



## OHIO STATE BAR ASSOCIATION **LAW FACTS** Connect. Advance. Succeed.

### About Attorneys

#### What is an attorney?

An attorney is a person educated to provide legal advice to people and businesses and to represent them before courts and government agencies and in private negotiations. “Lawyer” is just another word for “attorney.”

#### Why are attorneys necessary?

The law is an extremely complex network of statutes, regulations, and court decisions. Without law, our society would be chaotic, and it would be difficult for an individual to engage in many of the activities that we ordinarily take for granted.

It would be virtually impossible for an individual to know the meaning of all phases of the law and to keep up with the frequent changes without devoting full attention to studying and working with the law. It is essential, therefore, to have attorneys who are skilled in interpreting the law to advise others about legal matters.

#### What is “the law”?

When people refer to “the law,” they are actually referring to many laws that come from a variety of sources. Laws and rules arising from each source may have a different scope and effect. A lawyer must be familiar with all of the laws within his or her field(s) of practice. In Ohio (and other states and the federal government), the law that governs its citizens can be classified into four groups.

*Constitutional law.* The United States Constitution is the basic law of the nation. Similarly, the Ohio Constitution is the basic law of Ohio. The two are similar in many respects, but where a conflict arises, the federal Constitution usually takes precedence. Most constitutions also include a basic statement of fundamental freedoms (Bill of Rights).

*Statutory law.* Statutes are written laws adopted through legislation, and may come from several sources. For example, statutes affecting the entire state are enacted by the Ohio General Assembly. Federal statutes, enacted by Congress, also affect all of Ohio. Local laws, called “ordinances,” are enacted by city or village councils. County commissioners, township trustees and other local governing bodies also enact laws.

*Administrative law.* Many activities subject to statutes or ordinances are so technical or change so often or so fast that they cannot be regulated effectively by statutes or ordinances alone. In such cases, the government agency administering these activities may be authorized to adopt written rules to supplement the statutes. These rules are called “administrative laws.”

*Common law.* Common law is a large body of principles, rules and forms of proceedings that are not founded on statutory or legislative law, but have become interwoven with the constitutional and statutory law through custom, use and the reported decisions of judges in specific cases. Common law fills in the gaps and helps to unify, clarify or supplement constitutional, statutory and administrative law.

Statutes and regulations cannot address every issue or situation we face, so courts interpret the laws and apply them to the specific facts of a case to make a decision, which then becomes part of the common law. That common law becomes precedent (a model) in future cases about how the law will apply. Common law is indispensable to an effective justice system. Since common law is based on generations of experience, it gives the law continuity and consistency. At the same time, it is responsive to changing needs. For example, the United States Supreme Court augmented the U.S. Constitution in *Brown v. Board of Education* when it held that “separate but equal” facilities are inherently unequal and violate the Equal Protection Clause of the 14<sup>th</sup> Amendment.

#### What are an attorney’s qualifications?

To become an attorney in Ohio, a person must earn a bachelor’s degree and then graduate from an accredited law school. Law school courses cover contracts, real property, criminal and civil procedure, business organizations, domestic relations and many other legal topics.

After graduation from law school, the candidate for admission to the “Bar” (the collective term for all practicing attorneys) must produce evidence of good moral character, must successfully complete the bar examination (a two-and-a-half day comprehensive test administered by the Supreme Court of Ohio) and must take an oath of office.

To retain a license, every attorney admitted to practice in Ohio must complete 24 hours of accredited continuing legal education coursework every two years, including 2.5 hours in professionalism and ethics.

#### What is legal advice?

When an attorney gives you “advice,” it is a conclusion drawn from years of training and study, and perhaps many hours of research to ensure that the advice considers all of the laws affecting your problem.

While a law degree allows an attorney to practice any type of law, most attorneys concentrate in a few specific areas of the law. Therefore, not every attorney is going to know the answer to every legal issue you may have.

#### Do I have to get an attorney?

You can represent yourself “*pro se*” in a legal proceeding if you do not want to hire an attorney, but you cannot represent another person or a corporation unless you are an attorney. Keep in mind, if you are representing yourself, you are held to the same standard as trained attorneys.

#### When should I go to an attorney?

The best time to go to an attorney is **before** you are in legal difficulty or need to make an important decision about a legal matter. It is best to consult your attorney before you sign papers or take other action that might seriously alter your legal position.

*For example, you should consult an attorney when:*

- you are planning to enter into a verbal or written contract that has major financial consequences;
- you are involved in an accident involving injury to persons or damage to property;
- you are seeking to collect a debt from another person, or someone is taking action to collect a debt from you;
- you need an opinion about the title to real estate;
- you want to plan your estate, make a will or create a trust;
- you are organizing or dissolving a business;

- you are involved in a family situation such as adoption, divorce, settling an estate, etc.;
- you believe your rights as a consumer or employee have been abused;
- you believe your civil rights may have been violated;
- you have been named in a lawsuit.

#### **How should I go about choosing an attorney?**

Follow the same steps as you would in choosing a physician. If you do not know an attorney, ask for a recommendation from your friends, neighbors, employer, or anyone in whom you have confidence. In Ohio, there are also lawyer referral services in each metropolitan area, operated by the local bar association. (For a listing of lawyer referral services in Ohio, go to the “public” area of the OSBA website: [www.ohiobar.org](http://www.ohiobar.org).) You will also find advertisements for specific lawyers on TV or in other media, but be certain to get an unbiased opinion about their qualifications.

Remember that when you have a legal problem, you should go to a lawyer. Be wary of advice from persons who are not lawyers. To consult someone who is not an attorney about a legal problem is risky and often costly in the end. Generally speaking, no two legal problems are exactly alike.

#### **What is my attorney’s duty to me?**

Upon admission to practice, all attorneys take an oath to uphold the constitutions and the law and to be faithful to their clients.

Just as your communications with your minister and physician are confidential, so are your private communications with your lawyer. Legal ethics rules prohibit your attorney from disclosing, without your permission, any information you provide during the attorney-client relationship. However, your attorney *may* disclose your intention to commit a crime and the information necessary to prevent the crime.

Your attorney’s principal duty is to see that you receive the benefit of all your legal rights. An attorney is sworn to conduct cases in an orderly and efficient manner. Your attorney may not, without prior approval, make any agreement or incur any obligations that might substantially prejudice your interests.

#### **What is my duty to my attorney?**

You should be cooperative with and responsive to your attorney. Be truthful, giving your attorney *all* the facts concerning your case and make a full and fair disclosure of the entire situation. To serve you well, your lawyer must know not only the favorable facts but also those that may be unfavorable. Also, you should be available to your attorney and attend all legal proceedings, as requested. Finally, you should pay your legal bills on time.

#### **How is an attorney’s fee set?**

In determining the fee, an attorney must consider the difficulties involved in the problem you bring, the amount of time it requires and the value of the results obtained for you. You should keep in mind that, to serve clients efficiently, an attorney must bear certain necessary expenses. From the fees, the attorney must pay for office staff, rent, technological equipment, furnishings and legal research tools.

You should discuss your lawyer’s fee at your first consultation. Your attorney may not be able to tell you the exact fee in advance, but usually can give at least an estimate of the charge or an explanation of how it will be determined. Sometimes a lawyer’s fee is controlled by a statute or fixed by court rules. In some cases involving the recovery of money, the charge may be a percentage of the amount recovered. You should ask the lawyer to put into writing fee and billing agreements to avoid any misunderstanding.

#### **Why does an attorney defend a person accused of a crime?**

United States law is designed to ensure that a person who has been accused of committing a crime is given due process. Our constitutions require that an accused person receive a fair trial so that no one will be convicted of a crime that he or she did not commit.

No matter how unpopular the cause or how unsavory the character, every person has a right to be represented by counsel in most criminal matters. If a person is indicted for committing a crime and cannot afford to hire a lawyer, the court can appoint a lawyer to defend that person.

It is the duty of the defendant’s lawyer to present, by all fair and honorable means, every defense permitted by law to ensure that accused persons are not denied their constitutional rights. The prosecutor must present arguments and evidence on behalf of the state. In representing the accused—even someone most people believe is guilty—the lawyer is fulfilling one of the duties of the legal profession.

#### **What is a bar association?**

A bar association is a professional organization of attorneys and judges. Its purpose is to promote a high standard of ethics for its members and to help improve the administration of justice. In Ohio, most lawyers are members of the Ohio State Bar Association, a voluntary bar association. There is also a national bar association, and there are bar associations in every county and large city in Ohio, as well as some associations based on types of practice or other unifying characteristics. Bar association committees work to improve and simplify laws and the legal process.

#### **What if I want to file a grievance against an attorney?**

There is a thorough system for addressing and investigating client grievances against attorneys. For more information on the grievance process, see the LawFacts pamphlet called “Lawyer Ethics and Discipline.”

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*The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting your own attorney.*