

I Have a Problem with My Lawyer...

What Can I Do Now?

*What can I do if I disagree with
my lawyer?*

Can I fire my lawyer?

*Where do I turn if my lawyer is
overcharging?*

*Can I be reimbursed if my lawyer
has improperly kept my money?*

Can I sue my lawyer?

*Can I file a complaint against a
lawyer?*

CITIZENS
LEGAL GUIDE

HALT

AN ORGANIZATION OF
AMERICANS FOR LEGAL REFORM

I Have a Problem with my Lawyer...

What Can I Do Now?

So you worked with a lawyer on a civil case and did everything you needed to do. You shopped around for what you thought would be an affordable and competent lawyer; you created a list of questions and issues to discuss; you gave your lawyer all the relevant information you had; and you got the fee agreement in writing.

But despite this, your lawyer has failed you. Maybe he acted incompetently or unethically. Or she charged you for services she never performed. Perhaps his skyrocketing fee is well above what it should be for the work he did on your behalf. Or, worst of all, she has stolen money from you.

This brochure will help you decide how best to address a dispute with your lawyer and will provide you with information about the four primary avenues of recourse you can pursue when your lawyer has caused you loss or harmed your case.

The First Step: Addressing the Conflict

The first thing you should know is that while your lawyer does not always have the right to withdraw from your case, you can fire your lawyer at any time and retrieve any documents that you may have given him. However, before you decide to take this decisive final step, you should assess your options.

Communicating with Your Lawyer

If you are having a problem with your lawyer, write a letter immediately explaining your concern. This could clear up any misunderstanding. If you have a written agreement (and HALT strongly urges you to get the fee in writing at a minimum), mention the sections of the agreement that you think have been violated.

Why a letter? Because it's easy to forget what was said in a telephone conversation or in person and it will help you avoid a "he said/she said" debate down the road. Writing a letter will give you a chance to state your case clearly and dispassionately and give you written proof that you've communicated your concerns.

Keep your letter short and to the point. It should include:

- ✓ A concise summary of the problem;
- ✓ Questions you want answered;
- ✓ Possible solutions for working it out; and
- ✓ The date by which you are asking the lawyer to answer in writing. (Allow about two weeks for a response.)

While your lawyer does not always have the right to withdraw from your case, you can fire your lawyer at any time.

Don't accuse the lawyer in your letter, but be straightforward. Saying, "I expected a bill which itemized all the charges" or asking, "Is there a reason why such and

If your questions to your lawyer are repeatedly ignored, a written record of your attempts to communicate can be important evidence if a dispute arises.

such has not yet been completed?" is far less combative and more likely to get results than more confrontational statements, such as: "You were supposed to send me an itemized bill" or "You are late in completing. . . ." Be cooperative but firm. The best letters are to the point, logical, brief and objective.

Date your letter and keep a copy in your files. If your questions are repeatedly ignored, a written record of your attempts to communicate can be important evidence if a dispute arises and you go to court or file a grievance with your state disciplinary agency.

Insist on the information you need. You may learn that your lawyer is on the right track. If he refuses to communicate, you may find that it's time to fire your lawyer and hire another.

Firing Your Lawyer

Your freedom to fire your lawyer is almost absolute. You are not required to have a good reason. The only time you are not allowed to fire your lawyer is when you attempt to use the firing to delay a court proceeding or otherwise manipulate a delay for your benefit.

It's a good idea to shop for a new lawyer before firing your current one so that you won't have to drop the case or represent yourself. Any lawyer you interview will ask you if you already have representation. Tell the truth: that you are dissatisfied with your present lawyer and why. This may make some lawyers wary of taking your case or unwilling to talk with you until you fire

your original lawyer, but your honesty can prevent the same kind of problems arising with your next lawyer.

If you decide to hire a new lawyer, you should write a discharge letter to your current lawyer and ask the new lawyer to review the letter before you send it. The letter should state your reasons for discharge and request a meeting to discuss those reasons. Make arrangements for paying the final bill if you agree that you owe the lawyer money. If you disagree with the lawyer over how much you owe and the lawyer threatens to keep your file if you don't pay, remember that paying now may get your files back but it will probably make it more difficult to negotiate a fee reduction or to get the lawyer to agree to fee arbitration later on.

The Second Step: Seeking Recourse

Where do you turn if you decide not to fire your lawyer or if termination doesn't entirely resolve your problem?

There are four primary mechanisms in place that can help you—each designed to address different forms of lawyer misconduct. In order to decide which mechanism(s) to pursue, you need to determine the injury you suffered and the help you need. In many cases, you will want to explore more than one of the following avenues:

- ❑ **Fee Arbitration**—if you disagree with your lawyer about payment and you want to resolve the fee dispute
- ❑ **Client Compensation Fund** (also known as Client Protection Fund or Client Security Fund)—if your lawyer stole or commingled your money and you want to be reimbursed for those funds
- ❑ **Legal Malpractice Lawsuit**—if your lawyer acted negligently, incompetently or fraudulently and you want to sue your lawyer and recover damages in court

- ❑ **Lawyer Discipline Complaint**—if your lawyer acted unethically and violated his state’s Rules of Professional Conduct and you want to see that he is disciplined for the misconduct

Fee Arbitration

Our analysis shows that most people’s dissatisfaction with their lawyers boils down to a fee dispute. You and your lawyer simply do not agree on the appropriate fee for the work performed.

If you receive your lawyer’s bill in the mail and you do not understand the charges, you should first request a thorough explanation of the bill. The best way to understand whether a fee is excessive is to obtain an itemized list of the charges: what has been done, how much time did it take and who performed the work—a paralegal, a clerk, a secretary or your lawyer. All charges for expenses (e.g., postage, copying, airfare, filing fees) should also be itemized.

After discussing the charges, if you still disagree with the fee, you can turn to your state’s out-of-court arbitration forum for resolving lawyer-client fee disputes. A panel of arbitrators will listen to the testimony, examine your evidence and decide whether to uphold or reduce the lawyer’s requested fee. In most cases, arbitration is a better option than taking the dispute to court, because arbitration is considerably less expensive and can resolve the dispute much more quickly.

Voluntary vs. Mandatory Fee Arbitration. Participating bar associations offer one of two types of arbitration: voluntary and mandatory. Voluntary, the more common, requires that you and your lawyer agree to participate

Obtain an itemized list of the lawyer’s charges: what has been done, how much time did it take and who performed the work—a paralegal, a clerk, a secretary or your lawyer.

in binding arbitration. Binding arbitration means that the arbitrator’s decision may not be appealed; it is the final judgment regarding your fee dispute. Either side is free to refuse. In mandatory arbitration, the lawyer is required to submit to binding arbitration if you request it. In some places that provide only voluntary arbitration, if your lawyer refuses to arbitrate, the bar will help you pursue your case. It may give you free advice, offer an advisory opinion from the arbitration panel or even appoint a free lawyer to help you file a lawsuit over the disputed fee.

Arbitrators. If the bar accepts your application, it will give you the name or names of the arbitrators assigned to hear your case. A panel of one to three arbitrators will be chosen, the number depending on your state’s rules, the size of the fee in dispute and, occasionally, your own preference. Arbitrators are lawyers appointed by a bar administrator. Some bars also include nonlawyers, but nonlawyers are never in the majority. If you are worried that your arbitrators may not be impartial, when you get their names, do some research. In particular, try to determine whether they are members of the same bar or law firm as the lawyer whose bill you’re contesting. If you have reason to suspect that one or more arbitrators’ judgment will be biased, challenge their appointment. Find out from the bar how many arbitrators you are allowed to challenge and whether you have a limited number of days in which to do so.

The Hearing. When membership of the arbitration panel is settled, you and your lawyer will be notified of a hearing date. If you wish, you can be represented at the hearing by another lawyer. The chair of the arbitration panel will explain the process, then give you a chance to tell your side of the story. You can present witnesses and any documentary evidence you have. The rules of procedure are quite informal and arbitrators may ask questions at any time. You will be notified in writing of the arbitrators’ decision within 30 days of the date of the final hearing. If that decision is binding, the lawyer has the legal right to force you to pay. Similarly, you have the right to a refund if you have already paid the fee. If things go smoothly, the whole process should take 60 to 90 days.

If Your Lawyer Refuses. If the amount in dispute is within the small claims court dollar limit in your jurisdiction, you can sue your lawyer in that court. The advantages of using small claims court are that you can represent yourself, the process is usually less formal than in other courts and scheduling a trial is relatively easy.

Clients do get the short end of the stick in legal-fee disputes. If you can't resolve the problem directly with your lawyer, you have three options: pay the bill, sue in court or participate in an arbitration program that's funded, operated and staffed by lawyers.

To be reimbursed for money stolen by your lawyer, apply to your state bar's client compensation fund.

Client Compensation Fund

Let's say a lawyer deposits money from your trust fund or estate into his personal bank account. Or he never does any work on your case but refuses to return money that you paid him upfront. Perhaps your lawyer simply pockets the money you won in a lawsuit. To be reimbursed for money stolen by your lawyer, apply to your

state bar's client compensation fund. If your claim is found to have merit, the fund committee orders reimbursement, but it reserves the right to reimburse only part of the money stolen. If your loss exceeds the limit in your state, your only recourse is to sue the lawyer for the rest.

Filing a Claim. To file a claim, contact your state's fund committee and ask for the rules for filing. Usually, you cannot hire a lawyer to help you file your claim because lawyers are not allowed to accept payment for helping present a claim. However, some lawyers will volunteer their time as a public service, to help you file a complaint. You will be asked to fill out a form. You should attach copies of any letters, bills or receipts and a summary of the complaint. Keep a copy of your form and the originals of any attachments you submit.

Committee Review of a Claim. Committee members review your claim and contact the lawyer in question. They may also ask you to supply further information. No hearing is held, and the claim and evidence are not made public. If your claim is found to have merit, the committee orders reimbursement.

If Your Claim Is Rejected by the Committee. If your claim is rejected, you will receive a letter advising you of the rejection, but depending on your state's rules, you may not have the right to have the reasons for the committee's decision stated in writing. In many states, you can't appeal the committee's decision. In some states, if you have also filed a disciplinary complaint against your lawyer, the claim to the security fund will be delayed until the disciplinary complaint is settled. Also, information from the disciplinary committee can affect the outcome of your fund claim.

Legal Malpractice Lawsuit

If your lawyer did something wrong—even if it were unintentional—that led to a worse outcome in your case than would have otherwise occurred, you can sue the lawyer and recover for damages caused by his negligence. You should sue under a general theory of legal malpractice, and in some jurisdictions, you might also be able to sue under your state's consumer fraud law.

If you win a malpractice action, you can receive money damages, sometimes including any fees you had to pay to the lawyer who brought the suit on your behalf. However, don't bring a malpractice action without first considering several factors:

Difficulty of Winning. It's difficult to win a legal malpractice suit. To win, you must first prove your lawyer

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guilty of misconduct or negligence, then show you were harmed monetarily because of the misconduct or negligence. Often, this means you have to prove you would have won your original case if not for your lawyer's error. Needless to say, this is not an easy task.

If you sue your lawyer, prepare for a long and bitter fight. You will be fighting on the lawyer's own turf, where lawyers are most familiar with the rules and the other players, from the judge on down.

In addition, while the standard for proving that your lawyer committed malpractice varies in every jurisdiction, most states require a very strong showing of egregious misconduct and a great deal of evidence to demonstrate the losses you incurred as a result of that misconduct. In those states, you must demonstrate that you would have won your case or achieved a better result had it not been for your lawyer's negligence. In some states, you only need to prove that your lawyer's misconduct was a substantial factor in causing you some form of loss. However, even

this can be difficult to prove, especially when time has passed and you don't have access to all the relevant paperwork to use as evidence.

Also, keep in mind that each state has a statute of limitations for filing a malpractice lawsuit. A statute of limitations is a law which indicates that after a certain period of time, you may not bring a lawsuit. Usually, the statute begins to run upon your discovery of the lawyer's misconduct, but in some states, the statute starts to run as soon as the wrongdoing occurs, regardless of whether you were aware of the misconduct at that point.

Sue in Small Claims Court or Hire a Malpractice Lawyer. Malpractice cases can be brought in small claims court if you ask for an award that is within the small claims court limits. Taking such a case to small claims court

allows you to handle the case yourself and avoid lawyer's fees. It is also quick.

If you do not sue in small claims court, more likely than not you will need a lawyer. Look for one who specializes in legal malpractice and who doesn't have any conflict of interest in representing you against the lawyer you're suing. Unfortunately, it is often difficult to find lawyers willing to sue their colleagues, so you may need to look outside your area, especially if you live in a small city or town. Also, just because your new lawyer is outraged about your previous lawyer's conduct, remember to carefully manage your relationship with the second lawyer, or you may find yourself complaining about lawyer misconduct again.

A Final Caution about Bringing a Malpractice Lawsuit.

Prepare for a long and bitter fight. You will be fighting on your original lawyer's own turf, where lawyers are most familiar with the rules and the other players, from the judge on down. Lawyers do not take kindly when accusations about their professional conduct are placed before their bar and bench colleagues.

Nevertheless, a legal malpractice lawsuit may be the best way of obtaining compensation if your lawyer has negligently mishandled your case.

Lawyer Discipline Complaint

When your lawyer violates the state's Rules of Professional Conduct by acting dishonestly or deceitfully, failing to protect your rights, refusing to keep you informed about the case, breaching your confidentiality or otherwise acting unethically, you should file a complaint with your state's lawyer discipline system.

Filing a Complaint Versus Filing a Lawsuit. The major difference between a malpractice lawsuit and a complaint with a disciplinary agency is that the courts can award you money and the disciplinary body usually can't. The bar's authority is disciplinary. Lawyers in each state are bound by the state's Rules of Professional Conduct and when a lawyer violates a provision, the lawyer discipline agency's job is to punish him. The goal of a malpractice case in court, on the other hand, is to be paid for damages that resulted from your lawyer's

misconduct. If your only goal is to get money back, the state bar disciplinary committee is probably not the place for you.

While a disciplinary agency will not reimburse you for losses arising out of your lawyer's misconduct, you can receive the satisfaction of knowing that you have spared future legal consumers the frustration, delay and anguish you have suffered. In addition, pursuing your complaint can bolster a claim that you fired your lawyer for good cause and therefore shouldn't be required to pay fees.

Process of Filing a Complaint. Your state or local bar association can tell you how to file a complaint. Often, all that is required is sending a letter to the lawyer discipline committee or filling out a simple form.

When you file a complaint, be detailed but brief. Include all the relevant data and copies of any documents that support your claim. More than half of all complaints are dismissed after the bar committee merely reads the complaint letter and the lawyer's answering letter. You want to give the committee your best evidence and description of events at the outset; you may not get another chance.

If your complaint is not dismissed, the panel may ask for more information. It will also schedule a hearing. The hearing is usually confidential. You will be asked to give your side of the story and the lawyer will be asked to respond. The lawyer is usually permitted to ask you questions, but in some states you are not given the right to question the lawyer. Sometimes the lawyer also has the right to hear you tell your side of the story, but you can't hear the lawyer's version.

Forms of Discipline. If the panel does decide against your lawyer, however, it has several options. It can recommend that the lawyer's license to practice be taken away temporarily or permanently (disbarment). This is the most severe sanction available and the one least often used. Alternatively, the committee can suspend the lawyer's license to practice for a specified number of months or years. The difference between a suspension and a temporary disbarment is that the disbarred lawyer must reapply for a license and the suspended

lawyer's license is automatically reinstated at the end of the suspension.

Instead of disbarment or suspension, the panel can recommend a public or private reprimand of the lawyer. If the reprimand is public, the lawyer's name and the facts of the case will be published in the bar's journal or a local newspaper. If the reprimand is private, it is never made public, not even to the lawyer's other clients.

The Need for Reform

For over a quarter of a century, HALT has been an outspoken advocate for reform in each of the four primary avenues of recourse: fee arbitration, client compensation funds, legal malpractice lawsuits and the lawyer discipline system. We encourage you to pursue these recovery mechanisms, but we recognize that they are not always sure-fire solutions.

Although HALT supports the concept of fee arbitration, we oppose bar-sponsorship of fee arbitration because of the inherent conflict-of-interest. Whether or not such programs are biased, HALT believes clients should not be required to submit their disputes over lawyers' fees to a panel of lawyers. We urge removing fee arbitration from the bar and establishing independent, neutral state agencies that resolve fee disputes in an impartial and consumer-friendly forum.

Unfortunately, client compensation funds in many states ultimately offer little help. The combination of poor funding, lack of publicity, endless claims processes and ridiculously low and seemingly arbitrary payment caps produces a trickle of reimbursement for clients cheated by their lawyers. HALT urges state bars to allocate a greater percentage of lawyer dues payments to client compensation funds and increase pay-outs to victims of lawyer theft.

We encourage you to pursue these recovery mechanisms, but we recognize that they are not always sure-fire solutions.

In too many states, the standards for proving legal malpractice are nearly impossible to overcome. And even where the standard is reasonable, plaintiffs are often unable to recover because their lawyers are bankrupt

If your lawyer knows about your fee dispute, client compensation claim or disciplinary complaint, your lawyer may be more conscientious with future clients.

and don't carry malpractice insurance. HALT advocates more workable standards for proving malpractice and advises states to pass mandatory malpractice insurance legislation.

Across the country, lawyer discipline systems fall short of truly protecting the public. Hamstrung by inadequate resources and secrecy requirements, discipline systems yield a tiny trickle of disbarments, suspensions and reprimands. HALT works to educate the public and the legal profession about the ineffectiveness of the current lawyer discipline system by producing studies, such as our Lawyer Discipline Report Card, that document the

toothless sanctions, unnecessary secrecy, biased procedures and endless delays plaguing disciplinary bodies.

Despite the problems impairing the current systems, we encourage you to pursue these avenues of recourse and challenge the legal establishment to provide the services you're owed when a lawyer has caused you loss or harmed your case. We also encourage this because the number of fee dispute forms, client compensation claims and disciplinary complaints filed coupled with the lack of action taken is often used by HALT and other reformers to illustrate the need for a more effective disciplinary system. Also, being informed about your fee dispute, client compensation claim or disciplinary complaint may make your lawyer more conscientious with future clients, or yours may be the latest in a string of complaints against your lawyer, finally inspiring the bar association to take action.

Join Our Fight For Reform

Since 1978, HALT has provided a powerful voice—working on your behalf in Washington and across the nation—to help Americans find solutions when a lawyer has acted fraudulently, incompetently or negligently. And we need your help. Join HALT to help us transform these systems from ones which only pay lip service to consumer protection into effective and meaningful avenues for recourse. In this brochure, you will find further information about HALT and a membership form.

Where to Find More Information

More information about addressing problems with lawyers and seeking avenues of recourse is available on HALT's Web site, www.halt.org, in *HALT's Everyday Law Series* and in HALT publications *Using a Lawyer*, *The Legal Resource Directory* and *Small Claims Court*.

JOIN HALT TODAY!

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