



## Discussing Fees

There are many different ways of charging fees and each attorney will choose to work differently. Be aware of how your attorney charges. You will also want to know how often you will be billed. Some attorneys bill weekly, some bill monthly, some bill upon completion of work. Ask about these matters at the initial conference, so there will be no surprises. If you don't understand, ask again. If you need clarification, say so. It is very important that you feel comfortable in this area.

Some attorneys charge by the hour with different hourly rates for work performed by attorneys, paralegals, and secretaries. If this is the case, find out what the rates are. Other attorneys charge a flat fee for all or part of the services. This is not unusual, for example, if you are having documents prepared. Your attorney might use a combination of these billing methods.

In addition to fees, most attorneys will charge you out-of-pocket expenses. Out-of-pocket expenses typically include charges for copies, postage, messenger fees, court fees, deposition fees, long-distance telephone calls, and other such costs. Find out if there will be any other incidental costs.

The attorney may ask for a retainer. This is money paid before the attorney starts working on your case. It is usually placed in a trust account and each time the attorney bills you, he or she is paid out of that account. Expenses may be paid directly

from the trust account. The size of the retainer may range from a small percentage of the estimated cost to the full amount. In many cases, the total fee will be higher than the retainer.

## Get It In Writing

Once you decide to hire the attorney, ask that your arrangement be put in writing. The writing can be a letter or a formal contract. It should spell out what services the attorney will perform for you and what the fee and expense arrangement will be. *Remember* — even if your agreement remains oral and is not put in writing, you have made a contract and are responsible for all charges for work done by the attorney and his or her staff.

## Make It A Good Experience

A positive and open relationship between an attorney and a client benefits everyone. The key is communication. The communication starts with asking the kinds of questions suggested in this brochure. Use the answers to the questions as a guide not only to the attorney's qualifications, but also as a way of determining whether you can comfortably work with this person. If your concerns are given short shrift, if you don't like the answers to the questions, if you don't like the attorney's reaction to being asked all those questions, or if you simply do not feel relaxed with this particular person, *do not hire that person.* Only if you are satisfied with the attorney you have hired from the very start will you trust him or her to do the best job for you. Only if you have established a relationship of open communication will you be able to resolve any difficulties that may arise between the two of you. If you take the time to make sure that you are happy right at the beginning, you can make this a productive experience for both you and the attorney. You will thank yourself, and your attorney will thank you.

## About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder and Special Needs Law attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with special needs, and who advocate for the needs of such individuals.

While NAELA Elder and Special Needs Law attorneys work one-on-one with clients in their local areas, NAELA also examines and advocates on national public policy issues facing seniors and people with special needs in America, including long-term health care; planning for retirement; estate planning and probate; guardianship and conservatorship; health care decision making; and elder abuse and neglect.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder or Special Needs Law attorney.

More information about NAELA can be found at [www.NAELA.org](http://www.NAELA.org).

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 **NAELA**<sup>™</sup>  
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Questions & Answers  
When Looking For An  
Elder and Special Needs  
Law Attorney

 **NAELA**<sup>™</sup>  
National Academy of Elder Law Attorneys

## What Is Elder and Special Needs Law?

Legal issues that affect people as they age and people with special needs are growing in number. Our laws and regulations are becoming more complex, and each state has different laws. Actions taken with regard to a single matter may have unintended legal effects.

It is important for attorneys working with seniors, people with special needs, and their families, to have a broad understanding of the laws that may have an impact on a given situation to avoid future problems.

Elder and Special Needs Law encompasses many different fields of law. Some of these include:

- Preservation/transfer of assets seeking to avoid spousal impoverishment when one spouse enters a nursing home
- Medicaid
- Medicare claims and appeals
- Social Security and disability claims and appeals
- Supplemental and long-term health insurance issues
- Tax planning
- Disability planning, including use of durable powers of attorney, living trusts, “living wills” for financial management and health care decisions, and other means of delegating management and decision-making to another in case of incompetency or incapacity
- Access to health care in a managed care environment
- Conservatorships and guardianships
- Estate planning, including planning for the management of one’s estate during life and its disposition on death through the use of trusts, wills, and other planning documents
- Probate and administration of estates
- Administration and management of trusts
- Long-term care placements in nursing home and life-care communities
- Nursing home issues, including questions of patients’ rights and nursing home quality
- Elder abuse and fraud recovery cases
- Housing issues, including discrimination and

- home equity conversions
- Age discrimination in employment
- Retirement, including public and private retirement benefits, survivor benefits, and pension benefits
- Health law
- Mental health law

Most attorneys do not specialize in every one of these areas. So when an attorney says he or she practices Elder or Special Needs Law, find out which of these matters the attorney handles. You will want to hire the attorney who regularly handles matters in the area of law of concern to your particular case and who will know enough about the other fields to question whether the action being taken might be affected by laws in any of the other areas of law. For example, if you are going to rewrite your will and your spouse is ill, the attorney needs to know enough about Medicaid to know whether there are legal issues with regard to your spouse’s inheritance.

Attorneys who primarily work with seniors and people with special needs appreciate the complex financial and social decisions their clients face. Elder and Special Needs Law attorneys bring to their practice a knowledge of their clients that allows them and their staff to ignore the myths relating to aging and the competence of seniors and people with disabilities. At the same time, they will take into account and empathize with some of the true physical and mental difficulties that often accompany the aging process. They are tied into a formal or informal system of social workers, geriatric care managers, psychologists, and other professionals who may be of assistance to you or your loved one.

## Finding an Elder or Special Needs Law Attorney

Your first question may be: How do I find an Elder or Special Needs Law attorney? Before making the effort, step back a moment and try to determine whether you actually have a legal problem in which an attorney needs to be involved. If you’re not sure, ask your clergy, your financial advisor, a social worker, or a trusted friend to help you decide whether this is a legal issue rather than a medical or a social services issue. Legal expertise is expensive

and it serves you well to know that you actually need legal assistance before seeking an attorney.

There are many places to find an attorney in your city or state who specializes in working with the problems facing people as they age and people with special needs. Check with local agencies to obtain good quality local referrals. Some of the groups you may want to contact include:

- Alzheimer’s Association
- American Association of Retired Persons
- Area Agency (or Council) on Aging
- Children of Aging Parents
- National Academy of Elder Law Attorneys
- National Citizen’s Coalition for Nursing Home Reform
- Older Women’s League
- Social Security Administration
- State or local bar association
- Support groups for specific diseases
- Hospital or nursing home social services

If you know any attorneys, ask them for a referral to an Elder or Special Needs Law attorney. An attorney is in a good position to know who handles such issues and whether that person is a good attorney. Such persons are often the best and safest sources of referrals.

Take the time to interview prospective attorneys. Not every attorney is right for each client. The attorney/client relationship must be built on mutual trust and understanding. Ask questions about fees and services.

## Ask Questions First

Ask lots of questions before selecting an Elder or Special Needs Law attorney. You don’t want to end up in the office of an attorney who can’t help you. Start with the initial phone call. It is not unusual to speak only to a secretary, receptionist, or office manager during an initial call or before actually meeting with the attorney. If so, ask this person your questions.

- How long has the attorney been in practice?

- Does his or her practice emphasize a particular area of law?
- How long has he or she been in this field?
- What percentage of his or her practice is devoted to Elder or Special Needs Law?
- Is there a fee for the first consultation, and if so how much is it?
- Given the nature of your problem, what information should you bring with you to the initial consultation?

The answers to your questions will assist you in determining whether that particular attorney has the qualifications that are important to you for a successful attorney/client relationship. If you have a specific legal issue that requires immediate attention, be sure to inform the office of this during the initial telephone conversation.

## Once You Have Found an Elder or Special Needs Law Attorney

When you have found an appropriate attorney, make an appointment to see him or her. During the initial consultation, you will be asked to give the attorney an overview of the reason you are seeking assistance, so be sure to organize and bring all the information pertinent to your situation.

After you have explained your situation, ask:

- What will it take to resolve it?
- Are there any alternate courses of action?
- What are the advantages and disadvantages of each possibility?
- How many attorneys are in the office?
- Who will handle your case?
- Has that attorney handled matters of this kind in the past?
- If a trial may be involved, does the attorney do trial work? If not, who does the trial work? If so, how many trials has he or she handled?
- Is that attorney a member of the local bar association, a health advocacy committee, or trust and estates committee?
- How are fees computed?
- What is the estimate of the cost to resolve your problem and how long will it take?