

AVOIDING THE WRONG LAWYER FOR YOUR MOTORCYCLE ACCIDENT CASE

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In other articles, I've put forth some suggestions for things you should look for and consider when hiring a qualified lawyer for your motorcycle accident case. Following are some suggestions on lawyers to *avoid*.

- **Lawyers who pressure you to hire them immediately.** It's a sign that they are chasing you for business, and if they are desperate for new cases, there is usually a reason.
- **"We handle everything" law firms.** If a firm's ads indicate that they handle corporate, tax, real estate, bankruptcy, estate planning, criminal law, environmental law, patent law, and, uh, ... oh by the way, **accidents**, etc., you may want to be more selective. In my opinion, lawyers are no different from other trained professionals in this critical respect: the more they focus on one or two areas of expertise, the more competent and experienced they are likely to be in that area of practice. It's as simple as that.
- **Lawyers who don't know motorcycles and what it takes to prove a motorcycle negligence case.** Many personal injury lawyers will actually shy away from motorcycle accident cases because they are all too familiar with Rule #1 – motorcyclists are often disrespected by adjusters, police officers and juries due to unfortunate but common preconceptions. What you *want* is a lawyer who *understands* these prejudices and how to deal effectively with them – a lawyer who actually *likes* representing injured bikers, and who will work hard to overcome those prejudices and get you the successful result you expect and deserve. These lawyers do exist, and they are the ones to look for.
- **Lawyers who take more cases than they can handle (and make their money on volume rather than securing great results for each client).** I know of a personal injury "mill" firm in the Washington, D.C. area that attracts unsuspecting clients by charging an extremely low contingent fee of 25% instead of the usual 33 – 40%. Using this approach, they make a ton of money. How? Well, they pull a lot of clients in the door by offering the lower contingent fee percentage. Then, once they sign up a client, they accept the very first low-ball settlement offer that comes from the insurance adjuster. If the client balks at accepting it, the

firm “sells” that offer to the unsuspecting client by telling him that his case has some “problems” and that he’d better take the low-ball settlement because going to trial is “just too risky.” By employing this strategy countless times a year, these accident case mills “churn” a high annual caseload resulting in big profits for the firm but often poor results for the clients. I consider this practice to be shameful, but unfortunately, to varying degrees, it is all too prevalent.

Question to ask: Approximately how many pending personal injury cases is the firm handling at this time? If the lawyer proudly announces “thousands” and it’s just the one lawyer and a few paralegals in the office, perhaps you should consider speaking with another lawyer with a more manageable caseload who is willing to devote the time necessary to handle your case properly.

- **Lawyers who make promises they can’t deliver (“millions recovered!!”)**

Question to ask: “If every case is different, what does your past success have to do with my case? How long have you been in practice? Have you “recovered millions” because you run a high volume mill or because you’ve taken some hard-to-prove cases to trial and won substantial verdicts?”

Unlike many large personal injury firms, I do not publish specific dollar amounts when describing “case results” for the simple reason that such numbers can be inherently misleading. Amounts recovered in the past have nothing to do with potential recoveries in the future. Reasonable minds can differ on this subject, and there are plenty of lawyers who will disagree with me, but my philosophy is that it is not a good practice and does not contribute to sound legal information being disseminated to the public.

These are tough questions, and they should be, so don’t feel like you are unfairly putting that lawyer on the spot when you ask them. Some of the answers you get may make sense to you, and some may not. You be the judge.

Let me tell you a quick story here. At his request, I once visited a potential client in the hospital, just a few days after a devastating motorcycle accident. He was an experienced, safe rider who had been going under the posted speed limit. A pickup at an intersection going the other way had turned left in front of him, causing him to hit the bed of the truck at 40 mph. His pelvis was crushed, his knee badly damaged, and his lung collapsed at the scene. If it hadn’t been for a fast helicopter evacuation and an expert trauma and surgical team, he surely would have lost his life.

After I had obtained some initial information about the crash, I asked him if he had questions about my background and approach to bike cases. His very first question was this: “What percentage of your trials have you won and what percentage have you lost?”

My answer to his question went something like this. “I don’t know, because I don’t keep those numbers. If by ‘winning,’ you are talking about a jury award after a full

trial on the merits, I can tell you that I've won some cases and lost some cases. That is true of any capable trial attorney, because regardless of the evidence, juries are unpredictable, and no matter how effective you are in the courtroom, you never know how they are going to assess a given set of facts or circumstances, or how they are going to weigh your entitlement to compensation."

When he seemed taken aback by my answer, I explained the following. "Look at it this way. What if I told you that I had won 99% of my cases? Would that mean that I'm the best trial lawyer in Virginia, or would it mean that I'm a lazy, mediocre lawyer that only takes easy cases to trial and settles all the tougher cases for pennies on the dollar without a fight?"

He paused and smiled. "That's a fair answer, Counselor." He called to hire me the next day.

I tell you this story to make a point about sizing up the attorney candidates who may be interested in representing you. There's no magic to it. Listen to the answers the lawyer gives you, and trust your instincts and good common sense. If the attorney is trying to "sell" you a little too hard on his or her abilities based on information that isn't really relevant to *you* and *your case*, there may be a reason.

- **Lawyers who treat your case like a "file to be processed" rather than a claim to be resolved.**

Question to ask: "Who will be my primary point of contact once work on my case begins—the lawyer or a designated associate attorney, paralegal or secretary?"

This is a tough one to gauge, so let me start by saying there is nothing wrong with a lawyer who makes effective use of associates, law clerks and paralegals in his or her practice. This is because all accident claims, including motorcycle accident claims, are paper intensive. There are countless letters to be written, medical records and bills to be obtained and reviewed, and insurance documents to review. In the right context, trained legal professionals other than attorneys are perfectly well qualified to do this essential "legwork" so that the lawyer's time on the case is spent most efficiently and most effectively. There is nothing wrong with that.

At the same time, some firms – okay, a *lot* of firms in my opinion -- carry this principle way too far. When that happens, the lawyer loses contact with the file completely, and in the worst cases, loses contact with the client completely. The clients place call after call to the lawyer for weeks or months after the initial retainer agreement is signed, and try as they might, can never seem to receive a call back from anyone other than a secretary or other staff member. This is a terrible practice, causes frustration and anger on the part of the client, and damages the most important part of the attorney-client relationship: trust and confidence. It is no wonder that countless surveys have shown "failure to timely return phone calls" as the number one complaint that clients have about lawyers.

By asking the lawyer who the primary point of contact will be, and most importantly, how clerks and paralegals are used in the firm, you will get a sense of that lawyer's philosophy about how cases, and more importantly, how clients, are handled. The same principle applies here: listen to the answers the attorney gives you, and trust your instincts.

- **Lawyers who chase you for business (“runners” at the hospital – an unethical but common practice) Did the lawyer insist on sending someone to the hospital to get you to sign a retainer agreement within minutes or a few hours of speaking with you on the phone? Or even worse, did someone (like an EMT) or any other non-lawyer approach you at the hospital (or even in the ambulance) offering to contact a “great lawyer” for you?**

This is an age-old practice of a lawyer using “runners” to solicit (i.e. run after) business from injured people before they have a chance to seek legal representation elsewhere. These “runners” are often paid by the lawyer (sometimes out of a percentage of the earned fee) to bring in new clients. It is unethical misconduct at its worst, but it still goes on just about everywhere – especially in large urban areas.

This is an easy one. No caveats, no exceptions. Run far, far away. Lawyers who use “runners” are unethical, and deserve to be sanctioned for their misconduct. I can't say it any plainer than that.

- **Lawyers who pressure you to sign a “contingent fee” retainer agreement without giving you time to read and understand it thoroughly.**

Question: Has the attorney you have spoken with encouraged you to take your time to review the agreement and answered all of your questions thoroughly and carefully? Are you entirely comfortable that you understand all aspects of the agreement? Is it written plainly and clearly?

If the answer to all of these questions is “yes,” then wonderful. Any reputable lawyer will do just that. On the other hand, if the lawyer seems in a big rush to get your signature on an agreement so he or she can “start work right away” without making sure you are doing so with a complete understanding of the agreement, that lawyer is chasing you for business, and it's time to speak with another attorney. Pardon me, but this bears repeating. If that lawyer has to chase clients for business, rest assured there's a reason for it.

- **Lawyers who tell you they'll have your case settled “in no time” and will put “money in your pocket” quickly.**

Question to ask: “When can I expect negotiations to begin with the insurance company? Can I get a check quickly?”

If the lawyer's answer is "as soon as possible!" it's probably time to speak with another lawyer. An experienced lawyer knows that if you have been injured in an accident, it is important that you receive thorough and timely medical care for your injuries, and that you reach what is generally referred to as "maximum medical improvement" (otherwise known as "MMI") before making a formal demand for settlement in your case. Otherwise, if your attorney pushes you to settle the case prematurely and your injuries result in unforeseen complications or simply take a turn for the worse during treatment, your case will have been undervalued at the time of settlement and it will be too late to reopen the claim. Except in very rare cases involving fraud, once the insurance check is issued and you sign a release, that's the end of it. There are no "do-overs" when it comes to settlement.