

## **Eleven Questions To Ask Before Hiring A Lawyer For Your Injury Lawsuit**

By Patrick A. Malone

© 2005, Patrick A. Malone, [www.steinmitchell.com](http://www.steinmitchell.com)  
[pmalone@steinmitchell.com](mailto:pmalone@steinmitchell.com), 202-737-7777

### **1. Should I go see a lawyer because the ad promises me a “free legal consultation?”**

No! Nearly all lawyers who represent seriously injured persons will give a free initial consultation. So the promise of a free consultation doesn't mean much. What's more important is to find out the lawyer's field of specialty, their track record, and their status among other lawyers and judges. And it's important to obtain that information for any lawyer who will be working on your case, not just the lawyer who does the initial consultation.

### **2. Ask the lawyer, “Who will actually handle my case?”**

Find out if the lawyer plans to actually work on your case, or give it to someone else to work on. You need to know the skill and experience of the lawyer who will actually work on the case, not just the lawyer you first see. There's nothing wrong with having more than one lawyer on the case. Top lawyers typically run teams of lawyers who handle different aspects of the case. The senior lawyer may delegate more routine functions to less experienced lawyers. Find out how the team functions.

### **3. What kind of cases does this lawyer handle on a day-in, day-out basis?**

Some lawyers are general practitioners who do a little of everything, including personal injury practice. Their work may include occasional medical malpractice cases or suits against drug manufacturers. But if they don't do this type of work every day, injured people who hire them are at a disadvantage. It takes a specialist in any legal field – whether serious personal injury lawsuits or other specialties like immigration or real estate – to really know that field backwards and forwards, to practice at the highest skill level – and to get the best results for the client.

### **4. How long has the lawyer been working in the field in which you need a lawyer?**

By and large, lawyers who do personal injury lawsuits for injured persons charge the same fee no matter how long they have been practicing. (This is the contingency fee, a percentage of the amount recovered.) That means that for the same fee, you could get a lawyer with one or two years of experience, or a lawyer with 20 years of experience. As in any other field, experience helps!

## **5. Does the lawyer try lawsuits in court, or is every case settled out of court or referred to other lawyers to try?**

This is an important question that many lay people never think to ask. In every city, there are “clearinghouse” lawyers who advertise heavily and get many clients as a result – and who then either settle their cases quickly or refer them to other lawyers to do the real work. (The “clearinghouse” lawyer gets a piece of the fee for making such a referral.) On the other hand, real lawyers actually go to court and try cases the old-fashioned way: in front of judges and juries. Real lawyers settle cases out of court too, but they also compile a track record of verdicts that they will tell you about if you ask.

One problem with “clearinghouse” lawyers is that they are generally interested in volume and quick turnover. This means they try to settle cases quickly, sometimes at the expense of the client whose good case may be shortchanged in the lawyer’s rush for a fee.

Another problem with “clearinghouse” lawyers is that the client can become confused about who their real lawyer is. They hired the “clearinghouse” lawyer, but that lawyer is not their real lawyer.

Clarification: In the personal injury field, lawyers often collaborate with each other on cases. There is nothing wrong with that. It can be a good way for a client with a serious injury to get two lawyers for the price of one, because the lawyers typically share between themselves the same contingency fee that would be charged if only one lawyer was handling the case.

## **6. What is the lawyer’s track record of verdicts and settlements?**

The longer the lawyer’s list of successful case outcomes, the better it usually is for the client.

The insurance companies who defend personal injury and malpractice cases know who the attorneys are in your area who actually go into court to try cases and who do not. The insurance companies use that information to evaluate their risk. One of the first questions an insurance adjuster will ask when a serious claim comes in is: who is representing the plaintiff?

## **7. Does the lawyer teach other lawyers?**

Lawyers who frequently lecture at legal meetings (called “CLE” – or continuing legal education) have the esteem of their peers. Lawyers who regularly write articles in legal publications also can usually be counted on to know what they are talking about.

**8. Is the lawyer a member of legal organizations that specialize in representing injured people?**

Major organizations include the Association of Trial Lawyers of America (ATLA), ATLA state affiliates like Virginia, Maryland or D.C. Trial Lawyers Associations, the Etheridge Society (an organization of Virginia medical malpractice plaintiff lawyers), and the Inner Circle of Advocates, [www.innercircle.org](http://www.innercircle.org), a national group of 100 of the top plaintiffs' personal injury lawyers in the United States.

All these organizations provide extensive education for their members. You can certainly find a lawyer who doesn't belong to any of these groups, but why would you want that lawyer to represent you in a serious injury lawsuit?

**9. Should I hire a lawyer based on an advertisement on television or in the Yellow Pages?**

Anyone can pay for a slick commercial, or buy space in the Yellow Pages. Most of these ads say the same thing: "free initial consultation," and "no fee if no recovery." Almost every lawyer in the personal injury field gives free initial consultations, and almost every lawyer charges no fee if there is no recovery. (But see question below on what "no fee" means exactly.)

**10. What does the lawyer mean when he or she says "no fee if no recovery"?**

Consumers need to be careful, because this can mean different things. Every lawyer who charges solely on a contingency basis – that is, a percentage of the amount recovered – will charge "no fee" if they lose your case. (One-third of nothing, or 40 percent of nothing, is still nothing.) But expenses are handled differently by different law firms. On a big case, expenses can run up to \$100,000 or more. These are amounts paid to third parties to keep the case going: expert witness fees, court reporter fees, and charges from graphics designers, treating health care providers, nurse consultants, and the many other expenses that go into a personal injury lawsuit. There are different ways these ongoing lawsuit expenses are handled by different firms, depending in large part on the firm's resources:

- One way is to require the client to pay all or a substantial share of the litigation expenses at the start of a case or on an ongoing basis.
- Another way is for the lawyer to pay all the expenses as the case goes along, with the client reimbursing the lawyer out of any recovery at the end of the case, after the lawyer's contingency fee is deducted. (Example from a small case: If the recovery is \$100,000, and the lawyer and client have agreed to a one-third contingency fee plus expenses, and the lawyer has spent \$10,000 on the case, the \$100,000 will be disbursed like this: \$33,333 to the lawyer for his or her fee, \$10,000 to the lawyer to reimburse expense outlays, and the net -- \$56,667 – to the client.)

- Another system is for the lawyer to take out a loan from a lending institution – or arrange for a loan to be taken out by the client – to cover case expenses. These loans can quickly add a lot of extra expense to the case, and should be carefully considered.
- What happens to expenses if the case is lost? In some jurisdictions, lawyers can promise the client that the client will never be liable for the lawyer’s out-of-pocket expenses. Other jurisdictions prohibit this and require that the client always be ultimately responsible for case expenses, win or lose. But even in those jurisdictions, some lawyers are more vigorous than others in chasing losing clients for reimbursement of expenses paid.

Bottom line: You need to find out the lawyer’s practice on what he or she does about case expenses when the case is lost. And don’t let the lawyer tell you “I’ve never lost.” Every good lawyer loses cases.

### **11. Does the lawyer have the financial and personnel resources to take on my case?**

Lawsuits involving serious or catastrophic personal injuries can be very expensive to take to court. A typical case can involve three, six or even more medical specialties, each one of which needs to have an expert witness hired to deal with issues in that specialty. If a lawyer lacks the resources to fund a case properly, corners can be cut at the expense of the client’s case. Or a client can be pressured into taking an inadequate settlement. It pays to hire a lawyer who has the financial resources to take a case all the way to trial, if necessary.

###