

CHOOSING AND WORKING WITH A LAWYER



Iowa Supreme Court
Attorney Disciplinary Board
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This booklet is adapted with permission from “Hiring and Working with an Attorney,” published by the Colorado Supreme Court Office of Attorney Regulation Counsel, and is designed to provide Iowa legal consumers with general information about how to have a productive and positive working relationship with an Iowa lawyer. Nothing in this booklet should be construed as legal advice or as creating a lawyer-client relationship.

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INTRODUCTION

“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. As a representative of clients, a lawyer performs various functions.

As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications.

As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.

As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others.

As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.” – *Preamble, Iowa Rules of Professional Conduct.*

Almost every person, at some point, would benefit from the counsel of a lawyer. Lawyers help to create estate plans, prepare land transfer documents, resolve property disputes, advocate for clients in divorce and custody cases, establish business organizations, and defend people accused of crimes.

While the need for a lawyer may be evident, many people are unsure how to choose and work with a lawyer. This guide will help you to establish and maintain a productive lawyer-client relationship.

LAWYERS ARE TRAINED TO HELP

When faced with a legal problem or a question about your legal rights or responsibilities, you should always consider asking a lawyer for help. Lawyers are trained to explain your legal rights and the procedures that are followed in legal settings. Lawyers are skilled negotiators and are able to advise you about possible outcomes. Lawyers understand court rules and can ensure that your position is properly presented to a decision-maker.

It is important to talk with a lawyer before you make many important decisions, such as:

- Signing a contract
- Purchasing real estate or a home
- Making a will, signing a power of attorney, or considering a living will

A lawyer should also be consulted if:

- You are arrested or charged with a crime
- You are notified that you are being sued
- You are injured in an accident
- You are involved in a dispute with an employer, municipality, or other entity

An internet search or a legal website is not a substitute for the advice of an attorney. A lawyer is familiar with the laws that apply in your jurisdiction, has to stay updated about current laws, and has an ethical obligation to protect your interests, not those of a company or other party.

FINDING A LAWYER

ASK FOR REFERRALS

Lawyers are professionals like doctors, dentists, tax advisors, or home repair contractors. You should ask trusted family members and friends for recommendations, just as you might ask them to recommend a doctor. A suggestion from someone you know and trust is a good way to narrow your search for a lawyer.

LAWYER REFERRAL SERVICES

The Iowa State Bar Association maintains a list of lawyers and their practice areas at www.iowafindalawyer.com. This resource may help you to narrow down your search for a lawyer in your geographic area who can handle your legal issue. However, you should not consider this information to be a recommendation of a particular lawyer. A lawyer referral service will help you to identify possible lawyers, but you will need to screen the lawyer to be sure that he or she is the person you want to hire.

ADVERTISEMENTS, ONLINE SEARCHES, AND LAWYER REVIEWS

Remember that lawyers create and pay for their own advertisements and websites. An advertisement is not a recommendation and does not ensure that the lawyer will

be the right person for you. Similarly, a fancy website is not a guarantee of high-quality legal work.

In addition, online reviews of a lawyer's services are not a reliable way to choose a lawyer. You should be wary of such reviews. Any person may leave a review, even a non-client, and there is no way to be sure that your own lawyer-client experience will be similar to that of any other person.

LEGAL AID ORGANIZATIONS

If you cannot afford legal representation in a criminal matter, you should promptly notify the court. If you cannot afford legal representation in a civil case, a legal aid organization (such as a county-based Legal Aid office or Iowa Legal Aid) may be able to help.

LAWYER DISCIPLINARY RECORDS

If a lawyer has been the subject of public discipline for violation of the Iowa Rules of Professional Conduct (the lawyer ethics rules), you will find that information at www.iacourtcommissions.org. You should search for the name of any lawyer you are considering hiring before you make a decision.

HIRING A LAWYER

LAWYER REQUIREMENTS

Every lawyer licensed to practice in the State of Iowa must:

- Graduate from college and law school
- Be approved by the Iowa Supreme Court's Office of Professional Regulation, which conducts a careful character and fitness review
- Take and pass a qualifying bar examination, which tests the applicant's knowledge of the law
- Take and pass an examination on legal ethics
- Take an oath administered by the Iowa Supreme Court
- Register with the Office of Professional Regulation each year
- Pay money into a fund to reimburse clients who are financially harmed by the actions of Iowa lawyers

- Complete continuing legal education classes in various areas of the law, including ethics
- Follow the Iowa Rules of Professional Conduct

If you are unsure about whether a person is an Iowa lawyer in good standing, visit www.iacourtcommissions.org and search for the lawyer's name.

INTERVIEW THE LAWYER

You should meet with and interview a lawyer before making a hiring decision. As with any "job interview," you should consider the lawyer's background, qualifications, and experience. It is appropriate to ask questions like the following:

- Where did you go to college and law school?
- How long have you practiced law?
- How many cases like mine have you handled?
- What kind of clients do you normally represent?
- Will you handle my case alone or will other lawyers in your office be involved?
- Are you a member of any legal groups or professional organizations?

Consider how well the lawyer answers your questions and listens to you. Be prepared to listen carefully to the lawyer, and consider whether you feel that you understand the lawyer's explanations. Do you feel like he or she is giving your questions thoughtful consideration? Do you feel like the lawyer communicates well with you and makes sure you understand before moving on to another topic? Does the lawyer seem distracted or uninterested in you?

TALK ABOUT FEES

It is completely proper to discuss fees at your first meeting with a lawyer. You should ask the lawyer directly about the fee to be charged for legal services. Lawyers typically charge clients in one of the following ways:

- **An hourly fee.** This is a specific amount charged for each hour or partial hour spent working on your legal matter. You may be asked to provide the lawyer with a "retainer" to be applied toward that fee. The retainer is not prepayment for legal services, but is money that belongs to you and is deposited with the lawyer for safekeeping until it is used to cover your legal

bill or other authorized expenses. A high or low retainer amount does not mean you will pay a high or low eventual fee. The complexity of your case and the hours the lawyer works on it will affect the total fee.

- **A flat fee.** This is a fixed amount charged by the lawyer to handle a specific legal matter. Any portion of the flat fee that is not earned must be refunded to you. You and your lawyer should have a clear, written agreement to document the terms of a flat fee and the times when portions of it are considered earned.
- **A contingent fee.** This is an arrangement for a lawyer to collect an agreed-upon percentage of the amount recovered on a client's behalf in a case.
- **A fee set by statute (law) and approved by the Court.** This occurs in certain types of cases, such as when an estate goes through the probate process.

The lawyer ethics rules require that certain types of fees be documented in writing. However, you should always request that the lawyer provide you with a written agreement about fees and expenses. This protects both you and the lawyer against possible misunderstandings.

It is important to read the entire fee contract and understand all terms and conditions as written. Discuss with the lawyer any fee contract terms or conditions that are confusing or that appear unreasonable. Your lawyer has a duty to explain the written fee contract terms when you ask questions.

Lawyers must follow strict rules about handling client money. If a lawyer takes a fee or expense payment in advance, he or she must keep it in a special account, called a trust account, until enough work is done to consider some or all of the fees earned or expenses incurred. The lawyer is also required to provide you with billing statements and a report about the balance of your retainer whenever he or she applies retainer funds to earned fees and expenses. You should keep these documents for your records.

ASK ABOUT MALPRACTICE INSURANCE

You should ask whether the lawyer carries professional liability (“malpractice”) insurance. Malpractice insurance provides coverage for various acts or omissions committed by lawyers. Iowa lawyers are not required to have malpractice insurance, but many do.

CHECK THE LAWYER'S DISCIPLINARY HISTORY

If you didn't visit www.iacourtcommissions.org to check the lawyer's disciplinary history before meeting, you should do so before making your hiring decision.

THINK ABOUT "FIT"

You are under no obligation to hire the first lawyer you meet. Pay attention to your feelings about the interaction. Do you feel comfortable talking with the lawyer and listening to his or her advice? Do you feel like the lawyer is giving you an opportunity to talk but also keeping you on track and not wasting your time?

There are nearly 10,000 active lawyers in Iowa. If the one you've interviewed is not the right lawyer for you, talk with a different lawyer.

THE DUTIES OF A LAWYER

When you hire a lawyer, a lawyer-client relationship is formed. This relationship places several duties on the lawyer.

WORK HARD TO REPRESENT YOU

A lawyer is required to work hard, devote time to your case, and have the skill level needed to represent you and protect your rights. The lawyer must be both diligent and competent. The lawyer should comply with procedural rules and deadlines.

USE GOOD JUDGMENT

A lawyer is your own legal adviser and should not let another client's interests affect yours. A lawyer is expected to be honest with you and with others.

ADVOCATE FOR YOUR INTERESTS

Your lawyer must work toward your lawful goals in your legal matter. If you and your lawyer are unable to reach agreement about this, your lawyer may need to end the lawyer-client relationship. You may also decide to end the lawyer-client relationship at any time.

Your lawyer must follow your directions about certain things, even if he or she disagrees. For example, the lawyer must not settle a civil matter without you.

Similarly, in a criminal case, the lawyer may not enter a plea, demand a jury trial, or force you to testify.

However, your lawyer is not required to do everything you request. When an issue involves legal or tactical decisions, your lawyer uses expert judgment in your best interest, and may refuse or decline to take certain actions that he or she thinks are not advisable. The lawyer also cannot take illegal or unethical actions on your behalf or at your direction.

KEEP YOUR CONFIDENCES

Your lawyer must keep information about your case confidential, both during and after representation.

CHARGE A REASONABLE FEE

Your lawyer's fee must be fair. You should know ahead of time how the fee will be calculated and billed. You may ask for a listing of the work performed in your case and the amount billed for the work. You should be provided with a receipt for any money paid to the lawyer. You should keep these receipts and billing statements for your personal records.

PROTECT YOUR MONEY

Your lawyer must keep your money safe and provide you with records of how those funds are applied when you ask.

PROVIDE UPDATES

Your lawyer must keep you updated about the progress of your legal matter. You should be given copies of important papers (either in paper form or electronically if you and your lawyer prefer). Your lawyer should respond to your communications within a reasonable amount of time. Your lawyer should discuss your goals and options for ending your legal matter, along with the costs and positive or negative effects of different choices.

COMPLY WITH ETHICS RULES

Iowa lawyers must comply with the Iowa Rules of Professional Conduct. Those rules are adopted and periodically updated by the Iowa Supreme Court. You may

review the rules by visiting the “Court Rules” link in the public information section of www.iowacourts.gov.

THE DUTIES OF A CLIENT

BE TRUTHFUL

To do a good job for you, your lawyer needs to know all important information that could be related to your legal matter. Hiding facts from your lawyer may backfire and harm your case, especially if they come out later in court or in settlement negotiations. If you tell your lawyer something up front, that gives your lawyer time to advise you about it competently.

COOPERATE

Provide your lawyer with a reliable way to reach you and respond quickly when he or she asks for information or documents. Sometimes your prompt response is the only way to protect your legal rights. Delays are often very harmful to legal cases. Missed deadlines may severely limit your legal options and remedies.

Understand that text messaging is not a productive way to have a lawyer-client relationship. While texting may be helpful to remind you of a hearing or let you know that your lawyer will be a few minutes late for a meeting, complicated legal discussions should happen in person, by phone, or via letter or e-mail.

KEEP APPOINTMENTS

You have a right to be present and participate in all meetings and court hearings related to your case, unless a court orders otherwise. Respect your lawyer’s time. Be on time for all meetings and court appearances. If you cannot appear for a scheduled meeting, let your lawyer know right away.

PAY YOUR LEGAL BILLS

Lawyers rely on prompt and reliable payment of bills. Pay your bill on time. If you do not, the lawyer may have sufficient grounds to stop representing you and withdraw from your case.

BE RESPECTFUL

Treat your lawyer and your lawyer's staff with respect. Demonstrate respect for the legal system by dressing nicely for legal meetings, acting properly in court, and being polite to court employees.

COMMUNICATE CLEARLY

Openly share your questions and concerns with your lawyer. Oftentimes, it is helpful to keep a written list of questions as they occur to you. You may then make appointments to discuss those questions with your lawyer by phone or in person, just as you would with a medical professional. Clear, open communication is essential for a good lawyer-client relationship.

PREVENTING PROBLEMS WITH A LAWYER

AGREE TOGETHER UPON GOALS

At the start of your lawyer-client relationship, talk clearly with your lawyer about your problem and what you are asking the lawyer to do. Your lawyer should review different options or plans with you, and you should agree together on the services the lawyer will provide for you.

Be sure to ask your lawyer for a written agreement that documents the scope and goals of the representation. This will help avoid problems later in the relationship and will be a good reminder to both of you.

You have a right to have your goals respected and considered by the lawyer. However, some goals may not be realistic in your circumstances, and a good lawyer will help you to understand that and to reframe or revise your goals.

DECIDE TOGETHER HOW YOU WILL COMMUNICATE AND HOW OFTEN

At the beginning of the lawyer-client relationship, ask your lawyer when and in what form you will hear from the lawyer. Some legal matters require frequent communication, and others involve lengthy waits during which there is no news to share. Ask your lawyer how he or she prefers to communicate – in writing (via e-mail or letter), by telephone, or in person during an office visit. Remember that text messaging is not very useful in a lawyer-client relationship.

Ask your lawyer who else in the office will be working on the case, and whether you will communicate directly with those other people.

Be reasonable in your need to talk with your lawyer. When there is little or no activity on your case, it may be unreasonable for you to expect to hear from your lawyer. However, when there is activity on the case, your lawyer should have regular contact with you.

Remember that lawyers must manage time working for many different clients. Be assured that your lawyer must act carefully and promptly on your legal matter, but may not be actively working on your legal matter every day or even every week.

Your lawyer must keep you informed about your legal matters, and is expected to respond to your reasonable requests for updates.

KEEP RECORDS

Keep a calendar or list of all contacts with your lawyer's office, including dates and times. Many legal clients find it helpful to keep a notebook or folder dedicated to the legal matter, with paper for writing down questions or issues to discuss later with the lawyer.

If your lawyer does not return telephone calls or keep scheduled meetings with you, you should contact your lawyer in writing and keep a copy of the letter.

REQUEST RECORDS

You should request and keep monthly or periodic billing statements. Feel free to ask your lawyer anytime for an itemized statement of the work performed on your behalf.

Discuss questions or concerns about your fees right away. Your lawyer should also provide you with dated and signed receipts for any payments you make.

Ask your lawyer for copies of all correspondence sent or received on your behalf and any court filings. Review all documents promptly in case you have questions about them.

DO NOT SIGN BLANK DOCUMENTS

Do not sign blank papers, signature pages, forms, receipts, or checks on bank accounts for your lawyer. You have a right to know about and participate in all transactions undertaken on your behalf.

AVOID RELATIONSHIPS THAT COULD CAUSE CONFLICTS OF INTEREST

Remember that you and your lawyer have a working/professional relationship. It is important to avoid romantic, personal, business, or social interactions with your lawyer that could affect your lawyer's ability to consider your case properly.

Becoming involved in private business relationships or deals with your lawyer is risky. A lawyer should not borrow money from you, arrange for gifts or bequests from you, or ask for investments in the lawyer's own real estate or business dealings.

DEALING WITH PROBLEMS IF THEY OCCUR

DISAGREEMENTS

You and your lawyer may disagree on how to accomplish your goals or on strategies for moving your case forward. If this happens, you and your lawyer should talk together to find a way forward. If you and your lawyer cannot agree, your lawyer may withdraw from your case or you may dismiss your lawyer.

ENDING THE RELATIONSHIP

You are free to choose your lawyer and to end the lawyer-client relationship at any time and for any reason. If your case is moving forward in court, a judge may need to approve the removal of your lawyer from your case.

You can fire your lawyer on the telephone, in person, or in writing via e-mail or letter. The best and clearest way to end your lawyer-client relationship is in writing. You should keep a copy of the letter or e-mail for your records. If you do end your lawyer-client relationship while a legal matter is pending or contemplated, you should talk with another lawyer right away so that you do not miss any important deadlines.

If you fire your lawyer, you may still owe legal fees for work done and costs or expenses incurred on your behalf. You should ask for an itemized bill or accounting to document fees owed.

If you paid your lawyer a retainer for future legal work, you should ask for a refund of any unearned portion. If the lawyer had other funds or property belonging to you, ask to have those funds or items returned to you, or tell the lawyer where to send or deliver them. Finally, you may ask your lawyer to send your legal file to your new lawyer or to return it to you.

WHEN YOUR LAWYER DIES, BECOMES ILL, OR CLOSES THE PRACTICE

If your lawyer becomes seriously ill, stops practicing law or takes another job, or dies before your case is finished, talk with another lawyer right away. If you have a case pending in court, you should also notify the clerk of court so that court documents may be redirected to you or to your new lawyer.

ARGUMENTS ABOUT FEES

When you have questions or disagreements about fees, review your fee agreement and all billing statements and invoices. Ask for an itemization of work performed on your behalf. This should include the date of the work, the work being done, and the amount charged. Review it carefully.

If you cannot settle a dispute about fees with your lawyer, consider contacting the local bar association to ask about “fee arbitration” programs or filing a court action to settle the dispute.

While lawyers cannot charge unreasonable fees, it is difficult to decide whether a particular fee is reasonable. Fees are affected by the training and expertise of the lawyer, the complexity and nature of the legal work, the actual time spent on the legal matter, and many other factors. This is why you should talk openly with your lawyer about fees at the start of the representation and, ideally, review and sign a written fee agreement together.

LAWYER MISCONDUCT

Nearly all Iowa lawyers act diligently and honestly. Unfortunately, sometimes a lawyer may abuse the trust placed in him or her by a client. In those situations, the Iowa Supreme Court has procedures for determining whether the lawyer has

broken the ethics rules for lawyers (the Iowa Rules of Professional Conduct) and whether the lawyer should be disciplined as a result.

The lawyer regulation and ethics complaint process does not generally settle a situation for a client by refunding money paid to the lawyer, and it cannot find a new lawyer for you or change a court decision. The lawyer regulation process is not a substitute for an appeal or post-conviction relief petition.

If you believe a lawyer has committed ethical misconduct, you may file a complaint with the Attorney Disciplinary Board using the form found in the “complaints” section of www.iowacourts.gov. You may also request a form from the Attorney Disciplinary Board at 515-348-4680. The Board cannot accept complaints by telephone, e-mail, or fax.