

Fact Sheet 15 – Hiring a Lawyer

July 2015

When you hire a lawyer to act for you, he or she accepts your *retainer*. A retainer agreement is much like any other business agreement: it should be clear about the terms and conditions of the services the lawyer will provide for you.

What does it cost to retain a lawyer?

In some matters there are set fees for legal services. (Further information can be found on the OLSC Fact Sheets **Regulated Costs – Personal Injury Claims; Victims Compensation; Motor Accident Compensation**.) In other matters lawyers can decide their own charges, however they are generally required by law to disclose their costs (i.e. the fees and other charges that you will have to pay) before they begin work for you. There are some exceptions, such as if the work is urgent. **Costs should be disclosed in writing and the costs disclosure should explain how you will be charged and give you an estimate of the costs.** The costs disclosure should also say how you will be billed, e.g. monthly or at the end of your matter. [Further information can be found on the OLSC Fact Sheet **Costs Disclosure**]

Is my first appointment free?

You should ask about charges when you make your appointment.

Some lawyers advertise that your first appointment is free. This is a valuable opportunity for you to find out whether you have a reasonable case and what services the lawyer offers. However, free first appointments are often limited to twenty or thirty minutes. It is important to find out how long the free appointment will last. If your meeting is longer than the prescribed time of a free appointment, you may be billed for the extra time. If a lawyer has not advertised or otherwise indicated that the appointment will be free, then he or she is entitled to charge for the appointment.

What else should I ask the lawyer about?

As well as asking about likely costs and the chance of success, you should ask the lawyer about how he or she will keep you informed about your matter. Communication is the key to a successful professional relationship with your lawyer. At the outset, ask:

- when you can expect progress reports

- how long the case is likely to take
- how often you should phone the lawyer and who else to contact if the lawyer is unavailable
- if the lawyer will charge for all phone calls
- who else will be working on your matter

What duties does a lawyer have?

The Solicitors' Rules and Barristers' Rules which set out the standards of conduct for lawyers say they:

- must act honestly, fairly, with competence and diligence in the interests of clients
- should accept instructions, and a client's retainer, only when they can reasonably expect to provide the services the client wants within a reasonable period
- must avoid situations where they have interests or duties which conflict with the interests of their clients [Further information can be found on the OLSC Fact Sheet **Conflict of Interest**]
- have a duty of confidentiality to their clients
- have a duty to the Court to be frank, honest and independent. It is professional misconduct for a lawyer to knowingly mislead the Court

Must a lawyer act on my instructions?

Generally a lawyer must follow his or her client's instructions. This certainly applies to the settlement of cases and the starting of legal action. However, it is also appropriate for the lawyer to make decisions about how to conduct the case. The client should be able to rely on the lawyer's professional judgement and skill.

Most difficulties concerning instructions can be avoided by clear communication between the lawyer and the client. The lawyer needs to understand the client's expectations and the client needs to understand the general approach that the lawyer intends to take. Clients who are concerned that a lawyer is not following their instructions should mention their concerns to the lawyer as soon as possible — not at the end of the case.

Sometimes a client will disagree with, or be disappointed by, a lawyer's advice. This does not necessarily mean that the lawyer has failed to act on the client's instructions. If a client consistently refuses to accept advice and issues instructions which the lawyer believes are not in the client's best interests, there may be a breakdown of the trust involved in the relationship. This can lead to termination of the retainer.

Termination of retainers

A retainer agreement might include conditions for ending the professional relationship between the lawyer and the client. If not, the lawyer must not terminate a retainer except for good reason and with reasonable notice. Some examples of good reasons for termination are where:

- the client refuses to pay an interim bill, contrary to the costs agreement
- the lawyer is unable to obtain instructions from the client
- the client refuses to accept, or act in accordance with, the lawyer's legal advice
- the lawyer cannot continue to act without being in breach of the law or the Rules

The NSW Legal Services Commissioner cannot compel a lawyer to continue to act for a client if the lawyer's termination of a retainer is reasonable.

A client may terminate the retainer at any time. However, depending on what the costs agreement says, the lawyer might be entitled to keep the client's file until the client has paid outstanding costs. This is called holding a lien over the file. [Further information can be found on the OLSC Fact Sheet **Liens**]