, expert fees, etc.) This arrangement is commonly used for the preparation of standard documents (e.g., a simple will, power of attorney, living will, deed, mortgage or note, real estate closings, and municipal court matters.)

INTRODUCTION

This brochure is presented as a public service of the Mercer County Bar Association's Public Education Committee. The language contained within this brochure is for guidance and informational purposes only and is not intended to offer legal advice nor serve as a substitution for professional representation.

Welcome to the Law

In today's society we cannot help but consider the legal effects of everything we do. We are all overly conscious of the fact that any time we act, we are subject to legal scrutiny. We expect everyone to know right from wrong and we stand ready to hold our neighbor accountable for any and all of his or her actions.

As society has changed, so too has the role of the lawyer. Gone are the days of the courtroom Perry Mason. With the onset of high technology and the information super-highway, lawyers are caused to specialize their services. However, despite the heightened awareness of the law and increased need for competent legal services, you do not need a lawyer every time your life is impacted by the law.

This brochure is designed to help answer the most commonly asked questions when deciding if a lawyer is needed and whether or not the one you choose is the right person for the job.

WHAT IS A LAWYER?

Lawyers are known by many different names, such as attorney, counselor, solicitor and advocate. Lawyers go through rigorous training to become educated, prepared and able to represent a client. To qualify to practice, lawyers must earn a law degree, pass a bar exam and commit to pursuing continuing legal education for the duration of their legal career. This is not an easy task and one who undertakes it must be dedicated to the profession.

As a profession, lawyers are subject to codes of ethical conduct and professional responsibility. Additionally, the profession, on the whole, self monitors its members.

Lawyers take different forms. A lawyer may be a sole practitioner or a member of a large law firm. A lawyer may be a general practitioner or specialized in a particular area of the law. Additionally, a lawyer may be plaintiff oriented verses defense. Following the recommendations set forth in the next few pages will help you decide which lawyer is right for you.

DO I NEED A LAWYER?

Areas where lawyers are most commonly consulted include:

REAL ESTATE: Buying a home is by far the most common reason that people across the country hire a lawyer. It is the largest single investment most people will make.

Legal issues involved in the purchase of a home include the language of the contract, the obligations and rights of the buyer and seller, and what happens in the event that the deal falls through. If you choose not to have a lawyer at the closing, you may risk having no one present to protect your interests. The other parties, such as the title company or Realtor, are there to perform their functions and protect their interests.

WILLS AND ESTATES: While it is true that you can obtain do-it-yourself kits with printed form wills, power of attorney and living wills, be careful in using these forms. You must understand what your rights are before you sign any document. Generally, for the preparation of these common forms, attorney's fees charged are minimal. Certainly, if you want to set up a complicated trust or estate plan, the charges will be more significant.

If you choose not to have a will, you should understand that your possessions will pass according to law and not your specific wishes. Having a will allows you to dis-

Fees for services vary widely from lawyer to lawyer and firm to firm. Fees can also vary depending upon the location and size of the firm, expertise of the lawyer and who in particular is working on your case.

Most lawyers will bill on a regular basis, usually monthly. Bills should specify the tasks performed, who performed them and the charge for each task. If your bill is not itemized, you should ask the lawyer to do so. You should review the bill for accuracy and proper credit of money already paid. If you have any questions about the bill, address them immediately. Ignoring the mistakes or becoming upset over something that might be an inadvertent error serves no useful purpose.

Some lawyers require a retainer before beginning work to cover the immediate work and costs. This is to assure that you have the financial resources to follow through on the matter. Once the retainer has been used up, you will be required to continue to pay the lawyer.

A retainer may also be used to provide continuing availability of the lawyer to a client for questions and consultations on an as-needed basis. This is common with corporate clients. However, when special matters arise, the lawyer and client will enter into a separate agreement to provide for those services.

In general, lawyers bill in one of the following manners:

TYPES OF FEES:

1. Hourly rate: Some matters will be billed by a lawyer based upon their hourly rate (e.g.: \$150, \$175, \$200 per hour, etc.).

Services for which you may be billed include court appearances, legal research, investigation, correspondence, preparation and drafting of pleadings and other legal documents, trial preparation, conferences in person and by telephone with you and with others.

You should ask the lawyer whether they charge different rates for other people in their office performing services. Rates usually differ between a partner, associate attorney and paralegal. Moreover, the rate may be different for different services. For example, a lawyer may charge less for travel time than for time spent in court.

EXAMPLE: Lawyer spent 4.5 hours on a matter at an hourly rate of \$200 for a total fee of \$900 plus out of pocket costs.

If you doubt the lawyer's ability at this point, ask the lawyer the following:

- Are you familiar with this type of case?
- How many of these cases have you handled?
- Are other lawyers in the firm well versed in these cases?
- How many of these cases have you won?

When this proper exchange of information takes place, you will know whether or not the lawyer is the right person for the job.

WHAT IF THE RELATIONSHIP FAILS?

There are many reasons why the attorney/client relationship may not work. After all, not all relationships come with built in guarantees. However, it is important that the client understand why the relationship has failed and what the proper remedy is.

For example:

Fee disputes: If the lawyer and client disagree regarding a fee, the client may submit the matter to fee arbitration. The lawyer must give the client notice of this procedure.

Difference of opinion regarding your case: The lawyer and client may not agree on how the case is to be handled, the value of a case or whether there are grounds for a case at all. In this case the client should get a second opinion and/or hire a new lawyer.

Unethical behavior: If the client suspects unethical behavior, the client may contact the local county bar association to obtain information on how to file a disciplinary procedure against the lawyer.

How Do I PAY MY LAWYER?

When you have your initial meeting with a lawyer, you should discuss how the lawyer will be paid. The lawyer should tell you what the fee arrangement is, what the expected total fee will be (or reasons why an absolute figure cannot be estimated) and when that fee is expected to be paid. If you have any questions, you should discuss any concerns with the lawyer. In most cases, the fee arrangement should be put in writing. If the lawyer does not do so, you should request a letter setting out the fee arrangement.

pose of your property the way you see fit, to specify who you want to take care of the estate and, if you have children, specify who you wish to be their guardian. A lawyer can also help with the court proceedings necessary to dispose of your assets and liabilities.

CRIMES: A lawyer's skill can be useful in the area of criminal law. In every step of this process, you have legal rights you will want to make sure are protected. If you cannot afford a lawyer and there will be serious consequences to you if you are found guilty, you may qualify for the appointment of a Public Defender.

Many individuals are exposed to criminal law through the municipal courts when they are charged with criminal and quasi-criminal offences including speeding, drunk driving, driving with a suspended license, possession of drugs under fifty (50g) grams, shoplifting, trespassing, etc. If the crime with which you are charged is even more serious, it may be handled by the Superior Court in the county in which the offense occurred.

FAMILY LAW (Marriage, Separation, Divorce):

The marriage of two people creates a legal relationship with certain rights, duties and obligations. Some individuals may wish to make an agreement prior to entering marriage of how their assets will be distributed in the case of a divorce. This is not unusual in the case of a second marriage where each party may bring assets to the marriage which they wish to protect. Likewise, when a marriage is over, there are economic, emotional and legal impacts upon your life of which you should be aware. A lawyer can help advise as to the rights of each party in those situations.

CIVIL WRONGS AND INJURIES:

You may require the service of a lawyer when either you have injured another (personal injury or property damage), injured their reputation, intentionally or by accident, or someone has done one of these things to you. Common types of lawsuits in this area include motor vehicle accidents, destruction of property or libel/slander.

CONTRACTS:

There are many documents that we sign which subject us to conditions which we may or may not understand. A lawyer can assist you in sorting out your rights and obligations. Examples include: lending and borrowing money, buying a car, incurring debt, forming or operating a business or partnership/corporation, signing a lease for an apartment, etc.

Area where a lawyer's expertise may not be necessary:

SMALL CLAIMS:

It may not be necessary to hire a lawyer where the value of the claim is less than \$2,500. Usually the attorney's fee would far exceed the amount that you would hope to get back. Examples include disagreements involving services or money. These claims can be addressed by you in the small claims court (or "People's Court"). Even before filing a claim, you should attempt to settle the dispute as court proceedings will cost you time and money.

Most counties have mediation programs. When the matter is listed for a court date, court personnel meet with both sides and try to reach a fair settlement. It is always wise to try to reach a settlement based upon the parties' terms. However, if you do proceed to a trial, make sure that you have all the documents, photographs and witnesses that you need to be able to prove your case in court. It is not enough to only show that you were wronged. You must prove that amount of your damages in order for a Judge to award you those damages.

IF I DECIDE I NEED A LAWYER, HOW DO I FIND ONE?

Finding a lawyer in your area is not a difficult task if you know where to look. Listed below are several major sources where one can find an attorney. The books mentioned should all be available at your local library. If any are not there, simply ask the librarian to refer you to another library which has them.

1. BY RECOMMENDATION: At some point, your family members, friends or co-workers may have required the services of a lawyer. You may wish to check with them to see if they can give you some insight.

R. Reasonableness: The lawyer has a duty to focus on the individual needs of the client. The lawyer must exercise fair billing practices, act diligently in pursuing the claim, respect the client and safeguard the client.

WHAT IS THE CLIENT'S ROLE?

No matter how the lawyer performs his or her role, if the client does not hold up the other end of the relationship, the relationship will be doomed to fail. The lawyer expects the following from the client:

C. Candor: The client must be honest with the information provided to the lawyer.

L. Listen: The client's attention must be focused on the issue at hand.

I. Inquire: If the client does not understand some aspect of the case, the client must ask.

E. Expectation: The client must be realistic. Results are not always what one expects and results do not occur overnight. Lawyers are trained to research and analyze. They may not always have an immediate answer to a question and some questions may not have a specific answer.

N. Notify: The client must keep the lawyer up to date on any facts that may arise during the case.

T. Timing: When the lawyer makes a request of the client, the client must act promptly. This includes payment for services rendered and responses to information requested.

HOW DO I KNOW THE LAWYER IS COMPETENT?

You will be able to assess the lawyer's ability to handle your claim. After telling the lawyer about your case, ask yourself the following:

- Did the lawyers seem to know what he or she was talking about?
- Was the exchange of information comfortable?
- Did the lawyer offer suggestions and ask questions?

WHAT CAN I EXPECT FROM THE ATTORNEY/CLIENT RELATIONSHIP?

The attorney/client relationship can be a positive relationship only if both sides take an active role in working together. There are duties and obligations on the part of both the attorney and the client. Without active participation and cooperation from both parties the relationship can fail.

WHAT IS THE LAWYER'S ROLE?

As we have learned earlier in this brochure, the lawyer's behavior is governed by various codes of ethical conduct and professional responsibility, as well as rules of court and governing law. However, the lawyer's actions should also be governed by self-discipline, the exercise of good judgment and reliance upon experience. A breach of these standards may be grounds for termination of the attorney/client relationship or even worse, professional discipline. Accordingly, what should the client expect from the lawyer?

L. Liaison: The lawyer is the link between the client and the law. As such, the lawyer has a duty to explain the process and keep the client up to date at all times.

A. Avoidance of conflict: The lawyer's loyalty is to the client. As such, the lawyer should not engage in other representation which may breach that loyalty or at the least, the lawyer must disclose that representation to the client.

W. Willingness to safeguard: The "attorney/client privilege" demands that the lawyer hold all communications between the client and lawyer in trust.

Y. Yield: As an advocate, the lawyer must give way to the client's desires to the greatest extent possible. One exception is where the client asks the lawyer to engage in improper or illegal conduct.

E. Experience: The lawyer must have the requisite skills and ability to analyze and handle the client's particular cause of action.

2. REFERRAL FROM THE COUNTY BAR ASSOCIATION: In New Jersey, most counties have a lawyer referral service. If you are looking for a lawyer in your area, call the county bar association and request a referral. They will ask about the nature of your case and refer you to an attorney who handles the area of law which your case requires.

3. EMPLOYER/PRE-PAID LEGAL PLANS: many employers, unions and credit unions offer pre-paid legal plans. These plans are given as benefits to employees and may entitle you to free or reduced cost representation on certain matters. You should check with your office administrator about whether you are enrolled in such a plan.

4. THE PHONE BOOK: The phone books, which are published by county, provide you with the names and addresses of lawyers close to your home or work. Advertisements may provide areas of practice in which a particular attorney or firm specializes.

5. THE "NEW JERSEY LAWYERS DIARY AND MANUAL" Or its Equivalent: This manual provides a current list of almost every lawyer in the state of New Jersey both alphabetically by name and also by town. It is a useful source, as it also supplies the names and addresses of judges, courthouses, state agencies and contact persons.

6. MARTINDALE-HUBBLE: This multi-volume set of books provides the names of almost all lawyers in every state. Unlike the phone book and the New Jersey Lawyers Diary and Manual, Martindale-Hubble also provides a brief biography of each lawyer, as well as their specialties and areas of practice.

7. LEGAL AID: You may qualify for legal representation at a reduced cost or for free by a legal aid service. Legal aid primarily services low income individuals and the qualifications for such aid can be based upon where you live, your income and family size. To find the number of your local legal aid office, simply check the phone book under "legal aid society" or "legal assistance office."

8. COMPUTER RELATED SOURCES: If your library has computers with CD ROM capacity, there are several CD ROM sources available which lists lawyers. Most notably is West's Legal Directory which allows you to search for attorneys by state, county, specialty and even by law school.

NOW THAT I HAVE FOUND A LAWYER, HOW DO I KNOW THAT LAWYER IS THE RIGHT PERSON FOR THE JOB?

Once you have made the decision to hire an attorney, you must meet with the attorney to exchange information relevant to your case and assess the lawyer's competence to handle your case. This is called the initial interview.

WHAT SORT OF INFORMATION DO I NEED TO IMPART TO THE ATTORNEY?

Lawyers, at the initial interview, are essentially problem solvers. Their tools are the given set of facts of a situation, and the law as it applies to those facts. The facts are supplied by you, and their relationship to the law will be assessed by the lawyer. Once this process is complete, your lawyer will advise you as to the appropriate course of action, and inform you as to whether the result you wish to achieve is possible. In order to make an accurate assessment, therefore, it is imperative that you communicate to the lawyer all of the facts you have regarding your problem.

If you have been named as a defendant, your job is to discuss the nature of the complaint, and the nature of any defenses you may have such as an alibi or that you have been mis-identified.

WHAT IF I DON'T KNOW WHAT KIND OF CLAIM I HAVE?

That's O.K. A phone conference prior to the initial interview will help. Explain your problems, with as much detail as possible, and explain what outcome you would like. Consider the following scenario:

Client: My name is Jane White and I bought a remote controlled helicopter out of the back of a magazine.

Lawyer: When did you order it?

Client: About three months ago. I called them at least nine times to see what's going on but they said that they ran out of stock and I would have to be patient. At this point, I don't think that its coming and my credit card has been charged.

Lawyer: Do you have the ad?

Client: Yes, I'll bring it with me for our appointment. Is there anything I can do?

Lawyer: Well, what do you want, your money back or the helicopter?

Client: I'd like my money back.

Lawyer: O.K. Bring me your credit card statement too.

Because the client is clear on the facts, the lawyer will be able to develop a breach of contract claim and possibly a consumer fraud case. The client need not be familiar with these legal theories, but must be able to supply as many facts as possible.

WHERE DO THESE FACTS COME FROM?

Your personal knowledge of the events which make up your case will most likely be the primary source of information at the initial interview stage. Equally as important, however, will be any documents you may have concerning any part of your problem, no matter how unimportant they might seem. Take the above scenario. As indicated, Ms. White should bring to the interview her credit card statement, which shows the debt to the helicopter company (this will provide proof of purchase and will also allow the lawyer to assess how much interest she has accrued because of the debt) and the advertisement from the magazine. Although such scrap paper may seem unimportant, she should also bring with her any documents which show the dates she called the helicopter company (such as on a kitchen calendar).

CAN THE LAWYER PREDICT THE OUTCOME OF MY CASE?

This depends on each individual case. Again, the more information you have, the more likely it is to get an initial prognosis. This initial information is important as it will enable the attorney to ask more specific questions regarding your problem.