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How to Determine Whether to Hire a Lawyer

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Q. I have a modest sized case and am trying to decide whether to hire a lawyer or represent myself. What should I consider when making this decision?

A. Whether you should hire a lawyer will depend on a number of factors. First, it should be determined whether your case is criminal or civil, and if it is civil, whether your case nevertheless presents the possibility that you may, in the future, be prosecuted for a crime. If you have been charged with a crime or if there is the potential for future criminal prosecution, you should retain a lawyer. If you have been charged with a crime and cannot afford to hire a lawyer, the court will appoint a lawyer to represent you.

Although it sometimes can be difficult to identify civil cases which present the possibility of future criminal prosecution, it is imperative this type of case be identified as early in the process as possible, as you very likely will want to handle this type of case much differently than you would a civil case which does not have criminal law implications.

Assuming your case is purely a civil one, in other words, a case in which there is not the possibility of criminal sanctions, the next determination to be made is the value of the case. The value of a case generally is defined as the amount of money the other party may be ordered to pay you if you win, or the amount of money you may be ordered to pay the other party if you lose. In addition to the value of the case, don't forget to consider whether the court will be able to order one party to pay all or part of the other party's attorney fees and costs – which in certain cases may far exceed the value of the case.

If the value of the case is modest enough to fall within the monetary jurisdiction of the small claims court in your locale, the law makes the decision for you of whether to retain a lawyer: lawyers are not allowed to represent clients in small claims court. However, consulting with a lawyer before you file court papers or go to court may still be helpful, as a lawyer will be able to assist you in preparing both your written case filings and oral presentation.

If your civil case is one which exceeds the monetary jurisdiction of small claims court, a determination should be made regarding whether you are covered for the loss at issue by a policy of insurance. If you do have insurance coverage for the loss, the insurance company may be required to retain a lawyer for you. If your insurance company contends that the loss is not covered by the insurance policy – and you disagree with this contention – you may need a lawyer to assist you with a separate lawsuit against the insurance company.

If an insurance company will not be retaining a lawyer on your behalf, you should estimate the cost of hiring a lawyer and weigh and consider that cost against the likely cost of losing the case. Furthermore, even if a cost-benefit analysis suggests you should act as your own lawyer, it is also important to consider whether you have the knowledge and skill to competently represent yourself and, even if you do, whether you would be better-served – both financially and emotionally – by simply turning the case over to a lawyer and going about your daily business while the case is being resolved.

Lastly, when considering whether to hire a lawyer, it is always good to remember the age-old adage, “He who is his own lawyer has a fool for a client.”

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of bankruptcy, business law, constitutional and civil rights law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has served as a Judge Pro Tempore for the Santa Clara Superior Court, and is also a licensed Real Estate Broker.

Mr. Earle received his law degree from the Santa Clara University School of Law, where he served as an Editor of the school’s Law Review, and where he received awards for academic excellence. He received his undergraduate degree, with honors, in business administration from the University of La Verne.

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