

Everything You Should Know About

Hiring a Lawyer



PROVIDED BY



The Best Way to Find the Right Lawyer

Everything You Should Know About Hiring a Lawyer

Provided by LegalMatch

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Introduction

Thank you for your decision to work with LegalMatch. We understand that this may be the first time you have ever had to hire an attorney. When hiring a lawyer for the first time, it's not at all unusual to ask such questions as, "What are my rights as a client? How does a trial work? What is my role as a party in a lawsuit? What should I expect from my lawyer?"

At LegalMatch, we understand your concerns, so we are providing this guidebook to help address any inquiries you might have. The purpose of this handout is to teach you just about everything you should know about hiring a lawyer. This book contains many legal tips and pointers that will help you at every phase of the legal representation- from hiring a lawyer, to preparing for trial, and even after the end of litigation when your legal issue has been completely resolved.

Preparation is one of the key ingredients for succeeding whenever you begin a new project. Your success is our top priority, and we want you to be as prepared as possible during every step of the way. A thorough read through this handbook will help you be more informed so that you increase your chance of success. Enjoy!

Questions for Your Attorney

What Questions should I ask my Lawyer?

You will probably have many questions for your attorney when you first meet with them. Your lawyer knows that you will have plenty of inquiries regarding your case and their own services. Asking your lawyer questions is absolutely encouraged- in fact, the questions you ask may provide your attorney with information that will be helpful to your case.

However, you don't want to involve your attorney with inquiries that are unrelated to your particular situation. *Understand that both you and your lawyer may not have all the time in the world to go over every single question.* It is much better for both you and your attorney to plan out your questions ahead of time before the interview.

You may wish to consider dividing your questions into two categories: **information regarding the lawyer** and **information regarding your current legal case**:



Information regarding your Lawyer:

Background check-

- What school did you obtain your law degree from?
- Which jurisdictions are you licensed to practice in (this may be important if you're dealing with out-of-state matters)
- How long have you been practicing in this particular field of law?
- Do you have any areas of expertise or any special knowledge that might be useful for my claim?

The Lawyer's role in their firm-

- Are you a partner, associate, or a founding member of the firm?
- Will you be working alone or with a partner? Will a team be working on my case?
- Will you be assigning any portions of the work to other firm members?

Personal views and conflicts of interest-

- Do you hold any personal views or opinions that might prevent you from effectively representing me in court (for example, whether they have any personal, moral opinions about your legal claim, etc.)
- Have you worked on other similar cases involving matters that are substantially related to my claim?
- Have you worked for the opposite party in another legal case?
- Are you currently representing another party that might be opposed to my claim, such as an outside insurance company?



Information regarding your Current Legal Case:

Past success in related cases-

- Have you ever handled a case like mine?
- What is the rate of success for clients in similar types of claims?
- How many cases have won and how many have settled with this type of matter?
- What is the projected amount of monetary damages that I will be entitled to receive?

Fees and costs-

- Can you present me with a ballpark figure of how much the entire process will cost, including legal fees and court costs?
- Will you be working on a contingency fee basis or a flat hourly rate?
- Will you accept payments in increments?
- What forms of payment do you accept (i.e., check, credit card, etc.)
- Will you be sharing the fees with any other attorneys?

Projected outcome of the case-

- Are you able to anticipate the various strengths and weaknesses of the opposing party's arguments?
- How long will the case take in order to resolve the dispute (this might also be related to the overall cost of the lawsuit)
- Are there any alternatives to litigation, such as mediation or alternative dispute resolution (ADR)? Will you be able to represent me in such alternatives?

The questions above are only general suggestions- be sure to include any inquiries or concerns that could be relevant to your legal claim. *Again, be sure to ask the questions that are the most applicable to your case.*



Are There any other Considerations to Think About?

You should be aware that conflicts of interest can present challenges for your legal claim. A judge can actually dismiss an attorney from working with a client if they have a conflict of interest which would impair their ability to represent you. The most common conflicts of interest are if the attorney is financially invested in your situation, or if they have previously worked for the opposing party.

Also, in very rare instances, sometimes an additional attorney may be needed. For example, some jurisdictions allow an attorney to negotiate a separate, unrelated business transaction with the client they are currently representing. In such instances, a different attorney might be needed to mediate the contract.

Finally, you should understand that due to time and financial restraints, it might not always be possible to constantly stay in communication with your attorney. You will likely check in with your attorney over the phone at designated times. You will probably only be meeting with them in person if important developments emerge. In between communications with your attorney, be sure to keep track of any additional questions that might come up as the case progresses.

Did you know?...

In the year 2008, attorneys held about 759,200 jobs in the United States. Employment in the legal field is expected to increase by about 13% for the fiscal years of 2008-2018.



Tasks and Responsibilities

How are Tasks Divided between the Lawyer and the Client?

Rules of professional conduct and ethics govern how tasks are to be divided between the lawyer and client. States may also have their own laws regarding the division of tasks, which are normally entitled “Allocation of Authority between Lawyer and Client”.

As a general rule, it is the client’s job to make the major decisions in their case. The lawyer is required to abide by these decisions according to the client’s desires.

The lawyer’s job is therefore to select the means to complete the client’s goals. They are responsible for tasks involving legal procedures, strategies and court tactics. Even still, the lawyer is required to consult with the client about the course of action to be taken according to the law.

This means that you and your lawyer will need to cooperate thoroughly and communicate very clearly regarding what you wish to achieve in court. That way, your lawyer will know which actions to take for your particular circumstances.



What Tasks is my Lawyer Responsible For?

Your lawyer is responsible for making decisions regarding legal procedures and legal strategies. The lawyer's tasks mainly deal with technical, legal, and tactical matters, since the client is not expected to know the ins and outs of court procedures.

For example, lawyers are responsible for the following tasks:

Procedural Issues:

- Ensuring that the claim is filed within the deadlines known as the statute of limitations
- Selecting venue (the location where the case will be heard)
- Filing the appropriate papers with the court
- Responding to any court papers filed by the other party such as requests for documents

Strategic Matters:

- Investigating the case through discovery (obtaining information from the other party)
- Speaking for the client in court
- Selecting a jury
- Handling trial
- Appealing your case
- Recommending courses of action the client should take at all stages of the case
- Regularly communicating with the client to provide updates

There is not really a “bright line” dividing rule between what is considered to be a strategic task or a substantive issue. Make sure to consult with your lawyer regarding any major changes or revisions to your case.



Which Tasks am I Responsible For?

You are responsible for making all the substantive decisions of your case, including:

- What type of claim to file
- Whether to pursue a lawsuit or settle the legal matter out of court (you still may need a lawyer to represent you in out-of-court settlements)
- Criminal cases:
 - What type of plea you will be entering, i.e., guilty, not guilty, no contest, etc.
 - Whether to request or waive a jury trial
 - Whether or not you will testify at trial

You should inform your lawyer of the main direction in which you want your case to proceed. They will respond accordingly with suggestions as to how to achieve the overall aim of your legal claim. In other

words, your attorney needs your permission before acting in substantive matters.

Feel free to ask your attorney about the various ways in which your case can be argued and if there are any exceptional alternatives which may be appropriate for your case.

So, while you're not expected to have even a basic understanding of how the law works, you should have a good idea of what you expect to get out of trial. For example, you should have

an idea of how much monetary compensation you might be asking for or what types of relief you need. This makes it easier to tell if you have an actual case or if the lawsuit is "frivolous" (too trivial to be heard in court).

Amazing isn't it?...

Lawyers often perform a variety of tasks. 37% of American lawyers work over 50 hours per week. For lawyers engaged in private practice, tasks include research and writing, meeting with clients, and arguing in court. Lawyers who work on a salary basis sometimes have more structured work hours.



What Happens if I Disagree with my Attorney over our Tasks and Responsibilities?

It is the lawyer's job to abide by the decisions of the client. However, lawyer ethical rules state that the lawyer may limit the scope of representation only if such alterations are reasonable and the client gives informed consent. A client may elect to fire their attorney at any time, though this might not always be a practical option if trial is already underway.

A good example of a typical dispute between a lawyer and client is the decision whether to file an actual lawsuit or to settle out of court. As mentioned, it's the client's decision whether to pursue a trial or to settle. However, it is also the lawyer's responsibility not to file a lawsuit that is frivolous or lacking merit. In this situation, the lawyer and client would need to discuss whether the lawsuit has the proper basis to be filed in court.

The client cannot request the lawyer to do anything illegal, and vice versa. On the other hand, you should expect your lawyer to discuss all the possible legal consequences of any proposed course of legal action. Your lawyer might instruct you to make a good faith effort to determine the scope, meaning, application, or validity of any given law.



How Important is Communication when it comes to Dividing Tasks?

Communication is key when it comes to dividing tasks between you and the lawyer. In general, your lawyer should consult with you on every major decision before they return a response to the judge. It's always best if both you and your lawyer are in agreement on a decision.

If you both are attempting to accomplish different objectives, it will seriously affect your case. The best way to avoid such conflicts is to communicate clearly and frequently.

Thus a main role of the lawyer is to arrive at a balance between the client's particular needs and the requirements and limitations imposed by the law. The lawyer is basically a mediator between the client on the one hand and the legal system on the other (including the court, judges, and opposing lawyers). You can think of your lawyer as a sort of translator or interpreter for their clients, since laws can sometimes be complex and difficult to understand. However, it's up to you to make major decisions in light of what the law says.



Fees and Pricing

How Does Pricing Work?

The total cost for any given legal case depends on a variety of factors. The overall price can be divided into two areas: fees that you pay to your attorney, and the costs associated with the litigation. Both of these are affected by such factors as:

- The type of legal claim involved (i.e., a contracts suit vs. a felony case)
- The economic conditions and the standards of living of your jurisdiction
- The field of law involved (i.e., immigration law vs. divorce law)

There are many different pricing options and fee arrangements that can be used when you hire an attorney. The purpose of this chapter is to clarify different pricing options and to illustrate when and how they may be used.

What is the Difference Between “Fees” and “Costs”?

The word “Fees” refers to the payment that your lawyer receives in exchange for the work done on your case. These are specified in a fee agreement, which is a written agreement signed between the lawyer and client before work on the case begins. The fee agreement specifies details such as whether the lawyer will be paid on an hourly basis or on a contingency basis, and whether payment can be made in installments (more on fee arrangements below).

In contrast, “Costs” usually refers to any expenses that are related to the lawsuit such as court filing fees, photocopy costs, and other administrative matters. Sometimes the client will pay these costs and sometimes the attorney will pay for them, depending on what is stated in the fee agreement.

The client (you) will usually have to pay for the following costs:

- Court filing fees
- Photocopy charges
- Mail delivery charges including courier, postage, and overnight services
- Long distance phone charges
- Expert witness and court reporter charges
- Travel and transportation charges, so long as they are reasonable

Your attorney will usually pay for the following costs:

- Standard office staff and secretarial services

For your information...

Upon graduation, most lawyers begin their legal careers as associates with a salaried position in a law firm. Other popular career paths include becoming a firm partner, starting a solo practice, or teaching law. Americans and lawyers spend over \$150 billion per year in legal fees and court costs.



- Standard office materials and supplies
- Local phone charges
- In-town or local meals
- Special travel arrangements such as first-class travel costs or out of town meals

Payment for these associated costs should be addressed in your fee agreement. If you have questions regarding any other costs, be sure to ask your attorney about them.

What is Contained in a Fee Arrangement? Should I Have a Fee Arrangement?

You should always have a written fee arrangement when working with an attorney. This is to be signed and agreed upon by you and your attorney at your first meeting. The fee arrangement is basically a contract which outlines the manner in which you will pay your attorney for their services. Fee arrangements should address the following:

- What types of services your lawyer will perform for you
- The type of fee (hourly, contingent, etc.)
- Whether or not you will pay a retainer fee (similar to a down payment)
- An estimate of total fees and costs
- How often you will be billed
- Specification of which costs you will pay for and which costs your attorney will pay for
- If your lawyer will be working on a contingency basis, how much they will receive if you win

Your fee agreement should be as specific as possible so as to avoid billing disputes. The type of fee arrangement that you agree upon can have a great impact on how much you have to pay overall.



What is a “Contingency Fee” Basis?

A contingency fee or contingent fee means that your lawyer will not charge a specific amount. Instead, your lawyer will earn a percentage of the judgment if any is awarded. The word contingent means “depending upon”, which means that the amount your lawyer takes is dependent upon the outcome of the lawsuit.



Most contingent fees are in the amount of one-third of the judgment or settlement amount. Thus, if you awarded a sum of \$90,000, your lawyer will be entitled to one third of the amount or \$30,000.

This percentage can be negotiated between you and your attorney depending on the type of claim. In some types of cases, contingent fees are prohibited (such as in most divorce cases).

Contingent fee arrangements are most commonly employed in personal injury and employment cases, but they can also be found in real estate, probate, and business litigation matters, among others.

What Other Types of Fee Arrangements are There?

There are many different types of fee arrangements besides contingency fees. The most common types of attorney fees include:

- **Hourly Fees:** This is where the attorney charges based on the amount of hours of work they put into your case. This is the most common type of fee, used in both civil and criminal cases. The total amount of hours will vary greatly depending on the nature of the case. Be sure to ask your attorney for an estimate of hours if they will be charging on an hourly basis.

- **Flat Fees:** This is an overall charge paid up front for the entirety of the legal representation. It is usually employed when the services are more predictable, such as in criminal cases. Your lawyer should explain to you exactly which expenses and services are included in the flat fee.
- **Retainer Fee:** This is an advanced payment (like a down payment) when the lawyer is charging an hourly rate. The client deposits their money into the lawyer's trust account, and the lawyer will deduct fees as the services are completed. Any remaining retainer fees are generally refundable to the client.
- **Statutory Fee:** this is a fixed fee that is set by law or statute. Some types of legal work require the court to approve the fee.

These are the most basic and common types of lawyer fees. Other types of fees are:

- **Consultation Fee:** some lawyers charge a fee for your first meeting. The fee may either be a fixed fee or an hourly fee. During this initial consultation, several important determinations are made or advice may be given.
- **Referral Fee:** Sometimes an attorney who has agreed to accept your case may have to transfer or refer your case to another lawyer. In this case, the attorney may charge a portion of the new attorney's total fee. Some jurisdictions prohibit referral fees unless the first attorney did substantial work on your case, informed you of the referral fee, and such fees are reasonable.
- **Modified Contingency Fee:** this is where the lawyer charges a lower hourly rate but is awarded a portion of the judgment amount or a bonus if the case is successful.
- **Blended Fees:** these are employed if several lawyers working for the same firm will contribute to the case. The separate work done by each attorney is combined into a single bill and can result in an overall lower cost.

- Accommodation Rate: this is not really a fee but is a demand letter written by the attorney to someone who owes you money. Most lawyers will charge a very small fee for this service.

No two legal cases are the same, so you should understand that it may be difficult to obtain an exact estimate of fees and costs. This is especially true for cases involving hourly fees or contingency fees. You should review the different types of fee arrangements before meeting with your attorney for the first time.

Confidentiality and the Attorney-Client Privilege

Client confidentiality is at the heart of your new attorney-client relationship. If your lawyer is to represent you effectively, it is very important for you to feel a sense of trust and confidence in your legal counsel. Your legal issue may involve a number of sensitive and private matters. Understand that all attorneys are held to very strict standards when it comes to keeping your information confidential.

As a client, you are expected to share with your attorney as much information as needed to further the cause of your case. However, as a client you're also entitled to understand what your rights are concerning the standards of confidentiality. What follows is an explanation of the various confidentiality standards that all lawyers are held to.

What Confidentiality Standards is my Lawyer Bound To?

To begin with, you should understand that there are two basic standards that lawyers must adhere to when it comes to keeping your personal information confidential. The first is called the lawyer's **Duty of Confidentiality**, while the second is called the **Attorney-Client Privilege**. Each of these will be discussed in detail below.

What is the Lawyer's Duty of Confidentiality?



To put it briefly, the Duty of Confidentiality states that your lawyer cannot reveal anything that is related to your legal representation without your consent. Thus, your lawyer is prohibited from revealing any matter that might be related to the legal claim for which you have hired them.

This is a very broad standard which applies to all matters related to your claim, not just confidential communications or communications that were intended to be confidential. So, for example, if you hired a lawyer for a divorce claim and have told them information regarding a previous divorce, they are not supposed to disclose this information to other persons since it may be related to your claim.

What are Some Other Features of the Duty of Confidentiality?

The source of the information does not matter with respects to the duty of confidentiality. If your lawyer has learned information about you from a person besides yourself, they cannot disclose the information if it is related to your claim.

Also, the duty of confidentiality begins even *before* a lawyer-client relationship has officially been formed. When you initially meet with an attorney, you will likely have to disclose a certain amount of information even before you hire them. This is to allow the attorney a chance

to see if they can take your case or not. This information is also to be kept confidential if it relates to your particular legal claim. The duty also applies even if no formal lawyer-client relationship is ever formed.

Finally, the duty of confidentiality extends indefinitely, even after the case is resolved and the attorney-client relationship has formally ended. Your lawyer is not allowed to disclose confidential information related to your claim after they are done representing you in court.

The main thing to remember with the Duty of Confidentiality is that it only pertains to matters related to your legal claim. Thus, your lawyer may be allowed to reveal information that is not related to your legal representation.

What is the “Attorney-Client Privilege”?

On the other hand, the Attorney-Client Privilege is a much stricter standard. It protects communications between a client and their attorney for the purpose of obtaining legal advice or assistance. It protects both the client and the attorney from being compelled to reveal confidential communications in a court of law.

In order for a communication to be protected under the attorney-client privilege, the following five elements must be met:

- The person claiming the privilege must be a client, or had sought to be a client at the time of communication
- The person receiving the communication must be acting as the person’s lawyer
- The communication must be private, that is, between a client and attorney only, with no involvement from non-clients
- The communication must be made for the purpose of securing legal advice, services, opinions, or assistance in a legal proceeding
- The privilege may only be waived by the client, and they must demonstrate informed consent to waive- the lawyer cannot waive the privilege for you

Unlike the duty of confidentiality, the attorney-client privilege is available only where a formal attorney-client relationship has been formally established. Under federal laws, the privilege continues even after representation is complete. It continues even after the client has become deceased, unless they have given prior permission to make a disclosure. State laws vary regarding how long the privilege lasts.

The attorney-client privilege is actually an evidentiary rule and is intended to encourage frank and open dialogue between the client and the attorney they have hired. The idea is that if you know that you or your attorney will not be required to disclose sensitive information, you will be more likely to provide them with detailed disclosures. The attorney-client privilege is one of the most powerful evidentiary rules available to clients.

Are there Circumstances When My Attorney can Reveal My Confidential Information?

Yes, there are exceptions to both the duty of confidentiality and the attorney-client privilege. If the communication falls into any of these exceptions, the attorney's obligation to keep the information secret is no longer applicable, and they may reveal the information before a judge or other authorities.

Information that is normally protected under the Duty of Confidentiality may be disclosed under the following circumstances:

- **Consent:** Information may be revealed if the client consents to disclosure. This may either be express (i.e., oral or in writing) or implied from the client's conduct. The client must be informed as to the consequences of disclosure.
- **Self-Defense of Attorney:** The attorney can disclose confidential information if it is necessary to defend themselves against a personal claim that the client filed against them.

- **Prevent Client from Committing a Crime:** If the client is about to commit a crime involving the death or serious bodily injury of another, the attorney can disclose information regarding the crime. This also applies to crimes involving serious financial loss.
- **Court Order or Rule of Law:** If a court orders the attorney to make a disclosure, or if it is required by law, they will be required to follow the judge's instructions.

Exceptions to the attorney-client privilege include:

- **Disclosure by Client:** If the client discloses information to a party other than their attorney or staff, they have effectively waived (lost) the privilege. The communication can then be used in court. The client can also consent to disclosure.
- **Crime/Fraud:** If the client sought the lawyer's services in order to commit or aid in the commission of the crime, the lawyer can reveal the information.
- **Joint Client Exception:** Suppose the attorney is hired by two people to represent them as joint clients. If they subsequently file a lawsuit between themselves, either party can use the attorney as a witness if they desire. The attorney might then disclose information about either party.
- **Self-Defense of Attorney:** As a defense in court, the attorney can disclose the client's information if the client chooses to sue them.

Thus, it is important for you as a client to be aware of the limits of the confidentiality standards. Understand that there are certain circumstances wherein the dialogue between you and your attorney can be disclosed, though this is relatively rare.



To Whom Can My Confidential Information be Disclosed?

There are certain instances when confidential information might be required for submission as evidence in court. For lawyers in the same firm to do work on one case. In this situation, your communications might be made known to other lawyers in the firm. This is typically allowed by state laws, since the lawyers in the same firm are bound under the same confidentiality standards. However, if you are opposed to a different attorney performing work on your case, you should inform your lawyer of your concerns.

What Happens to My information Once the Case is Over?

Both the duty of confidentiality and the attorney-client privilege continue even after the case has been concluded. No matter what the results of the case are, your attorney is not allowed to disclose any information according to the duty and the privilege.

This is why it is always important to inform your attorney if a different attorney has worked on your case before, or has worked on a similar case you were involved in. Such information remains confidential and can have consequences regarding what may or may not be disclosed in a subsequent case. Be sure to inform your lawyer of any past lawsuits as well as the entire history surrounding your legal claim.

Consider this...

Law school is where lawyers learn basic skills and etiquette in dealing with clients. There are currently 200 law schools accredited by the American Bar Association (ABA). Law school enrollment peaked in 2009 with 142,922 students enrolled. The legal field is becoming more and more specialized, with some attorneys working as “specialists within a specialty”.



Developing a Winning Trial Strategy

Most lawsuits are adversarial in nature. This means that two parties will be presenting their legal arguments in a manner that pits one side against the other. No one enters into any adversarial contest without first devising a strategical plan for success. One of the most important things that you and your lawyer will be doing is planning out a trial strategy that will outline the course of action for trial.

What is “Trial Strategy”?

Trial strategy refers to the overall planned approach to your trial. The well thought-out plan should cover all major aspects of the trial from beginning to end. It also describes how you and your lawyer are to go about achieving your goals. Consider your trial strategy as your “roadmap” or “game plan” which will give direction and uniformity to your presentation in court.

Trial strategy is much different from “trial tactics”, though the two are often mistakenly used interchangeably. Trial tactics refers to individual techniques that a lawyer might employ when making an argument in

court. The word “tactics” often has a negative connotation, because it is sometimes used to describe the application of trickery or deceit.

An example of disreputable trial tactics is when a lawyer deliberately misquotes a witness’ testimony in order to confuse them. Such dishonest techniques have nothing to do with proper trial strategy. Dishonesty in court is prohibited and can lead to severe legal consequences. If your trial strategy is effective, you and your lawyer will not need to resort to using questionable trial tactics.

What are the Benefits of Having a Trial Strategy? Why Should I have One?



The main benefit of having a trial strategy is that you and your lawyer will have a general outline of the arguments from start to finish. This eliminates any guesswork from your presentation, since you will know what to do beforehand. Trial strategy allows you to concentrate on presenting your arguments, much like having a script to rely on.

It is unwise to have a haphazard, disorganized approach to litigation. A common reason why self-representation in court (without a lawyer) fails is not due to a lack of legal knowledge, but rather sloppy presentation.

Another benefit of using a trial strategy is that it creates a unified presentation in court. Judges and jurors will appreciate it if your arguments are connected by an overall theme instead of being disjointed and unconnected. They will be more able to remember your key points, which could be a decisive turning factor for your success.

What Should a Trial Strategy Include?

Generally speaking, your trial strategy should accomplish three main goals:

- Develop an **overall theme** that unites your case from beginning to end
- Emphasize the **strengths** of your own case while highlighting the other side's **weaknesses**
- Prove how the facts of the case satisfy the **requirements of law**

These three principles should run throughout the entirety of your lawyer's legal presentation. At each point in trial your trial strategy should achieve these goals.

Trial strategies are best organized according to the natural progression of most civil and criminal trials. You may wish to structure your trial strategy according to a timeline:

Jury Selection:

- Select a jury that is not biased or overly opinionated
- Eliminate "problem jurors" who might damage your case

Opening Statements:

- Create a captivating first impression
- Introduce the theme of your case (for example, "He is not guilty of DUI because his blood alcohol level was under the legal limit")
- Briefly introduce the legal requirements

Legal Arguments:

- Introduce 3-4 key arguments in support of your case, giving more weight to the strongest one
- Locate any possible defenses in anticipation of the opponent's arguments

Witness Testimonies:

- Fill in your story with descriptive portrayals and examples
- Identify expert witnesses
- Expose any lack of credibility of opposing witnesses



Exhibits and Other Forms of Evidence:

- Clearly mark all exhibits before presenting them; secure the labels so they do not change or fall off of the exhibits during presentation
- Use visual evidence- many jurors tend to be visual learners
- Prevent incriminating or damaging evidence from being admitted based on evidentiary rules

Final Remarks and Closing Statements:

- Leave a lasting final impression
- Reiterate your main points: repetition = memory

As you can see, there are so many points to consider in any given trial. It would be difficult to try and approach such a serious endeavor without a game plan. *Even though it may take you and your lawyer some extra time in the beginning, it is worth it in the long run to create a workable trial strategy.* The difference between having a trial strategy and being unprepared is enormous.

Are there any Special Considerations for Developing a Criminal Defense Strategy?

Yes- criminal defense trials present some unique challenges due to the nature of criminal law. Criminal cases often subject the defendant to inquiries into their “moral culpability” or overall standing in the community. Also, community attitudes toward crimes and police can be different based on the jury pool. So, when formulating a trial strategy, the defense attorney and the defendant need to consider these important factors.

In addition, sometimes the goal in a criminal case is not to prove that the defendant is innocent, but rather to receive a lesser charge, such as reducing the charges from murder to manslaughter. For this reason defenses in a criminal case will usually fall into one of three categories:

- Complete Confession- the defendant fully admits their guilt
- Complete Denial- the defendant denies that they committed the crime. Usually an alibi (excuse or explanation) will be presented, such as “I was not at the scene of the crime.”
- Admit and Explain: The defendant admits that they committed the crime but offers an explanation of their actions, such as, “I did commit the crime, but I did it because I was held at gun-point and forced to do it.”

Whatever type of category the defense falls under, it should be consistent with the evidence presented. Also, it should be able to foster the sympathy of the judge or the jury. For example, the defendant’s story might demonstrate that they acted in self-defense or attempted to withdraw from the crime.

Finally, a good defense strategy should explain why the events occurred as the defendant claims. Suppose that your defense states you were out of town during the crime. You should be able to explain why you were gone, and be able to present evidence in support of that statement.

Lawyers in training:...

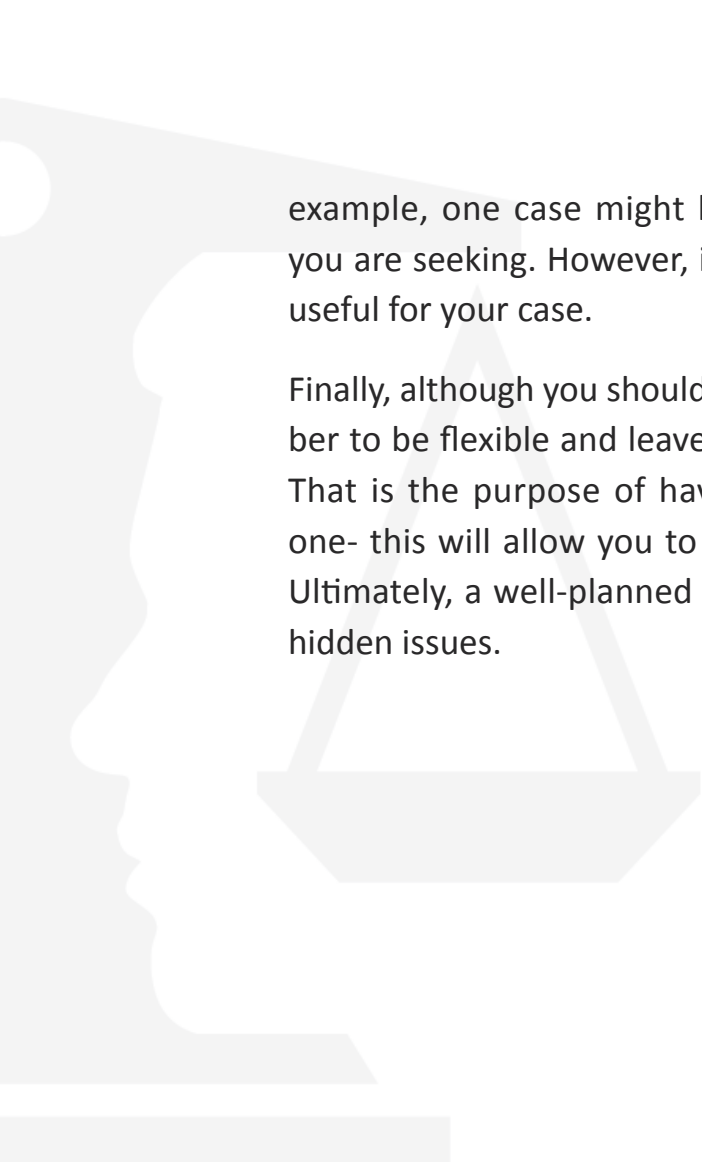
Law students gain experience through simulated court exercises known as mock trial. Participation in law school journals helps students gain experience in research and writing. Many law schools offer clinical programs and internships to help students gain valuable hands-on experience working with clients. All of these opportunities help future lawyers hone their trial strategies and abilities.

Are There any Other Considerations to Remember When Creating a Trial Strategy?

Always remember that some laws are different from state to state and according to jurisdiction. Be sure to consider these differences in laws, and tailor your strategy to conform to the proper laws. There is nothing more damaging to your case than arguing according to the wrong law or a law that has recently been overturned.

You and your lawyer should go over similar cases to collect information and arguments that you can use in your own strategy. For





example, one case might have had a different result than the one you are seeking. However, it might reveal an argument that might be useful for your case.

Finally, although you should stick closely to your trial strategy, remember to be flexible and leave room for any unexpected developments. That is the purpose of having 3-4 key arguments rather than only one- this will allow you to make adjustments as the case proceeds. Ultimately, a well-planned trial strategy should be able to anticipate hidden issues.

Communications with the Opposing Counsel

What the Opposing Lawyer Can and Can't Do

Once your case is underway, it is expected that you and your lawyer will be communicating with the opposing lawyer and their client. Part of any lawsuit or settlement includes many meetings with the opposing counsel. The purpose of such interaction between adversaries is to exchange information and obtain key facts and figures for trial. All of this is necessary in order to make any progress on your case.

Professional rules of conduct govern how lawyers are supposed to treat clients from the opposite party. You should be aware of how the other party's attorney is treating you and report any instances of misconduct.

How Do I Deal with the Opposing Lawyer?

First of all, the most important point to remember is that lawyers are prohibited from communicating with persons who are already represented by counsel *unless their attorney approves of such communications*.

That is, if your adversary's lawyer approaches you to speak to you and they have not obtained the consent of your own lawyer, they can be subject to disciplinary actions. You should not speak to that lawyer under such circumstances.

Ideally, your lawyer should always be present if the opposing lawyer must speak with you. It is always a wise choice not to speak with the other party's lawyer unless your attorney is there to represent you. If you're approached by the opposing lawyer, you should refrain from speaking with them until you consult with your lawyer first.

What Can the Opposing Counsel Ask Me? What Can't They Do?

If the opposing party has obtained your lawyer's permission, then they are allowed to ask you matters that are related to your legal claim. You should address their inquiries directly and try to provide accurate responses.

Sometimes meetings and interviews between parties are recorded in written transcriptions. Transcriptions are often made during depositions (interviews of the clients and witnesses by opposing lawyers). Depositions are usually made under an oath requiring you to tell the truth.

This means that information recorded from a deposition can usually be used in a court of law as evidence. Your answers and overall attitude towards the opposing counsel will be reflected in the transcription, so be sure that you are truthful and cooperative.


Even if your opponent's lawyer has obtained permission to speak with you, legal rules prohibit them from dealing dishonestly or unethically with you. When communicating with adversaries and 3rd parties, lawyers are prohibited from:

Did you know?...

Communication in the legal field has become increasingly advanced. Lawyers are quickly incorporating the use of technologies like e-mail, internet research, and electronic court filing. These methods help make the court system more efficient.



- Making false statements
- Violating legal rights in order to obtain evidence
- Using means which serve no purpose other than to delay legal processes, or to burden and embarrass the adversarial party



In other words, the opposing counsel is expected to conduct themselves in an honest and straightforward manner. If you suspect that the other lawyer is employing unethical tactics, you should report this to your lawyer, who will in turn communicate the issue to the judge.

These rules also apply equally to the conduct of your own lawyer when they are dealing with the other party.

Do I Need My Lawyer's Permission to Speak with the Other Party's Lawyer?

Rules of ethics generally state that you do not need your lawyer's permission to speak with the other party or their lawyer. However, it is almost never wise to approach the opposite party without the consent of your lawyer and without them being present at the meeting.

You could lose several evidentiary protections by speaking to the other side without representation. For example, the attorney-client privilege protects private communications between you and your lawyer made for the purpose of obtaining legal advice. This means that the opposite party cannot obtain such information. However, if you volunteer such private information to the opposite party, the attorney-client privilege will be waived or forfeited, and the information could then be used in court against you.

Also, if your attorney is not present to counsel you when speaking with your opponents, there is a possibility of incriminating yourself or divulging information that could be used against your case. While

lawyers are discouraged from completely controlling your responses and communications, they should be present to provide you with advice and guidance.

Can I Speak with the Other Party about Settlement Offers or Damage Amounts?

One of the greatest areas of contention with regards to speaking with your opponent is the issue of monetary damages and settlements. Some clients are eager to negotiate the amount of money that they will receive from the lawsuit.

It is common for clients to jump the gun and contact their opponents without their own lawyer's knowledge in order to discuss settlement amounts. This is not a wise thing to do, because your lawyer may have legal advice that could help you obtain a better settlement or monetary remedy.

You are encouraged to discuss the issue of settlement offers and damage amounts with the other party. Doing so will result in a fair and appropriate judgment according to the laws of your state. However, always inform your attorney and have them present at any meetings or phone conferences. It is in your best interest to be patient and include your attorney throughout the entire process.



Conflicts of Interest and Attorney Malpractice

What is Meant by a Conflict of Interest?

A lawyer has a conflict of interests if they have professional or personal interests that compete with your interests as a client. If your attorney has such competing interests, it will make it difficult for them to represent you fairly and to their full capacity. Therefore, lawyers are prohibited from entering into an attorney-client relationship in which there will be a conflict of interest.

The Model Rules of Professional Conduct issued by the American Bar Association (ABA) address conflicts of interest under the lawyer's Duty of Loyalty to the Client. Once an attorney-client relationship has been formed, the lawyer has a duty to remain loyal to their client at all times. This means that they cannot have any conflicts of interest. If conflicts of interest exist or arise later on during representation, the lawyer is required to withdraw themselves from the case.

Violations of the duty of loyalty due to conflicts of interests can subject the lawyer to disciplinary actions or a civil malpractice suit. There are



some exceptions to this rule, however. For example, there are some instances where the lawyer can proceed with representing their client even though a conflict of interests exists. They usually must disclose the conflict and obtain the client's permission in such instances. However, it is generally discouraged for legal representation to continue if there is a conflict of interest between the lawyer and client.

What Types of Conflicts of Interest Would Violate my Lawyer's Duty of Loyalty to Me?

In general a conflict of interest is defined as simultaneous (at the same time) representation of parties who have opposing interests without their consent. There are several types of conflicts of interest that may lead to a malpractice claim. These include:

- **Simultaneous Representation:** The lawyer cannot represent two different clients or parties who are opponents in a lawsuit
- **Separate Cases:** The lawyer cannot represent two different clients in separate cases wherein the legal position of one party will negatively affect the other
- **Parties with Familial Relations:** The lawyer must not represent both the husband and wife in a divorce proceeding or other similar family law hearings
- **Present or Former Clients:** The lawyer cannot represent a client in matters that may negatively affect one of their present or former clients
- **Acting as a Witness:** Lawyers are prohibited from acting as witnesses in cases where they are presently representing a client
- **Private Interests:** A lawyer's private interests must not conflict with their professional capabilities, such as when they take a case against a close friend
- **Financial Interests:** The lawyer cannot represent a client in matters that they are directly or indirectly financially interested in

- **Business Transactions:** Lawyers are generally prohibited from entering into business transactions with their clients until representation is completed

These types of conflicts of interests could severely impair a lawyer's ability to render fair and equal representation in a court of law. A lawyer should not accept your case if any of these conflicts of interest are present upon hiring them, or if they arise later on.

As mentioned, state laws often provide exceptions to these rules, which may vary according to jurisdiction. However, it is recommended that you avoid trying to work with a lawyer if any of these conflicts apply, even if there may be exceptions to these rules.

Have you heard?...

There are about 40,000 law firms in the United States. Only some 2,000 of them employ over 10 lawyers. This indicates an increase in smaller, boutique-type specialty firms. However, some "megafirms" can employ over 1,000 lawyers.

Are There any Other Issues with Regards to Conflicts of Interest?

Conflicts of interests may be imputed or transferred from one lawyer to another if they work in the same law firm. For example, suppose one lawyer is representing a business in a lawsuit. If any another lawyer from the same firm is representing the other party, then this is considered a conflict of interest as well.

There may also be issues when one lawyer leaves their law firm to work with a different organization. The firm which the lawyer left cannot represent any clients whose claims are materially opposed to the matters which the retired lawyer previously handled. This is especially true if the remaining lawyers have information that is protected by confidentiality standards.



What are the Consequences of these Conflicts of Interest, and How Can I Avoid Them?

Conflicts of Interests can have many harmful consequences. The first is that your lawsuit may experience delays if a conflict of interest exists between you and your lawyer. The attorney will be required to withdraw from the case and you will have to find a different lawyer to handle your claim.

Also, the lawyer may be subject to discipline according to ABA rules and they could be subjected to a malpractice suit. If the violations are serious, the attorney can even be disbarred.

You can avoid conflicts of interests by informing your lawyer of any past lawsuits that you may have been involved in, especially ones that are similar to or related to your present legal claim. Your lawyer also needs to inform you if they have worked on similar or related cases in the past which may conflict with your representation. This discussion should occur during your first meetings with your lawyer. The issue of conflicts of interest should also be revisited if any changes arise later on during the course of the trial.



Firing a Lawyer

Hopefully your case will proceed smoothly and you will not need to consider firing your appointed lawyer. However, realistically many circumstances can come up during trial which create the need for a new attorney. Firing a lawyer, or dismissal, can become necessary for various reasons. This chapter outlines the reasons why a lawyer might need to be dismissed and how to change lawyers if you need to.

Note: The decision to fire your lawyer is a major question that should be approached with great caution. It should only be done when absolutely necessary for the success of your claim. Try to avoid changing lawyers over trivial or meaningless issues.

When Can I Fire My Lawyer if I Need To?

If at any time you are unhappy with your lawyer's quality of services, you can terminate your attorney-client relationship with them and hire a new one. You can do this regardless of whatever type of fee agreement you have and even if your case is already underway in court.

If you have decided to fire your lawyer, it's up to you to find another one. You should have another attorney lined up before you proceed with the decision to dismiss your lawyer. Also, your lawyer will still be entitled to payment for their services rendered up to the time of firing.

You should be aware that if it is close to the end of trial, a judge may not grant a dismissal if it would cause undue delay or disruption of court proceedings. Also, in all criminal cases, any requests for a new lawyer must be approved by the judge.

For What Reasons Can I Fire My Lawyer?

As mentioned in the previous chapters, your lawyer accepts certain duties to you once a formal client-attorney relationship has been formed. We have already discussed the Duty of Confidentiality and the Duty of Loyalty that your lawyer owes to you. If these duties are violated, they can be dismissed from representing you. Other duties that your lawyer owes to you include:



- **Duty of Competence:** Your lawyer has a duty to ensure that they can represent you competently in court. This means that they are of sound mind and health to represent you fully. They should have enough knowledge of the laws involved in your claim to be able to represent you. It also implies that they will exercise due diligence to research your case. Your attorney must be able to represent you zealously and enthusiastically within the boundaries of the law.
- **Fiduciary Duties:** Your lawyer has a duty to deal ethically with you when it comes to fiduciary or financial responsibilities. For example, if a client trust account has been set up for the purposes of paying fees, your lawyer needs to exercise proper care with regards to those funds. Also, if you have entrusted your

lawyer with any items of personal property, they have a duty to safeguard the property until the end of the case.

A lawyer can also be fired if they engage in certain actions that are prohibited by ethical rules. Some of these actions include:

- **False Claims of Expertise:** If a the lawyer holds themselves out to be an expert in a field of law, but do not possess the necessary knowledge or qualifications, they could be liable for malpractice
- **Ignoring Client Requests:** You may fire a lawyer if they do not respond to your requests. For example, if they are continually disregarding your phone calls or e-mails
- **Missing Deadlines:** If the lawyer has failed to file your claim in a timely manner and caused you to lose your case, you may be able to recover for damages. You must be able to prove that you would have won your case if it was filed on time
- **Abusing client funds:** If your lawyer has mishandled your funds, such as improperly investing them, you may be entitled to relief
- **Improper business with client:** Your lawyer should not engage in business transactions with you, or benefit from your loans or credit. They should not have any financial interests with you, nor should they manage a company that would create financial conflicts with your case

These actions and violations listed above can also be grounds for a malpractice lawsuit against the attorney. Also, you may obtain new counsel if your lawyer has repeatedly acted in an unethical manner.

What Happens with Fees and Payments if I Fire a Lawyer?

Your lawyer is entitled to compensation for any work they have done up until the time of firing them. This will be calculated according to the



type of fee arrangement you have between the two of you, whether it be an hourly fee or a flat fee. Your fee agreement might also contain instructions regarding how to calculate payment in the event that you fire your lawyer.

Amazing facts:

Roughly 26% of lawyers are self-employed, practicing in their own solo firms or as independent partners in law firms. Solo practitioners tend to be concentrated in rural areas. Still, nearly 90% of all American lawyers are situated in metropolitan regions. 10% work for some level of the U.S. government. The U.S. Department of Justice is considered the largest law firm in the world.

When you hire a lawyer on a contingency fee basis, it means that they are entitled to a percentage of the monetary award resulting from the judgment. If you have fired a lawyer under a contingent fee contract, they may still be entitled to a portion of the judgment even if you fire them.

Be sure to read the provisions of the contingency fee contract to determine exactly how to deal with the payment.

Many lawyers who work on a contingent fee basis include termination provisions in the fee agreement. It is common for a lawyer to state in the contract that they can only be fired if there is “good cause” to do so. If the fee agreement contains such a “good cause provision”, you need to be able to prove that there is a legitimate reason why you’re firing the lawyer.

Finally, if there are conflicts regarding fee payments upon firing a lawyer, many states offer fee arbitration services to help mediate these kinds of disputes.

How Do I Go About Firing My Lawyer if I Need To?

Once you have made the decision to fire a lawyer, you need to specifically inform them that you are dismissing them. You should instruct them to stop all communications in connection with your legal claim.

The best way to accomplish this is to put it in a written letter to the attorney. That way you have a record of your intentions to dismiss the lawyer should there be a dispute over the termination.



In your letter, you should clearly state your reasons for dismissing the lawyer. Include as many specific details as possible, such as dates, descriptions of events, and transcriptions of any conversations you may have had. You should also address fees and any unpaid costs or payments.

The most important part of the letter is to include a date and time so that you have a record of the exact time you instructed the attorney to stop representing you. Make copies of the writing in case it needs to be used as evidence in a future lawsuit. You may wish to consult with an additional attorney to assist you with the process of firing your current lawyer.

Can My Attorney Withdraw From My Case?

Yes, there are three basic circumstances in which your attorney may withdraw from your case- involuntary, mandatory, and permissive withdrawals:

- **Involuntary Withdrawal of Representation:** This is basically where the client fires their lawyer for the reasons discussed above. The attorney can recover fees in proportion to the amount of work done.
- **Mandatory Withdrawal:** The lawyer must withdraw if their legal representation forces them to commit a crime or violate an ethics code.
- **Permissive Withdrawal:** A judge may allow a lawyer to withdraw from a case if:
 - The client refuses to pay them their rightful fees
 - The client has acted illegally, using the lawyer's services to further a crime or fraudulent activity
 - The client refuses to cooperate with the lawyer

Again, a court can deny a lawyer's request to withdraw if it would cause undue delay or disruption of court proceedings.

Procedures for withdrawal- If the lawyer must withdraw for any reason, they are required to:

- Provide you with timely notice of their intent to withdraw from the case
- Promptly return any unspent fees or expense advances
- Return all of your papers and property to you in order that your case can proceed in a timely fashion

Success in any lawsuit depends on the healthy cooperation between you and your lawyer. Communication is a two-way street, and any disputes between the client and lawyer should be dealt with in a manner that is constructive for both persons. If you're unable to resolve your differences, be sure that your decisions will ultimately contribute to the success of your legal claim.



After Trial

The main purpose of any trial is to apply the laws to the facts of your situation in a way that is just and accurate. In most cases, this is done through the involvement of a jury who will determine the outcome of your case. Even after the jury has reached its conclusion, there can still be matters left to be resolved.

How is a Conclusion Reached in a Trial?

Once both attorneys have presented their closing arguments, the judge will give the jury specific instructions regarding how to apply the laws in your case. Then the jury will be excused for deliberations in the jury room. Their first task will be to appoint a foreperson who will oversee the deliberations and communicate the verdict or conclusion to the judge.

In a criminal case, all jurors must unanimously agree before a verdict is considered final. In civil cases, state laws vary regarding how the jurors must agree in order to make a decision final.

Once the jury has reached a conclusion, it is considered to be binding and final. Very seldom is a verdict or judgment set aside. Unlike on T.V. or in the movies, it's actually somewhat rare for a case to be appealed or considered for review. Appeals are not automatically granted as a right- having a case appealed is only available in specified circumstances.

What Should I Do After the Trial? What Information and Documents Do I Retain?

Before you formally part ways with your lawyer, be sure to ask yourself the following basic questions:

- Am I satisfied with the outcome of the case?
- Am I satisfied with the services of my lawyer?
- What are my options in light of the recent judgment?



If you have any doubts or questions about the judgment you received, you should immediately communicate these to your lawyer, so that they can help determine whether any further action is necessary.

After the trial, make sure you make and keep copies of any relevant documents that were issued to you by the court. You should also create a file with all the documents and information used during the trial, in case you need to reference them in the future.

What Should I Do if My Case Was Successful?

Your lawyer knows that the end of trial is sometimes just the beginning of a new phase with regards to your legal issue. Even if you obtained the judgment you desired, several issues can still present themselves after the judgment is rendered.

For example, if you have obtained an order for a monetary payment, your opponent may not always be willing to pay on time. In this case, you and your lawyer may need to initiate collection proceedings in order to enforce the payments. Another example is in a contracts case. If your opponent is unwilling to adhere to the contract specifications even after the judgment, you may need to retain your lawyer for further actions in court.

Therefore, be prepared to resolve any unsettled matters after the judgment has been reached.

What if I Am Unsatisfied with the Result of the Judgment?

The losing party in a lawsuit basically has two options: first, they may request a motion for a new trial and ask the court to disregard the previous ruling; or alternatively, they can appeal the judgment to an appellate (appeals) court.

A motion for a new trial will be granted only if any of the following apply:

- The ruling or verdict was clearly contrary to the weight of the evidence presented
- The damages according to the ruling were exceedingly out of proportion to the harm
- Serious errors or misconduct were committed by a judge
- Serious misconduct was committed by a lawyer, witness, juror, or party to the lawsuit
- Important evidence that could not have been obtained before the end of trial has now been discovered

When Can an Appeal Be Granted?

The purpose of an appeal is not to retry the case, but rather to ensure that the law was properly applied. As a general rule, appellate courts don't weigh any new evidence or hear any more witnesses.

Instead, an appellate judge can only reverse the trial court's ruling due to a significant legal error, such as an erroneous jury instruction or due to improperly excluded evidence. The appeals court will be relying mostly on transcripts from the trial court to determine whether any legal faults were made.

Thus, if you feel that the ruling you received was wrong due to a factual error rather than a legal error, you will likely not be entitled to an appeal.

In an appeal, the party seeking to overturn the judgment is called the "appellant", and they will be arguing that the judge improperly applied the law. The other party is called the "appellee". The appellee will try to persuade the appeals court that no legal error was made, or that any errors were harmless and did not affect the outcome of the case.

In a federal case, the losing party may request for an appeal through the appropriate federal appeals circuit. In state or local cases, the appealing party usually must first file with an intermediate court before the claim reaches an appeals court. However, intermediate courts sometimes have very limited discretion to follow up on rulings from a trial court.

This means that not all civil appeals are accepted in intermediate and appellate courts. In that case, the lower court's ruling will stand as is. Your lawyer should be able to decide whether an appeal would be successful in a higher court.

More tidbits:

43 states currently require lawyers to continue their education even after passing the bar exam. This helps ensure that they are informed of any recent changes in the law. There are many continuing education seminars and internet courses available to help lawyers stay up to date.



What Issues Should I Consider for Legal Disputes in the Future?

After your legal issue has finally been completely resolved, it is a good time to reflect on its affect on your life overall. You should seriously ask yourself whether you are satisfied or made whole as a result of the legal representation.

Consider such questions as: Have I achieved the goals I originally sought to achieve? Was it worth my time and resources to undergo litigation? In the future, would I consider alternative methods for obtaining legal relief? What have I learned as a result of this lawsuit?

These questions are worth asking- they will help you evaluate your personal situation in light of the recent ruling. Lawsuits and any legal disputes require a great deal of effort and can sometimes be lengthy processes. *You will want to gain as many lessons as you can from the experience.* That way, you will be even better prepared to handle similar situations in the future. A diary or journal of your legal journey can be very helpful, both professionally and personally.

Conclusion

Thank you once again for choosing LegalMatch. We hope that you now have a better understanding of what to expect from your lawyer and the trial process. If you have any more questions, be sure to address them with your newly appointed lawyer.

Also, you can learn a great deal of information from our online law library service, located at <http://www.legalmatch.com/law-library/>. We also have an online legal forum, <http://forums.legalmatch.com/>, where you can post any questions or concerns and receive a response.

Please be sure to utilize our free services if you should need them again in the future. We wish you the best in all of your pursuits and aims. Thank you again for reading this guidebook- we trust that it will come in handy as you proceed to work with your lawyer. Good luck!

