

## Choosing and Using an 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.

Q. Are there other ways of picking a civilian attorney?

A. Yes. The Monterey County Bar Association maintains a Lawyer Referral Service. By calling the number 375-9889 you can obtain the names of lawyers who may be able to help you. You can also choose a Lawyer based on advertising or any number of other ways. You receive a half-hour consultation for \$30. You may hire that attorney or another. 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.

Q. When would I need a private 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 state laws, 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 will also need to retain an attorney if you need a complex will to be drafted. Many legal assistance attorneys are licensed to practice in a state other than where they are assigned and therefore are not permitted to appear in other state courts. Sometimes a regulation will prohibit advice or representation, such as in cases involving a conflict of interest (e.g. both parties to the same dispute), income-producing property of a client, civilian employment, and most criminal matters. 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 private civilian attorney.

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" that must be held in confidence unless you give permission otherwise. In addition, your civilian attorney has the duty to:

1. 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
2. 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. The California State Bar is responsible for maintaining and enforcing these standards of conduct for attorneys licensed in this state. All states have similar enforcement authorities.

Q. How do civilian lawyers charge for their services?

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

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 straightforward, predictable and routine. Thus, many lawyers use a flat rate or set a 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.

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.

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 down payment 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.

Q. Does the court ever award attorney's fees?

A. Yes. The courts in California are authorized to award attorney's fees in several situations. The major ones are as follows:

1. 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.
2. In certain family law cases, the court may order one partner 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.
3. In some cases, a contract provides for payment of attorney's fees 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.

4. 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.

Q. What if I can't afford an attorney?

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 (currently involving claims up to \$5,000 in California. The Family Support Office (linked with the district attorney's office in each California county) can help obtain an order establishing fatherhood and an initial order for child support for free. Once child support is ordered, you can obtain help in enforcing payment from the Family Support Office. In other cases 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.

Q. What if I have other questions about attorneys and their fees?

A. Never be afraid to ask such questions at your very first meeting with a civilian lawyer. You should always insist on signing a contract with the lawyer if you want the advantage of having your agreement in writing -- and 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.

Based on the handout of the North Carolina Bar's Standing Committee Legal Assistance for Military Personnel