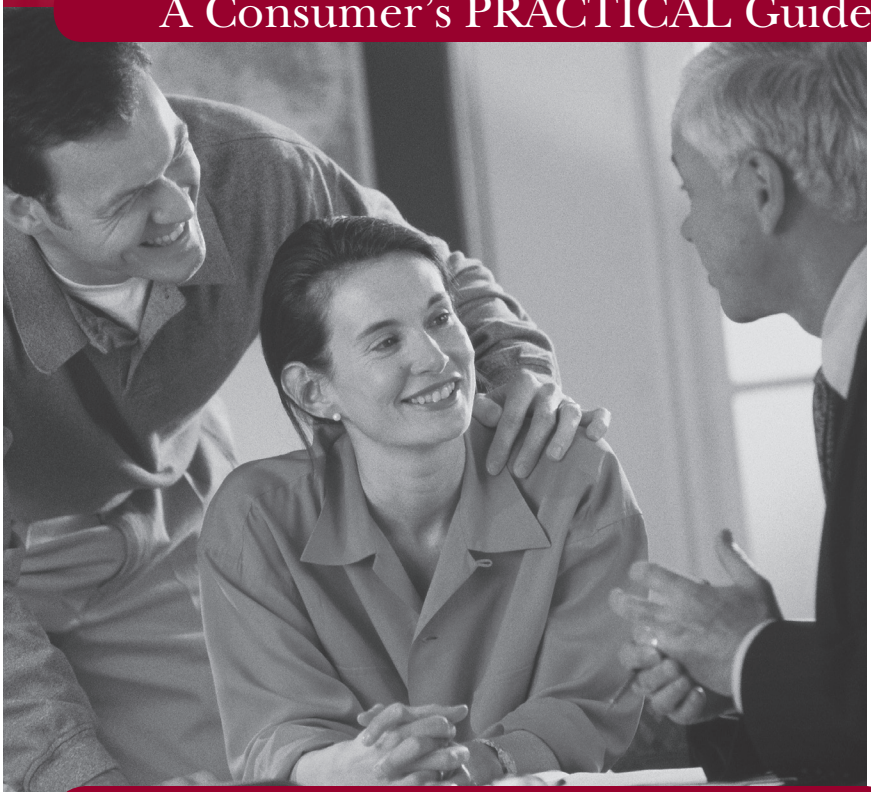
THE SUPREME COURT *of* OHIO

A Consumer's PRACTICAL Guide



to Managing a Relationship With a Lawyer

The Supreme Court *of* Ohio

A CONSUMER'S PRACTICAL GUIDE TO MANAGING A RELATIONSHIP WITH A LAWYER

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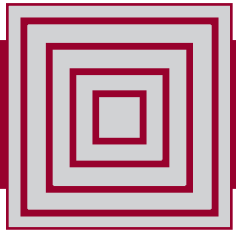


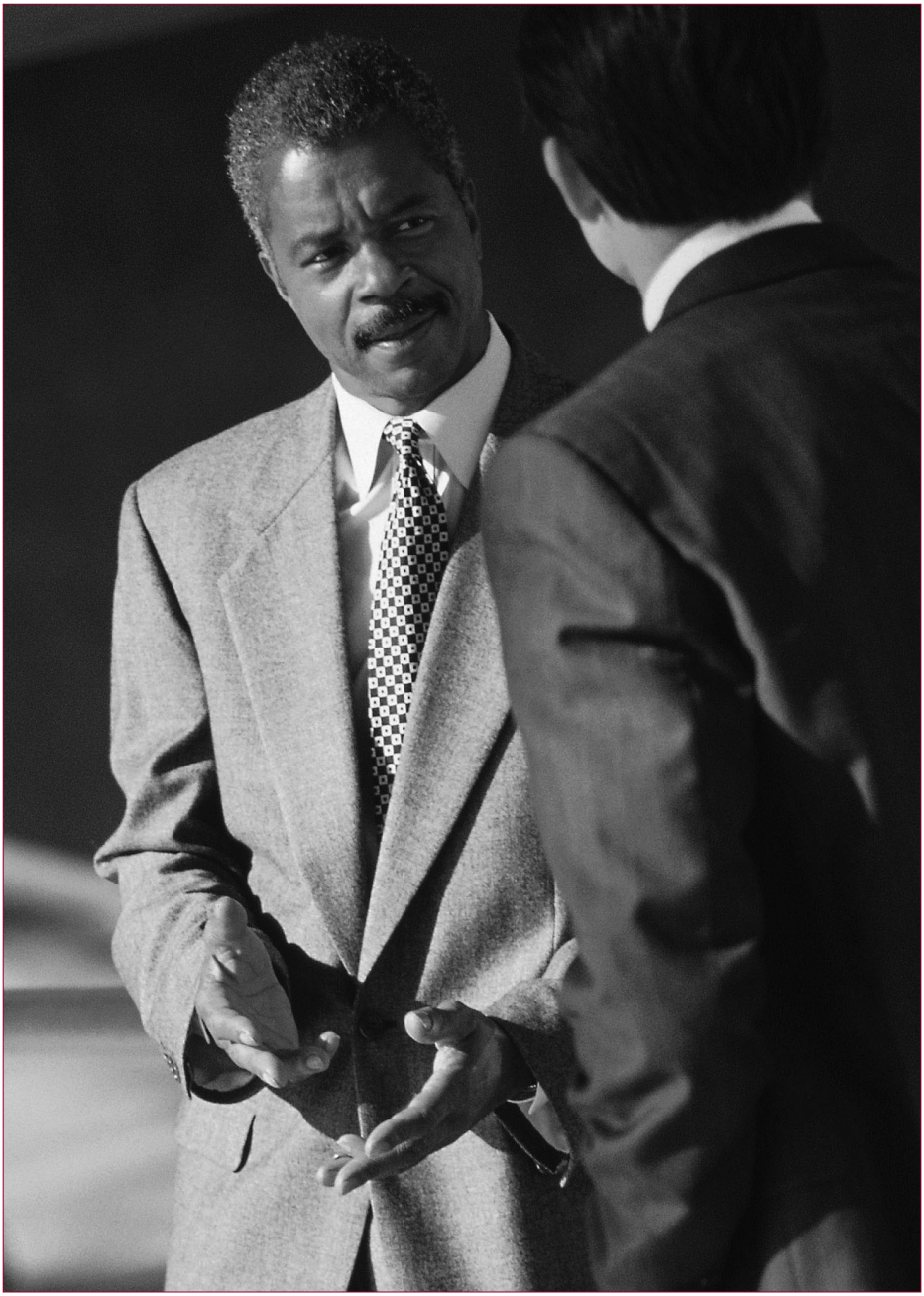
Introduction

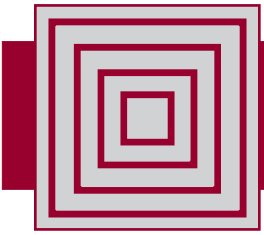
Lawyers have a duty to advise and help their clients understand the legal system. In doing so, lawyers work to protect the legal rights of their clients, help solve legal problems, defend the accused, and guard against abuses by the government and its agents.

It is likely that everyone, at some point, will need a lawyer. Lawyers help write simple wills or detailed estate plans and can file the legal forms required to create a business. They also act for someone in court on family matters, such as divorce or custody issues. Lawyers also defend someone who is accused of a crime or sued over a debt. For these and other reasons, many people find they need a lawyer's skill and support.

When the need to hire a lawyer arises, people often are unsure how to choose a lawyer or what to expect after hiring a lawyer. This guide is intended to reduce the worry you may feel. By learning what to expect, you can be more confident in your lawyer-client relationship.

This guide explains how to avoid possible problems with your lawyer, but is not meant to provide legal advice and should not be used for that purpose.





Learning How a Lawyer Can Help **YOU**

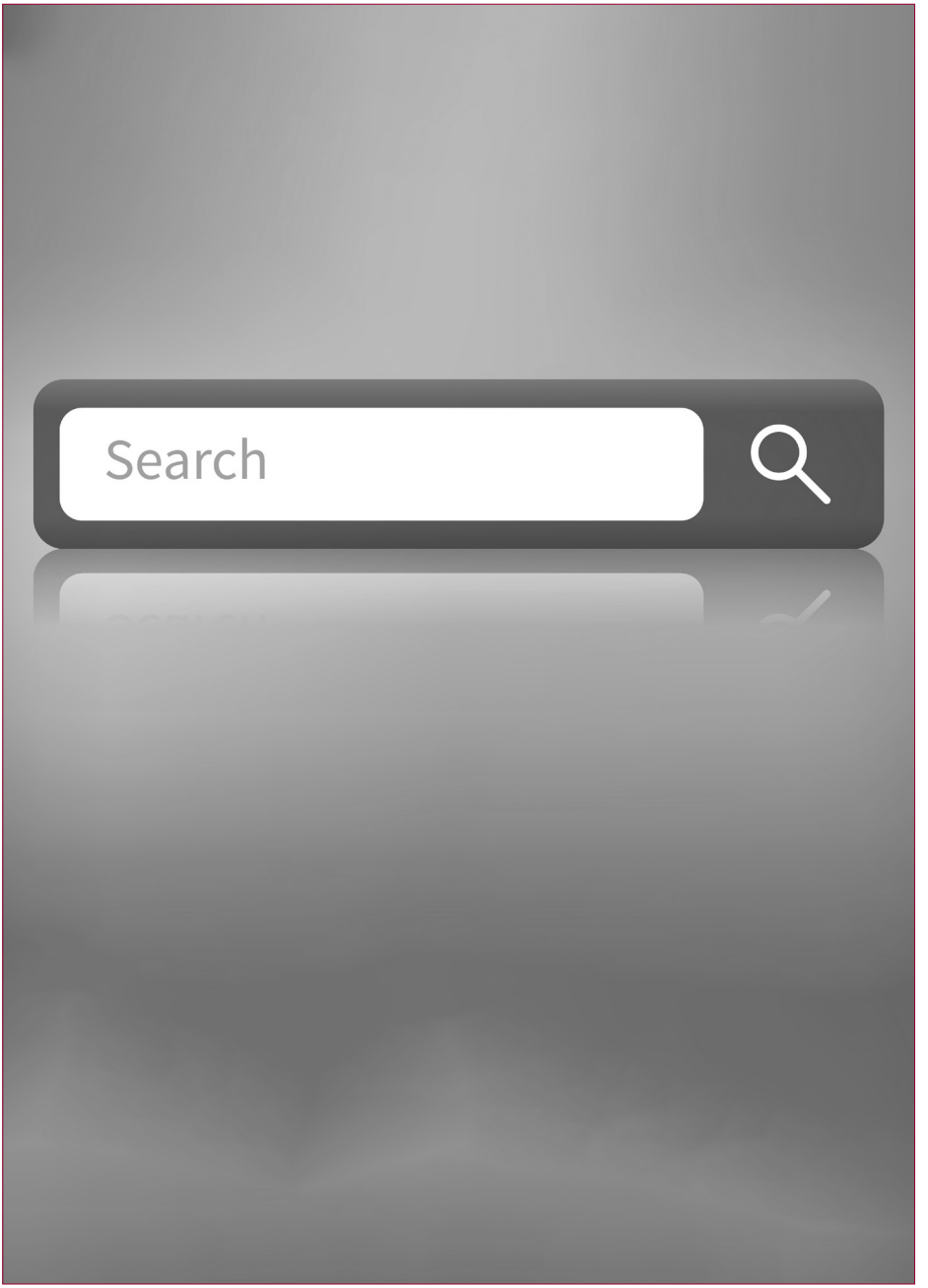
Why Hire A Lawyer?

If you have a legal problem or a question about your legal rights, it is important to ask a lawyer for help. Lawyers, also called attorneys or attorneys-at-law, do many things. As your advisor, your lawyer can help you understand your legal rights and obligations. In court, your lawyer can argue your position in a way that follows court rules. As a negotiator, your lawyer will try to get the legal result you want.

The best time to ask for a lawyer's help is before you take any action, or any further action, that might have legal importance. For example:

- Before you sign a contract
- As soon as you become involved in a purchase, sale, or other matter that could affect your legal rights, like making an offer on a new home or creating a living will
- If you are arrested or charged with a crime
- If you are notified that you are being sued
- If you are injured in an accident and believe you are entitled to compensation.

There are lots of alternatives that claim to be money-saving options to hiring a lawyer. These include self-help books and companies that provide and complete legal forms. These resources may assist with understanding your problem, but they cannot take the place of an attorney. A trained attorney can tailor advice to your specific needs. A lawyer also is ethically bound to look out for your best interests.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Finding a **LAWYER**

Get Referrals

When you hire a lawyer, you should take the same careful steps as when you choose a doctor, dentist, home contractor or other expert. If you do not know a lawyer, ask family, friends or neighbors for names. You also can ask others whose opinion you respect, such as a church leader, accountant, realtor or other professional. A suggestion from someone you know and trust based on that person's own experience often is the best way to find a good lawyer.

Lawyer Referral Services

There also are lawyer referral services in Ohio that can refer you to lawyers based on where the lawyers' offices are and the type of legal work you need. Generally, these services are operated by local bar associations or nonprofit community services.

To operate in Ohio, a lawyer referral service must meet standards set by the Supreme Court of Ohio and register with the Supreme Court each year. You can find out if a referral service is registered with the Supreme Court by contacting:

Office of Attorney Services
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431
614.387.9327
www.supremecourt.ohio.gov/AttySvcs/LawyerReferral.

You should not consider the information you get about an attorney from a referral service to be an approval of that lawyer. A referral service only can tell you how to contact the lawyer. It cannot assure the quality of the lawyer's work.

Advertisements and Directories

Telephone directories and advertisements also are places for finding a lawyer. When reading an ad, remember that lawyers create their own ads and pay for the space used to publish them. While attorney rules in Ohio require lawyers to be truthful in advertisements, the directory or business printing an ad cannot ensure the information is accurate.

Web sites of legal groups and legal directories also can be helpful. Some legal resources, such as the Martindale-Hubbell Law Directory, list lawyers by city and state. These listings include facts about the lawyer's education and professional rating. You can find these directories at many public and law libraries.

Attorney Specialization

The Supreme Court of Ohio sets measures for attorneys to be certified as specialists in certain areas of law. Areas of certification include, but are not limited to:

- Civil trial advocacy
- Criminal trial advocacy
- Creditors' rights/debt collection
- Elder (senior citizen) law
- Estate planning/trust & probate law
- Family relations law
- Workers' compensation law.

Certification is one of many things to think about when hiring an attorney. Certified-specialist attorneys devote a large part of their work to a special area of law and have earned certification from the Ohio State Bar Association or other agencies approved by the Supreme Court of Ohio.

For a full list of specialty areas of practice and links to the websites of legal agencies, visit the Supreme Court website at **www.supremecourt.ohio.gov/Boards/certification**.

Legal Aid Organizations

If you need legal assistance and you cannot afford to hire a lawyer, you should call 1.866.LAW.OHIO to determine whether you qualify for free legal assistance. You also can contact the Ohio State Legal Services Association (OSLSA) at 1.800.589.5888 or **www.ohiolegalservices.org** to determine if you qualify.

FACTORS to Consider When **SELECTING** a Lawyer

Background, Qualifications and Experience

It is a good idea to gather information about any lawyer you might hire before your first meeting. You can find information on the Internet, at some public libraries and bar associations, and in legal directories.

Lawyer Requirements

To practice law in Ohio, a lawyer first must:

- Graduate from college
- Graduate from law school
- Be approved by a special committee authorized by the Supreme Court of Ohio
- Pass an exam about laws and court procedures
- Pass an exam about the rules of professional conduct governing a lawyer's professional behavior
- Take an oath administered by the Supreme Court of Ohio.

Lawyers actively practicing law in Ohio must:

- Register their current address with the Supreme Court of Ohio every two years
- Take continuing legal education classes.

Those who do not complete these criteria or do not have a current law license cannot provide legal services for other people.

To find out if a person you want to hire as your attorney is licensed to practice law in Ohio, you can contact the Supreme Court Office of Attorney Services (614.387.9320) or search the Attorney Directory at **www.supremecourt.ohio.gov/AttySvcs/AttyReg/Public_AttorneyInformation.asp.**

Interview the Lawyer

The process of selecting a lawyer should include an interview meeting, similar to a job interview. During the interview, you should consider the lawyer's answers to your questions and how well the lawyer listens to you. You also want to pay attention to how easy it is to understand the lawyer's explanation of your legal problem, and how you feel about the lawyer's abilities.

During the interview, you may ask questions about the lawyer's background, qualifications and experience, such as:

- Where did you go to college and law school?
- How long have you practiced law?
- How many cases like this one have you handled?
- What kind of clients do you normally have?
- Would you be the only attorney working on my case or would others from your office also be involved?
- Do you belong to any legal groups?
- Do you belong to any other civic groups?

The Lawyer's Fee

During the interview, you should ask the lawyer about the fee to be charged. Lawyers usually charge for their services in one of three ways:

- **Hourly —** A specific amount charged for each hour or partial hour spent on your legal matter. You may be asked to make an advance payment, called a retainer, that will go toward your fee.
- **Flat fee —** A fixed amount charged in advance for specific legal matters.
- **Contingent fee —** An arrangement in which a lawyer receives an agreed-upon percentage of the amount recovered on the client's behalf.

Once you hire a lawyer, you should ask for a written fee agreement listing the services to be provided and the fee to be charged.

Professional Liability Insurance

You should ask if the lawyer carries professional liability insurance. This insurance also is called malpractice insurance. It protects clients against losses caused by a lawyer's neglect or lack of ability. In Ohio, lawyers are not required to have malpractice insurance, but many do. Lawyers who do not have professional liability insurance of at least $100,000 per occurrence and $300,000 total must tell their clients they do not have the insurance when they are hired.

The Lawyer's Disciplinary History

The Supreme Court of Ohio has a system for filing and processing complaints against lawyers for violations of the ethical rules for lawyers (called the Ohio Rules of Professional Conduct). To find out if there are past complaints against a lawyer you are considering, you may contact:

Supreme Court of Ohio
Board of Professional Conduct
65 South Front Street
Columbus, Ohio 43215-3431
614.387.9370
www.supremecourt.ohio.gov/Boards/BOC.

To find out if a lawyer was formally punished because of a past complaint, or is in good standing with an active law license, you may contact:

Supreme Court of Ohio
Office of Attorney Services
65 South Front Street
Columbus, Ohio 43215-3431
614.387.9327
www.supremecourt.ohio.gov/AttySvcs/officeAttySvcs.

More information about the lawyer disciplinary process is found on pages 25 to 26 of this book.

Organizations such as the Better Business Bureau and the Consumer Protection Section of the Ohio Attorney General's Office do not handle complaints against lawyers.

The **DUTIES** of a Lawyer

When you hire a lawyer, a lawyer-client relationship is created between you and your lawyer. In this relationship, your lawyer has several duties.

Work Hard to Represent You

Your lawyer's main job is to work hard, devote the time needed to your case and use the skill necessary to represent your interests and protect your legal rights.

Use Good Judgment

Your lawyer must serve you as a neutral legal advisor and should not be swayed by the interests of other clients (called conflicts of interest). In order to avoid conflicts of interest, your lawyer must decide whether working for another client's interests is harmful to yours.

Carry Out Your Wishes

Your lawyer must carry out your lawful goals in your legal matter. If you and your lawyer cannot agree on how to handle your case, then your lawyer may decide to stop representing you. However, your lawyer must follow your choices about certain parts of the case. This includes deciding whether to settle a civil matter. In criminal matters, it also includes whether to enter a plea, have a jury trial, or have you testify.

On other matters, such as those involving complex, legal, or tactical points, your lawyer must use expert judgment in your best interest. Your lawyer cannot assist you in illegal or deceptive conduct. If you ask your lawyer to act in an illegal or unethical manner, your lawyer may stop representing you.

Lawyers always should respect opposing attorneys and parties, as well as court officials. Your lawyer also should complete all legal tasks on time, and avoid offensive methods.

Keep Your Confidences

Your lawyer must keep the information you provide about your case confidential. This is true except in rare instances when your lawyer is required or permitted by law or other rules to reveal the information.

Charge a Reasonable Fee

Your lawyer's fee for services must be fair. You should be told ahead of time how the fee will be determined and billed. Sometimes, you may agree to a contingent fee, which is based on how your case is decided.

Your lawyer must give you, if you ask, a listing of the work performed on your case. The listing must include the amount of time spent and the total amount charged for each task. Your lawyer also should provide you with a receipt for any payment you make.

Protect Your Funds

Your lawyer must protect any money held for you and must keep accurate records of those funds. Your lawyer must give those records to you if requested.

Provide Updates

Your lawyer must inform you about the progress of your legal matter. To do this, your lawyer should give you copies of important papers, answer your questions and return your calls in a reasonable amount of time. Your lawyer also must explain options for ending the legal matter, as well as any positive or negative effects.

Not Discriminate

A lawyer cannot refuse to take your case on the basis of race, color, age, religion, gender, sexual orientation, national origin, marital status, or disability. Also, your lawyer should treat you with respect at all times.

The **DUTIES** of a **CLIENT**

In order for you and your lawyer to work well together, you also have duties.

Be Truthful

You must be truthful and give all important information needed to handle the legal matter. Even if you believe certain facts may hurt your case, hiding those facts most often will hurt the case in the end. If given all the facts upfront, your lawyer will have time to deal with them.

Cooperate

Give all related papers to your lawyer, respond on time to your lawyer's requests for information, and tell your lawyer of changes in your situation. Also, work with your lawyer to meet deadlines in your case.

Keep Meetings

Respect your lawyer's time. Be on time for meetings and legal proceedings. Often, being late for court can result in penalties or delays. If you cannot attend a scheduled meeting, call your lawyer right away so other clients are not affected.

Pay Your Legal Bills

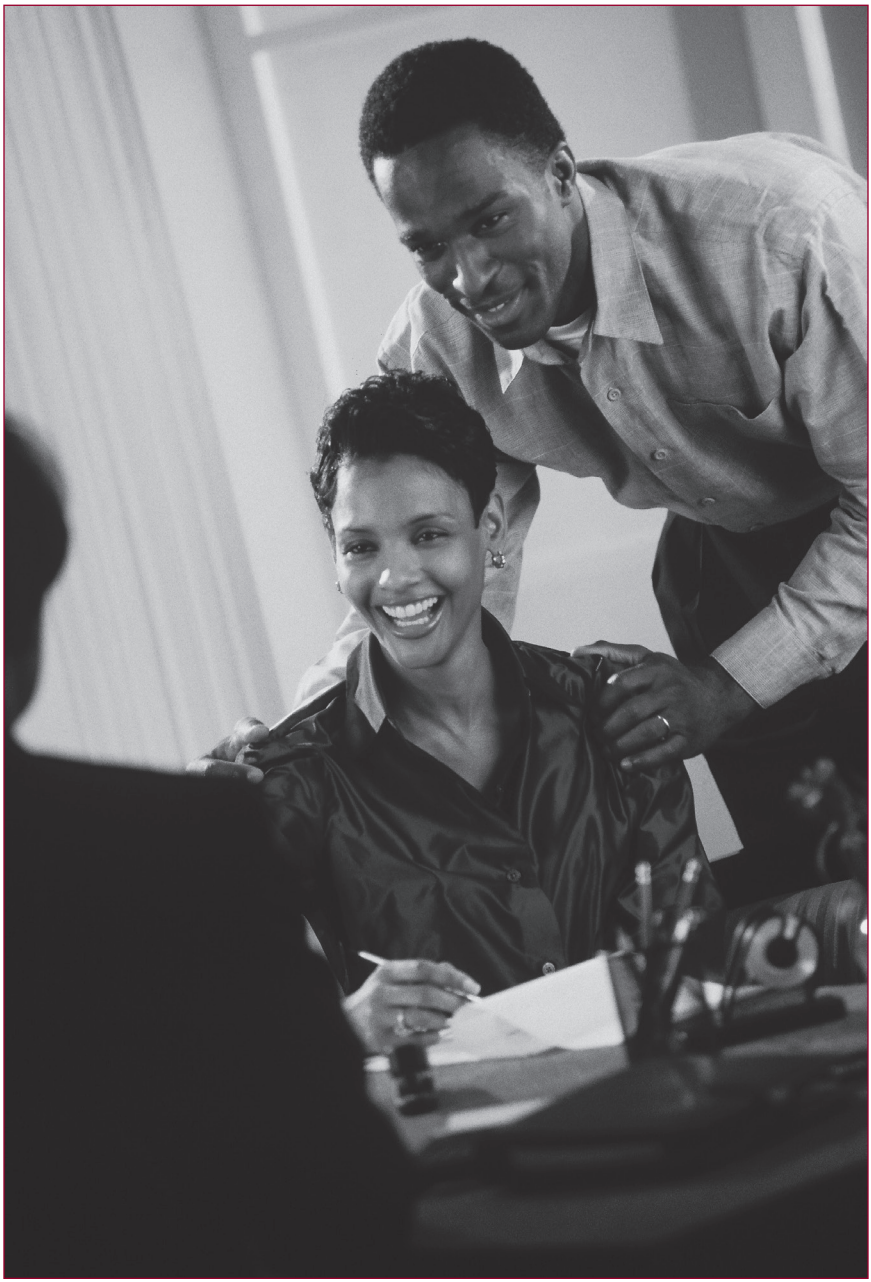
Pay legal bills promptly. Your lawyer cannot be expected to work without being paid, so always request a receipt to show your payment.

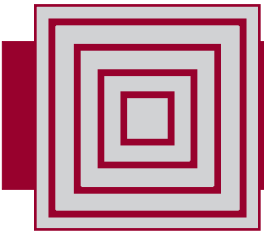
Be Respectful

Treat your lawyer and your lawyer's staff with respect. Also, show respect for the legal system by dressing nicely for legal meetings, acting properly in court, and being polite to all members of the legal field, including court workers.

Communicate Clearly

Openly share your beliefs, concerns or questions with your lawyer. Do not assume your lawyer knows or should know when you have concerns or questions. Regular contact between client and lawyer greatly improves the lawyer-client relationship.





PREVENTING Problems with a **LAWYER**

Agree Upon Goals

At the start of your lawyer-client relationship, talk clearly with your lawyer about your problem and what you want the lawyer to do. After reviewing options with you, the lawyer will decide whether you can be helped. Both you and your lawyer should agree upon the services to be provided.

Decide How You Will Communicate and How Often

At the beginning, ask when you will hear from or talk with your lawyer, whether by telephone, letter, e-mail or personally in the office. Also, ask for the names of other people in the law firm who will work on certain parts of your case. This can include writing papers, going to court hearings or working on a trial or appeal.

Be reasonable in your need to talk with your lawyer. Most legal matters have times when there is no activity, as well as other times when things are busy. When there is little or no activity on a case, it may be unreasonable for you to expect to hear from your lawyer.

However, when there is activity on the case, your lawyer should have regular contact with you. Remember, a lawyer must manage time when working for many different clients. Understanding this is critical to keeping a good working relationship with your lawyer. Be assured, however, that your lawyer must act carefully and promptly when acting for you. Your lawyer must keep you informed about your matters, and respond to your calls and reasonable requests for updates.

Keep Records

Keep a calendar or list of all contacts with your lawyer's office, with dates and times spent talking about your legal matter. If your lawyer does not return telephone calls or attend scheduled meetings, you should contact your lawyer in writing and keep a copy of the letter.

Request Records

Unless you have a flat fee or contingent fee agreement, it is wise to ask for monthly bill for legal services and other costs. Feel free, at any time, to ask for an itemized listing that details the work performed on your behalf. It should include the time spent on each task and the amount charged.

Discuss questions about fees with your lawyer right away. Your lawyer also should give you dated and signed receipts for all money you pay for your legal services. Your lawyer also should give you a receipt for any property or items you give for safekeeping.

Ask your lawyer to send a copy of all letters or forms sent or received on your behalf. Also ask for a copy of each paper filed in your case.

Your lawyer may charge you for the cost involved in providing the copies, but it is worth the cost to receive copies, because it will help you stay informed about the progress and status of your legal matter. Having these copies also allows you to ask questions about anything you do not understand.

Do Not Sign Blank Documents or Powers of Attorney to Cash Checks

Do not sign blank papers, forms, receipts or checks on bank accounts for your lawyer. Do not sign a "power of attorney" document giving your lawyer or the law firm permission to cash a check for you, unless there is an urgent need.

Avoid Relationships With a Lawyer that Could Cause Conflicts of Interest

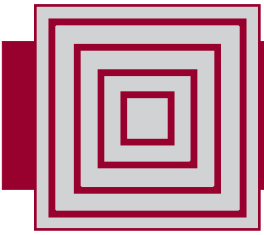
Remember that you, as a client, have a working relationship with your lawyer.

It is important to avoid romantic, personal, business, or social situations with your lawyer that can change your lawyer's ability to consider your case properly.

Becoming involved in private business relationships or deals with your lawyer is risky. A lawyer should not borrow money from a private client or ask for investments in the lawyer's real estate, property or other business dealings.

If this happens, take steps to protect yourself. This includes asking another lawyer for an opinion about whether the deal is in your best interest. To avoid possible problems, simply avoid any business deals with your lawyer by not agreeing to them.

If you want to make a gift of money or property to your lawyer in your will, you must hire another lawyer to write the will. The only time this rule does not apply is when the gift is to a lawyer who is related to you.



DEALING With Problems if They Occur

You and your lawyer may disagree on how to achieve your goals or on other matters involved in your case. If this occurs, your lawyer should talk with you to find a way to resolve the matter. If you and your lawyer are unable to agree, your lawyer may withdraw from your case or you may dismiss your lawyer.

Calling It Quits

Because you, as a client, are free to choose a lawyer, you can end your lawyer-client relationship at any time and for any reason. But, if your case is pending in court, a judge may have to approve the removal of a lawyer from a case.

You can fire your lawyer on the telephone or in person. You also may do so in writing by e-mail or letter. The best way to dismiss your lawyer is to send a letter. Be sure to keep a copy of the letter for your records. When deciding to dismiss your lawyer, it is best to talk with a new lawyer to avoid missing important deadlines or creating other problems.

If you fire your lawyer, you still may owe legal fees for work already done and for costs and expenses spent on your behalf. It is important to ask for an itemized bill or an accounting, which is a detailed statement of the work performed on your behalf. This should include the time spent on each task and the amount charged.

If you paid your lawyer a retainer fee for services to be performed, ask for a refund of the unearned portion. If the lawyer was holding any other funds or property belonging to you, request a return of everything. Or you may tell the lawyer to send the funds or property to a specific person or group. Finally, ask the lawyer to send your file to your new lawyer or return the file to you.

When Your Lawyer Closes His Practice, Becomes Seriously Ill, or Dies

If your lawyer closes the law practice, becomes seriously ill, or dies before completing work on your case, talk with a new lawyer or call your local bar association. If you have a case pending in court, call the court right away as well.

Arguments About Fees

When there are disputes over the fees charged for your lawyer's services, you should review the fee agreement. If the agreement was not in writing, ask for a written statement from your lawyer listing all of the work done on your behalf. This should include the date work was completed, amount charged for each item listed, and copies of all related papers or forms. Review all of this carefully to make sure everything is correct. Then respond by presenting receipts, cancelled checks or other proof of payment for any disputed items. Also, ask your lawyer to explain other items listed on the statement that you question.

If you cannot settle a dispute about fees with your lawyer, then either:

- Contact the local bar association to learn about local "fee arbitration" programs or
- File a court action to settle the dispute.

If you choose to settle the argument using a fee arbitration program, be certain you understand the process and the possible outcome. If you choose to take court action, consult a new lawyer for help.

While lawyers cannot charge unreasonable legal fees, it is hard to decide if a fee is reasonable or unreasonable. That is why it is important for you to discuss fees with the lawyer before entering into the lawyer-client relationship. A written fee agreement should clearly give information about the type of work expected from the lawyer. The agreement also should explain the payment of fees and expenses, the billing process and should be signed by both you and your lawyer.

Attorney Misconduct

Nearly all lawyers in Ohio act in an honest manner. But sometimes a few abuse the trust placed in them by their clients. In those instances, the Supreme Court of Ohio has procedures for deciding whether a lawyer acted improperly and breached the ethical rules for lawyers (called the Ohio Rules of Professional Conduct) and whether the lawyer should be punished as a result.

The lawyer disciplinary process does not settle a situation for the client by refunding money paid to the lawyer, and it does not find a new lawyer to take your case or overturn an unfavorable decision.

Instead, if the lawyer's conduct is a breach of the Ohio Rules of Professional Conduct, the Supreme Court of Ohio will decide on the type of penalty to be given to the lawyer.

Penalties or "sanctions" affect a lawyer's license to practice law in Ohio. Sanctions for professional misconduct by a lawyer can include:

- **Public Reprimand —** A public statement issued by the Supreme Court of Ohio informing the public that a lawyer committed misconduct.
- **Suspension —** Temporary loss of a lawyer's right to practice law in Ohio.
- **Disbarment —** Permanent loss of a lawyer's right to practice law in Ohio.

The Supreme Court gives the Office of Disciplinary Counsel and Certified Grievance Committees permission to investigate and prosecute lawyer misconduct. If you believe your lawyer committed professional misconduct, you may file a complaint or "grievance" with the Office of Disciplinary Counsel or with a certified grievance committee at a local bar association.

Examples of professional misconduct include, but are not limited to:

- Neglecting a legal matter and thus harming you
- Allowing a conflict of interest to sway how your lawyer acts for you in the matter
- Stealing your money
- Knowingly lying to you or a court.

For more information about the lawyer disciplinary process, contact the local bar association or the Office of Disciplinary Counsel.

Supreme Court of Ohio
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256
800.589.5256
www.supremecourt.ohio.gov/DisciplinarySys/odc.

Reimbursement of Stolen Money or Property

The Lawyers' Fund for Client Protection is an agency established by the Supreme Court of Ohio to repay clients for losses occurring because of the dishonest actions of a licensed Ohio lawyer. If you believe you lost money or property because of your lawyer's dishonest conduct, you can file an application asking for reimbursement from the fund.

There is no cost to file an application, and you do not need a lawyer to file the paperwork. Forms for the Lawyers' Fund for Client Protection can be obtained from its office or from most bar associations.

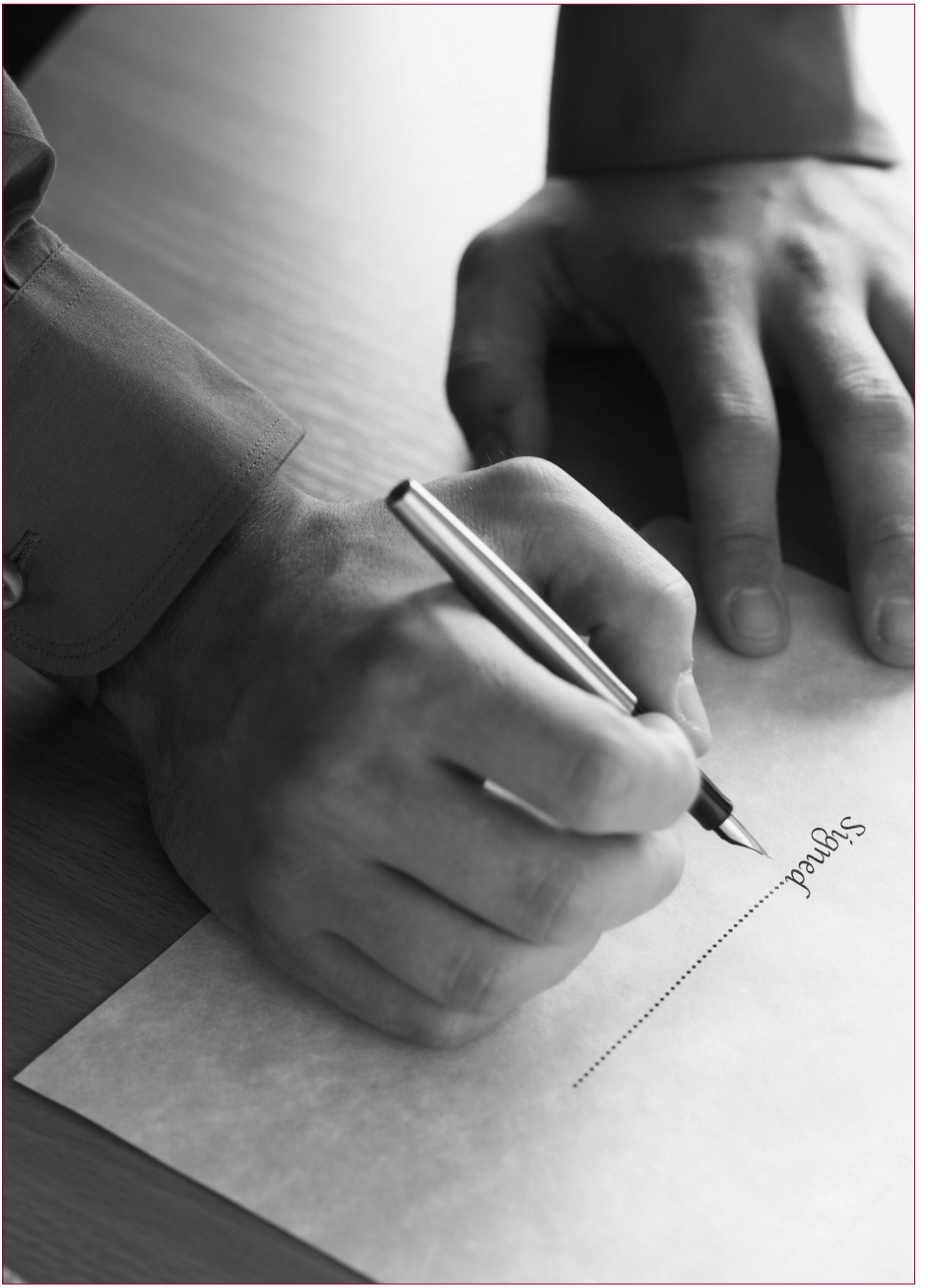
For more information, contact the Client Protection office.

The Lawyers' Fund for Client Protection
65 South Front Street, 5th Floor
Columbus, Ohio 43215-3431
614.387.9390
800.231.1680
www.supremecourt.ohio.gov/Boards/clientProtection.

Legal Malpractice

Most lawyers are skilled, hardworking experts in their field. Yet, there may be times when you believe your lawyer acted wrongly. In general, "malpractice" occurs when a lawyer fails to follow the reasonable standards of the legal profession and the client is injured as a result.

The deadline for filing a legal malpractice case in Ohio is one year. Deciding when the one-year period of time starts depends on the details in each case. If you believe legal malpractice occurred in your matter, contact a private lawyer who handles legal malpractice cases right away to talk about the matter and get advice.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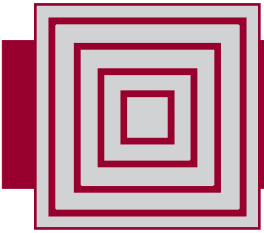

Conclusion

The lawyer-client relationship is created by an agreement, preferably in writing. The agreement states the legal tasks to be done by your lawyer and the fee you pay for those services. Once the relationship starts, your lawyer must provide you the agreed-upon legal services in a skilled and prompt manner that follows any related rules or laws. You must give the information needed for the lawyer to provide these services. You also must pay the agreed-upon fee. The duties of both you and your lawyer are critical to creating and keeping a successful lawyer-client relationship that avoids disputes or other problems. The information provided in this guide should assist you in finding and working with a lawyer to meet your legal needs.

GLOSSARY of Common Legal Terms

A

adjudicated: decided by a court.

affidavit: a sworn statement, submitted to a court or other fact finder, usually in a civil case.

arbitration: a method to resolve civil disputes outside of court; this involves a person (arbitrator) or panel chosen by the parties in the dispute to decide the outcome.

attorney ***(also called attorney-at-law or lawyer):*** a person licensed by the state of Ohio to practice law by representing clients in legal matters and giving legal advice.

B

bar: a term used to refer to all attorneys or members of the legal profession.

bar association: a professional organization of attorneys and other legal professionals who have paid membership fees to join.

C

client: a person who hires an attorney.

complaint: the first pleading filed in a legal action that contains the facts alleged by the complaining party (plaintiff).

contingent fee: a fee charged for a lawyer's services that is payable only if the lawsuit is successful or is favorably settled out of court.

conflict of interest: 1) arises when a lawyer's personal interest in a situation conflicts with the duty of loyalty owed to a client; or 2) arises when a lawyer has two clients with opposing interests.

consultation: a meeting with a lawyer, often used to discuss the client's case or legal problem, obtain information about the lawyer, the fee to be charged, and the services to be provided.

court: the part of the judicial branch of government that applies the law to settle disputes brought before it.

D

defendant: 1) the person who is accused of wrongdoing; or 2) the person who is sued in a court action for money, property, or the recovery of a legal right.

disbarment or disbarred: the loss by a lawyer of his or her license to practice law. In Ohio, disbarment is permanent.

F

fee agreement: a written agreement entered into by a client and a lawyer that states the amount of money to be paid by the client for the lawyer's work.

fiduciary: a person who owes a duty of loyalty to safeguard the interests or property of another person or entity, such as a guardian, executor or trustee.

J

judgment: the final decision of a court in a civil or criminal case.

judgment debtor: a person who owes a debt, as decided by a court.

L

lawyer referral service: a service that refers clients to lawyers.

LLC (limited liability company): a form of doing business that allows owners to avoid personal liability under certain circumstances.

LLP (limited liability partnership): a form of doing business that allows lawyers to limit their personal liability under certain circumstances.

legal malpractice: occurs when a lawyer fails to follow the reasonable standards of the legal profession and the client is injured as a result.

M

mediation: a method of settling disputes in which a third party attempts to convince parties to a dispute to settle their dispute; it is sometimes court-ordered.

O

Ohio Rules of Professional Conduct: rules made by the Supreme Court of Ohio that lawyers must follow in order to practice law in Ohio.

P

plaintiff: a person who files an action against another person or entity; the person who sues another person or entity.

power of attorney: a legal document allowing one person to act for another in financial or other matters; may be limited to a specific matter or may be a general power of attorney.

professional liability insurance: a form of insurance that protects clients against losses caused by a lawyer's neglect or lack of ability.

public reprimand: a public statement issued by the Supreme Court of Ohio informing the public that a lawyer committed misconduct.

R

restitution: a payment made by a criminal defendant to victims as part of a sentence; can also be payment made by a lawyer to victims as a result of the lawyer disciplinary process.

retainer: a fee paid by a client to a lawyer in advance for legal services to be provided to the client.

S

settlement: when parties to a lawsuit resolve their differences without having a trial.

statute of limitation: the deadline, set by law, for filing a legal action.

suspension: the temporary loss of a license to practice law.

T

trust account: a bank account that lawyers must maintain to hold client funds separately from the lawyer's own funds.

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