

Lawyers



Chapter Overview Visit glencoe.com and enter **QuickPass** code **StreetLaw8u1** for an overview, a quiz, and other chapter resources.

There are more than one million lawyers, also referred to as attorneys, in the United States. More than 70 percent of them are in private practice. Around 10 percent are government lawyers who work for federal, state, or local agencies. Another 10 percent work for corporations, unions, or trade associations. A small number of lawyers work for public interest or legal aid organizations. An even smaller number are law professors, judges, or elected officials.

Contrary to popular belief, most lawyers rarely go to court. Most law practice involves giving advice, drafting legal opinions, negotiating settlements, or otherwise providing out-of-court legal assistance.

Some lawyers do, however, go to court. They are called trial attorneys or **litigators**. In civil cases, lawyers act as advocates for their clients' positions. Likewise, in a criminal case, the lawyer for the defendant has a duty to do everything possible—without violating a code of professional ethics—to secure the release and acquittal of his or her client.

The sixteenth president of the United States, Abraham Lincoln was also a lawyer.



When Do You Need a Lawyer?

It is important to know when to see a lawyer. Many people think of seeing an attorney only after they get into trouble, but perhaps the best time to consult an attorney is before the problem arises. Preventive advice is an important service that lawyers provide.

You should consider consulting an attorney about a number of common situations. These include:

- buying or selling a home or other real estate,
- organizing a business,
- changing your family status (for example, by divorce or adoption),
- making a will or planning an estate,
- handling accidents involving personal injury or property damage,
- signing a large or important contract, and
- defending a criminal charge or bringing a civil suit.

If a question of law is involved, a legal document needs to be drawn up or analyzed, or you are involved in a court case, you will probably need legal help. However, if your problem is minor, you may be able to handle it on your own or with the help of someone other than a lawyer. For example, you can usually sue someone in a small claims court without a lawyer. Likewise, an argument with a spouse may be better handled through a marriage counselor or mediator. Relatives, friends, teachers, members of the clergy, doctors, or accountants may be more appropriate sources of advice in certain situations.

If you are not sure whether you need a lawyer, it may be advisable to see one to help you decide. Many **bar associations**—organizations that license lawyers—and other groups have services to help you decide if you need a lawyer. These are often provided free of charge or for a small fee.

Involvement in a car accident may require you to seek the advice of a lawyer. *How would a lawyer's services help someone involved in a car accident?*



Problem 6.1

For each of the following situations, discuss the reasons you may or may not need an attorney.

- a. You hit another car in a parking lot. Your insurance agent indicates that the company will pay for bodily injury and property damage.
 - b. You borrow a friend's car without his knowledge, and he reports it to the police as stolen.
 - c. You buy a new stereo for \$500. One month later, the receiver and speakers blow out. You return to the store, and the salesperson tells you he is sorry but his stereos have only a two-week guarantee.
 - d. You decide to trade in your old car and buy a new one.
 - e. Two friends are caught robbing the cashier at a local store, and they name you as someone who helped plan the robbery.
 - f. The principal suspends you for two days because of an article you wrote for the student paper criticizing the school dress code.
 - g. You are turned down when you apply for a job. You think you were rejected because you are deaf.
 - h. You do not want your family to inherit the \$10,000 you have saved. After being told you will die within a year, you want the money to be used for cancer research.
 - i. You and your spouse can no longer get along. You want a divorce.
 - j. You earn \$5,000 working in a restaurant during the year. You want to file your federal income tax return.
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How Do You Find a Lawyer?

If you need a lawyer, how do you find one who is right for you and your particular problem? Perhaps the best way to find an experienced lawyer is through the recommendation of someone who had a similar legal problem that was resolved to his or her satisfaction. You might also ask your employer, members of the clergy, businesspeople, or other professionals for the name of a lawyer they know and trust.

Probably the best way to find a lawyer is through the recommendation of a friend who used a lawyer for a similar problem and felt well represented. In addition, the *Martindale-Hubbell Law Directory*, available in your public library, lists most lawyers in the United States and provides general information about education and professional experience of each lawyer. Lawyers sometimes advertise their services. In many places, advertisements for lawyers appear in newspapers and magazines or on radio and television. In addition, a variety of Web sites also provide referrals to lawyers.

Lawyers have not always been allowed to advertise. For years, it was considered improper and was forbidden by bar associations and courts. In 1977, the Supreme Court ruled that advertising by lawyers was protected by the First Amendment's freedom of speech clause.



The Law Where You Live

Find out the contact information for the bar association in your state. Does it provide a lawyer referral service?



Lawyers specializing in certain legal services, such as bankruptcy and personal injury, often advertise on large billboards.

What is the best way to find an experienced lawyer?

Those in favor of allowing lawyers to advertise think that it helps consumers decide which lawyer to hire. They add that statistics show advertising lowers legal fees through competition. Those against advertising by lawyers think that it encourages lawyers to be salespersons who are likely to make exaggerated claims. They think that lawyers should be hired based on competence and skill, qualities difficult to ascertain through advertising.

Many lawyers now advertise through various means, including telephone directories, newspapers, radio, television, and the Internet. Advertising has enabled large, lower-cost law firms, often called legal clinics, to develop, and some have spread nationwide. However, many attorneys and others still consider advertising improper.

Problem 6.2

- a.** A television advertisement shows a lawyer in a bathing suit coming out of a lake. He says, “If you’re in over your head because of bad debts, let us bail you out. We’re the best firm in the state.” Should there be any restrictions on ads like this? If so, what? Should there be other restrictions on ads? If so, what should they be?
 - b.** A lawyer hears that many people have been injured as a result of accidents in a particular type of car. He runs a newspaper ad showing a car crash. The ad reads, “If this happens to you, I may be able to help you recover your losses.” Should the lawyer be able to do this?
 - c.** Many people in a city have lost their jobs and could lose their homes because they cannot make their monthly mortgage payments. Jane, a lawyer, writes to all of them saying she is willing to represent them to prevent the loss of their homes. Should she be allowed to do this?
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Another way to find a lawyer is to contact a local lawyer referral service. Most bar associations maintain lists of lawyers who specialize in certain kinds of cases. Many lawyers offer an initial meeting with clients at a special rate. When you call the referral service, you will be told the amount of the initial consultation fee and given a lawyer's name and phone number. If additional legal service is needed, the fee is subject to agreement between the lawyer and the client.

Hiring a lawyer can be expensive. Legal aid programs in some places provide free legal services to low-income people for certain civil cases. However, the cost of a lawyer is an obstacle for many middle-class people who do not qualify for legal aid. Some people argue that the cost of hiring a lawyer creates a lack of access to the justice system for many Americans. As a result, more people now represent themselves in civil cases. Online materials, how-to books, and phone consultations with lawyers help prepare people to represent themselves. Some people also buy legal insurance or receive this as an employment benefit.



The Law Where You Live

Research to find out about the legal aid office closest to where you live. Most services can be found online. Where is it located? What services does it offer?

Steps to Take

What to Ask Your Lawyer

- **What is the lawyer's fee?** Is the client required to pay a flat fee or by the hour? Is a retainer required? What about a contingency fee, in which the lawyer gets paid only if he or she wins your case?
- **Will there be a written fee agreement?** What will it say? How often will you be billed? Will the lawyer tell you when the fee is going to exceed a certain limit?
- **Has the lawyer ever handled cases like this before?** If so, with what results?
- **Will the lawyer provide you with copies of all correspondence and documents prepared on your behalf?**
- **Will the lawyer keep you informed of any new developments in your case and talk to you in "plain English"?**



Working with a lawyer

The Car Crash

On April 1, Al and his friend Marie were driving along Sixth Street, returning home from a party. Al had stopped at a red light at the corner of Sixth Street and Florida Avenue when a 2004 Buick hit his car from behind.

Al's 2006 Volvo was smashed in as far as the back seat. Al suffered a severe neck injury, four broken ribs, and many cuts and bruises. As a result, he spent three weeks in the hospital. Al's passenger, Marie, was also severely injured. She suffered a fractured skull, facial and numerous other cuts, a broken right arm and hip, and internal bleeding. Marie, an accountant making \$65,000 a year, spent 6 weeks in the hospital and returned to work after 12 weeks. She had to take 10 weeks of unpaid leave from work. Her insurance covered all but \$5,000 of her medical bills.

Fred, the driver of the Buick, suffered minor cuts on his face and arm and was released from the hospital after 24 hours. Fred was given a ticket for speeding and reckless driving.

Fred's insurance company has offered Marie a \$4,500 settlement. She is uncertain whether she should accept and decides to consult an attorney. After checking with a lawyer referral service, she is referred to a local attorney.

Problem 6.3

Role-play the initial attorney-client interview between Marie and the attorney. Persons role-playing the attorney should attempt to ask all the questions an attorney should ask at this point. Persons role-playing the client should provide the attorney with all necessary information and ask all those questions that are relevant to Marie's case and that relate to whether she should retain the attorney.

If possible, it is wise to interview more than one lawyer before making a selection. Use these meetings to compare the differences between lawyers' fees, their experience in the type of case you are facing, and how well you think you will be able to work with each one.

To avoid misunderstandings about legal fees, ask for an up-front estimate of the total charge. You should also find out who else will be working on the case, what each person charges per hour, and how often you will be billed. Lawyers often require a **retainer**—a down payment on the total fee. In addition, attorneys may charge clients for court costs, filing fees, or other expenses.

Attorneys sometimes take cases on a **contingency fee** basis instead of charging an hourly fee or a lump sum. A contingency fee is a percentage of whatever amount the client wins or settles for in the case. However, in a contingency arrangement the client pays nothing except expenses if the case is lost. This arrangement is most common in personal injury cases in which money damages are being sought.

A typical contingency fee is one-third of the amount awarded to the client. However, it could be 40 percent or higher in some cases. If a client wins or settles for \$300,000 in an auto accident case, the lawyer hired on a one-third contingency fee basis would take \$100,000, and the client would receive \$200,000 minus court costs.

The attorney-client relationship is often based on oral agreements. However, bar associations frequently recommend and sometimes require written fee agreements, which can cover flat fee or contingency fee agreements, signed by both the attorney and the client. This can help prevent disagreements later.

Another thing to consider before choosing a lawyer is whether your legal issue is one that might be of interest to an advocacy organization or public interest law firm. These firms and organizations may provide free representation. An issue such as freedom of speech, discrimination, property rights, or environmental law might be handled in this way. You can use an online search engine to identify potential firms or organizations that can help.

Working With Your Lawyer

Trust is the foundation of the attorney-client relationship—you must be able to trust your attorney. In order to help you, your attorney needs to know everything about your problem. To encourage clients to speak freely to their lawyers, the law grants an attorney-client **privilege**. This means that whatever you tell your attorney about your case is private and confidential. Such information cannot be disclosed to anyone without your permission.



Trust is an important factor between an attorney and his or her client. *What is the attorney-client privilege? Why is it important?*

Figure 6.1 Code of Professional Responsibility

The Code of Professional Responsibility consists of the following nine canons, or principles, which involve both ethical considerations and disciplinary rules.

Canon 1. A lawyer should assist in maintaining the integrity and competence of the legal profession.

Canon 2. A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.

Canon 3. A lawyer should assist in preventing the unauthorized practice of law.

Canon 4. A lawyer should preserve the confidences and secrets of a client.

Canon 5. A lawyer should exercise independent professional judgment on behalf of a client.

Canon 6. A lawyer should represent a client completely.

Canon 7. A lawyer should represent a client zealously within the bounds of the law.

Canon 8. A lawyer should assist in improving the legal system.

Canon 9. A lawyer should avoid the appearance of professional impropriety.

Source: Adapted from the American Bar Association

Problem 6.4

The following situations present ethical dilemmas faced by attorneys. Read the Code of Professional Responsibility, examine each case, and then decide whether the attorney acted ethically or unethically. Explain your answers.

- a. Marta, an attorney for the family of a man killed in an auto accident, visits a bar and runs into a juror in the case. She has a drink with the juror.
- b. Nicholas, a criminal defense attorney, puts his client on the stand to testify to her innocence, even though Nicholas knows she is lying.
- c. Gene, a corporate lawyer, is asked by a wealthy client to recommend her son for admission to the state bar. Gene says yes.
- d. Rosa represents a man injured by a defective lawn mower. The manufacturer's insurance company offers a \$100,000 settlement. She accepts the settlement without consulting her client.
- e. Nang, an attorney, has a trial next week before Judge DeSilva. Nang sees the judge in a grocery store and asks her if the trial can be postponed one week.

Working with an attorney also involves making decisions. A good attorney will give you advice, but you must make the final decision. For example, you must decide whether to sue or not to sue, or whether to accept or reject a settlement. The attorney's job is to help you understand what is going on so that you can make informed decisions. You, in turn, should ask the questions needed to clarify things. You may discharge your lawyer if you are not satisfied. However, once the case is in court, a judge will permit this change only for a very good reason.

Lawyers must follow certain basic standards of conduct. These standards are set out in a Code of Professional Responsibility (listed in Figure 6.1 above) and are enforced by state bar associations.

In almost every state, a lawyer must pass an examination to become a member of the state bar. Lawyers who violate standards of conduct may be reprimanded, suspended, or **disbarred**. Once a lawyer has been disbarred, he or she no longer has a license to practice law.

In recent years, there has been a great deal of concern about the conduct of lawyers. A client who has serious complaints that cannot be worked out with his or her attorney can report the problem to the local or state bar association. Like other professionals, lawyers can be sued by clients for serious errors that result in injury or loss. This type of case is known as a **legal malpractice** case. Additional information on malpractice can be found in Unit 3.

To handle attorney-client disputes, some state bar associations have arbitration systems in which panels of lawyers—and sometimes nonlawyers—hold hearings to weigh the disagreement and issue opinions. Some disputes deal with the amount of the fee charged for the lawyer's services. Panels may order the attorney to return some of a client's money if they decide the fee was improper.



For Your Information . . .

Becoming a Lawyer

The path to becoming a lawyer in the United States usually involves completing a four-year college program, demonstrating strong academic skills, taking the Law School Admission Test (LSAT), completing law school (usually a three-year program), and passing a state-administered bar examination. The rules for eligibility to take the bar and to qualify for bar admission are set by each state. However, to receive a license to practice law, one must be a graduate of a law school that meets certain standards, and one must achieve a passing score on the bar examination. In addition, states check the character and fitness of

each person who takes the bar examination and applies for a license to practice law.

Nearly 150,000 students were enrolled in U.S. law schools in 2007. While about half of these students are female and approximately 20 percent are minorities, the legal profession is approximately 70 percent male and 90 percent white. A number of organizations, including Street Law, Inc., are actively working to increase diversity in the legal profession. Businesses and other groups work to encourage minority students' interest in the legal profession by providing them with role models and the opportunities to connect with lawyers.