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# HOW TO BE A GOOD LEGAL CONSUMER

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*An International Foundation for Gender Education  
Educational Resources Publication*

**I.F.G.E.**

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## INTRODUCTION:

The decisions you make regarding legal advice are some of the most important (and costly) decisions you make as a consumer. Yet many people spend less time choosing a lawyer than they would in choosing a new TV set. In addition, you may feel hesitant to question or discuss fees with a lawyer. If so, you are not alone. Many people share such reluctance.

This guide was prepared by the Legal and By-Laws Committee of the International Foundation for Gender Education ("IFGE"). Its purpose is to encourage you to take an active part in your legal decisions and to help you get the most for the money you spend for legal services. It includes sections on: **When do you need a lawyer? How do you select a lawyer? How do lawyers set fees? How to hold down legal costs? What is your lawyer's duty to you? and What is your duty to your lawyer?** It also briefly discusses what to do if you are dissatisfied or unhappy with your lawyer's performance. We hope that in using this guide you will become a better informed and satisfied consumer of legal services.

Legal questions and legal problems can occur at any time, to anybody, including you and your family. Like many other problems, they won't go away if you ignore them. They may even get worse. Prompt access to a qualified, competent, and understanding lawyer can often save time, money, and disruption to your life. Going it alone may be the costliest option of all.

## WHEN DO YOU NEED A LAWYER?

Obviously, the person who is accused of a crime, or is the defendant in a civil suit, becomes acutely aware of the need for professional legal assistance. Law suits and courtrooms can be complex, confusing and intimidating to someone who is not trained or experienced in the practice of law.

Legal help is highly desirable and often indispensable in situations which have little or nothing to do with crime, a law suit, or a court proceeding. For example, you may need a lawyer:

- \* **When you make or revise a will.**
- \* **When you buy or sell real estate.**
- \* **When you buy or sell a business.**
- \* **When you enter into a contract, particularly one that involves a major financial obligation.**
- \* **When you are injured or involved in an accident.**
- \* **When you are the victim of fraud or you are denied contractual or governmental benefits.**
- \* **Whenever your "rights" are threatened, such as by age, or sexual or racial discrimination.**
- \* **When your life status changes, such as in marriage, or divorce and child custody, or upon sexual reassignment.**

When do you need a lawyer? A lot more often than you think! Make no mistake: Life is not always easy or fair. Your legal rights and obligations are constantly being challenged.

## **HOW DO YOU SELECT A LAWYER?**

**Step One:** Finding a lawyer who best suits your needs may take time and effort. First, you need to determine what those needs are.

Ask yourself: Is this a simple or routine matter? Or, do you need a specialist familiar with a complex area of the law?

Of prime consideration is whether this matter can be handled by a lawyer who does not "need to know" your inner-most thoughts and feelings? Or, is this a matter, such as divorce, child custody, or sexual reassignment, that may require your lawyer to have, in addition to his or her legal knowledge and ability, a supportive, caring, understanding, or non-judgmental view of your lifestyle, or your social or sexual preferences.

Also, it's best to initiate a search for legal help prior to an emergency. In this way you will have more time to gather information and make an informed decision.

**STEP TWO:** A good place to start your search for a lawyer is with reliable and trustworthy friends or confidants who may have been involved in a situation similar to yours. Ask for their recommendations.

You may also want to contact leaders of support groups within the gender community, or members of the legal profession who are associated with, or members of, a support group, for their referrals.

In some areas a call to a local telephone "hotline" operated by the gay or lesbian community, or to the local office of the American Civil Liberties Union ("ACLU") may be helpful in obtaining a list of candidates.

It may even be possible to contact a TRUSTED family lawyer. However, in doing so you should be aware that your family lawyer may also be in contact with your relatives and friends; and although it is unethical for a lawyer to betray a confidence, he or she may not initially understand the sensitivity of your situation or the importance of strict confidentiality.

When all this is not possible, legal advice may be sought by contacting a Lawyer Referral Service operated by a local or state bar association. In some areas "leads" can also be obtained from advertisements in the Yellow Pages or in local or alternative life style publications.

If you anticipate that fees and costs may be a major inhibiting factor in the obtaining of legal services, you may wish to contact a local Legal Aid Bureau or a legal aid service operated by a local volunteer service group.

**STEP THREE:** When you have collected a list of candidates, call their offices. Briefly state your legal situation and ask the lawyer if he or she has an interest and knowledge in that subject. If you were referred to the lawyer by a third party it may be helpful to mention the referring person's name. This can help the lawyer to understand if there are special needs that

you may require. Ask for an initial consultation appointment and whether there is a fee for such an appointment.

At the initial consultation it is quite appropriate to ask a lawyer to briefly describe his or her background and training. In addition, don't be afraid to ask the lawyer to relate his or her experience in handling matters similar to yours.

It is also perfectly in order (if not mandatory) for you to discuss your lawyer's fees and the costs that may be necessary in representing you. While the lawyer may not be able to give you the exact amount of the fees and costs, it may be possible for you to obtain an initial estimate and an explanation of the contingencies that may cause the fees and costs to be more or less than the original estimate.

Other considerations in selecting a lawyer include the location of his or her office (It's best to obtain a lawyer admitted to practice in the state and jurisdiction in which you reside or the place where you are being sued.); and his or her personality (Does he or she make you feel at ease and respond thoughtfully and clearly to your questions?).

Finally, you should come away from the first meeting with some idea of the legal procedures that the lawyer thinks is necessary in your situation and the services that he or she will provide should you desire to proceed as a client.

**STEP FOUR:** After the first visit you should be able to make a decision whether you wish to retain the lawyer to represent you. At this point you should have confidence in the lawyer's ability and be comfortable with the relationship.

## **HOW DO LAWYERS SET FEES?**

Lawyers use a combination of factors in setting fees. Besides direct income, a lawyer, like any business person, must take into consideration overhead and other usual expenses of running a business office. This includes rent, furnishings, secretarial salaries, accounting costs, printing and postage, telephone and other utilities, office equipment and supplies, and taxes. It is also expensive for a lawyer to either maintain or

have access to a good law library. And, a lawyer must pay for subscriptions to various legal services and publications in order to keep informed of the latest developments in a legal system which has become increasingly complex.

There are four basic types of fee arrangements customarily used by lawyers.

- \* **Fixed Fees** - For uncomplicated and routine services, such as drafting a simple will, or handling a name change, some lawyers charge a flat or fixed fee. The fee is not based on the actual number of hours expended on the matter but rather on the "average" anticipated time it takes to perform the service.
- \* **Hourly Charge** - The most common fee method is the use of a fixed or set charge per hour. The fee is computed by multiplying the hourly rate by the number of hours the lawyer has actually spent working for you. Hourly rates of lawyers will vary depending upon a lawyer's experience and the demand for his or her services. Rates can also vary depending on whether the time is spent in the office or "on trial" in court.
- \* **Contingent Fees** - In certain types of lawsuits, such as for personal injury, it is customary for the lawyer representing the injured party to agree to accept a percentage of any recovery as his or her fee. If the suit is unsuccessful the lawyer does not receive a fee, however the client is expected to reimburse the lawyer for costs. The fee percentage in contingent fee matters can vary by agreement between the lawyer and the client.
- \* **Fees set by the Judge** - In some jurisdictions and in some special circumstances, such as in probate or in workman's compensation matters, the judge sets the fee according to a suggested fee schedule either required by law or established by the court. Usually, the judge in setting the fee takes into consideration the amount and difficulty of the work performed by the lawyer as well as any unusual circumstances.

In addition to fees a lawyer usually adds out-of-pocket costs and expenses to the client's bill. These costs include filing fees

assessed by a court, court reporter's costs, long distance telephone charges, transportation and travel costs, photocopy charges, investigation costs, and fees and expenses paid to witnesses.

It should also be noted that fees in divorce and other family matters can also become complex and can vary depending on whether the matter remains uncontested or whether one of the parties is ordered by the court to pay all or part of the fees and costs of the other party.

In all matters, fees and costs, and the variables and possibilities affecting fees and costs, should be discussed with your lawyer in advance so that you have a full and complete understanding of your obligations and responsibilities.

If your lawyer requests a deposit, sometimes called an "advance" or "retainer", ask whether any part of it will be refunded if you do not proceed. Traditionally, a retainer was considered non-refundable. However, on occasion lawyers may refund an advance or retainer after reimbursing themselves for services actually performed. It's best to confirm your lawyer's policies in this regard at the initial consultation.

Many lawyers and clients enter into a written agreement on fees and the payment of costs. You should carefully read and understand such an agreement before you sign it.

## HOW TO HOLD DOWN LEGAL COSTS

Most lawyers maintain detailed records of the time expended and the work performed for each client. These records serve as basis for billing. If you have a question regarding your lawyer's bill ask for an explanation. Sometimes questions and problems can occur because the client is unaware of the extent or the nature of the work the lawyer has actually done. Reaching an early understanding with your lawyer will lessen the chance of a future billing surprise or misunderstanding.

There are some things you can do to help hold down legal costs. This includes:

- \* Before meeting with your lawyer, collect and bring with you all letters, documents and information regarding your matter.
- \* You should also keep and be on time for all appointments with your lawyer and do not skip or fail to appear at required court appearances or depositions.
- \* When talking with your lawyer share ALL information in your possession, even if it is not in your favor.
- \* Keep a written list of questions to be asked, and issues to be discussed, at the meeting. This will avoid unnecessary and costly follow-up meetings and telephone calls.
- \* Avoid frequent or excessive telephone calls or visits to your lawyer just to find out how things are going. It is better to ask your lawyer to keep you advised on a regular basis of the progress of your matter.
- \* Ask your lawyer to suggest ways to keep costs down. Some lawyers employ paralegal assistants to help gather factual information and prepare simple (rough draft) documents for filing with the court. The time billed for these assistants are usually billed at a lesser rate than the lawyer's.

## **WHAT IS YOUR LAWYER'S DUTY TO YOU?**

Your lawyer must be completely loyal to you and your cause. This means that he or she must have no conflicts of interest or competing loyalties to other persons.

Your lawyer must uphold and protect your rights and interest with all the skill, knowledge, and resourcefulness at his or her command. To do this, he or she must know all the facts of the case including those that may not be favorable to your cause. Your lawyer may not disclose these facts to anyone else without your consent unless required to do so by law or the court. He or she must keep your confidence at all times.



A lawyer's failure to communicate with a client is often the cause of client dissatisfaction. Therefore, ask your lawyer to make timely periodic reports to you, either by telephone or in writing, of the status of your matter. It's your lawyer's duty to keep you informed.

Lawyers are required to maintain client trust funds for the holding of funds he or she is managing on your behalf. Your lawyer may not expend funds he or she is holding for you without your knowledge and should give you regular and prompt accounting of those funds. Your lawyer may not commingle your funds with his or her own personal funds.

In addition to being your advocate, your lawyer is also at all times an officer of the Court. This means that he or she must be loyal to the administration of justice. While he or she may use all legitimate means in your behalf, he or she may not resort to illegal or unethical conduct or tactics, or utilize untruths.

## **WHAT IS YOUR DUTY TO YOUR LAWYER?**

Your first duty to your lawyer is to give him or her your complete cooperation. This means a prompt response to your lawyer's letters and telephone calls and prompt payment of bills.

You should also keep and be on time for all appointments with your lawyer and do not fail to appear at required court appearances or depositions. Failure to do so could result in adverse action in your matter, jeopardize your relationship with your lawyer, and increase your fees and costs.

You also need to keep your lawyer informed of your whereabouts and any changes in facts previously reported to him or her. As previously mentioned, you need to share ALL your information with your lawyer, even if you believe some of it is not in your favor.

Communications between you and your lawyer are protected by an "Attorney-Client Privilege". That means that it is against public policy for information and discussions between you and your lawyer, given in the course of a confidential professional relationship with your lawyer, to be divulged. This privilege can be lost or waived if you reveal the same information and discus-

sions to someone other than your lawyer. Therefore, it is best not to discuss the details of your matter with anyone other than your lawyer. If you have any questions about this privilege discuss it with your lawyer.

It is important to establish a comfortable relationship with your lawyer. For many people, this is determined by the lawyer's willingness and ability to speak openly, clearly, and patiently with them. Don't forget, however, that it takes two to communicate, and that you will need to ask questions.

Finally, if you are unhappy or dissatisfied with your lawyer's performance there are some steps you can take.

First, discuss your complaint or problem with your lawyer. Many misunderstandings can be resolved at this level. Pursue it until you reach an impasse with the lawyer, or his supervisor, if there is one. If your lawyer is a member of a large law firm it may be possible to discuss your matter with a senior partner or request that another lawyer within the firm be assigned to handle your matter.

If you believe your lawyer has engaged in illegal or unethical conduct it may be necessary to contact your state's lawyers licensing and disciplinary board. In most states this board is associated with your state Supreme Court. Since this review process can be lengthy, it will probably be necessary, if you haven't already done so, to end the relationship and seek other legal representation.

Do not be reluctant to go elsewhere if your lawyer does not meet your needs or expectations. You have a right to be a satisfied legal consumer.

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