

CHAPTER 4

HOW TO FIND A LAWYER*

A. Introduction

Finding a lawyer can be difficult. It can be even more difficult if you do not have the money to pay a private lawyer. But even then, finding a lawyer is not impossible. Before you try to find a lawyer, you must know the following information:

- (1) The type of correctional institution you are in (city, county, federal or state);
- (2) The type of case for which you are seeking representation (civil, criminal, or criminal appeal);
- (3) If you are seeking a criminal appeal, the name of the county in which you allegedly committed the crime; and
- (4) Your county of residence.

The more specific information you know about your case, the easier it will be to find a lawyer and to help the lawyer prepare your case. There are generally two types of cases in which you may be involved:

- (1) **Criminal:** In a criminal case, the state charges you with a crime. If you have already been convicted and are in prison, you are probably not currently involved in a criminal trial. One exception is if the state thinks that you committed a crime *while* you were in prison. Please note that this chapter does not discuss how to find a lawyer for a criminal trial. But, you may want to try a “criminal appeal.” In a criminal appeal, you appeal from the conviction or sentence that sent you to prison. If you have a right to a criminal appeal and you cannot afford a private lawyer, you have the right to a court-appointed lawyer.¹ Read Part B below if you would like to find a lawyer to help you in your criminal appeal.
- (2) **Civil:** In a civil case, either you bring a claim against someone (an individual, an entity such as a corporation, or the state), or someone brings a non-criminal claim against you. Civil cases ask for a “remedy” (for example, monetary compensation for an injury, a statement by the court that someone has to stop doing something that violates your rights). You file a civil lawsuit whenever you bring any of the suits explained in the *JLM* Chapters about federal and state habeas corpus, Section 1983, Article 78 of the New York Civil Practice Law and Rules, or tort actions. Unlike in criminal cases and appeals, you do not have the right to a lawyer when filing a civil case. Read Part C if you would like to try to find a lawyer to help you in your civil case.

B. Lawyers for Criminal Appeals

If you have the right to bring a criminal appeal and you are unable to pay a private lawyer to represent you, you have the right to have a lawyer assigned to your case.² If you cannot afford an attorney for your criminal appeal, you should petition the court to proceed as a person who cannot afford a lawyer (or what in legal terms is called “in forma pauperis”) and ask the court to assign an attorney to your case. Chapter 9 of the *JLM*, “Appealing Your Conviction or Sentence,” has sample in forma pauperis forms.

* This Chapter was written by Won Park based on a previous version by Angie Armer and members of the 1991–1992 *Columbia Human Rights Law Review*.

1. *Douglas v. California*, 372 U.S. 353, 357–58, 83 S. Ct. 814, 816–17, 9 L. Ed. 2d. 811, 814–15 (1963) (finding that a state must provide counsel for an indigent defendant in a first appeal from a criminal conviction).

2. *Douglas v. California*, 372 U.S. 353, 357–58, 83 S. Ct. 814, 816–17, 9 L. Ed. 2d. 811, 814–15 (1963). There are some higher-level appeals that you do not necessarily have the right to bring, such as an appeal to the United States Supreme Court. In these cases, you may not have the right to a lawyer if you cannot afford one. *See Ross v. Moffitt*, 417 U.S. 600, 610, 94 S. Ct. 2437, 2443, 41 L. Ed.2d 341, 351 (1974) (holding that a state need not appoint counsel to aid a poor person pursuing a second-tier discretionary appeal).

One of the first places you should try contacting when looking for a lawyer is the Public Defender or Indigent Defender office in any of the following places:

- (1) The county where the appellate court (the higher court) is located,
- (2) The county where your prison is located,
- (3) The county where your original trial took place, or
- (4) The county where you live.

These offices can provide you with more information about having a lawyer assigned to your criminal appeal. If you have access to the Internet, the easiest way to find a Public Defender is by doing a simple Internet search. For example, you can try using the term “Public Defender” and the name of one of the four counties mentioned above on a research site like Google or Yahoo.³

If you would like to choose your lawyer instead of being assigned one, you have fewer options than if you were filing a civil suit. Most Legal Aid offices do not handle criminal appeals. However, some organizations have specific criminal appeals divisions. The Legal Aid Society of New York City is one such organization. See Appendix IV of the *JLM* for a list of other such groups. You might also contact local prisoners’ rights groups, which may refer you to organizations that handle criminal appeals free of charge.⁴ Keep in mind that lawyers are not permitted to arrange contingency fees with you for a criminal case. Read Part C for more information about contingency fees.

C. Lawyers for Civil Cases

If you are looking for a lawyer for a civil case in federal court (as opposed to state court), think about whether it is worth it to bring your case in light of what may happen under the Prison Litigation Reform Act (“PLRA”). **You must read Chapter 14 of the *JLM*, “The Prison Litigation Reform Act,” to understand the requirements of the PLRA.** Failure to follow the requirements in the PLRA can have negative consequences. For example, you can lose the good-time credit you have earned so far. Not all attorneys are knowledgeable about the PLRA. So, you should make sure to know about it yourself so that you can tell your attorney about the requirements.

If you have a civil case and you are incarcerated in a New York state prison (as opposed to a city, county, or federal prison), you may be able to find a lawyer through the Prisoners’ Legal Services of New York (“PLS”). PLS is described in the very beginning of Appendix IV of the *JLM* (Part A(1)(a)). PLS provides assistance to prisoners in state institutions in cases involving habeas corpus, jail time and sentence problems, and warrants and detainers. They may also be able to forward your letter to a private attorney who could handle your Section 1983 case, Article 78 petition, or tort action. But, unlike the Legal Aid Society of New York mentioned above, PLS does not handle criminal cases or criminal appeals.

3. To find a list of Federal Public Defenders, visit the Office of Defender Services website, *available at* <http://www.fd.org>. Federal Public Defenders either work for the federal government directly, or are paid through federal government funds. Note that Federal Public Defenders take on fewer cases than state or local Public Defenders. For a partial list of Federal Public Defenders, New York State Public Defenders, and New York City Public Defenders, visit the New York State Association of Criminal Defense Lawyers website, *available at* <http://www.nysacdl.org>.

4. The American Civil Liberties Union (“ACLU”) publishes a Prisoners’ Assistance Directory with contact information for organizations helping prisoners around the U.S., *available at* <http://www.aclu.org/prisoners-rights/2012-prisoners-assistance-directory>. You may also buy a physical copy of the book for \$35. If you would like to buy it, write to:

National Prison Project of the ACLU
Attn: Prisoners’ Assistance Directory
915 15th St. NW, 7th Floor
Washington, D.C. 20005

You may also find contact information for the New York State Bar Association’s Lawyer Referral Service and Information Service on its website, *available at* <http://www.nysba.org/>. Please bear in mind that these are private lawyers who may or may not charge a consultation fee. If you use the referral service, you should ask whether the lawyer charges a consultation fee before telling him about your case.

If you are in a city, county, or federal prison, check the other organizations listed in Appendix IV to see if special legal assistance programs serve prisons in your area. Check if a Legal Aid office exists in the county in which you are incarcerated. If none exist in your county, check for offices in the surrounding counties, since these organizations might still be able to help you. Note that Legal Aid organizations usually handle only civil matters, unless they have a special criminal appeals division. Many Legal Aid offices may not be able to help you because their government funding does not allow them to help prisoners. However, the Prisoners' Rights Project of the Legal Aid Society of New York does not receive government funding, and it sometimes takes cases that help prisoners.

You can also ask the court to appoint a lawyer for you. You should do this at the same time that you file your *in forma pauperis* forms.⁵ New York law states that a New York court may assign an attorney to you in a civil case at the same time that it permits you to proceed as a person who cannot afford legal representation, but this is very rare.⁶ If you can establish your inability to pay a lawyer, then you may be able to get a lawyer assigned to your case if your claim is substantial. For example, you are much more likely to get a lawyer if there is a lot of factual investigation that must be done on your case that you cannot do because you do not have the money. You are also more likely to get a lawyer if the facts of your case depend on the credibility (believability) of people involved.⁷ If your case requires you to know particularly complex legal issues that you may not be able to understand and handle on your own, the court may be more willing to assign you a lawyer to help with your case.⁸

For example, the Seventh Circuit has listed some factors ("*Maclin* factors") that district courts take into consideration in determining whether or not to appoint counsel for a civil claim.⁹ First, district courts will generally consider the merits of the claim and determine if it is frivolous (frivolous means that the claim lacks merit) or substantive (substantive means the claim has merit).¹⁰ The more likely a claim is to be successful (the stronger the legal argument being made), the more likely the

5. Chapters 2–8 of the *JLM* discuss how to bring a lawsuit. Chapter 9 of the *JLM*, "Appealing Your Conviction or Sentence," explains how to file poor person's (also called *in forma pauperis*) papers in the context of an *appeal*. You should change the affidavit example shown in Appendix B-3 of *JLM* Chapter 9 to show that you are filing poor person's papers in a civil case, *not* a criminal appeal. See N.Y. C.P.L.R. § 1101 (McKinney 2012). These papers establish that you do not have the money to pay for a lawyer. See also New York State Application for Poor Person Status and Assignment of Counsel in a Criminal Appeal, *available at* <http://www.courts.state.ny.us/ad3/Criminal/NEWFfinancialAffPoorPersonRelief.pdf> (last visited February 1, 2014).

6. N.Y. C.P.L.R. § 1102(a) (McKinney 2012). The court has the discretion to appoint you a lawyer for free if a lawyer is needed to reach a fair decision. But, you do not have a constitutional or statutory right to a lawyer. See *In re Smiley*, 36 N.Y.2d 433, 438, 330 N.E.2d 53, 55, 369 N.Y.S.2d 87, 91 (1975) (noting that there is no absolute right to assigned counsel and that the determination to assign an attorney lies within the discretion of the court).

7. See *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981) (quoting *Manning v. Lockhart*, 623 F. 2d 536) (8th Cir. 1980) for the proposition that courts should appoint counsel where the credibility of witnesses is an issue). For example, if you claim that your warden assaulted you, the facts of your case would depend on the credibility of you, your warden, witnesses, and maybe other prisoners or staff members who knew you and the warden. In such a case, a court might be more willing to assign you a lawyer. Note that *Maclin* was overturned within the Seventh Circuit by *Farmer v. Haas*. There, the court held that the real question was: "did the plaintiff appear to be competent to try it himself and, if not, would the presence of counsel have made a difference in the outcome?" *Farmer v. Haas*, 990 F.2d 319, 322. However, the *Maclin* factors were adopted by and continue to be good law in other circuits. See *Hodge v. Police Officers*, 802 F.2d 58, 61–62 (2d Cir. 1986) (reaffirming that the *Maclin* factors apply to judicial determinations of appointment of counsel).

8. See *Hodge v. Police Officers*, 802 F.2d 58, 61–62 (2d Cir. 1986) (reaffirming that the *Maclin* factors apply to judicial determinations of appointment of counsel); *Maclin v. Freake*, 650 F.2d 885, 887–889 (7th Cir. 1981) (setting forth the factors for a district court to consider in determining whether to appoint counsel). *But see* *Stewart v. McMickens*, 677 F.Supp. 226, 227–228 (S.D.N.Y. 1988) (interpreting *Hodge* to require appointment of counsel "only where the individualized assessment suggests that an apparently legitimate case cannot proceed without the assistance of an attorney").

9. *Maclin v. Freake*, 650 F.2d 885, 887–889 (7th Cir. 1981).

10. *Maclin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981).

district court will be to appoint counsel.¹¹ Next, district courts will generally consider additional factors such as the complexity of the facts and legal issues being raised.¹² For example, if the claimant is not able to properly investigate the crucial facts of a case, counsel will generally be appointed.¹³ A court is also more likely to appoint counsel in situations where there is conflicting testimony about relevant evidence, and the factual issues are complicated in such a way that trained attorneys would be more likely to uncover the truth.¹⁴ Additionally, district courts should appoint counsel in situations where the claimant lacks the ability to present the case himself because of either physical or mental illness.¹⁵

Furthermore, if you are not assigned a lawyer but your case survives the defendant's motion for summary judgment,¹⁶ you should again request that the court assign you a lawyer, as they may be more likely to do so at that stage.¹⁷ Remember, if the court assigns you a lawyer, you will have little or no say as to who your lawyer will be. Thus, you may want to first try on your own to find a lawyer whom you trust and who is committed to helping you.

Keep in mind that many lawyers will be taking your case to earn a fee. Whether you pay a flat fee (fixed amount of money for the lawyer to represent you), an hourly fee, or a contingency fee, you will still be expected to pay for the lawyer's litigation expenses, either before or after money is spent on your case.¹⁸ These expenses may include things like long-distance telephone calls, postage, photocopying, stenographers for depositions, hiring an investigator, medical reports, etc. Unless you get poor person's status, you are also responsible by law for all court costs, such as filing fees.

If you cannot pay a lawyer's fees, a lawyer might take your case for a contingency fee.¹⁹ You will be asked to sign an agreement giving the lawyer a percentage (usually 33%) of whatever money the other side gives you if you win (the "recovery"). If you do not win, your lawyer gets no money. Lawyers *cannot* ask you for a contingency fee in criminal or domestic relations (family law) cases.

D. Conclusion

Finding a lawyer whom you trust and who you can work with is an important part of your legal process. You should feel that you can be truthful with your lawyer, and that your lawyer is working in your best interest. Even if finding a good lawyer seems frustrating, keep on trying. When you write letters to ask for legal help, provide as much specific information about your case as possible so that a lawyer can see you have a good case.

If you cannot find a lawyer, or you choose not to hire an attorney, you have the option of acting "pro se." This means that you represent yourself without the aid of an attorney. While it will be more difficult, it is still possible to proceed pro se.

11. Maclin v. Freake, 650 F.2d 885, 887 (7th Cir. 1981).

12. Maclin v. Freake, 650 F.2d 885, 887–889 (7th Cir. 1981).

13. Maclin v. Freake, 650 F.2d 885, 887–888 (7th Cir. 1981). The court found that the claimant's status as a paraprofessional made it such that it would be hard for him to investigate the facts of his case.

14. Maclin v. Freake, 650 F.2d 885, 888 (7th Cir. 1981).

15. Maclin v. Freake, 650 F.2d 885, 888 (7th Cir. 1981).

16. Fed. R. Civ. P. 56. Summary judgment is when a court decides before a trial that no trial will be necessary because in applying the law to important undisputed facts, one party is clearly the winner.

17. You should request assignment of counsel again at this stage because if your case survives a summary judgment motion, then the court thinks that it is worthy of a trial or hearing. *See* Hendricks v. Coughlin, 114 F.3d 390, 393 (2d Cir. 1997) (invalidating lower court's application of a bright line rule of appointing counsel only after plaintiff's case survived a motion for summary judgment because, in some cases, an indigent plaintiff will have trouble developing even the basic facts necessary to survive summary judgment without assistance of counsel).

18. *See* N.Y. State Bar Assoc., *The Courts of New York: A Guide to Court Procedures with a Glossary of Legal Terms*, 66–68 (2001), available at <http://www.personalinjury317.com/files/1013/5161/8498/courtsofny.pdf>.

19. You cannot be convinced to enter into a contingency fee arrangement by fraud, nor can your lawyer ask for so much money that the lawyer obviously took advantage of you. *See* Gair v. Peck, 6 N.Y.2d 97, 106, 160 N.E.2d 43, 48, 188 N.Y.S.2d 491, 497–498 (1959) (holding that contingency fees may be disallowed where "the amount of the fee, standing alone and unexplained, may be sufficient to show that an unfair advantage was taken of the client or, in other words, that a legal fraud was perpetrated on him"); *see also* King v. Fox, 7 N.Y.3d 181, 191, 851 N.E.2d 1184, 1191, 818 N.Y.S.2d 833, 840 (2006) (stating that a contingency fee may be unconscionable (excessive or unreasonable) if not proportional to the value of the services rendered).

