



LEGAL

A Dentist's Guide to Selecting a Lawyer



ADA Center for
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The ADA receives hundreds of calls a year related to legal matters. Many begin, and many end, with the question, “Can the ADA recommend a lawyer who can handle this matter?” As a national association, the ADA does not maintain a listing of lawyers in your area who are qualified and sufficiently experienced to handle your legal matter. The following material will provide some guidance for you when the need arises for you to hire the right lawyer. If you're in a hurry, however, and don't have the time to read the below discussion, here is the below guidance in a “nutshell”: you choose an attorney in somewhat the same manner that a lawyer who is new in town would select his or her dentist.

For those who do have the time for a more detailed discussion of how to select an attorney, please keep reading.

A. Why Do You Need an Attorney?

The threshold question is: Why do you need the attorney? Any situation involving your legal rights and obligations is a situation that you should consider consulting a lawyer. Examples of such situations include:

1. Purchase/sale of, or starting, a business (such as a dental practice)
2. Real estate transactions
3. Estate planning (wills, trusts)
4. Family matters (divorce, adoption)
5. Contractual matters (drafting, review of, disputes over)
6. Governmental agencies (investigations, inspections, citations)
7. Labor and employment matters
8. Litigation (you are being sued or threatened with a lawsuit)
9. Criminal matters (you have been arrested and/or accused of a crime)

Some attorneys practice more as generalists, while some practice in more specialized fields of law. An attorney who might be perfectly qualified to handle an employee's claim of retaliatory discharge would likely not be the best attorney to help you manage your legal obligations in case of a breach of HIPAA protected patient health information. Just as you would not go to a gynecologist if you were having migraines, you would not go to an attorney specializing in patents to review an office lease.

Thus, your first step is to understand (even in a broad manner) why it is that you need legal guidance, to better direct your search.

B. Sources for Referrals

1. Personal and Professional Referrals: A simple way to start your search is to ask friends, relatives, coworkers, or other members of your community for recommendations of lawyers with whom they have worked, especially if those people have had similar legal concerns to yours. Professionals with whom you have a



business relationship, such as health care professionals and businesspeople, can also be helpful, particularly if they work in a field related to the type of law your case concerns. Keep in mind that even if a recommended lawyer does not practice the kind of law you require, s/he might be able to direct you to other reputable lawyers who do. Be careful, however, not to make your decision based solely on another person's recommendation; the lawyer that is right for someone else's case might not be right for yours.

2. **Organizations:**

(a) **Lawyer Referral Services:** Your state or local bar association may have a lawyer referral service. The American Bar Association's directory of lawyer referral services can be found here:

<http://apps.americanbar.org/legalservices/Iris/directory/>

(b) **Malpractice Carrier:** If the legal concern relates to your practice, your malpractice carrier might be able to provide you with some guidance in finding a local attorney who has dealt with similar cases.

(c) **State Dental Association:** Your state dental organization might be able to recommend an attorney. For example, the New York State Dental Association provides has an approved referral list of attorneys and law firms who specialize in dental matters: (<http://www.nysdental.org/membership/subpage.cfm?ID=14>) .

3. **On-Line:** If you are unsuccessful in obtaining a personal or organizational recommendation for a local attorney who practices in the substantive area you need, you may be able to locate such an attorney through an on-line search.

C. Due Diligence

The amount of work you will want to devote to assuring that you have selected the best attorney will likely be directly proportional to the importance and complexity of the matter. Are you selecting an attorney for your residential real estate closing? The attorney who coaches your daughter's soccer team (or her law partner) will likely do just fine, as will the attorney with an office in the nearby strip mall. Facing a government investigation and substantial fine due to a HIPAA breach? You will likely wish to make sure that your attorney has substantial experience and expertise in HIPAA and regulatory matters.

D. Interview

For an important legal matter, you will likely want to meet with the attorney to "interview" him or her before engaging the attorney. Depending on the matter and on your level of comfort, you may wish to interview more than one attorney. Most attorneys will be willing to meet with you at no cost to discuss the possible engagement, but you should make sure that you have agreed upon whether or not you will be charged for this initial meeting.

1. **Interview Considerations**

(a) **Fees:** Advertisements can be misleading. An attorney might advertise a low price that does not include other costs (such as filing fees, copying and fax charges,



- etc.). Be sure you know whether the attorney will be charging you on a flat fee basis or by the hour. You will want to have an estimate, in most cases, of how much the attorney's services will cost for your particular matter, and when you will be expected to pay before you hire him/her. You may wish to request a written engagement agreement with the attorney that details the engagement, including fees.
- i. Be aware that some lawyers charge for an initial interview. As previously noted, you should know ahead of time whether there will be a charge for this initial visit and, if so, and how much it will be. The initial meeting does not mean you have committed to hire the attorney.
 - ii. Types of fee structures:
 - a. Hourly rates: A fee calculation based on cost per hour for the attorney's services.
 - b. Fixed fee: A flat fee charged for a simple service, such as the review of an agreement, a real estate closing, or an uncontested divorce.
 - c. Contingent fee: A fee consisting of agreed-upon percentage of money the client receives from a settlement, plus all out-of-pocket costs or expenses incurred in the transaction or lawsuit.
 - d. Miscellaneous fees: Filing fees (physical and e-filing), photocopying, transcription, phone calls, messenger services, serving papers, witness fees, travel expenses, etc. Some lawyers also charge for work done by their paralegals/legal assistants.
- (b) Practice Record: Though online reviews can be misleading, there are several ways to check an attorney's on-line reputation. One method is to check your state bar association's website, which may provide information as to whether any complaints, misconduct charges, or malpractice accusations have been filed against the attorney.
- (c) Experience: You may wish to ask the prospective attorney to describe the level of his or her experience. Based on the nature of the case, you may not always need the most experienced attorney. A relatively inexperienced attorney might be sufficient for a small matter (such as a residential real estate closing), and hiring one can save you money. More complex legal matters may call for a more experienced attorney, whose fees are likely to be significantly higher.
- (d) Communication: Legal matters require clear, consistent, and reliable communication between client and attorney, especially in a complex or extremely important matter (such as where your dental license may be at risk), which may last for several months or more. You should choose an attorney who commits to respond to calls and e-mails in a timely manner. You might attempt to test this by sending an e-mail to the law office after an initial visit, detailing a few questions you might have. A delayed response might indicate that the attorney is too busy to give your matter the attention you would want.
- (e) Personality: An attorney's personality may be important to you, since you should feel comfortable in his/her presence and working with him/her. You may need to



openly share private information so that he/she can effectively represent you to achieve the best outcome. If you withhold information because you do not feel comfortable with your lawyer, that decision could negatively impact your results.

2. Your Interview Preparation

- (a) When you go to the meeting with the attorney, it may be helpful to bring the following:
- i. A written summary of the issues. For example, for review of an employment agreement, this may consist of a summary of what you believe should be the terms of the agreement (what you have been orally promised), concerns that you have with the proposed agreement (e.g. with what is stated, or even omitted, from the proposed agreement), and any other concerns related to the employment.
 - ii. In other types of matters, you might bring the names, addresses, and phone numbers of all people and/or entities involved. The lawyer cannot represent you if he/she has a relationship with anyone who is adverse to your position.
 - iii. All documents related to your matter: For review of an employment agreement, you should bring the employment agreement. If you are involved in a lawsuit, bring anything you've received from a court or any person or entity involved in the dispute.
 - iv. Some lawyers might request that you send them the materials ahead of time so they can prepare to meet with you. Provide copies at the initial interview, not the originals.
- (b) General note: Attorneys usually charge by the hour. The more focused and well organized you are (e.g. all documents supplied to the attorney and well organized), the less work for the attorney and the smaller your legal bill.

3. Interview Questions: You are essentially conducting a job interview. Depending on the matter, some or all of the following may be helpful questions:

- (a) Are you experienced in this kind of matter?
- (b) Will you be the lawyer handling this matter, or will an associate be handling this?
- (c) How long do you estimate it will take to complete this matter?
- (d) How much do you estimate your services will cost me?
- (e) What is your fee structure?

E. Your New Attorney

1. Your Expectations

- (a) Once you have hired your lawyer, there are certain expectations for that relationship. You should expect your lawyer to:
- (b) Prepare a written fee agreement, including information about what expenses you will be required to pay and the reasons behind those charges



- (c) Be straightforward and honest in giving you advice
- (d) Tell you the strengths and weaknesses of your case or position
- (e) Keep you informed of the status of the matter and of actions that he or she is taking
- (f) Follow your instructions (as long as they are legal, ethical, and reasonable)
- (g) Protect your interests and consult you when making important decisions regarding your case
- (h) Refrain from representing any other client with interests that conflict with yours during the time that s/he is representing you
- (i) Provide you with copies of all letters and documents related to your matter
- (j) Provide you with an itemized periodic bill of all work done and expenses related to your case

2. Your Attorney's Expectations

- (a) Be present and on time for all appointments and court dates (if applicable)
- (b) Give him/her reliable contact information for you and update him/her whenever your contact information changes
- (c) Be completely honest. Except in very special circumstances, your lawyer must keep any information you tell him/her confidential, and it's important that she or he have as much information as possible that might help him/her argue your position effectively

3. Problems in the Relationship: If you have problems with your lawyer, such as if you are dissatisfied with the representation, first talk to him/her about them and see if the problems can be resolved in a mutually satisfactory manner. If you can't resolve the problem, you have a right to fire the lawyer and hire a new one (though, depending on the matter, this may give rise to additional – and sometimes significant -- costs).

F. Your Trusted Counsel

If you have found an attorney with whom you can work well and who you trust, you have likely found a valuable business advisor on whom you can rely in the future to help with legal problems that may arise. This includes those problems beyond that attorney's expertise -- a good attorney will advise you when a matter is beyond his/her (or the firm's) area of expertise, and likely be able to recommend another attorney with that type of expertise.

Thus, spending the time to carefully choose the right attorney to work with you and your practice may pay dividends beyond the instant matter. Select carefully, and good luck!

The ADA designed these materials to assist our member dentists. We do not, in making these materials available to you, intend to give you legal or professional advice or opinions. To get appropriate legal or professional advice, you need to consult directly with a properly qualified attorney admitted to practice in your jurisdiction. To the extent ADA has included links to any third party web site(s), we intend no endorsement of their content and imply no affiliation with the organizations that provide their content. Further we make no representations or warranties about the information provided on those sites, which we do not control in any way.