



“A lawyer’s time and advice are his stock in trade.”

– Abraham Lincoln

**L**awyers are officers of the courts and their services are essential to the effective operation of the legal system. Lawyers work under solemn duties of trust and responsibility to their clients. The purpose of this section is to discuss the profession of law, to describe the requirements for becoming a lawyer and to outline the standards of conduct lawyers must follow. The section also provides information about legal fees, bar associations and other professional organizations, and information on finding a lawyer.

## The Legal Profession

Lawyers are members of a learned profession. Admission to the profession (or the *bar*) requires an undergraduate degree and specialized higher education.

### What Is a Lawyer?

A lawyer, also known as an *attorney-at-law* or *attorney* or *counselor*, is someone licensed to manage the legal affairs of another person, to give legal advice, to help resolve disputes and, when necessary, to plead cases in court. The lawyer occupies a position of special trust in society. Clients regularly entrust their most important business and personal affairs and even their freedom to their lawyers. The lawyer has a confidential and individual relationship with each client. Within this relationship, the lawyer must always place the client’s interests above any of his or her own personal and professional interests.

### A Lawyer’s Education

The Ohio Supreme Court controls the practice of law in Ohio, including the development and oversight of admission standards. Before being admitted to the practice of law in Ohio, an individual must, among other things, success-

fully complete both undergraduate and graduate-level studies.

Ohio’s educational requirements are similar to those of most states. According to the Ohio Supreme Court’s Rules for the Government of the Bar, a candidate for admission to the bar must earn a bachelor’s degree from a properly accredited college or university before being admitted to law school. The candidate must then earn a law degree from a law school approved by the American Bar Association (ABA).

There is no set curriculum for pre-law students; a bachelor’s degree in any field of study is acceptable. However, since words are the tools of the legal profession, expertise in their proper and effective use is a highly desirable attribute for a lawyer. A lawyer should be able to read quickly, write clearly and speak persuasively. A major or minor in English in undergraduate school is one way to prepare for the study of law. Other disciplines—philosophy, history, economics, journalism, political science, or business administration—also provide excellent pre-law studies. A background in science or engineering is an asset for certain specific areas of practice, such as patent law, construction law, environmental law, or computer law. Justice Felix Frankfurter (who served on the Supreme Court of the United States from 1939 to 1962) once advised a young candidate to prepare for the study of law by becoming well read and familiar with all the arts and sciences—in short, a cultured person. This advice is still sound.

The basic curriculum of an accredited law school complies with the requirements of various accrediting agencies. Approximately one-half of the courses taken by law students are required; the remaining courses are electives. The required courses cover the substance, theory and philosophy of the law, as well as its practice and

procedure. Emphasis is placed on developing and research, writing and speaking. The work is demanding. The average course load is 14 hours per semester, and at least two or three hours of concentrated study is required to prepare for every hour spent in class. To earn a law degree, a candidate usually must spend three years as a full-time student or four years as a part-time student.

A legal education does not end when a lawyer receives a law degree; it is a life-long proposition. Some lawyers obtain additional degrees in legal specialties. All lawyers must read the voluminous literature of the profession, engage in private study and attend regular continuing legal education seminars to learn about changes in the law and to improve their legal skills. In fact, the Ohio Supreme Court requires lawyers to attend 24 hours of continuing legal education (CLE) programs every two years to retain their licenses, including specific courses in legal ethics, substance abuse and professionalism.

## **Admission to the Bar**

An undergraduate degree, admission to law school and a law degree are only some of the necessary steps an individual must take to become a licensed lawyer in Ohio. The prospective lawyer also must undergo a background investigation, successfully complete a comprehensive examination on the law (the bar exam), and, finally, take an oath of office.

A basic investigation of a candidate's character and fitness to practice is completed while a candidate is in law school. Normally, this investigation is completed during the first year of law school and a report is forwarded to the Supreme Court of Ohio. When a candidate is ready to graduate from law school, an updated report is submitted to the Supreme Court of Ohio. The Court must approve a candidate's character and fitness to practice law before he or she can take the bar examination. A candidate's character and fitness are not taken lightly. The Supreme Court of Ohio, as part of its Summary of Character and Fitness Process, outlines a number of reasons a candidate may be not be approved.

honing the student's skills in analysis, reasoning,

The bar examination is a comprehensive test of legal knowledge and judgment that a candidate must pass in order to practice law in the state. One portion of the test, called the multi-state exam, consists of multiple-choice questions on general legal principles. Those questions are developed at the national level and used by many states as part of their bar examinations. In a second, Ohio-only portion of the exam, the Supreme Court of Ohio specifies the subject matter and number of questions posed on each area of law. Bar examiners (experienced lawyers appointed by the Supreme Court) prepare the questions and determine how the answers are to be scored. The questions are changed for each examination (two tests are held each year). On average, four out of five candidates pass the exam, although this varies from year to year.

The Court notifies all candidates of their individual bar exam grades. Successful candidates must take an oath of office, which is normally administered to all successful candidates together by a member of the Supreme Court of Ohio at a formal swearing-in ceremony in Columbus. The oath of office is not a hollow formality; rather, it distills the essence of lawyers' duties concerning justice, the law and the courts, clients and the public. The oath reads:

I, (name), hereby (swear or affirm) that I will support the Constitution and the laws of the United States and the Constitution and the laws of Ohio, and I will abide by the *Code of Professional Responsibility*.

In my capacity as an attorney and officer of the Court, I will conduct myself with dignity and civility and show respect toward judges, court staff, clients, fellow professionals, and all other persons.

I will honestly, faithfully, and competently discharge the duties of an attorney-at-law. (So help me God.)

When the candidate completes the oath, he or she is officially an attorney authorized to practice in all Ohio courts.

## Admission to Other Jurisdictions

Admission to practice in Ohio does not authorize a lawyer to practice before the federal courts, although generally, a lawyer must be admitted to practice in a state before he or she is eligible for admission to federal practice. Separate applications for admission to practice are required for each federal district court, each circuit court of appeals and the Supreme Court of the United States. Normally, admission to the federal system is by application and does not require an examination, although some federal courts do have admission examinations. For example, the District Court for the Southern District of Ohio requires lawyers to pass an admission examination covering federal practice and procedure.

Similarly, admission to practice in Ohio does not automatically authorize a lawyer to practice in another state. Different states have different requirements for lawyers who are already admitted to practice in another state. In many states, a lawyer who is in good standing in Ohio may be admitted to practice without taking that state's bar exam. Also, most states will admit an attorney from another state by courtesy or *pro hac vice* for the purpose of participating in a single case. For example, an Ohio attorney representing an Ohio resident who was injured in an accident in Michigan may represent the client in a Michigan court providing that the attorney has sought and received admission by the Michigan court for that case.

When they become effective in 2007, the Rules of Professional Conduct will permit lawyers in good standing in other U.S. jurisdictions to provide legal services on a temporary basis in Ohio under certain circumstances.

# Legal Ethics and Discipline

All attorneys are bound by a strict code of ethics. In Ohio, the code of ethics is presently

called the *Code of Professional Responsibility*. Judges are also bound by an additional set of rules called the *Code of Judicial Conduct*. The discipline (punishment) for a lawyer's violation of the *Code of Professional Responsibility* may range from a public reprimand to permanent disbarment. Judges may be disciplined and removed from office for violation of either the *Code of Professional Responsibility* or the *Code of Judicial Conduct*.

***At this printing, the Supreme Court of Ohio has adopted The Rules of Professional Conduct. The rules are generally modeled on the Model Rules of Professional Conduct as promulgated by the American Bar Association. The new rules are effective February 1, 2007, and will change the information about professional responsibility that follows. To learn about these changes, go to the Supreme Court of Ohio's Web site at <http://www.sconet.oh.us> and click on "Task Force on Rules of Professional Conduct."***

## The Code of Professional Responsibility

All states have codes of conduct for lawyers that are similar in most important respects. The Ohio Code is based on the Model Code of Professional Responsibility developed by the American Bar Association.

Ohio's *Code of Professional Responsibility* is a list of principles organized into canons (general rules or standards of behavior) of ethics, ethical considerations and disciplinary rules. These disciplinary rules state the minimum standards of conduct that every lawyer must follow. The Code is summarized below.

- A lawyer must help to maintain the integrity and competence of the legal profession.
- A lawyer may advertise, but the advertisements must not be misleading in any way. Also, there are restrictions on how clients may be obtained. For example, lawyers may not seek prospective clients by telemarketing or face-to-face solicitation.

- A lawyer's fees must be reasonable. After full disclosure to the client, lawyers may divide fees between or among themselves as long as the total fee is reasonable and either: 1) the fee is divided based on the proportion of work performed; or 2) the lawyers enter a written agreement with the client stating that each of them will assume full responsibility for the representation.
- A lawyer should not bring an action, conduct a defense, take a position or otherwise take action for the purpose of harassing or maliciously injuring any person. Similarly, a lawyer should not present a claim or defense that cannot be justified under existing law, unless the lawyer can support the claim or defense with a good-faith argument that current law should be extended, modified or reversed.
- Once a lawyer has accepted employment, generally speaking, that lawyer cannot withdraw from a case without the client's consent (or a court's consent, or in some instances, the consent of both the client and the court). A lawyer who withdraws must protect the client's interests. For example, the lawyer must return all of the client's property, give the client copies of all important papers, refund any unearned portion of prepaid fees and inform the client of important dates and required actions.
- A lawyer cannot assist in the unauthorized practice of law, divide a legal fee with a non-lawyer or form a partnership with a non-lawyer where any of the activities of the partnership would constitute the practice of law.
- A lawyer must preserve the confidence and secrets of clients. A lawyer must avoid conduct—professional or personal—that conflicts with the interests of any client or tends in any way to interfere with the lawyer's ability to exercise independent professional judgment on the client's behalf. One lawyer (and, in general, one law firm) cannot represent multiple clients who have conflicting interests. (In certain cases, a lawyer may represent multiple clients, but only if it is obvious that he or she can adequately represent the interest of each and if each client consents to the representation after the lawyer has completely explained the possible effect of such representation on the exercise of his or her independent professional judgment on behalf of each.)
- A lawyer cannot accept any case that is beyond the lawyer's competence and ability. Further, it is improper for a lawyer to attempt to handle any matter without adequate preparation. A lawyer must not neglect legal matters entrusted to him or her, nor try to limit his or her liability for malpractice.
- A lawyer is required to represent clients zealously, but always within the bounds of the law. A lawyer should not:
  - communicate directly with opposing parties who have legal counsel, but rather should contact the opposing parties through their attorneys;
  - give legal advice to an opposing party;
  - threaten criminal prosecution only to obtain an advantage in a civil matter; or
  - advise a client to ignore a court ruling (a lawyer may in good faith appeal or challenge the validity of a court's ruling).
- In representing a client in a proceeding, a lawyer cannot:
  - cite false authority;
  - assert personal knowledge about the facts of a case, unless the lawyer is a witness (in general, a lawyer cannot testify as a witness and be a lawyer in the same proceeding);
  - give a personal opinion about the justice of the case, the credibility of a witness, the probable guilt of a party or the guilt or innocence of someone accused of a crime, except in the course and within the scope of permitted argument;
  - fail to abide by known local practices without notifying opposing counsel; or
  - intentionally or persistently violate an established rule of procedure or rule of evidence.
- A lawyer is bound to help improve the legal system and the administration of justice.

- A lawyer must keep a client's funds in a trust account (an account, or accounts, completely separate from the lawyer's regular business or personal accounts) and never commingle (combine) a client's funds with the lawyer's regular business funds or personal funds. A lawyer must promptly and strictly account for funds and property.
- Finally, a lawyer must avoid even the appearance of impropriety.

## The Code of Judicial Conduct

As lawyers, judges are bound by the *Code of Professional Responsibility*, as well as the *Code of Judicial Conduct*. The *canons* (general rules or standards of behavior) of the *Code of Judicial Conduct* specifically apply to judges and magistrates. According to the canons, judges and magistrates must:

- uphold the integrity and independence of the judiciary;
- avoid even the appearance of impropriety in all activities (judicial, professional and personal);
- perform all judicial duties diligently and impartially;
- engage in outside activities only as long as they do not cast doubt on the judge's impartiality and provided the judge regulates the activities to minimize any risk of conflict with judicial duties;
- file all financial disclosure statements required by law and report compensation received for any quasi-judicial or extra-judicial activities; and
- refrain from political activity inappropriate for a person holding judicial office.

## Discipline for Professional Misconduct

Herbert Harley, founder of the American Judicature Society, once said that in disciplinary matters the legal profession could "afford to be drastic but not sentimental." The *Code of Professional Responsibility* reflects this view. The *Code of Professional Responsibility* is rigorously

enforced. In no other profession is discipline for misconduct as certain or as severe as it is in the legal profession. A client, or any interested person, may complain about the conduct (actions or inactions) of an attorney or judge by filing a grievance with either the Supreme Court of Ohio's Disciplinary Counsel or a certified grievance committee of a local bar association or the Ohio State Bar Association.

The Disciplinary Counsel is a permanent entity established by the Supreme Court of Ohio that has jurisdiction to investigate and prosecute professional misconduct by attorneys and judges. The Disciplinary Counsel investigates allegations of misconduct and prosecutes formal complaints of misconduct before the Board of Commissioners on Grievance and Discipline and before the Supreme Court of Ohio.

A certified grievance committee is an organized committee of a local bar association, or of the Ohio State Bar Association, that meets certain standards established by the Supreme Court of Ohio and has been certified (authorized) by the Supreme Court to act in disciplinary matters. Generally, the certified grievance committee of a local bar association will consider grievances against lawyers who practice in that locale. The Ohio State Bar Association's certified grievance committee accepts complaints from all areas of the state, but generally limits its activities to cases involving alleged judicial misconduct. In general, bar association certified grievance committees serve the same function and have the same investigative and prosecutorial powers as the Office of the Disciplinary Counsel.

The grievance process begins with the filing of a written grievance with a disciplinary agency in which the complainant provides specific information regarding the alleged misconduct. At this preliminary stage of the process, the fact that a grievance has been filed remains confidential. The disciplinary agency will begin an investigation.

In a great many cases, preliminary investigation by a disciplinary agency finds that a grievance does not involve alleged unethical

conduct, but rather a dispute over the unfavorable outcome of a legal matter, the amount of an attorney's fee or poor lawyer/client communications. Such problems are troublesome for all concerned, and many bar associations have special programs to help resolve these kinds of disputes. If, however, the conduct complained of does not involve an ethical issue, it cannot be addressed through the disciplinary process and will be dismissed for that reason.

When a grievance does allege a violation of one or more ethical rules, the responding disciplinary agency will go forward with its investigation in order to determine if there is probable cause to believe that a lawyer or judge has engaged in misconduct. At the conclusion of that investigation, the disciplinary agency will take one of the following two actions:

- If it finds probable cause to believe that a violation has occurred, it will file a formal complaint against the offending lawyer or judge with the Board of Commissioners on Grievances and Discipline.
- If it finds insufficient cause to believe a violation has occurred, it will notify both the complainant and the lawyer or judge involved that the grievance has been dismissed. (If a bar association grievance committee dismisses a grievance, the complainant has the right to appeal the committee's decision to the Board of Commissioners.)

If probable cause is found and a formal complaint filed, a three-member panel of the Board of Commissioners conducts its own probable cause review. If this panel does not agree that there is probable cause to proceed, it can dismiss the grievance. If the panel finds probable cause to proceed, it certifies the complaint and schedules a formal evidentiary hearing. It is at this point that the existence and nature of the complaint become matters of public record.

A formal disciplinary hearing at which the accused lawyer or judge appears before the Board of Commissioners (basically the "trial" on the grievance) is then scheduled. If the Board finds that the subject attorney or judge has committed

professional misconduct, the Board files a report with the Supreme Court of Ohio. The report states the basis of the Board's decision and also states the recommendation for discipline. The Court reviews the Board's findings and imposes the discipline it believes to be proper under the circumstances.

There are special procedures for dealing with grievances against attorneys and judges who suffer from mental illness.

In Ohio, there are four basic types of discipline, which are (in descending order of severity):

- **Disbarment** – a permanent revocation of the right to practice law without any possibility of reinstatement.
- **Indefinite suspension** – suspension of the right to practice law for an unstated period of time. Reinstatement is a possibility, but not a certainty. A reinstatement application cannot be filed for two years after the indefinite suspension begins.
- **Definite suspension** – suspension of the right to practice for a specified time, ranging from six months to two years.
- **Public reprimand** – a public censure for the conduct involved.

Probation for a definite time is often required if the discipline is a definite suspension. Further, many attorneys charged with misconduct choose to resign their right to practice law rather than face discipline. Reinstatement is not possible after resignation, regardless of the reason for the resignation.

All disbarments, suspensions, reprimands, resignations and reinstatements are published in the official reports of the Supreme Court of Ohio that appear in the *Ohio State Bar Association Report* (a weekly magazine published by the Ohio State Bar Association) and the publication of the appropriate local bar association. To learn about the status of a particular Ohio lawyer, visit the Supreme Court of Ohio's Web site at <http://www.sconet.state.oh.us/>, click on *Attorney Directory*, and type in the name of the lawyer in question.

While the disciplinary systems of other states and the federal courts are in many ways similar to the Ohio system, many other states have centralized procedures that do not permit bar associations, or committees of bar associations, to prosecute disciplinary actions. Further, the types of discipline imposed in other states may differ from the discipline imposed in Ohio. For example, in most states disbarment is not the permanent loss of the right to practice law. In most states, a lawyer who is disbarred has a possibility of reinstatement, generally after five years. In Ohio, a lawyer who is disbarred or has resigned has permanently lost the right to practice law in Ohio without any opportunity for reinstatement. Some jurisdictions also levy fines for misconduct.

Lawyers in Ohio and in the United States are subject to active discipline, and have a duty to police the legal profession through the disciplinary system and, thus, to protect the public.

### **Discipline for Judges**

Discipline for judges is similar to discipline for lawyers. Any person may file a grievance with the Disciplinary Counsel or with a certified grievance committee. The grievances are processed in basically the same way as grievances against lawyers, although there are special procedures for dealing with grievances against justices of the Supreme Court of Ohio.

### **Compensation for Clients' Losses**

When an attorney is guilty of either malpractice or professional misconduct, that attorney's client may suffer legal damages (lose money, property, or a particular right, etc.). An attorney is required to use, at least, the degree of care exercised by other members of the legal profession in any given matter. If the attorney is negligent and a client suffers loss as a result, the attorney may be liable for monetary damages in an action for malpractice. (*See Part V, "Torts," at "Typical Negligence Cases."*) It should be noted that malpractice itself is usually not a violation of the *Code of Professional Responsibility*, although a violation of the Code may amount to malprac-

tice in a particular case. Further, repeated neglect or incompetence may be grounds for discipline.

In addition, a client who has suffered a loss caused by the dishonest conduct of any attorney acting in his or her professional capacity may seek reimbursement from the Client Security Fund of Ohio, which was established by the Supreme Court of Ohio in October 1985. Eligibility requirements and reimbursement limitations are stated in the Supreme Court of Ohio's Rules for the Government of the Bar. Application forms and general information are available from the Client Security Fund of Ohio, located in Columbus, or through the Supreme Court of Ohio's Web site at [http://www.sconet.state.oh.us/client\\_security/](http://www.sconet.state.oh.us/client_security/). The Client Security Fund is financed solely by attorney registration fees from all lawyers licensed to practice in Ohio.

## **When and How to Locate an Attorney**

Individuals who need legal advice are often faced with a series of questions, such as: Do I really need an attorney in this situation? How do I find an attorney who is familiar with this kind of problem? What do attorneys charge? The following sections address these questions.

### **When to See an Attorney**

It is clear that an attorney is needed when an individual is arrested or charged with a serious crime, or when someone is served with a formal complaint naming him or her as a defendant in a lawsuit. At other times, the need for legal assistance may be just as important but less obvious. The best time to consult a lawyer is before a problem occurs. A lawyer should be consulted whenever someone has reason to believe that an act, omission, or course of conduct may have a significant impact (good or bad) on an individual's (or his or her family's) property, finances, rights, freedom, obligations, or liabilities.

There are many more opportunities to avoid legal difficulties than there are to solve actual legal difficulties. For example, a lawyer may be able to write an agreement defining rights and obligations, or clarifying important issues between parties. A lawyer also may see obvious legal problems in a “wonderful deal,” or may be able to negotiate a compromise in a matter that might otherwise result in litigation. Early consultation with a lawyer may avoid the necessity of filing or defending a lawsuit, or may maximize the effectiveness of a claim or defense.

While it is impossible to develop an all-inclusive list of the situations in which a lawyer should be consulted, the following list provides some guidance. In general, you should consult a lawyer as soon as possible if you:

- receive notice of a lawsuit, or know a lawsuit is a distinct possibility;
- are arrested or cited for an offense where charges involve the possibility of jail time or a substantial fine;
- are involved in an accident where there are personal injuries or property damage;
- seek to have another party perform according to the terms of a contract, or are being pressed by the other party to do something you do not believe is required;
- believe you have been treated unfairly in a business transaction and the other party shows reluctance to make the transaction “right”;
- try to collect a debt that another individual is reluctant to pay;
- are being dunned (persistently pursued or threatened) for a debt you question or do not believe you owe;
- wish to file for bankruptcy, trusteeship or a wage-earner plan, or make an arrangement with your creditors;
- need an opinion on title of real estate;
- are buying or selling real estate;
- are about to enter a written or verbal agreement that may have consequences—good or bad—with respect to your actual or prospective property, finances, rights or obligations;
- are involved in any problem concerning taxes;

- are about to begin any venture that may be significantly regulated by the government;
- are organizing, dissolving, buying or selling a business;
- are organizing or dissolving a partnership or corporation;
- do not have a will and are married, or even if unmarried, you own or may acquire a significant amount of any kind of property;
- want to plan your estate;
- are involved in settling an estate for someone who has died;
- want to adopt a child;
- are involved in a guardianship; or
- are involved or may become involved in a divorce or similar proceeding.

## Choosing an Attorney

Traditionally, suitable lawyers have been found through word-of-mouth referrals. People talk with relatives, friends, neighbors or business acquaintances who have used attorneys and ask them about the possibility of using their attorneys for help in finding other attorneys.

Another way to find a lawyer is through the use of a lawyer-referral service. These services are generally operated by local bar associations. Attorneys taking part in referral programs represent a cross-section of types of practice; a person who contacts such a service is referred to a lawyer whose practice fits his or her needs. The referral program usually sets initial consultation costs. After a person’s first consultation, the employment and fee arrangements will be between the client and the attorney.

Other methods of finding an attorney include using telephone directories, published lists of lawyers (law lists) and information from advertisements. The “yellow pages” of telephone directories contain listings for many attorneys in a particular geographic area; the “white pages” usually list both an attorney’s office and home phone numbers. Some attorneys will advertise in the yellow pages, giving basic information about their practice. Similar information can be gleaned from advertisements in the newspaper, the radio

or television. Not all attorneys advertise. The fact that one attorney advertises, while another does not, has no bearing on either's competence or suitability.

A number of published "law lists," including the *Martindale-Hubbell Law Directory*, may be available through the public library. The *Martindale-Hubbell Law Directory* lists attorneys in the United States by state and city, as well as some attorneys in foreign countries. It also provides law firm information.

If an individual has a legal problem but cannot afford to pay an attorney, he or she should contact a legal aid society or legal aid clinic. Legal aid societies, legal aid clinics, law school legal clinics and similar entities operate for the specific purpose of providing legal advice and assistance to individuals who cannot afford to pay for legal services. The Ohio State Legal Services Association was founded by members of the Ohio State Bar Association. (See "*The Ohio State Bar Association and Affiliated Organizations*" section below.) A legal aid society (or an Ohio Public Defender's office, or an attorney in private practice) may be contacted by the court to handle a case for someone who is accused of a serious criminal offense. Such an individual has a right to an attorney, even if he or she cannot afford one.

## How Lawyers Charge for Their Services

Lawyers earn a living by charging fees that are based chiefly on the amount of time they devote in service to their clients' causes. The hourly rate a lawyer charges is governed largely by the economics of the practice of law.

### Determining the Amount of a Legal Fee

Abraham Lincoln summed up the economic realities of the practice of law when he said, "A lawyer's time and advice are his stock in trade."

Lawyers have only their time, learning, experience and skill to offer their clients, and their livelihood depends on the compensation they receive for the time, learning, experience and skill they use on behalf of their clients. The rate charged depends primarily on the lawyer's expenses, the nature of the problem, the demands on the lawyer's time and the lawyer's relative standing, experience and ability. In general, time is the basic unit for determining a legal fee. Lawyers keep careful records of the time they spend on any given matter, and fees are normally calculated by multiplying the number of hours spent by the lawyer's hourly rate. Some lawyers charge a flat fee for particular types of routine services—such as preparation of a will or deed—but even a flat fee is based on the time it takes the lawyer to complete the particular service in normal circumstances. In certain types of cases, lawyers may use contingent fees. (See "*Some Typical Fee Arrangements*" on page 206.)

When establishing an hourly rate, a lawyer factors in office operating expenses. A lawyer's office expenses and overhead, including such items as personnel costs, rent, office furniture, equipment and maintenance, may consume 40 percent or more of the income from client fees. Other expenses include dues for professional organizations, the cost of continuing legal education programs required to learn about changes in the law and insurance, including malpractice insurance.

The relative standing and ability of a lawyer and the demands on the lawyer's time also affect the lawyer's rate. A lawyer who has gained recognition for ability and experience is in demand and generally will charge a higher rate, although the greater the attorney's experience, the less time likely will be needed to complete the work.

The nature of the legal question at the core of a particular case also affects rates. Legal questions that are new or complex, or both, generally will increase the time that must be spent. Such legal questions may require an enormous expenditure of time for legal and non-legal investigation, research and analysis.

Normally, a lawyer will set an hourly rate for most matters. Under some circumstances, the lawyer may vary the rate. The impact that representing a particular client might have upon the lawyer's practice may be a reason to vary the rate. This is especially true if representing a particular client requires the lawyer to turn down other prospective clients. For example, a long trial would require the lawyer to decline representing other—perhaps many other—clients. On the other hand, a lawyer might reduce the rate if there is a continuing relationship with a particular client who might regularly give the lawyer similar legal questions that can be addressed in a standard fashion.

Rates are also affected by the responsibility a particular lawyer assumes in a legal practice (a partner charges more than an associate); the relative benefit of the lawyer's service to the client; and the certainty, or uncertainty, of actually being paid by the client.

Remember that, unlike people in other occupations, a lawyer cannot simply charge what the market will bear. The *Code of Professional Responsibility* requires that fees be reasonable and gives the factors lawyers must use to determine a reasonable fee. Many of those factors are discussed above. An attorney who charges an unreasonably high fee, or charges for services that were not performed, is subject to discipline for professional misconduct. Further, a court must approve some attorney fees before they can be paid. For example, the probate court must approve attorney fees in estate administration cases, and the common pleas court must approve attorney fees in certain domestic relations matters.

### Some Typical Fee Arrangements

The most common type of fee arrangement is the *time charge*. In this arrangement, the hourly rate is multiplied by the number of hours spent on the matter to arrive at a fee. Another common fee arrangement is the *flat fee*, where the total fee charged for a case is determined before work starts. Generally, a flat fee would be charged for a

routine service such as preparing a standard will or handling a real estate closing.

A *contingent fee* is an arrangement that sets the attorney fee as a particular percentage of any money that is recovered in the case. The fee is contingent (dependent) upon a recovery being obtained; if there is no recovery, there is no attorney's fee, although the client still may be liable for expenses. Without contingent fees, persons of modest means could not seek redress for injuries, because they could not afford to pay a lawyer for the time that would have to be spent. Because of their general social value, contingent fees are allowed in certain cases, despite the general rule that lawyers cannot stir up litigation or buy an interest in an actual or prospective lawsuit.

Usually, contingent fee contracts set the attorney fee as a percentage of any recovery made in the case. Such contracts are risky for attorneys because they do not get paid if no recovery is made in the case. Because of this inherent risk, the percentage may range from 25 percent to 50 percent of the amount of the recovery, with 33 and one-third percent being the most common percentage. The percentage may vary depending on how far the case proceeds in the courts. For example, a settlement before trial may call for a lower percentage fee, while a recovery after a completed trial may call for a higher percentage. When discussing a contingent fee arrangement with an attorney, the client should ask how the expenses of the litigation are to be handled. For example, are the expenses taken from the gross settlement or from the client's portion? These are negotiable items.

Clients who need regular legal services often make regular monthly or annual payments to ensure that the lawyer's services will be available as needed. Such payments are called *retainers* because they maintain the lawyer's services on a continuing or standby basis. This fee is considered earned upon receipt because it buys only the lawyer's availability. Also, in some matters a client may be asked to make an advance payment toward the lawyer's fee, and this advance payment

is also called a *retainer*. The fee for services subsequently rendered by the lawyer to a client who has made such an advance payment is credited against the retainer. As fees are paid against this retainer, the client may be asked to make additional payments to be added to the retainer.

Lawyers sometimes offer *pro bono* legal services, that is, volunteer their time and expertise to individuals or organizations who could not otherwise afford a lawyer and who would otherwise be denied equal access to the law. According to the Ohio Legal Assistance Foundation, more than 75 percent of the civil legal problems of Ohio's poor receive no attention. Consequently, attorneys throughout Ohio provide many hours of civil legal services to assist low-income citizens in matters such as landlord/tenant disputes, wills, consumer problems and personal injury. Lawyers also provide *pro bono* services to individuals or organizations involved in disputes concerning social justice issues that have wide implications beyond their individual situations. Lawyers providing *pro bono* work operate out of an ethical obligation to do so. The *Code of Professional Responsibility* states that every lawyer should find time to help serve the disadvantaged and further calls on the legal profession to institute additional programs to provide legal services.

### **Discussing Fees with Your Lawyer**

The best time to discuss fees is during the first meeting with a lawyer. If your lawyer does not mention fees, you should ask your lawyer to explain his or her fee policy and contract. Specifically, ask your lawyer whether he or she charges a flat fee, an hourly rate, or works on a contingent fee basis. Ask the lawyer to state the amount of the flat fee or hourly rate or, where applicable, the specific terms of the contingent fee contract. Further, ask the lawyer to estimate how much time your particular legal issue is likely to require. (Sometimes it is not possible for a lawyer to make such estimates. However, a lawyer should be able to outline the steps that he or she intends to take.) Finally, ask your lawyer about how fees

and expenses are to be paid. Many lawyers accept credit cards or will make arrangements for deferred or installment payments.

Ask your lawyer any questions you may have about the agreement, the services provided, or the fee arrangement. The agreement (contract) should clearly state the lawyer's obligations and your obligations. The lawyer's invoice should itemize each service performed on your behalf and the time it took to complete it. Remember that much of what lawyers do for their clients is done when the clients are not present. For instance, the proper preparation of a four-page contract may take many hours of careful deliberation, writing and rewriting. Similarly, advice that takes only minutes to give may have required days of concentrated research and analysis by the lawyer. If you are not sure a charge is justified, talk with your lawyer. From both a business and a professional point of view, it is to your lawyer's advantage for you to be content that the fee (the amount of the invoice) is fair and that the services provided were satisfactory.

## **Bar Associations and Related Organizations**

The bar association movement began in the 1870s as a concentrated effort by lawyers to improve the image and standing of the legal profession. Today, more than 25,000 Ohio lawyers are members of the Ohio State Bar Association, which is one of the largest voluntary bar associations in the United States.

### **Historical Perspective**

Before the Revolutionary War, most lawyers were well educated, competent and esteemed by the public. With the Revolution, the bar in the United States began a long period of professional decline, and by the end of the Civil War the system of professional legal education had broken down and standards for admission to practice were nearly non-existent.

By the 1870s, the situation had become critical. The honest and competent members of the profession realized that there were many unscrupulous and incompetent practitioners, and that little was being done to control or discipline these individuals. It was clear that some standards of competence and honesty had to be established for the profession. These concerns spurred the formation of voluntary bar associations across the United States.

Leading the way was the Association of the Bar of the City of New York. It was formed in 1870, primarily to rid the city of the notorious Tweed ring, many of whose key members were lawyers (including William Marcy “Boss” Tweed himself). The New York City Bar’s long-term purpose was to reverse the process of professional erosion by upgrading standards for legal education, admission, and conduct, and by providing an effective system for disciplining lawyers.

New York City was not unique in its problems with the bench, the bar and political corruption; these problems existed everywhere in the 1870s. The example provided by the New York City bar in attacking these problems motivated responsible lawyers in other states to organize to accomplish the same purposes.

Local, and then state bar associations sprang into existence across the country. Ohio helped lead this charge with the formation of the Cincinnati Bar Association in 1872 and the Cuyahoga County Bar Association in 1873. The American Bar Association was formed in 1878, partly to encourage the organization of state bar associations. Twenty-five state bar associations were formed from 1878 to 1888. Again, Ohio remained on the cutting edge with the formation of the Ohio State Bar Association in 1880.

Despite the movement’s success, professional progress was neither quick nor easy. Nevertheless, despite setbacks, the bar associations never lost sight of their mission. Today, the legal profession holds its members to exceptionally high standards of legal education, professional competence, conduct and discipline. Moreover, the organized

bar scrupulously maintains those high standards and is constantly seeking to improve them.

## **The Ohio State Bar Association and Affiliated Organizations**

Bar associations are not maintained for lawyers alone, but also for the benefit of the public. For its members, the Ohio State Bar Association has committees and sections concerned with improving justice and the administration of justice in all areas of the law. For example, committees and sections regularly review the developments in their areas of the law and recommend specific actions to improve the law and the public’s understanding of the law. The Ohio State Bar Association also conducts its own regional and statewide meetings. While these meetings concern some association business, much of the time at the meetings is spent on presentations designed to keep lawyers informed about developments in the law.

The Ohio State Bar Association’s Continuing Legal Education Institute is one of the leading providers of approved continuing legal education (CLE) programs in the state, and continues to offer a wide variety of CLE programs in a variety of formats, including live and online seminars, video replays and live satellite broadcasts. Programs cover a broad range of topics in almost every area of legal practice.

The Association also sponsors or directly administers a number of important programs that benefit the public either directly or indirectly. These programs currently include, for example: evaluation of judicial candidates for the Ohio Supreme Court; an active legislative program designed to improve justice and its administration; specialization programs that allow lawyers and paralegals to become certified in certain areas of the law; and public information services through a pamphlet series, a weekly legal information column, a statewide essay contest for high school students, a “legal minute” television segment, publications such as this book and legal resources for journalists and small business owners and a

Web site that contains a wide variety of materials for members of the general public.

The organizations affiliated with the Association also provide services to the public and the profession. A partner in this publication is the Ohio State Bar Foundation, an independent, 501(c)3 corporation whose membership of attorneys and judges is dedicated to the mission of promoting public understanding of the law and improvements in the justice system throughout Ohio.

In all of its initiatives, the Foundation strives to be a catalyst, convener and collaborator for change that furthers its mission for the benefit of Ohioans. Founded in 1951, the Foundation has fulfilled its charitable and educational roles in a variety of ways:

- awarding more than \$2 million in grants since 1991 to nonprofit organizations, government agencies and bar associations for projects that further the Foundation's mission;
- recognizing outstanding attorneys and law-related organizations across Ohio for their service to their communities and to the legal profession;
- providing programs that directly impact jury management, court news coverage and online access to hundreds of informational resources, as well as programs that encourage family discussions on advance directives, help children learn about the courts, mentor troubled youth and guide new and struggling nonprofit organizations; and
- supporting ongoing efforts to bring courts and communities together to improve the access and experience of the public with their local courts and to address the role of courts as community institutions.

Other organizations affiliated with the Ohio State Bar Association are listed below.

- **The Ohio Bar Liability Insurance Company (OBLIC)** is an independent, for-profit corporation affiliated with the Ohio State Bar Association. Established by members of the Ohio State Bar Association, it ensures that

lawyers have access to professional liability insurance at reasonable rates.

- **The Ohio State Bar Association Insurance Agency** is an independent, for-profit corporation affiliated with the Ohio State Bar Association. It offers all types of group and individual insurance coverage to Association members.
- **The Ohio State Legal Services Association (OSLSA)** is an independent, non-profit corporation affiliated with the Ohio State Bar Association. It was established by the Ohio State Bar Association to provide civil legal services to people who could not afford such services. Currently the OSLSA offers two basic services. First, it provides free legal representation to indigent persons in civil matters in 30 counties in southeastern and central Ohio. Those services are delivered through nine offices spread throughout the region. Second, it provides assistance to the other legal services programs in Ohio through a state support center located in Columbus. For more information, visit the OSLSA Web site at <http://www.oslsa.org>.
- **The Ohio Center for Law-Related Education (OCLRE)** is an independent, non-profit, non-partisan organization affiliated with the Ohio State Bar Association. It was established by the Ohio State Bar Association, the Attorney General of the State of Ohio and the American Civil Liberties Union of Ohio Foundation to develop an active law-related education program through the partnership of educators, the legal community, government officials and civic leaders. Among other activities, OCLRE conducts the statewide Ohio Mock Trial Program, We the People...The Citizen and the Constitution, Middle School Mock Trial, We the People...Project Citizen, Youth for Justice, the Ohio Government in Action program, the Law and Citizenship Summer Camp and Academies program, an annual Law and Citizenship Conference for teachers and a new Foundations of Democracy program for lower grades based on four fundamental concepts of democracy:

authority, privacy, responsibility and justice. The Center also offers to OCLRE members free use of its lending library. OCLRE is now jointly sponsored by the Ohio State Bar Association, the Supreme Court of Ohio, the Attorney General of the State of Ohio and the American Civil Liberties Union of Ohio Foundation.

- **The Ohio Lawyer's Assistance Program, Inc. (OLAP)** is an independent, non-profit corporation affiliated with and established by the Ohio State Bar Association. It is a voluntary program available to help lawyers, judges and law students who suffer from alcohol and drug

abuse/dependency, and/or mental health issues, by providing assessments, referring them to treatment and providing continuing support. The person seeking assistance does so confidentially.

- **Other Bar Associations**

In addition to the Ohio State Bar Association, local bar associations are active in each of Ohio's 88 counties. Some of Ohio's metropolitan bar associations are among the largest in the nation.

The American Bar Association operates at the national level in many of the same areas of activity as the Ohio State Bar Association and local associations.

## Chapter Summary

- Lawyers are officers of the courts and their services are vital to the effective operation of the legal system. They work under solemn duties of trust and responsibility to their clients.
- A lawyer, also known as an attorney-at-law or attorney or counselor, is someone licensed to manage the legal affairs of another person, to give legal advice and to plead cases in court.
- Before being admitted to the practice of law in Ohio, an individual must, among other things, successfully complete approximately seven years of higher education.
- A lawyer's education does not end with the receipt of a law degree; it's a life-long proposition.
- An undergraduate degree, admission to law school and a law degree are only some of the necessary steps an individual must take to become a licensed lawyer in Ohio. A prospective lawyer also must undergo a background investigation, successful completion of a comprehensive examination on the law, and must take an oath of office.
- All attorneys are bound by a strict code of ethics. In Ohio, the code of ethics is called the *Code of Professional Responsibility*. Judges are also bound by another set of rules called the *Code of Judicial Conduct*. A disciplinary process ensures that practicing attorneys and judges abide by these codes.
- An attorney is needed, usually without question, when an individual is arrested and charged with a serious crime, or when someone is named as a defendant in a lawsuit. At other times, the need for legal assistance is often just as important but less obvious. The best time to consult a lawyer is before an actual problem occurs.

***Continued on page 211***

## Chapter Summary *continued*

- A lawyer's livelihood depends on the compensation received for the time, learning, experience, and skill used on clients' behalf. The rate charged depends primarily on the lawyer's expenses, the nature of the problem involved, the demands on the lawyer's time and the lawyer's relative standing, experience and ability.
- The most common type of fee arrangement is a *time charge*, where an hourly rate is multiplied by the hours spent on particular legal matter. *Flat fees* and *contingent fees* are also commonly used.
- Lawyers sometimes offer *pro bono* legal services, that is, volunteer their time and expertise to individuals or organizations who could not otherwise afford a lawyer and who would otherwise be denied equal access to the law.
- The bar association movement began in the 1870s as a concentrated effort by lawyers to improve the image and standing of the legal profession. Today, more than 25,000 Ohio lawyers and nearly 4,000 law students and legal assistants are members of the Ohio State Bar Association, one of the largest voluntary bar associations in the United States.
- Local bar associations are active in each of Ohio's 88 counties.

## Web Links:

### ***OSBA's "Law You Can Use" articles:***

(go to <http://www.ohioabar.org/pub/lycu> and search for article by title or topic)

"Attorney Ethics Judged by State's Supreme Court"

"How Do I Choose Representation in My Personal Injury Case?"

"How To Get the Most from an Attorney/Client Relationship"

"Legal Aid Societies Help Poor Clients"

"Ohio Code of Professional Responsibility Governs Attorneys' Actions"

"Ohio Supreme Court Regulates Lawyer Advertising"

"Paralegals Aid Attorneys and Clients"

"What Happens When a Lawyer's Practice Closes?"

"What You Should Know about Attorney Fees"

"What You Should Know about the Value of 'Free' Legal Information"

"Why Hire a Lawyer?"

***Continued on page 212***

## Web Links *continued*

### **OSBA's "LawFacts" pamphlets:**

(go to <http://www.ohiobar.org/pub/lawfacts/> and search by title or topic)

"Attorneys"

"Certified Attorney Specialists"

"Lawyer Ethics and Discipline"

### **Other resources from the OSBA:**

<http://www.ohiobar.org/pub/links.asp>

Link to local bar associations in Ohio, law schools and universities,  
and federal and miscellaneous selected legal resources

<http://www.ohiobar.org/pub/?articleid=72>

Lawyer referral services

<http://www.ohiobar.org/pub/?articleid=85>

Attorney licensing

<http://www.ohiobar.org/pub/?articleid=57>

Specialization program (Certified Attorney Specialists)

<http://www.ohiobar.org/pub/?articleid=84>

Filing a complaint

### **From State of Ohio Web site:**

<http://www.sconet.state.oh.us/Rules/govbar/>

Rules for the Government of the Bar of Ohio

### **From the American Bar Association:**

<http://www.abalawinfo.org/>

Legal information on a variety of topics