

Finding a Lawyer

The Difference Between Civil and Criminal Cases

The purpose of a criminal case is to determine if a defendant has committed the crime of which they have been accused. A crime is an offense against *society's* rules. Criminal cases have a prosecutor on one side and a defendant on the other. The defendant can be found “guilty” or “not guilty” and can face probation, jail time or a fine if they are found guilty of the crime.

It's important to understand that in a criminal case the prosecutor does *not* represent the victim, but rather represents society—the city, state, county or United States. The victim of a crime can be a witness in the prosecutor's case, but is not their client. This means victims of crime do not have control over the choices the prosecutor makes. The defendant may either hire a private lawyer or will have one appointed, usually from the public defender's office. Unlike the prosecutor, the defense lawyer is the defendant's lawyer, representing only his/her interests in the case.

A civil case is basically anything that's not a criminal case. Usually it is a dispute between two *private* citizens (a corporation or a government can count as a “private citizen”). Civil cases can be over disagreements about families, contracts or harm to a person or property. When people talk about “suing” or “being sued,” they are talking about civil cases.

The outcome of a civil case is typically a court order to do something or to stop doing something—including to pay someone money, called “damages.”

Both criminal and civil cases can be ended by “settling.” A settlement is an agreement worked out before a judge or jury gives the final decision.

Do I need a Lawyer?

If you are facing criminal felony charges (that is, a risk of serious jail time), you are entitled to a lawyer and should get one as soon as you can. Unfortunately, in other cases, the answer isn't as simple.

As a general rule, if you're in doubt about whether you need legal assistance, or you're feeling nervous or confused about paperwork you've received or an upcoming court date, it's probably worth the investment to talk to a lawyer. What happens in court can have serious consequences for you and your family, and having good legal advice and/or representation can make a big difference in the outcome.

Consulting a lawyer can be expensive, and most people aren't eligible for free legal services. Many lawyers do offer a free initial consultation; ask when you call for an appointment. Lawyers can also provide “limited representation,” which means they can perform specific tasks for you like offering general advice,

preparing documents, or appearing in court, without representing you throughout an entire case. This can significantly lower costs.



How to Find a Lawyer

There's no magical process for finding a good lawyer; in many ways it's the same as finding a good doctor or a good mechanic: you look in the phone book, you ask people you trust and you trust your instincts.

You are not likely to find any official source willing to "vouch" for a particular lawyer—and if you do, you should be suspicious. There are ethics and liability rules which make it risky for agencies, organizations or even other lawyers to officially "endorse" individual lawyers, or to publish lists or databases of "good" lawyers. However, asking a shelter or hotline advocate with whom you have a relationship if they have any personal opinions about certain lawyers is perfectly okay, and can be really helpful.

Sometimes your local bar association may sponsor a lawyer referral service—but be aware that being listed in the referral services may be no different from being listed in the phone book; it doesn't necessarily mean that the lawyer is good or bad, just that they signed up for the listing.



Retainers

A "retainer" is the contract or agreement that you sign when you hire a lawyer, which spells out all of the things that each of you agrees to do (or not do). Since usually one of the things that you agree to do is to pay your lawyer, the word "retainer" can also mean the money that you give your lawyer when you hire them.

Payment terms vary from lawyer to lawyer, but most lawyers will expect you to make a significant down payment up front, as a condition of taking your case. This is because they will need to start paying court costs etc. right away, and also because they want to make sure that you actually have the money to pay them. Usually, any costs and expenses will be deducted from your retainer as you go.

Contingency Fees

A "contingency fee" is a payment arrangement with a lawyer that says you only have to pay if you win the case. It is typically only used in cases where you are suing to get money from someone. The agreement is if you win the case, the lawyer will get a percentage of whatever money you win—but not more than a third. If you lose, they get nothing. You may still have to pay court fees and expenses, however.

Questions to Ask When Hiring a Lawyer

Here are some basic things you can establish at the outset to decide whether the lawyer you are talking with is competent in the area of law you need help with. Remember that even excellent lawyers lose cases, so a win/loss record is not necessarily the best way to judge competence.

- How long have they been practicing in this area, and how many of your type of case have they handled?
- Do they typically represent people on your side of the case (e.g. victims, mothers, employees)?
- Have they attended any Continuing Legal Education trainings in the area? How recently?
- How often do they appear in court on your type of case, if appearing in court is what you need them to do for you?
- Are they familiar with the judge assigned to your case?
- Have they ever appealed your type of case? Did they win?
- Where did they graduate from law school, and in what state(s) are they licensed to practice law?
- If possible, ask them for a reference – the name of a client whose case has closed who would be willing to speak with you about their services.

Questions to Ask a Lawyer About Fees and Costs

The following suggestions were provided by the National Coalition Against Domestic Violence. Visit their website at www.ncadv.org for more helpful information. Please note that NCADV does not have lawyers on staff and cannot provide legal assistance.

- What are your fees? What work do these fees cover?
- Is this an hourly fee or a flat fee for the entire case?
- Is there an additional charge for appearing in court?
- Do you ever charge less for people who do not have much money?
- Are you willing to work out a payment plan?
- Do you charge a retainer? How much? What does it cover?
- Do you refund all or part of the retainer if my case ends up being dropped or not taking much time?

Lawyers should be willing to refund any part of the retainer not spent.

- Are there other expenses which I may have to pay? What are they and how much are they likely to be?
- Will you be the only person working on my case? What will other people do? How will I be charged for their work? Will I be charged for speaking to your secretary? Your receptionist?
- Are there ways that I can assist you so as to keep down my costs?
- Will you send me a copy of letters, documents and court papers that you file or receive regarding my case?
- Do you charge extra if the case gets more complicated or we have to go back to court?
- Will you require that I have paid everything that I owe you before you will go to court with me or finish my case?

Many lawyers do this. They may also refuse to return your original papers or copies of your file, and in some states this may be legal. Therefore you should insist on getting a copy of any paper filed with the court or given or received from another party or otherwise relevant to your case. Be sure to keep all of them in a safe place, in case you ever need them.



Expectations For Your Lawyer

- They will explain the legal situation to you and review all of your options until you understand them
- They will be in court when they need to be and will complete documents and pleadings in a timely manner
- They will be clear and open with you about their fee structure and exactly what they can and can't do for you, and they will put all of this in writing
- They will advise you on a course of action, but will ultimately do what you tell them to do

Communication is key. Feel free to discuss any other expectations you have with your lawyer. If your lawyer doesn't know your (reasonable) expectations, she can't live up to them; and if you don't know her (reasonable) limitations, you may be anxious or disappointed.

Remember: many lawyers maintain very hectic court schedules and may not return your phone calls right away. This doesn't necessarily mean that they are slacking off, but if you didn't know that, it would be easy to feel ignored and get angry with your lawyer.

If your lawyer isn't meeting your expectations

first talk to them. Give them an opportunity to explain to you what they've been doing (or not doing) and why. Ask questions. Take notes. Explain calmly what you want to be done differently and why. Be firm, but reasonable. Listen to what they have to say, and establish new, clearer mutual expectations.

If you're not satisfied with what you're hearing, end the relationship. You hired the lawyer, and you can fire them. If you do decide to let your lawyer go, make sure to ask for a detailed, itemized bill before you leave.

However, be aware that changing lawyers in the middle of a case can be very disruptive to the case, and may leave you at a real disadvantage. You may not have found a new lawyer to take over yet, or your new lawyer may not be able to get up to speed as quickly as is needed. It can also be expensive: unless you are eligible for free legal services, you may have to come up with a new retainer and you'll have to pay for the time it takes your new lawyer to figure out what's going on with your case.

When to Find a Lawyer

There’s no formal time limit for you to find a lawyer—though there may be a time limit for you to start your case (see below). If you plan to get a lawyer, but haven’t had time before your first court appearance or court filing deadline, file the paperwork or go to your court date and explain the situation to the judge. **Always follow the court filing timeline and/or go to your court dates!** It’s up to the individual judge, but often they will give you some time to find a lawyer before moving forward. If they don’t, it’s still okay for you to get a lawyer part-way into a case.

In most cases, there are “statutes of limitation,” which mean the court will only allow you to start a case within a certain number of months or years of the incident that provoked it. The length of time varies by jurisdiction and type of case, so if you’re seriously considering bringing a case, you should check with a lawyer or do some research to find out how long you have in your jurisdiction.

Transportation and Child Care for Meetings and Court Dates

Mention any special needs you have when you set up the initial appointment. Some lawyers may be willing to accommodate your kids for a brief meeting (but don’t assume that their assistant will be your babysitter). If you are working with legal services or a volunteer lawyer, they may have additional resources to help with transportation and child care.



Also, if you are working with any kind of advocate or support organization (like a domestic violence shelter or hotline), let them know what’s going on; they may be able to help.

Finally, if you have any concerns about accessing your lawyer because of a language barrier or disability, tell them up front about your concerns and what accommodation you need, so that they can make arrangements in advance.



Paying for Your Lawyer

If your income puts you near the federal poverty line, or if you are a member of a particularly vulnerable group (e.g. disabled, elderly), you may be eligible for free legal services. The intake guidelines vary widely by program; some can be as high as three or four times the poverty line, some allow you to deduct certain items from your income, and some have no income guidelines at all if you have some other qualifying feature. Also, in some cases, if you are a victim of domestic violence without access to your family’s income, you may qualify. So it’s always worth checking to see if there’s a way to become eligible for services.

2006 HHS Poverty Guidelines

Persons in Family or Household	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$9,800	\$12,250	\$11,270
2	13,200	16,500	15,180
3	16,600	20,750	19,090
4	20,000	25,000	23,000
5	23,400	29,250	26,910
6	26,800	33,500	30,820
7	30,200	37,750	34,730
8	33,600	42,000	38,640
For each additional person, add	3,400	4,250	3,910

Providers may be a legal services organization or a volunteer lawyers program. Legal services are non-profit agencies with a staff of lawyers who are paid by the agency instead of by their clients. Volunteer lawyers programs are places where for-profit lawyers can donate volunteer (“pro bono”) hours. In either case, the quality of legal representation is as good as anywhere; don’t worry that just because your lawyer is free, he or she isn’t any good. Often there is a lot of competition for legal services jobs, and the people who end up working there are highly qualified and very devoted to helping people.

However, the reality is that most people will not be eligible for free legal services, and even when they are, there is a desperate shortage of available lawyers. Some lawyers may be willing to work at a reduced fee or accept a payment plan. But if you’re not lucky enough to find someone like that, you may have to consider some other options, like a limited representation agreement or representing yourself.

Representing Yourself

Increasingly, the civil court system recognizes that people cannot afford a lawyer and so it is becoming easier to represent yourself (often called “pro se” or “pro per”). Many courts have pro se packets available to individuals through the web or at the courthouse. However, representing yourself might not always be a good idea. There are several things to balance when making your decision.

First, think about what’s at stake in the case. The higher the stakes, the more likely you’ll want expert assistance.

Second, does your opponent have a lawyer? If so, you may be better off finding someone to help you too, even if only in a “limited representation” capacity.

Third, what kind of resources do you have available to you? Although lawyers can be expensive, there are also costs to representing yourself. You’ll have to spend time preparing your case and responding to your opponent, which may mean time away from work, or paying for a babysitter. And an experienced lawyer may be aware of options and remedies which may end up saving you money in the end.

If you feel confident that you can explain your case and defend your position, and if you just don’t have the means to hire someone, then you can try to represent yourself. Be aware that you will be held to the same standards and rules as a lawyer.

The materials contained in this tip sheet represent the opinions of the author and should not be construed to be those of the American Bar Association or the Commission on Domestic Violence unless adopted pursuant to the bylaws of the ABA. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

What to Bring When You Meet With Your Lawyer

Try to think about what will be at issue in your case, and then bring any documents, photos or recordings that have to do with the issue (and remember, it is *always* better for your lawyer to be prepared to deal with “bad” evidence than not to know about it at all). If you are in doubt whether you should bring something, then bring it – it is better to bring too many things than too few. Often a calendar or date book is helpful because clarity about time, date, and location of what happened is critical.

The more organized you are when you meet with your lawyer, the more smoothly things will go. If you can sort through papers ahead of time, it will save you and your lawyer time and money down the line.

So, for example, if your case is about child support, you might bring pay stubs, SSI or disability statements, last year’s tax forms, bank statements, the kids’ medical bills and receipts for extra-curricular activities, and anything else you think might come up. If your case is about domestic violence, you might bring notes, voicemails, emails, photos of injury and/or property damage, or a list of names and addresses of witnesses, if you have them.

Meet the Author of This Tip Sheet

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One good starting place for more information is the American Bar Association’s “Consumer’s Guide to Legal Help” page, at: www.findlegalhelp.org. This site has links to lawyer referrals, directories and free legal services in your state, as well as basic information about the laws and courts, in case you are representing yourself. It will also let you find out if someone is licensed to practice law in your state, and what to do if you have a complaint.