

LEGAL ASSISTANCE

This section provides some basic information on legal representation along with tips on selecting and hiring a lawyer. It also describes some available resources for seeking legal assistance, including consultations with a military legal assistance attorney, a civilian attorney for a fee and possible eligibility for free legal services.

The Role of a Lawyer

The Model Rules of Professional Conduct published by the American Bar Association (ABA), define the role of the lawyer as that of an advisor, advocate, negotiator, and evaluator. The preamble to these rules includes the following passage:

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.

Engaging a Lawyer

Here are a few key issues that should be considered and raised when engaging a lawyer.

1. Understand the fees and costs

On initial contact with a lawyer, surviving family members should ask the lawyer whether there is a fee for the initial consultation, which is the first visit with the lawyer, and if so, how much.

At the first meeting with a lawyer, the client should be prepared to discuss and ask questions about the legal problems or issues which created the need for the lawyer's services.

If, after the first meeting, the surviving family member decides to hire the lawyer, the surviving family member should ask for an estimated

total cost for services. The surviving family member should understand from the first meeting how much the lawyer will charge to handle the matter, which is known as the lawyer's fees. Costs, as opposed to fees, are the expenses incurred to pursue the matter, such as court costs and filing fees if there are papers to be submitted to a court. Typically, the client is responsible for those court costs and filing fees.

The surviving family member should establish an understanding of the required legal fees as well as costs for the action that the lawyer is going to take on his or her behalf. A lawyer may charge on an hourly basis or a contingency fee basis, and he or she should fully explain the reason for the fee. Before actually agreeing upon representation, the client should get an explanation of the fee in writing from the lawyer. Most lawyers will enter into a written agreement listing the fees, other costs, and the nature and extent of the lawyer's representation. This agreement should be signed by both the client and the lawyer. Below is a description of the various types of fees:

- Retainer fee - advance payment to the lawyer for a portion of his or her fee. This is similar to a deposit and is typically required regardless of the type of fee arrangement ultimately established. It is usually nonrefundable even if the client later changes his or her mind and decides to stop retaining the lawyer.
- Contingency fee - an agreed-upon percentage of any monies obtained through settlement, trial or negotiation. This may be as much as 30%.
- Hourly fee - the lawyer's hourly rate multiplied by the number of hours (or portion of hours) spent on the case.
- Fixed fee - a specific amount of money for a specific service.
- Cost advance - periodic advance payment to the lawyer for ongoing expenses.
- Mixed fee - combination of contingency and hourly fees.

2. *Establishing that there is a legal problem*

The surviving family member should fully explain the situation to the lawyer without leaving out any facts. Even if they relate to a sensitive subject, some facts could impact the advice given. The surviving family member should also bring any papers or documents that may help explain the story to the first meeting, discuss any practical solutions or non-legal alternatives to the problems as well as all of the options available under the law and advise the lawyer of the position taken by any adverse party.

3. *Establishing that the lawyer is qualified to handle the legal problem*

Many lawyers specialize in handling specific legal problems. The surviving family member should find out the type of law the lawyer usu-



ally practices and the lawyer's specialty or expertise. In addition, he or she should discuss with the lawyer how much experience the lawyer has in dealing with similar cases. If the lawyer expresses doubts about his or her competence to handle the matter, the client can ask for a referral to other lawyers who are familiar with similar cases. The client should also ask about the outcome of the other cases that the lawyer has handled, as well as whether or not the anticipated fees and costs that have been quoted by the lawyer are consistent with the fees and costs charged in the other cases.

4. Establishing the length of time it will take to solve the legal problem

The surviving family member should ask the lawyer how long it has typically taken to bring similar cases to a conclusion in the past. If the case involves issues more complex than the lawyer's previous cases, then it should be determined whether or not that will affect the expected time to resolve this case. The surviving family member should also ask if there are any legal time limitations which restrict the length of time available to bring an action in court. These restrictions are known as statutes of limitations; they vary depending on the nature of the case and the location of the action. The client should ask the lawyer what he or she believes to be the best case and the worst case scenarios with regard to the amount of time that the case will take. If there is no way to predict how long the matter might take, the client should establish the reasons and find out if there is anything he or she can do to make the process faster.

5. Establishing reasonable expectations for what can be accomplished

The client should ask the lawyer whether or not the facts presented in the first meeting provide enough information to be able to predict somewhat the results of the outcome of any proposed legal action. The lawyer should explain the law as it relates to the case and the effect which existing laws may have on the case. It is extremely important that both the client and lawyer fully understand each other with regard to the results expected. This should play a big part in the ultimate decision of whether or not the cost and the time involved in pursuing the matter are worth the expected results.

Where Can the Families of a Deceased Service Member Obtain Legal Assistance?

Military Legal Assistance

Does the military offer legal assistance?

Yes. The military offers free legal aid to families of service members through legal assistance attorneys located on nearly every military base.



Who is eligible for legal assistance from the military?

Surviving family members who were dependents of deceased service members are often eligible for legal assistance from the military. However, the services provided are often limited due to constraints on space, facilities or legal and support staff. In addition, legal assistance attorneys are not authorized to represent surviving family members in court if those family members can afford the fees for such representation without undue hardship.

What is the role of a legal assistance attorney?

A legal assistance attorney is a military or civilian Department of Defense lawyer whose primary duty is to advise individuals eligible for military legal assistance about their personal legal affairs. While the service is free, it is subject to the resource constraints described above, and limited to the legal issues covered as described below.

What are the qualifications of a legal assistance attorney?

All Department of Defense legal assistance attorneys, whether military or civilian, are graduates of accredited law schools, licensed by a state, and admitted to practice law in at least one state. Nevertheless, it is not possible for any one attorney to have expertise in every area of the law where surviving family members may need professional advice. One should ask a legal assistance attorney about his or her experience and expertise, and the prospects for the matter, as discussed earlier in this section.

What types of legal services can a military legal assistance attorney provide for families of deceased service members?

For eligible persons, a military legal assistance attorney can:

Provide advice about select areas of the law, for example:

- Family and domestic relations (including family support, adoption, custody, paternity and name changes);
- Consumer affairs;
- Taxes on real and personal property and income (and, in certain locations, tax preparation and electronic filing);
- Landlord-tenant issues (including leases, security deposits and evictions);
- Immigration and naturalization; and

Perform general legal services such as:

- Serve as advocate and counsel;
- Prepare and sign correspondence on behalf of the client;
- Negotiate with another party or that party's attorney;
- Prepare legal documents;



- Notarize documents;
- Draft powers of attorney;
- Draft wills;
- Offer estate planning advice;
- Review contracts and leases;
- Offer some types of personal financial advice;
- When necessary, refer eligible persons to a civilian lawyer.

Since there are restrictions on the types of services that a military legal assistance attorney can provide, surviving family members who wish to use the services of such an attorney should clearly state the type of services needed at the first meeting. As noted above, although the areas of law and the legal services that these attorneys may be able to provide appear broad, in many instances resource constraints will make it difficult for surviving family members to obtain the services of these attorneys.

To find the nearest military legal assistance office, use the legal assistance locator at assistance.law.af.mil (note: “www” must be omitted).

For additional information on legal assistance for each branch of the military, visit the following web addresses or write or call the relevant service branch:

Army

US Army Legal Assistance Policy Division,
Client Services Branch
1777 North Kent Street
Suite 9001
Rosslyn, VA 22209
Phone (703) 696-1477
www.jagcnet.army.mil/Legal

Air Force

arpc.afrc.af.mil/ja/legasst.htm
(Note: the “www” must be omitted)

Navy

Legal Assistance Division
1322 Patterson Avenue, Suite 3000
Washington Navy Yard, DC 20374-5066
Phone (202) 685-4642
www.jag.navy.mil/html/OJAGLegal%20AssistHome.htm

Coast Guard

www.uscg.mil/legal/la/

Marine Corps

Commandant of the Marine Corps (JAL)
HQMC
2 Navy Annex
Washington, DC 20380-1775
Phone (703) 614-1266,
(703) 614-3880, (703) 614-3886
sja.hqmc.usmc.mil/jal/JAL.htm

Civilian Legal Assistance

Are there other alternatives besides a military legal assistance attorney?

Surviving family members whose legal needs cannot be met by a military legal assistance attorney should consider contacting a civilian attorney. Finding the right civilian attorney depends on the surviving family member’s legal needs and financial means.



There are a number of online lawyer directories that help put individuals in touch with lawyers who can address their legal needs. The American Bar Association provides a selection of these online services on its website at www.abanet.org/legalservices/findlegalhelp/hirelawyer.html.



Full Fee Legal Services

Full fee legal services are provided by private civilian attorneys for individuals who do not qualify for free legal services. Please see the discussion below for information on eligibility restrictions for free legal services.

How do I look for a civilian lawyer?

The most traditional route for finding a lawyer is to consult other people for a referral. Surviving family members may also ask friends, teachers, employers, co-workers, relatives and neighbors. In addition, there are many legal referral services available.

How does a legal referral service work?

The traditional legal referral services organization provides a telephone number where someone will ask the caller questions about his or her needs. This individual most likely is not a lawyer. Based on the discussion, the person will provide contact information for one or more lawyers in the area who seem qualified to handle those legal needs. Generally, there is no charge for legal referral services.

Low Cost and Free Legal Services

Low cost or free legal services are typically provided through Legal Aid offices or pro bono legal services. Legal Aid offices are staffed with attorneys who offer assistance and expertise on issues that affect the poor. Pro bono legal services are often provided through local bar associations or private law firms by attorneys who donate their time to work for eligible clients. To be eligible for Legal Aid or pro bono legal assistance, an individual's or family's income typically must be around or below the federal poverty line.

It should be noted that if enacted, the legislation proposed in early 2005 to increase significantly the amount paid as the Death Gratuity would likely result in Death Gratuity recipients losing eligibility for free legal services based on income. There are, however, some programs that offer free legal services to the families of deceased service members without regard for their financial circumstances.

The American Bar Association maintains a state-by-state directory of low-cost and free pro bono legal programs on its website, in addition to useful information on selecting a lawyer and working with a lawyer. Visit www.findlegalhelp.org. For the state-by-state directory select "Pro Bono Programs" from the options at the left of the screen or, to visit the website directly, go to www.abanet.org/legalservices/findlegalhelp/probonodirectory.shtml.

The Legal Services Corporation (LSC), a private, nonprofit corporation established by Congress, provides certain types of legal services to individuals and families that meet low-income eligibility requirements. For more information on the types of cases LSC handles, income eligibility limits, and the locations of local offices on a state-by-state basis, visit the LSC website at www.lsc.gov, call (202) 295-1500, or send an email to info@lsc.gov.