



# **A Dozen Questions You Need To Ask Before Hiring an Injury Attorney**

**Information Law Guide**

# A Dozen Questions You Need to Ask Before Hiring an Injury Lawyer

If you've been injured as a result of someone else's negligence, you will be facing many important decisions in the days, weeks and months following an injury. Finding the "right" lawyer to represent you is often the most critical factor in a successful recovery. Insurance companies have the financial resources to hire skilled lawyers who specialize in defending personal injury claims. The experience and skills of your lawyer will play a pivotal role in the amount of compensation you receive.

Most injury victims do not know that the best, most successful personal injury attorneys in your community charge fees that are the same as inexperienced lawyers who have no track record of success in the courtroom.

Don't make the mistake of choosing a personal injury lawyer from ads alone. There are unscrupulous lawyers who will settle your case quickly for whatever the insurance company will offer because these firms work on a "high volume" and "quick turnover" basis. Every community has a number of personal injury "wannabe" lawyers who would like to grab your case and settle it quickly for low dollars for you (but a high return for the lawyer's time investment).

So how do you find a good lawyer for a serious personal injury lawsuit? Like most important decisions, you need to do some "homework" on the lawyers in your community. When you decide to meet with an attorney to discuss your case, you need to ask the right questions to find out if the attorney has a proven track record of success.

The purpose of this free report is to provide you with insights that most injury victims never bother to learn about lawyers who handle personal injury claims. If you follow the advice contained in this report, it may make the difference between winning your case or going home with nothing or significantly less than your case is worth.

## **1. There are sources that rate personal injury lawyers based on what their colleagues say about them.**

How do you find a top-notch lawyer for a serious personal injury case? There are resources you can check before deciding which lawyer to schedule a consultation with. One of the most reliable ways to research a lawyer's qualifications is to check sources that rate personal injury lawyers based on what their fellow lawyers (and their competitors) say about them. Please understand that there is no other official "rating" system for personal injury lawyers besides peer review by other lawyers. Here are the peer review rating systems that you should check out:

- The Martindale-Hubbell Bar Registry ([www.martindale.com](http://www.martindale.com)) has peer review ratings of more than 1 million lawyers across the country. It publishes short biographies of these lawyers. For over 130 years,

Martindale-Hubbell has been the most respected source of authoritative and reliable information about members of the legal community in the United States. An “AV” rating identifies a lawyer and a firm with a very high to preeminent legal ability and is the highest reflection of expertise, experience, and integrity and overall professional excellence. Martindale-Hubbell ratings are established by attorneys for attorneys and it states: “clearly indicates a demonstration of the highest professional and ethical standards.”

- The Best Lawyers in America. ([www.bestlawyers.com](http://www.bestlawyers.com)) The lawyers listed in *Best Lawyers* been selected by their peers as “the best” in 57 specialties, including personal injury and medical malpractice law.
- Superlawyers. ([www.superlawyers.com](http://www.superlawyers.com)) *Super Lawyers* is an annual listing of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. Law & Politics performs the polling, research and selection of Super Lawyers in a process designed to identify lawyers who have attained a high degree of peer recognition and professional achievement. Only five percent (5%) of the lawyers in each state are named Super Lawyers.

## **2. Ask the lawyer, “What percentage of your cases are referrals from other lawyers”?**

If you want to know who the top notch personal injury lawyers are in your community, ask the lawyers who practice there. It’s important to find out whether a significant percentage of a lawyer’s caseload comes from referrals from other lawyers. In any field or profession, the professionals who work in the field usually know who’s good and who’s not. If you have an attorney or a friend who practices law, that might be a good place to start. Even if he or she doesn’t handle injury cases, they are bound to have colleagues who are familiar with the personal injury or malpractice lawyers who are recognized by their peers as being the best in your community.

## **3. Be careful about lawyers who send “solicitation” letters to your home following an accident.**

Recently, an increasing number of personal injury lawyers have been hiring runners or “gophers” to obtain traffic accident reports prepared by local and state police officers. Once the accident reports are obtained, a member of the law firm’s staff will comb through the report to find the name and address of the accident victim. The law firm will then mail a “solicitation” letter to the injury victim informing him/her that the law firm is ready and willing to represent the accident victim in a personal injury case. In our community, it is not unusual for an accident victim to receive fifteen to twenty solicitation letters from law firms. There is a law firm in southern Indiana that sends a solicitation to every single traffic accident victim in the entire state where there is a police report. There are law firms that will continue to send solicitation letters after the

initial letter is sent and will even have a staff member call the accident victim and ask if they received the solicitation letters.

The vast, vast majority of law firms that rely on solicitation letters operate on a “high volume, quick turnover” basis. They have difficulty attracting referrals from satisfied clients or other lawyers so they resort to sending out hundreds (and sometimes thousands) of solicitation letters hoping that they will receive responses to their mass mailings. It’s probably safe to say that injury victims who choose an attorney based on a solicitation letter they receive in the mail aren’t doing a lot of research on the law firm they are hiring. Many states are in the process of enacting rules and laws to prohibit lawyers from sending solicitation letters to accident victims.

#### **4. Virtually all personal injury lawyers offer a free consultation and will not charge a fee unless there is a recovery.**

Anyone who has ever seen or received any type of advertisements (TV commercials, yellow pages, internet sites, direct mail solicitation letters, etc.) from personal injury firms quickly learns that every injury lawyer makes the same offers:

- “No fee if no recovery.”
- “Free initial consultation.”
- “We will visit you at home or in the hospital.”

A lawyer who offers you a “free consultation” and tells you that he or she will not charge a fee unless there is a recovery in your case (known as a “contingent fee” agreement) is not offering you anything out of the ordinary. Almost every lawyer who specializes in handling personal injury cases will make the same offer.

#### **5. What does it mean when lawyer says “no fee if no recovery”?**

Almost every personal injury lawyer handles injury cases on a contingent fee basis. A “contingent” fee means that there is no attorney fee unless there is a recovery and the fee is a percentage of the amount recovered. (i.e. usually 33.33% of the amount recovered). That means that the lawyer will not charge the client a fee unless there is a recovery. Sounds simple, right? Not so fast. This is an area where personal injury victims need to be careful before they make a decision on a lawyer for their case.

If a lawyer agrees to handle your injury case on a contingent fee basis, and loses the case, there’s not going to be an issue on whether you owe the lawyer anything for his or her attorney fee. You don’t owe anything. One third of nothing is nothing. However, consumers must understand that there is a big difference between attorney fees and the case “expenses.” Almost every personal injury case will entail some case “expenses” that need to be paid in order to prepare the case properly. Case expenses are monies paid to third parties to keep the case going: expert witness fees, court reporter fees, charges for medical records, charges for physician reports, filing fees and the many other expenses that go into a personal injury lawsuit.

Case expenses are handled differently by different law firms. In a typical motor vehicle accident case, where the settlement is less than \$100,000, the case expenses are usually less than \$5,000. However, in a serious personal injury case involving permanent or catastrophic injuries, or in a medical malpractice case, the litigation expenses can run up to \$50,000 or more. There are different ways these ongoing litigation expenses are handled by different firms, depending, in large part, on the firm's philosophy and the firm's financial 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. That method can create serious financial issues for a client.
- 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. For example, if the recovery is \$270,000, and the lawyer and the client have agreed to a one-third contingent fee plus reimbursement of the expenses advanced by the lawyer, and the lawyer has advanced \$10,000 toward the case expenses, the final disbursement of the settlement will look like this:
  - you will receive \$170,000;
  - the lawyer will receive \$90,000 for his attorney fee;
  - \$10,000 will be paid back to the lawyer to reimburse expenses.

What happens to the expenses if the case is lost? Some lawyers have a policy of not asking the client to reimburse the law firm for the "out of pocket" expenses. Other lawyers expect the client to reimburse the law firm for all the expenses if the case is lost. As a consumer who has choices, you need to find out the lawyer's policy on expense reimbursement in situations where the case is lost. If a lawyer tries to tell you *"don't worry about it, I've never lost a case,"* don't accept that response. Even the very best personal injury lawyers lose cases from time to time.

## **6. Does this lawyer have the financial and staffing resources to take on my case?**

As noted above, lawsuits involving serious or catastrophic personal injuries can be very expensive to take to court. For example, a typical medical malpractice 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. A serious injury case against a trucking company can involve accident reconstruction experts and trucking safety experts as well as the experts who will be needed to testify about the nature and extent of a client's injuries (treating physicians, life care planners, vocational experts, economists, etc.). 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.

**7. What kinds of cases does this lawyer handle on a daily basis?**

Some lawyers are “general practitioners” who handle many different types of legal cases, including the occasional personal injury case. If you have a serious personal injury claim, you will want a lawyer who handles personal injury cases on a day-in, day-out basis. The practice of law has become so complex that it is virtually impossible for a general practice lawyer to stay on top of all the developments in personal injury and medical malpractice law. Most of the lawyers who are hired by insurance companies to defend personal injury cases are seasoned specialists who limit their practice to the defense of personal injury cases. A general practitioner is likely to be at a major disadvantage when he or she goes up against a law firm that specializes in the defense of personal injuries cases.

**8. How long has this lawyer been handling personal injury cases?**

For the most part, lawyers who handle personal injury or medical malpractice cases charge injury victims the same “contingent” fee no matter how long they have been practicing. If a lawyer with only 3 years experience is going to charge you the same fee as a lawyer with 25 years experience and 100 personal injury jury trials under his or her belt, you should strongly consider hiring the more seasoned lawyer. The experience of your lawyer can make a very big difference in the outcome of your case.

**9. Does this lawyer actually try lawsuits in court?**

Most lay people believe that all personal injury lawyers go to court and try cases on a regular basis. Nothing could be further from the truth. A significant percentage of lawyers who hold themselves out to be “trial lawyers” or “personal injury lawyers” have little or no jury trial experience. One of the first questions you should ask is whether the lawyer tries cases in court, and, if so, how often. This is an important question that many lay people never think to ask.

Lawyers who defend personal injury cases know the injury lawyers who actually try cases and those who don’t. 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?*

There is only one way to get top dollar for your case in a settlement. The insurance company must believe that your lawyer is ready, willing and able to try the case in court. If you hire a lawyer who always settles and never goes to court, be prepared to take a substantial discount on your case.

**10. Does this lawyer teach other lawyers?**

Lawyers who frequently lecture at legal education seminars (called “CLE” – or continuing legal education) have the esteem of their professional colleagues. They are asked to speak at legal education seminars because other attorneys want to hear what they have to say. Lawyers who regularly write articles in legal publications are usually the authorities in the field and know what they are talking about. Many personal injury lawyers will list the topics of their speaking engagements or their publications on their website. If you want to know whether a lawyer teaches other lawyers about developments in personal injury law or writes articles about personal injury litigation, you should check the lawyer’s website or ask for a copy of the lawyer’s resume.

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

There are both national and state organizations comprised of lawyers who are dedicated to the representation of injury victims. These organizations sponsor legal publications and legal education programs. They also conduct lobbying activities for the rights of consumers. The most prominent national organization is the American Association of Justice (AAJ). In the State of Indiana, the Indiana Trial Lawyers Association (ITLA) is a statewide organization of plaintiff attorneys dedicated to the rights of injured persons. 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?

**12. Is this lawyer a “board-certified” civil trial lawyer by the National Board of Trial Advocacy?**

For many years, the medical profession has utilized a system of testing and peer evaluation known as “board certification.” Board certification is designed to identify physicians who have expertise in a particular specialty or sub-specialty of medicine. In recent years, the legal system has begun emulating the board-certification process in the medical profession. The National Board of Trial Advocacy (NBTA) is a national organization that has a process for civil trial lawyers to achieve board certification. The National Board of Trial Advocacy is part of a larger lawyer certification organization called the National Board of Legal Specialty Certification. NBTA certification as a “civil trial attorney” is only available to attorneys who have extensive experience in the courtroom and in preparing cases for trial. In addition to having courtroom experience, an applicant must also pass an all-day examination before receiving board-certification from the NBTA as a civil trial attorney.