THE STATE BAR OF CALIFORNIA

WHAT CAN I DO IF I HAVE A PROBLEM WITH MY LAWYER?

GET THE LEGAL FACTS OF LIFE

What can I do if I have a **problem** with my **lawyer**?

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1 What should I expect from my lawyer?

Your lawyer should:

- Act ethically and abide by the Rules of Professional Conduct and the California Business & Professions Code. (To see the Rules of Professional Conduct, visit the State Bar website at **calbar.ca.gov**.)

- Represent you zealously and use all lawful and ethical means to present or defend your case.

- Not reveal anything you tell him or her in confidence. There are some exceptions to this rule in, for example, certain life-threatening situations.

- Allow you to make the final decisions regarding how your case will be handled.

- Exercise independent professional judgment on your behalf.

- Keep you updated on your case.

For tips on finding a lawyer, see the State Bar pamphlet ***How Can I Find and Hire the Right Lawyer?*** For information on ordering a free copy of this pamphlet and other State Bar consumer publications, call 1-888-875-LAWS (5297) or send an e-mail to **pamphlets@calbar.ca.gov**. Or you can visit the State Bar's website at **calbar.ca.gov** (click on *Pamphlets*) where you'll find the pamphlets and ordering information. The pamphlets also can be ordered in bulk.

2 How can I avoid problems with my lawyer?

Your lawyer is responsible for your case and you are entitled to his or her best efforts on your behalf. However, you can help avoid some problems and misunderstandings. As the client, you should:

- Make sure that your "lawyer" is really a

licensed lawyer. Lawyers must be licensed to practice law in California. And every licensed California lawyer has a State Bar number. Ask your lawyer for his or her number. Also, you can contact the State Bar to check the status of your lawyer's license. (See #5). Avoid falling victim to someone who is simply posing as a lawyer.

- Understand exactly what your lawyer will (and will not) be doing for you and what it will cost. And get your fee agreement with the lawyer in writing. For example, if you will be responsible for court costs or telephone calls, this should appear in a written agreement. Lawyers use various kinds of fee arrangements. If your expenses (fees and costs) will amount to more than $1,000, your attorney is required by law to have a written fee agreement. And you can request a detailed bill every 30 days. This will help you track your costs and avoid surprises.

- Make sure you understand the potential cost if a lawyer takes your case on a contingency basis. In a contingency case, you may be responsible for filing fees and certain other expenses, but you will not be charged attorney fees. However, if you win your case, you will have to pay the lawyer a percentage of the court award or settlement. In this type of arrangement, the lawyer must have a written fee agreement. Make sure that the written agreement specifies the amount of the lawyer's percentage (usually 33-1/3 or 40 percent), and whether or not the fee will be calculated before or after related costs have been deducted.

- Be completely honest and provide all information related to your case—even the facts that you don't think are important. And make sure that your lawyer always has your current address and contact information.

- Supply your lawyer with all documents related to your case. Keep copies for your records.

- Ask the lawyer to estimate how long your case will take. Be aware, however, that unexpected twists and turns in a case could delay the process.

• Ask your lawyer to keep you updated on your case. You might ask the lawyer to send you copies of letters and any official documents filed in court as well.

3 What if I have a personal dispute with someone who is a lawyer?

You may believe that your landlord, who happens to be a lawyer, hasn't given you enough warning of a rent increase. Or, maybe a lawyer who charged some tools at your hardware store has not paid his or her bill.

While lawyers are licensed by the State Bar, the bar does not generally become involved in such matters. To solve these problems, you need to exercise your rights as a tenant or as someone who is owed a debt.

4 What should I do if I have a problem with my lawyer?

Contact your lawyer at the first sign of a problem:

• Express your concerns to the lawyer. It may be a simple misunderstanding that can be cleared up with one phone call. Keep a record of the date and time of your call.

• If your lawyer does not return your call, send him or her a letter and keep a copy. In the letter, describe what is bothering you and what you need. Suggest meeting with the lawyer face-to-face.

• Your next step would depend on the nature of the problem.

5 What should I do if I suspect that my "lawyer" isn't really a licensed lawyer?

• Ask for his or her State Bar number. To confirm whether he or she is licensed to practice law in California, call the State Bar at 1-800-843-9053

(inside California) or 1-213-765-1200 (outside California). If the "lawyer" is licensed to practice law in California, the hotline staff can provide you with State Bar membership information and any public record of discipline.

- Or visit the State Bar's website at **calbar.ca.gov** to obtain membership and discipline information on the person. Go to *Attorney Search* in the upper left-hand corner and type in the person's name. You can type in the person's bar number as well if you have it.

- If you cannot find the "lawyer" in the State Bar's membership records and it turns out that he or she is not licensed to practice law, you may be referred to a law enforcement agency, such as your local district attorney's office. Practicing law without a license is a criminal offense. The State Bar's authority over non-attorneys is limited by law.

- If your "lawyer" is not licensed to practice law in California, ask him or her—by phone and in writing—to return your file and other documents so that you can hire a licensed attorney.

6 What should I do if I don't agree with my lawyer's advice?

Express your concerns to the lawyer and listen to the lawyer's explanation. If you are not satisfied, you may want to seek a "second opinion" from another lawyer. Then, if you are still dissatisfied, you might consider hiring a new lawyer. For some tips on finding and hiring a lawyer, see the State Bar pamphlet ***How Can I Find and Hire the Right Lawyer?*** (See #1 for ordering information.)

You do have the right to change lawyers at any time. However, if you wait until you are close to trial, you must consider whether this would be good for you and your case. You may not be able to find another lawyer at such a late stage. In addition, such a change might delay your case. And if you fire your lawyer, he or she usually will be entitled to payment for any past work.

7 What can I do if my lawyer's bill seems high?

First, talk to your lawyer about it. You may find that the case was more complicated and took more time than you realized. Or your lawyer may find that a billing mistake was made.

If talking to your lawyer fails to solve the problem, you can request fee arbitration (see #10). This is an out-of-court hearing in which a sole arbitrator (or panel of lawyers and non-lawyers) not involved in the dispute will listen to what you and your lawyer have to say, examine the fee agreement, the attorney's performance and supporting records and reach a decision regarding the fee dispute.

Arbitration is usually faster and less expensive than going to court, and you can do it without hiring another lawyer.

In most cases, the lawyer must agree to arbitration if you request it. (See #8 for exceptions.) The arbitrator's decision will be final if both you and the lawyer want it to be binding. Binding means that you will have limited ability to appeal (challenge) the decision. Non-binding means that you would still be able to take your case to civil court for a new trial if you do not agree with the arbitrator's decision.

If either you or the lawyer want a new trial in civil court after a non-binding award, such a request must be filed with the court within 30 days. If no one requests a new trial, the arbitrator's decision in a non-binding case will become final and binding after the 30-day period.

If the arbitrator determines that you are entitled to a refund and the lawyer fails to pay it, you can go to court and obtain a judgment to collect the money. You can also contact the State Bar's Office of Mandatory Fee Arbitration at 415-538-2020 for assistance in enforcing the award. On the other hand, if the arbitrator says that you must pay the lawyer fees and you don't pay them, the lawyer can obtain a court judgment to collect the fees.

8 Can a lawyer refuse to arbitrate a disputed fee?

If you choose to arbitrate, the lawyer must do so in most cases. This is true even if he or she has sued you for payment of the fee, and even if you and the lawyer agreed to the fee in writing. The exceptions include:

- Fees set by law or by the courts, such as the ordinary charges for probating a will, or attorney fees that a judge orders one spouse to pay the other in a divorce.

- Fees charged by an attorney who is not a member of the California bar, who does not have offices in California and who did most of the work for you out of state.

- Fee disputes in which you or the lawyer filed a suit and the lawyer notified you of your right to arbitrate using the required State Bar form, but you filed a suit or answered a suit in court before requesting arbitration.

- Fee disputes in which you are not the lawyer's client, unless you paid fees to the lawyer for a client.

9 What happens at a fee arbitration hearing?

Arbitration hearings are informal. They may be conducted by a panel of lawyers and non-lawyers or by a sole lawyer arbitrator. Whether you are entitled to a single or three-person panel depends on the particular program's rules and the amount in dispute.

You may be represented by a lawyer, but it is not necessary. You can arrange for an interpreter to attend the hearing with you.

You and the lawyer both will have a chance to make statements, ask each other questions and present evidence, such as letters, billing statements or the fee agreement. You may also present witnesses—someone who, for example, heard you and your lawyer agree to the fee. If you have problems

obtaining papers needed for the hearing from the opposing lawyer, you may ask the arbitration panel to intervene.

If you think you will need moral support, ask the arbitrator if a family member or friend can accompany you to the hearing. Fee arbitration hearings may be closed to everyone else except the witnesses while they are testifying.

If you want a transcript (a written record) to be made of the hearing, you must hire a court reporter and pay for it.

Also, keep in mind that the aim of fee arbitration is to determine if the fee amount is appropriate for the lawyer's work on your case. Arbitrators do consider the lawyer's performance in your case to reach their decision. But they will not—and cannot—award any additional money for what may or may not be attorney malpractice or professional misconduct.

10 *How do I request fee arbitration?*

Local bar associations that operate fee arbitration programs generally set up the arbitration. Contact the local bar program in the county where most of the legal services were actually provided. To locate a local program in your area, you can:

- Visit the State Bar's website at **calbar.ca.gov**. Click on *Fee Disputes*, then *Approved Programs*.

- Contact your local bar association directly.

- Call the State Bar at 415-538-2020 for a referral or if there is no available local bar program. If no fee arbitration program exists in your area, the State Bar will set up an arbitration for you.

- Write to the Office of Mandatory Fee Arbitration Program, The State Bar of California, 6th Floor, 180 Howard Street, San Francisco, California 94105-1639, and request a list of fee arbitration programs in your area.

The filing fee for fee arbitration varies from program to program. If you cannot afford to pay

the fee, however, some programs will waive it.

When you fill out the arbitration program forms, you will have to state the type of case (adoption or divorce, for example), the amount of your lawyer's fee and the amount you believe it should be. In addition, you must specify whether you want the arbitration to be binding or non-binding.

If you are the one requesting arbitration, you can do so at any time. However, if you receive a notice of your right to arbitrate form from your attorney (in the event that he or she is planning to sue you and pursue some other action for the disputed fee), you must request arbitration within 30 days—or lose your right to such arbitration.

Keep in mind that requesting fee arbitration is not the same as filing a State Bar complaint alleging attorney misconduct. A disciplinary complaint is an independent process available to you to address an attorney's performance and professional conduct (see next question).

11 *What can I do if I believe that my lawyer acted unethically?*

You can register a complaint with the State Bar. All lawyers who practice law in California must live up to ethical standards. The State Bar of California's Office of the Chief Trial Counsel handles complaints against lawyers. If you believe that your lawyer acted unethically, you can download a complaint form and find information about the complaint process on the State Bar's website at **calbar.ca.gov**. You may also call the State Bar's intake hotline at 1-800-843-9053 (in California) or 1-213-765-1200 (outside California) to discuss the complaint-filing process. The intake hotline staff:

- Can refer you to fee arbitration, lawyer referral services or another agency better suited to handle your particular situation. Your problem with your lawyer may not involve an ethical issue.

- Can explain how the discipline process works and send you a complaint form.

- Cannot give you legal advice. Nor can anyone

on the hotline staff take your complaint by telephone or predict the future outcome of your case. Complaints against attorneys must be submitted in writing. A State Bar lawyer then reviews each complaint and determines whether or not it should be investigated further for possible prosecution. (See #15)

Keep in mind that the State Bar cannot discipline attorneys for being rude or for making a mistake. Also, the mere fact that you lost your case does not mean that the lawyer did something unethical. Nor does the fact that you disagree with the lawyer's handling of the case necessarily mean that the lawyer did something unethical. Complaints are evaluated on a case-by-case basis.

12 *What are some examples of lawyer behavior that may be unethical?*

- You hired the lawyer a year ago. He or she never responds to your letters or calls. You worry that the lawyer has stopped working on your case. Such a situation could warrant State Bar intervention.

- You were told by an insurance company that a settlement check was sent to your lawyer two months ago. Your lawyer is required to tell you that a settlement has been received. Your lawyer has never contacted you. You wonder why you have not received your money.

- Your lawyer settles your case without your permission, and nothing in the fee agreement authorizes the attorney to do so.

- Your lawyer tells you that your case is going well when the lawyer knows (or should have known) that he or she missed the legal deadline for filing your lawsuit. In such a situation, the lawyer may be intentionally misleading you

13 *How do I file a complaint against an attorney?*

- Call the State Bar's intake hotline at

1-800-843-9053 and request a complaint form. The hotline operator will take your name and address and send you the form with instructions on filling it out.

- Or go to the State Bar's website at **calbar.ca.gov** and download the form. Simply fill it out and mail it to: The State Bar of California, Office of the Chief Trial Counsel, Intake Unit, 1149 South Hill Street, Los Angeles, CA 90015-2299.

There is no fee for filing a complaint and you do not have to be a U.S. citizen. In filing your complaint, you should provide copies of any documents that will help support your claim. Your allegations alone are not evidence. Supporting documents might include, for example, copies of retainer agreements, letters, canceled checks or pleadings. Keep the original documents for your records.

14 *What will happen to my complaint?*

- You will be notified by mail after the State Bar has received your complaint.

- An experienced State Bar lawyer will review the complaint.

- If the complaint does not involve an ethical violation or provide information supporting such a violation, the file will be closed and you will be notified by mail. (You can, at this point, request in writing that the file be reviewed by the State Bar's Audit and Review Department.)

- If the file is not closed, a State Bar complaint analyst (supervised by a State Bar attorney) will typically write to the lawyer named in the complaint and ask for his or her side of the story. Also, additional documents may be needed to determine whether the matter should be investigated further.

- If there isn't enough evidence to prove a

serious ethical violation, the bar may issue a warning to the lawyer. Or the bar could issue an Agreement in Lieu of Discipline in which the lawyer agrees to take corrective action. (Such an agreement is not considered discipline.)

- If the State Bar attorney who reviews the complaint sees evidence of a serious violation, a full investigation will be launched.

15 What happens when the State Bar files charges against an attorney?

If the lawyer continues to deny the misconduct, there will be a hearing in the independent State Bar Court:

- Testimony and documents will be presented to a judge.

- The State Bar Court hearing judge can dismiss the case, issue a private or public reproval, or recommend that the lawyer be suspended or disbarred.

- The hearing judge's decision can be appealed to the State Bar Court's Review Department by either the lawyer or the State Bar prosecutors. A review panel of three lawyers—appointed by the California Supreme Court—can accept or change the hearing judge's recommendation.

- Another appeal can be made to the California Supreme Court. (However, the Supreme Court does not have to review the case.) And even if no one appeals, the Supreme Court can review any State Bar Court decision. In most cases, however, the court adopts the recommendation for suspension or disbarment.

16 What is my role in the discipline process?

Your role is similar to that of a witness in a court case. You may be asked for information at various times. And by cooperating with the State

Bar staff, you may be protecting others from falling victim to an unethical lawyer in the future. Keep in mind that the State Bar can only take action with regard to the licensing of lawyers.

State Bar attorneys cannot help you resolve the legal problem that led you to complain about your lawyer in the first place. If you still need legal help, you will need to consult a new attorney.

17 *If I lost money because of my lawyer, can I get it back?*

Maybe. If you lost money because a lawyer did something dishonest, you should first call the State Bar's intake hotline at 1-800-843-9053 and file a complaint. At that point, request a Client Security Fund application form as well.

If an investigation shows that a lawyer took your money unlawfully, the Client Security Fund may reimburse all or part of your lost money, up to a set amount. All California lawyers contribute to the fund, which helps clients who lose money or property because of their lawyer's dishonesty.

For more information on the fund, call 213-765-1140 to request a complimentary copy of the State Bar pamphlet ***Can the Client Security Fund Help You?*** Or send your request to: The State Bar of California, Client Security Fund, 1149 South Hill Street, Los Angeles, CA 90015-2299. Or go to **calbar.ca.gov** (click on *Pamphlets*), where you will find an online version of this pamphlet, as well as other State Bar consumer publications.

You might also consider filing a criminal complaint or suing your lawyer for the lost funds. However, there are legal time limits for filing such lawsuits. If you're considering a lawsuit, you should seek legal advice immediately.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. It is not legal advice. Consult a lawyer if you have a specific legal problem.

The State Bar of California

Office of Media and Information Services

180 Howard Street

San Francisco, CA 94105-1639

415-538-2000

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pamphlets@calbar.ca.gov

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