

FREQUENTLY ASKED QUESTIONS ABOUT HOW TO FIND AND WORK WITH A LAWYER

LEGAL DISCLAIMER:

FAMM cannot provide legal advice, representation, referrals, research, or guidance to those who need legal help. Nothing on this form is intended to be legal advice or should be relied on as legal advice. If you or your loved one feel that you need legal advice, you should consult with an attorney or consult a law library. Finally, rules and ethical standards for attorneys and judges are different in every state and change frequently. If you have questions about the rules in your state, contact your state's bar or bar association.

YOUR RIGHTS

Q1: When do I or my loved one have a right to be represented by an attorney?

A: The Sixth Amendment guarantees every person accused of a crime the right to an effective attorney for his or her defense when he or she cannot afford one—this is called the “right to counsel.” *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Strickland v. Washington*, 466 U.S. 668 (1984). It reads, “In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.” U.S. CONST. amend. VI.

If you are convicted, you have the right to one direct appeal and you have the right to effective assistance of counsel at that appeal. *Douglas v. California*, 372 U.S. 353 (holding that denial of counsel to indigent defendants at their direct appeal violated the Fourteenth Amendment guaranteeing all citizens, rich or poor, equal rights before the law); *Evitts v. Lucey*, 470 U.S. 1065 (1985) (holding that the defendant's counsel at appeal must be effective). You do not have the right to appointed counsel for filing a petition for writ of certiorari to the Supreme Court of the United States. *Austin v. United States*, 513 U.S. 5 (1994) (holding that the right to counsel does not extend to forums for discretionary review, including the Supreme Court).

Only the accused person, the defendant, has the right to an attorney. If you are the loved one of someone accused of a crime, you do not have a right to an attorney and the defendant's attorney does not represent you or your interests.

Even if you are at a stage, such as filing a petition for certiorari or a post-conviction petition, for which you do not have the right to have the government appoint and pay for your attorney, you of course may hire an attorney to represent you at your own expense.

Q2: Do I or my loved one have a right to a free attorney?

A: Yes, if you cannot afford one. In 1963, *Gideon v. Wainwright* said that the Sixth Amendment guarantees *every* person accused of a crime the right to have an effective attorney for his or her defense *even when he or she cannot afford one*. This decision kick-started the development and expansion of public defender programs all over the United States, which are dedicated to providing skilled criminal defense lawyers for people who otherwise would not be able to afford an attorney. Since 1963, accused people who can't afford an attorney are appointed an attorney by the court, free of charge.

Q3: Do I have the right to an attorney during my first § 2255 motion?

A: In most cases, no. You only have the right to counsel from the time judicial proceedings are first begun against you in the current criminal prosecution until you have completed your direct appeal (your first, automatic appeal). Any subsequent appeals or post-conviction motions do not come with the right to counsel, with two exceptions. One exception covers prisoners facing a death sentence who are filing federal habeas corpus petitions. *See* 18 U.S.C. § 3599(a)(1). The other requires the court to appoint counsel when it orders an evidentiary hearing to make factual findings in a §§ 2255 or 2254 case. *See* Rule 8(c) of the Rules Governing § 2254 Cases in the U.S. District Courts (2007) (this rule may be, but does not have to be, applied to all other habeas cases, including § 2241 cases) and Rule 8(c) of the Rules Governing § 2255 Cases in the U.S. District Courts (2007). Prisoners are allowed to ask the court to appoint counsel when they file a § 2255 motion, even if the court does not order an evidentiary hearing, though that request for an attorney may be denied.

You are free of course to hire an attorney to represent you in post-conviction proceedings such as a § 2255 motion.

Q4: I have already completed one § 2255 case. Do I have the right to an attorney if I file another § 2255 motion?

A: In most cases, no. Appeals or post-conviction motions filed after the first appeal or habeas petition has been completed do not come with the right to counsel. The exception is when prisoners facing a death sentence are filing federal habeas corpus petitions, *see* 18 U.S.C. § 3599(a)(1), or when the court orders an evidentiary hearing in a § 2255 motion. *See* Rule 8(c) of the Rules Governing § 2254 Cases in the U.S. District Courts (2007). Prisoners are allowed to ask the court to appoint counsel when they file a § 2255 motion, even if the court does not order an evidentiary hearing, though that request for an attorney may be denied.

BEFORE YOU HIRE AN ATTORNEY

Q5: How do I find an attorney to represent me or my loved one?

A: There are lots of good attorneys that can represent you in court—the key is looking in the right place:

- **Your local bar association** can refer you to defense attorneys in your area—you can be sure that these attorneys are licensed and in good standing with the bar. Find your local bar association and other resources here:
<http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>.
- **Legal clinics, legal aid organizations, or community groups** that work on criminal or low-income issues may be able to refer you to defense attorneys in your area—these organizations will be more likely to make recommendations based on attorneys they have actually worked with and who have worked on the legal issue that you are facing. The American Bar Association website (<http://www.americanbar.org/aba.html>) has directories and LawHelp (<http://lawhelp.org/>) has directories that may also help. You can also check the website of the National Association of Criminal Defense Attorneys to determine if a

lawyer is a member of that organization (<http://www.nacdl.org/About.aspx?id=20400&libID=20370>).

- **Your family, coworkers, or friends** may have worked with an attorney that they can recommend to you—especially if they have faced the same type of charge that you are facing. Always make sure that you choose the right attorney for you and your case—the simple fact that your friend or loved one knows of an attorney won't help unless the attorney has valuable experience for your case. For example, if you are facing criminal drug charges in federal court, you want to retain a lawyer who has significant experience representing defendants facing drug charges in federal court. State court experience, while important, will not suffice.
- **What to watch out for:** Some sources, like the Yellow Pages or different advertising websites, will list lots of attorneys, but they won't necessarily tell you what you need to know about the attorney's skills, strengths, fees, or success rates—and they won't necessarily tell you the truth. Be careful not to be lured in by false promises—it is illegal for an attorney to promise you that they will win your case. Other promises that sound too good to be true undoubtedly are.

Q6: What should I look for when hiring an attorney?

A: You will want to put in the time up front to hire someone you really trust. Switching attorneys later will cost you time and money, so it's best if you hire the right attorney for you at the start.

Collect several referrals from the people or organizations listed above. Call or meet with each attorney, so that you can compare them. Look for an attorney who has experience working on cases like yours and who listens to you. Ask about their experience defending people for the crime you are charged with or doing the kind of legal work you need, such as filing a post-conviction motion, and request to be put in contact with a past client who could give you some feedback about the attorney's work. Ask the attorney how much they charge, whether they are willing to work out a payment plan and whether they will sign a work agreement between the two of you. **A work agreement can be vital if you ever have a financial disagreement with your attorney. Many jurisdictions require a retainer, and that document will set out the terms of your agreement with the attorney.**

Remember that the attorney you hire will represent the accused person, not relatives or friends. Because of that, if you are hiring your own attorney, hire someone who is right for YOU. If you are hiring an attorney for a loved one, hire the right attorney for YOUR LOVED ONE, not just someone who fits you or your interests. Remember: the defendant is the client, not the defendant's loved ones or family!

Q7: How do I get the court to appoint an attorney to represent me for free?

A: As soon as you are arrested, you can ask to speak with an attorney. You are supposed to be provided with counsel as soon as possible after you are taken into custody. This might mean that an officer of the court (not a law enforcement officer) will come ask you questions about your financial resources, to figure out whether you are eligible for appointed counsel. If you are eligible, your appointed attorney will come to meet with you or you will be given their phone

number to call. If no officer of the court comes to ask you about your financial eligibility before you are arraigned (taken before a judge and told what you have been charged with), the judge who arraigns you will ask you at that time whether you need a court-appointed attorney. If you say yes and the judge decides that you are financially eligible, the court will appoint you an attorney.

Q8: What kind of attorney will the court appoint to represent me or my loved one?

A: Depending on your case and the district you are charged in, the court will appoint either a public defender or a preselected private attorney (called CJAs or panel attorneys). Both types of attorneys are “court-appointed attorneys.”

- **Public defenders** are attorneys employed full-time by the state or federal government to represent indigent people in criminal matters. They are very experienced working with different criminal charges and they are usually assigned to defend different offense types and severity levels (drug crimes or murders, misdemeanors or felonies). They tend to be very familiar with the local courts, prosecutors, and judges because they defend people in those courts every day. In the federal system, the public defenders have smaller workloads than public defenders in state courts.
- **CJAs or “panel attorneys”** are private attorneys pre-selected by the federal courts to defend some federal criminal cases that cannot be handled by the federal public defenders’ office. They are paid by the federal government for their work and they usually have an affiliation with a local Bar Association, a legal aid organization, or a defender organization. In other words, CJAs have regular jobs as private attorneys, where they are paid for their work directly by their clients, but they make time to be appointed to cases like yours. Some jurisdictions rely on federal CJAs more than others—it just depends. CJAs are held accountable to their clients the same way federal public defenders are.

To learn more about federal public defenders and CJAs, visit <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel.aspx>.

Q9: Why would I or my loved one be appointed a CJA instead of a federal public defender?

A: In the federal courts, you or your loved one might be appointed a CJA (federal panel attorney) instead of a federal public defender. Named after the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, which provides funding and authority for the federal district courts to furnish counsel for any person financially unable to obtain adequate representation, CJAs generally handle cases that the Office of the Federal Public Defender decides that it can’t take, and different public defender offices make those decisions for a few different reasons:

- Some jurisdictions have a policy of appointing CJAs to certain kinds of cases and appointing public defenders to others.
- Other jurisdictions reserve CJAs for handling cases that Office of the Public Defender can’t take because it has a conflict of interest—for example, when there are multiple defendants prosecuted for a conspiracy charge, the Office of the Public Defender can

represent one defendant, but needs a CJA to represent the second defendant, because the clients have differing interests.

- Sometimes, a CJA might be appointed because the public defenders' case load is too large.

Q10: What kind of attorney is better—a public defender, a CJA, or a private defense attorney?

A: There is no rule for which kind of attorney is better. It depends on the attorney's experience and the facts of your case. Some people say that court-appointed attorneys are never as good as private attorneys, but some of the best defense attorneys out there are public defenders or CJAs—they have a lot of experience, they are very familiar with the courts, and they care deeply about putting up a good defense.

Q11: Do I have any choice about what kind of attorney the court appoints to represent me?

A: Yes and no. If you simply have a preference about who you think is a better attorney, you don't have any say. However, judges can replace court-appointed attorneys in the "interests of justice"—in other words, if you have a good reason that your court-appointed attorney should not represent you (he has a conflict of interest or committed an ethical violation), you should make the court aware of it. You should write a letter to the judge describing why you feel your current attorney should not represent you and ask the court to appoint you a new attorney. If the judge agrees with you, he or she may replace your attorney. However, if this happens, you won't have a choice about which new attorney the court appoints to you. The Supreme Court has said that the Sixth Amendment includes the right of a defendant to choose who will represent him, but only if that defendant *does not require appointed counsel*. *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). The Supreme Court has also held that the Sixth Amendment does not guarantee a "meaningful relationship" between an accused and his counsel. *Morris v. Slappy*, 461 U.S. 1 (1983) (holding that the trial court's denial of a continuance in defendant's trial was not a violation of defendant's right to counsel when a continuance would have allowed defendant's original appointed attorney time to recover from emergency surgery and resume work on defendant's case instead of proceeding with another appointed attorney).

Q12: What if I can't afford an attorney, but the court says I make too much money to be given a free attorney?

A: Your financial ability to hire qualified counsel is determined by the magistrate judge on a case-by-case basis, considering all of your financial resources (including the home in which you live) and your need to provide yourself and your dependants with the necessities of life. They will not consider the financial resources of family members. You are "financially eligible" for a court-appointed attorney if your resources fall below a certain level. If they exceed that level, you will be required to either hire your own attorney or permitted to represent yourself. If you are deemed to have enough resources to hire your own attorney at the start of the criminal case, you will not be appointed an attorney. However, if at any point your financial resources change, you may be considered financially eligible. You and your attorney should inform the court immediately if this happens so that you can be appointed an attorney.

If your financial resources are more than what you need to provide yourself and your dependants with the necessities of life but less than what is needed to hire a private attorney, you may be found to “partially eligible.” In this case, the court will appoint you an attorney, but you will have to contribute to the cost of that attorney, as much as the court says you can afford.

Q13: How much is my appointed attorney paid for representing me or my loved one?

A: Federal public defenders earn the same salaries as federal prosecutors do. Salaries for state public defenders vary from district to district, depending on cost of living and other factors. Generally, federal panel attorneys working under the CJA (see above) are paid no more than \$100 per hour spent in court or out of court on a case. Generally, for federal felony charges, appointed CJA attorneys are paid no more than \$7,000 for initial trials and no more than \$5,000 for appeals. Federal public defenders and federal CJAs are also reimbursed for any reasonable expenses they incur while representing a client (e.g., copying and faxing costs). *See* Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Ch. 2, Part C.

Q14: Do I have a right to represent myself instead of having an attorney represent me?

A: In almost all situations, yes. When a person represents himself in court, it is called “*pro se*.” Sometimes, however, the court will not allow a person to be completely *pro se*—if a person has difficulty reading or writing, behaving in court, or is mentally ill or mentally retarded, the court may appoint an attorney to help the person with his or her case.

Q15: What will it cost to hire my own attorney?

A: That depends on the attorney, the way they would bill for your case, what part of the country you’re in, and how long you need to work with that attorney. When you meet with different attorneys to discuss their work and your case, ask them up front about how much they charge and how many work-hours they think your case will require. They may avoid giving you a precise number because criminal matters can be unpredictable, but try to at least get a ballpark estimate. (See below for different billing strategies and how to talk money with your attorney.) You will get an idea of the going rate after asking several attorneys and can then decide what is best for you. Frankly, hiring an attorney is usually expensive, and having a family member prosecuted criminally can be too expensive for many families. The expense of an attorney makes it that much more important that you take the time to hire the right attorney for you. And, remember, the court determines a defendant’s financial eligibility, not the eligibility of his or her family. If the defendant is indigent, it does not matter what loved ones, such as parents or children, can afford.

Q16: Can I negotiate with my attorney on how much the representation costs me and how I pay for it?

A: Yes, absolutely. Attorneys can bill you for their work in different ways, and you can negotiate how you are billed with an attorney you are thinking of hiring. That doesn’t mean that all attorneys will agree to your terms, but you might be surprised. Here are a few common billing strategies:

- **Flat fee billing** is when an attorney bills you a flat fee for a legal job (i.e., \$4,000 for the whole case). This is most commonly used when the job has an easily defined and relatively uncomplicated workload. A parole hearing is a good example.
- **Hourly rate and retainer billing** is when an attorney bills an hourly rate (i.e., \$200 per hour) for every part of an hour they work on your case (down to fractions of an hour) **plus** a flat fee paid up front, called a retainer. The retainer is used for the expenses associated with your case, like filing fees, copying, or investigation. Depending on what you negotiate, the retainer can be part of the total fees you pay the attorney, or it can be a refundable deposit. Whether you decide the retainer should be refundable or not, *always put these details in writing* in your work agreement with the attorney. Be aware that some attorneys will bill for a pre-set portion of an hour (for example, 15 or 30 minutes to draft a letter) for certain tasks, even if the task takes less than the pre-set time. Be sure to read the work agreement carefully and consider whether you want to negotiate such billing practices.
- **Hourly rate with a billing cap** is when, as above, an attorney bills you for every hour they work on your case, down to fractions of an hour, but they stop billing—and working—when they reach the amount that you agree upon beforehand. For example, if you agree that you will pay them an hourly fee, but only up to the amount of \$2,000, the attorney will work until they have billed you \$2,000, then stop.
- **Contingency billing** is when you only have to pay the attorney if you win a money award, and then, you pay the attorney a certain, pre-agreed-upon percentage of the amount you won. It's common in other legal matters, but *is never used in criminal cases*.

In addition to different billing strategies, you can always negotiate different payment plans with your attorney. Here are a few examples:

- **Up front**—most commonly used with flat-fee billing, this is when you pay the attorney a sum of money at the very beginning of your working relationship. Though your attorney might prefer this payment, it's not always good for clients because it's a large lump sum (and often hard to afford) paid before the attorney has done much, if any, work (so clients can't withhold payment if they don't like the attorney's work). Note that retainers are always paid up front.
- **Monthly or every two weeks**—most commonly used when legal work extends over several months or more, this is when the attorney bills you every two weeks or every month for the work they have performed during that time period. This is a more common option if you have recurring legal problems and solid financial resources.
- **Installments**—most commonly used when you want to spread the payments out over a longer period to more easily afford the cost, like the payment plan you might work out with your dentist or car mechanic if you had them perform some expensive work. In this plan the attorney sends you a bill every month or every two weeks for a portion of the total debt. You pay the bill until the debt is paid off.

Always make sure that your work agreement with your attorney includes a requirement that the attorney give you an itemized billing statement showing the breakdown of all the work the

attorney performed, all the work that their support staff performed, and how much it cost. This will allow you to know what work your attorney is actually doing and keep tabs on how much you owe.

WORKING WITH YOUR ATTORNEY

Q17: My attorney has given me advice I don't agree with. Do I have to follow his or her advice?

A: No, you don't. As the client, you are the boss of your attorney, even if your attorney is free and court-appointed. However, your attorney is legally and ethically required to advise you of what your options are, what your best options are, and to act in your best interest. You should consider your attorney's advice seriously and ask for in-depth explanations if you don't understand why they are giving you certain advice.

The general rule is that clients get to decide what the goals of the case are, while the attorney gets to choose the best means for achieving those goals. There are some decisions that only the client can make and which the attorney must respect, even if he disagrees with the client. The client decides:

- What plea to enter
- Whether to accept a certain plea offer from the prosecution
- Whether to waive a jury trial or not
- Whether to testify at trial
- Whether to pursue an appeal.

Other decisions have more to do with strategy and how to achieve a certain goal. These decisions are typically made by the attorney, after full consultation with the client:

- How many and which witnesses to call to testify at trial
- Whether and how to cross-examine witnesses
- Which people to pick and exclude from the jury
- What kinds of motions to make at trial
- What evidence should be introduced at trial.

See ABA STANDARDS FOR CRIMINAL JUSTICE 4-5.2, 21-2.2 (2d ed. 1980).

Q18: Can I get a second opinion on my attorney's advice?

A: Absolutely. You are free to speak with anyone, including other attorneys, about your case and what your attorney is doing on your case. However, the court will not appoint you another attorney to give you a second opinion for free. **Please note: FAMM cannot give you or your loved ones any legal advice, representation, or referrals to other lawyers.**

Q19: What do I do if I feel my attorney is not doing a good job representing me?

A: You have several options if you are dissatisfied with your attorney:

1. Communicate with your attorney about your complaints. Many disputes can be solved by speaking frankly with your attorney and being specific about your disagreements. First, talk to them on the phone or in person. Follow up with a letter explaining your complaint and their response, if they had one. *If there's no improvement:*

2. Complain to your attorney's boss. If you have a public defender, complain to the chief Public Defender. Check with the Public Defender's office for the formal complaint procedure. If you have a federal panel attorney, there may be a panel representative you can complain to, or you may need to complain directly to the court. *If there's no improvement:*
3. Complain to the court. Check with the court clerk for the court's formal complaint procedure—it will probably involve submitting a written complaint about the attorney's behavior. Usually, you can write a letter to the judge explaining the problem and asking the court to intervene to correct it or appoint a new attorney. Also, if you have a court appearance, tell the judge at that appearance that you are dissatisfied with your attorney.
4. Complain to the local bar association. If you have a private attorney, or if you get no positive response from the Public Defender's office or the court, you can report your attorney to the local bar association, where they are a member.
5. Get a new attorney. If you are paying for your attorney and can afford it, you can always fire your current attorney and hire another one—but you will still have to pay your old attorney for the work they have performed so far. If you have a public defender and the Public Defender's office agrees with your complaint, they may appoint you a new attorney. You should still make your objections known to the attorney (in an effort to improve your working relationship) and the court (to get your complaints on the record in case you are convicted and need to appeal, claiming that your counsel was ineffective).

Q20: What do I do if my attorney is not returning my phone calls?

A: Your attorney must accept or return your phone calls, answer your letters, and take the time to counsel you and explain the developments in your case. Though it can be hard to contact your attorney with your complaint if they aren't taking your phone calls, at least try to speak with them by phone or in person, including leaving a voicemail message if possible. Keep in mind that most defense attorneys spend a great deal of their time at the courthouse, where they may not be able to take phone calls or answer emails. If you cannot reach your attorney directly, leave a message with their secretary, paralegal, or legal assistant, let them know if your message is urgent or there is an emergency, and ask them to give the attorney your message as soon as the attorney gets back to the office. If your attorney is not keeping up communication with you, write to the court and ask that the judge intervene.

Q21: What can I do if my attorney will not give back money I overpaid him or if I have some other disagreement about payment with the attorney?

A: Talk to your attorney about the problem immediately, as soon as billing is irregular. If you signed a work agreement (or contract) with your attorney that he or she is violating, tell the attorney that you expect him to stick to your agreement. If you don't have a written agreement, explain your complaint and attempt to work out a solution. Even if your communication with your attorney is not successful, follow up with a letter explaining your complaint and requesting a certain course of action—a refund, for example. If there's no improvement, contact the state bar or bar association for the state your attorney is licensed in and ask how to begin a fee dispute. Most bars and/or bar associations have a fee dispute resolution process in place that allows you

to file a complaint, gives the attorney a chance to respond, and allows you and the attorney to resolve the dispute with the help of a neutral negotiator or arbitrator.

Q22: How can I find out if my attorney has actually filed a motion or other document?

A: The best way to find this information is to ask your attorney. Your attorney is obliged to provide you copies of all filings and in many cases you have the right to review key filings before they are made. However, you can also try contacting the “clerk of court” of the court you are being tried in (the clerk’s contact information is usually available on the court’s website online; for federal courts, you can find a directory of the contact information for all of the federal courts at http://www.uscourts.gov/court_locator.aspx). The clerk of court can produce copies of filed documents that are available to the public. If the case is a federal case, the clerk will charge a \$26.00 fee for each search of the records, plus a fee of \$.50 per page for copying any record. For those in federal courts, you can also go to the federal courthouse and access records electronically at a public access terminal. Printing out copies of these documents or records costs \$.10 per page. You can also try looking for federal case dockets in PACER, the electronic docket system available online. To view dockets, you need to establish an account with a valid credit card number. It costs 8 cents per page to view documents and records. You can create an account at this link: http://www.pacer.gov/reg_pacer.html.

Once you are registered, you can look for dockets by searching by the offender’s first and last name. (In the “Party Name” field, the format is “lastname, firstname”—for example, if you are looking for John Doe’s dockets, you would enter “Doe, John”.) When you run the docket report, it will show all the motions and papers that have been filed in the case. Some of those papers may be available for viewing (using Adobe Reader software), but some others may have been sealed by the court and won’t be available for public viewing. PACER is used only for cases filed in federal courts, not state courts. Sometimes, there may be a delay before an event, such as a motion or order, is noted in the electronic PACER docket. For example, if your attorney filed a document on a Tuesday, it may not show up on the docket until Wednesday or a few days later.

People facing charges in a state court can go to the courthouse where the case was filed and request copies of documents from the clerk of court, usually for a small fee. Some states may have electronic docketing systems similar to PACER—ask your attorney or the clerk of court if your state has this option.

FOR FAMILIES AND LOVED ONES

Q23: I am the loved one of a person who is currently going through a trial or was just convicted or sentenced. My loved one’s attorney is not responding to my questions or calls. What can I do?

A: Outside of complaining to your loved one, nothing. The attorney representing your loved one is not your attorney—you are not the client. Because you aren’t the client, the attorney does not have to return your phone calls, correspondence, or even talk to you. This does not mean that the attorney *won’t* talk to you, return your phone calls, or answer your correspondence, but they

don't *have* to. There are a few reasons why attorneys may not communicate with family of the client:

1. The attorney represents the client and the client alone—by keeping his communications strictly between himself and the client, he preserves the privacy of the client and the confidentiality of the attorney/client relationship.
2. The attorney is busy working on the client's case—she might not have time to talk with non-clients or answer their questions. Remember: the attorney's job is to represent the client, not educate the client's family on the law or explain to the family everything the attorney is doing.
3. The attorney may see that talking to the client's family is a conflict of interest—especially when the family is directing the lawyer to act in ways that are different from what the client wants or in conflict with the client's best interests. For example, sometimes a client's family wants him to go to trial, but the client wants to plead guilty. This is the client's decision to make, not the family's. The attorney must honor the client's decision, not the wishes of the family.
4. The attorney may believe that the client does not want him to talk with you. You can suggest to your family member that he give his attorney permission to speak with you.

Q24: I am the loved one of a person who is currently going through a trial or was just convicted or sentenced. I disagree with a decision that the attorney made. What can I do?

A: Nothing, outside of talking to your loved one. Because your loved one is the client, they are the only person who can directly influence what the attorney does or complain, formally or informally, if the attorney makes mistakes.

Q25: What if I'm the one paying for my loved one's attorney?

A: You are still not the client. The attorney is not your attorney and they don't have to take your advice, follow your direction, or reply to your correspondence or calls. You can stop paying the attorney, but you may damage your loved one's case by discharging their attorney.

Q26: What if I'm communicating with my loved one's attorney because my loved one is in prison?

A: If your loved one is in prison, you are still not the client. Attorneys and their imprisoned clients have rights that allow them to maintain contact even when the clients are in prison, so your participation is not necessary even if your loved one is in prison. If your loved one simply asks the attorney to communicate with you, the attorney may respect that request—but realize that the attorney may still have good reasons for not speaking with you (see above).

AFTER YOU ARE CONVICTED

Q27: I was just convicted (or sentenced) and want to file an appeal, and my attorney says that he no longer represents me. How can I get an attorney to help me on my appeal?

A: On your direct appeal (your first appeal after your conviction), you have the right to an attorney—a private attorney if you can afford it, or a court-appointed attorney if you are financially eligible. Many Public Defender offices have an appellate division—a group of attorneys that works only on appeals. Often, defendants switch attorneys for their appeal, hiring a new attorney who is more experienced in appellate practice. The court appointing your free attorney will often make the same decision, assigning you a different attorney for your appeal. Or, if you are represented by a public defender, your trial attorney may send your case to the Public Defender office’s appellate division so that an appellate attorney can take up the case.

Q28: I have finished all my appeals and been in prison for awhile now, but I want to file another habeas petition or another post-conviction motion. How can I get an attorney to help me with this?

A: There is no right to counsel for appeals or post-conviction motions, whether your first or subsequent ones, except when prisoners facing a sentence of death are filing federal habeas corpus petitions. *See* 18 U.S.C. § 3599(a)(1).

- If you are a death row inmate filing a federal habeas corpus petition, you should follow the process for getting a court-appointed attorney to assist you in that petition.
- If you aren’t a death row inmate, you have no right to counsel for your habeas or post-conviction petition. You have a few options:
 - If you can afford a private attorney, go through the steps above to locate a private attorney for your post-conviction motion.
 - If you can’t afford to hire a private attorney, focus your attorney search on pro bono attorneys or law students that might be available through law school legal clinics (for example, many law schools have criminal appellate practice clinics or capital practice clinics). **Please note: FAMM cannot provide you with legal representation, referrals, or research.**
 - If you still can’t find an attorney, you can file *pro se*. The famous Supreme Court case that created the right to counsel if you could not afford it, *Gideon v. Wainwright*, was written by an indigent and uneducated prisoner, Clarence Earl Gideon, who filed his petition *pro se*.
 - If you want to try and get the court to appoint an attorney for you anyway, or you are filing your petition because you believe you have a claim of actual innocence or are entitled to application of a new rule of constitutional law made retroactive by the Supreme Court, file a motion for appointment of counsel at the same time you file your petition.

Q29: What can I do if I think my attorney violated an ethical rule when he represented me?

A: Try to document your attorney’s unethical behavior (i.e., take notes during trial, keep records of when you asked your attorney to do things and when he failed to do them, etc.). During your direct appeal, you can claim that your counsel was ineffective and support your claim with your documentation. You will be trying to meet the high standard for “ineffective assistance of counsel.”¹ Alternatively or at the same time, you can seek disciplinary action against the lawyer by reporting them to the state bar they are a member of. Even if you can’t get your conviction overturned, you may be able to pursue a civil suit against that attorney for legal malpractice.

Q30: What can I do if I think my judge violated an ethical rule during my trial or appeal?

A: Discuss your concern with your attorney. Try to document your judge’s unethical behavior (i.e., take notes during trial, keep records of when your judge ignored you or your attorney’s complaints or requests, etc.). During your direct appeal, you can use that documentation to support your claim that you did not receive a fair trial as constitutionally guaranteed by the Sixth Amendment.

If you are in a state court, you can seek disciplinary action against the judge by reporting him or her to the state bar—judges are members of the bar and subject to ethical rules, and many state bars have judicial ethics boards that resolve complaints about judges and can even discipline or suspend judges for misconduct.

If you are in federal court, you may file a complaint with the clerk of the court of appeals for the circuit your case is in (e.g., if your case is in the Northern District of Ohio, you would file your complaint with the clerk of court for the Sixth Circuit

Court of Appeals). The complaint must be in writing and must include a brief statement of the facts supporting the complaint. The complaint will be referred to the judge in question and to the chief judge of the circuit, who will review it and decide how best to resolve it. *See* 28 U.S.C. §§ 351, 352.

SPECIAL NOTE: Complaints about judges must be for ethical or professional violations, not merely because you disagree with or dislike the judge’s decision on a motion or because you lost your case.

¹ In 1984, the Supreme Court ruled that “ineffective assistance of counsel” is when:

1. The representation provided by the attorney is deficient (to be deficient, the representation must fall below an “objective standard of reasonableness”—this means the representation must be below the standards of what a reasonable attorney in similar circumstances would do or, in other words, the attorney’s conduct must be “unreasonably bad”) **and**
2. There is a reasonable probability that, if not for the deficient representation, the outcome of the trial would have been different. (A “reasonable probability” means the attorney’s conduct was bad enough to undermine confidence in the outcome.)

See Strickland v. Washington, 466 U.S. 668 (1984).

This is a very high standard to meet, because not only does the attorney’s work have to be unreasonably bad, it also must have been the reason you were convicted. If the appeals court thinks that you would have been convicted even if you had an attorney whose work wasn’t deficient, you will not win on this claim.

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