

How to seek legal Counsel

The majority of the information came from the Federal Employees Legal Survival Guide. I recommend everyone to purchase. It is well worth it.

<http://www.fedweek.com/pub/index.php>

- What you should consider when seeking legal counsel
- What sources are available to assist you in finding counsel?
- How to maximize your legal assistance?

How do you find a lawyer who knows federal employment law?

You can find attorneys with experience through a variety of resources.

The National Employment Lawyers Association (NELA) is a bar association of attorneys whose primary practice involves representing employees rather than employers. NELA also has local affiliates in some major cities.

<http://www.nela.org/home.cfm>

By contacting these organizations, you can get lists of attorneys who specialize in employment law and federal workplace issues.

In addition, there are many other recommendations from satisfied clients with your type of case.

- Many of the federal agencies charged with overseeing federal employee laws, such as the EEOC and the MSPB, have lawyer referral lists. You can call you local office and ask for a list of attorneys who practice the relevant type of law.

<http://www.mspb.gov/>

<http://www.eeoc.gov/>

- Call your state, county or local bar association, which will also have referral list that often identify lawyers by the type of law they practice.
- Ask other attorneys for referrals.
- Ask other employees who has used federal employment attorneys before.
- Check the internet.

TIP

- *Finding the right lawyer usually takes time and sometimes money for consultation fees. Not all lawyers have the knowledge, experience necessary to represent federal employees. You may have to make phone calls and schedule several appointments with different lawyers, before making the right selection. Do not be discouraged. The end result will be worth your effort.*

Rarely will an attorney or a firm agree to take your case over the telephone.

Because employment cases are factually and procedurally complex, experienced federal Employment attorneys usually want to talk with you first to find out what type of case you have, and the specific facts. Most lawyers charge for this meeting, which is called an initial consultation. Some attorneys even require you to fill out a detailed form (like an application or a questionnaire) before agreeing to meet with you. You should, of course, be truthful and detailed in answering the questions.

The initial meeting, or consultation, is important. You will have to present to the lawyer the merits of your case. You should have all of your relevant documents with you. Be sure to bring:

- the collective bargaining agreement. (THE CONTRACT)
- Your recent performance evaluations.
- Copies of EPF and OPF folder.
- Any disciplinary actions against you.
- Any evidence you have about your case.
- It is also helpful if you draft a time-line or chronology of events for attorney to review
- Bring the originals of all your relevant documents with you plus copies for the attorney.
- Keep the originals.
- Be organized everything should be in folders and labeled and dated and copied.

Use the initial consultation as an opportunity to get legal advice on your case. Find out what procedural avenues are available to you and what your deadlines are. Ask the lawyer to identify the strongest and weakest points of your case. Often people want to know if they will win, or the likelihood of winning, Lawyers aren't fortune tellers. A good lawyer will not be able to say for certain that you will win, particularly not at an early stage of your case.

Also use the initial consultation to interview the lawyer. Ask:

- have you handled cases of this type before?
- How many years have you been practicing this type of law?
- Are you familiar with the laws that apply to my case, and
- Have you ever dealt with my agency before?

TIP

- *Use the internet. Before you decide on a lawyer ask what cases they have won, and look up the cases and attorneys up on the internet. You will see exactly what kind of attorney they are. (I would also look up the agency's attorney and the judge that gets assigned to your case to see how they are and how they rule.) Do searches on there name and on the cases.*

The lawyer might already know the agency representatives and can comment on their strengths and weaknesses.

As the attorney talks about your case and the applicable law, listen for whether he or she talks about how the law affects your particular set of facts. If the lawyer talks about the legal aspects of the case, they will probably be familiar with the relevant law. If they instead talks only about how terribly you were treated and how unfairly the agency has dealt with you, but does not talk very much about the law, this may be a sign he/she may not know very much about the law.

There may not be a remedy for every unfair action that has been taken against you. A lawyer unfamiliar with the law may not know this, leading you to think that you have a strong case than you do.

Many people want to know the lawyers win/lose ratio. In many states, it is unethical for a lawyer to answer that question, because the answer would be misleading.

Another factor to consider is the lawyer's ability to accomplish you most significant goals through settlement. With a settlement, the lawyer and his client are almost always sworn to secrecy after the settlement is signed. But the lawyer can talk with you generally about the settlements they have achieved. A settlement is neither a "victory" nor a "defeat" when looking at an attorneys' win/lose record. But a settlement is considered a "win" because it almost certainly puts the employee in better position.

When you talk with the lawyer, discuss their approach to the case, how he plans to pursue it, and what legal theory she believes is applicable. Each attorney is different. Some may have general philosophies or practices with which you may or may not be comfortable. You will be disclosing very personal and private information to this person. You may be investing a log of time and money in him or her. If you do not feel comfortable with the attorney, find someone else.

TIP

- *Finding a lawyer is not like trying to find the best price for a certain brand of TV or VCR. Whenever possible, meet the lawyer in person, and get a sense of whether he or she has a command of the subject matter and a genuine interest in you and your problem. The most important question is not what the hourly rate is, but whether you have true confidence in this lawyer.*

IMPORTANT

When you hire an attorney, it is critical to understand all the terms and conditions of your relationship. You should **ALWAYS** have the terms and conditions in writing. Most attorneys will require that you sign a written fee agreement. If the attorney says that you and he can act "on faith" and do not need an agreement, insist upon a written agreement or find another attorney. The agreement is a personal protects you. The attorney should also sign the agreement. That agreement is a personal service contract between you and the attorney or the law firm. Read the agreement carefully and make sure you understand all of the fine print. If you have any questions or concerns, raise them before signing.

TIP

Most employees are not familiar with legal disputes, lawsuits, and lawyers. Don't be afraid to ask your lawyer questions about legal fees, about the fee agreement, and about what you can expect from the legal process and from the lawyer. (Lawyers are not your friend)

If you find a lawyer you feel satisfied with, you will enter in to what is called a "retainer" or a fee agreement. It is the contract between you and the lawyer regarding the services the lawyer is to provide for you for you. For your understanding, protection, and security, several points should be addressed in a retainer agreement:

1. What are the specific tasks the lawyer is to perform in representing you?
For example, if you are retaining an attorney to represent you in response to a proposed removal, does the representation include an appeal to the MSPB, if necessary? If you are retaining the attorney to represent you in a union grievance, does the representation include a hearing before an arbitrator?
2. The estimated or exact dollar amount of the fee should be stated.
If the attorney charges by the hour, the hourly rate should be clearly identified. If you are retaining a firm, the agreement should state the hourly rate for each attorney. If you are retaining an attorney based upon an hourly rate, ask whether there are any minimum or maximum fees that are involved. Ask whether any stated fee is merely an estimate subject to change.

A few attorneys charge a flat rate or on one single amount for their representation, regardless of how long it takes. Accept these conditions with caution. Flat rates may not provide sufficient incentive for the attorney after he/ has spent considerable time on the case.

3. What are the anticipated expenses and are those expenses in addition to the fee advance / estimate or are they already included?
Expenses can be simple and small, like postage, or complex and significant, like deposition transcripts. Check the charge for copies. Some firms charge up to fifty cent per page for copying services, a sum which can add up quickly. The average rate seems to be about twenty cents.

TIP

The most important thing about a fee agreement is not what it is, but that you understand it!

4. What if the fees and costs are less than the attorney estimated?
Will you be entitled to a refund?
5. What if the fees and costs are more than the attorney estimated?

6. What are the payment arrangements? Will the attorney accept a monthly payment plan, or is all the money to be paid "up front"? Will the attorney require an additional retainer or fee advance after a certain period of time has elapsed?
7. Does the attorney accept contingency fee cases?
Contingency cases are those in which the attorney agrees to take a percentage of the proceeds of your recovery (often one-third) instead of requiring you to pay a fixed amount or pay by the hour. If you lose and recover nothing, there is usually no fee except for any "up front" retainer and actual expenses. Lawyers usually only agree to contingency representation if it is probable that there will be a large cash settlement or cash award. This is often the case only where liability is clear and large sums of back pay and/or compensatory damages are likely. If the lawyer or the firm is will to take your case on contingency basis, make sure that the agreement clearly identifies the percentage to which the lawyer is entitled and what happens if you choose to terminate representation by the attorney before the case is completed. Frequently lawyers require a reasonable "up front" retainer in addition to, or as an advance towards, the contingent fee payable at the end of the case. Normally you are still responsible for out-of-pocket expenses, even where there is a contingency fee arrangement.
8. What if you choose to end the representation? Will you be entitled to a refund or the funds not yet spent by the attorney?
9. Will the attorney send you statements identifying exactly what is being done on your case, and what fees have been incurred to date?
Monthly statements are the ideal.

Some attorneys do not provide their clients with periodic statements identifying the actions the attorney is taking. In those situations, you don't know if the attorney is following up or is taking action at all. Make sure that under your written agreement the attorney is required to provide that under your agreement the attorney is required to provide statements of all activities on your case. Also request that your attorney send you copies of all significant correspondence and other important papers concerning the case. Ask what the deadlines for action in your case are, if you don't know them, so you can make sure they are being met, if you have any doubts. If your attorney is not answering questions, appears incompetent or disinterested in your case, and is not doing all you think to be proper, you should not hesitate to get a second opinion on the progress of your case from another lawyer.

TIP

- Keep your lawyer up to date on your case. This your responsibility.
- If you feel it really is time to have word on something from your attorney, don't hesitate to call and ask. The squeaky wheel still gets the grease-On the other hand, don't call an attorney too often, as you are usually billed for every minute of that time.
- If you are having trouble getting a busy lawyer on the phone, consider other means of communication, such as voice mail, fax or e-mail.
(Correspond with e-mail and keep everything so you could have a record)

Law Firms in Cincinnati Ohio.

Freking & Betz (513)721-1975

TIPS

- Time is your enemy stay on top of everything the agency will try to drag everything out as long as possible.
- There are no simply cases.
- This is an EXPENSIVE PROCESS. The agency has unlimited time and resources (money) you do not. You are looking at \$3000.00 to \$5000.00 to start.
- Be organized.

- *Keep everything.*
 - *Document everything.*
 - *Get copies of EPF and OPF folders.*
 - *Don't miss time frames. (It is your responsibility that time frames are kept.)*
 - *Get a computer or access to computer and e-mail address. (Everything is electronic)*
 - *File with EEOC or Merit Protection board as soon as you can don't hastate.*
 - *Don't be cheap you get what you pay for.*
 - *Don't file a EEOC complaint it takes for ever and will get you nowhere. (Management tool to block you and draw thing out longer)*
- File all discrimination complaints with the union as a grievance.*