

RULE #1: IN THE EYES OF MANY, MOTORCYCLISTS ARE SECOND-CLASS CITIZENS

Let's talk about equality, and reality. You and I both know that motorcyclists have the same rights and responsibilities on the road as all other drivers. So bikers should receive the same treatment by law enforcement and insurance companies as any other drivers on the road, right?

In theory, and in the eyes of the law, of course. But is that true in the real world?

In my opinion, almost never. Why? Public perception.

The reality is this: the actions of a few affect the perceptions of the many. Every time a biker screams past a car with throttle open and pipes blasting, the driver of that car thinks, "There goes another speed-demon maniac on a motorcycle." Does that driver stop to think that *most* motorcyclists are safe, courteous, responsible citizens? Not on your life. And if that driver ends up on a jury one day – maybe on a jury deciding responsibility for a motorcycle / car accident, will it impact his or her thinking? Of course it will.

What about police officers? Whether we're talking about local police, county police, deputy sheriffs or state troopers, the same often holds true. Despite that fact that police are trained professionals, they are also human beings subject to the same prejudices and life experience tendencies as everyone else. Every time they pull over a biker for aggressive driving, excessive speed, or just plain screwing around on the road, their perception of all motorcyclists is affected – and not for the better.

As a result, unfortunately, the actions of a few irresponsible bikers do affect the public's view of riders in general, and that includes highly trained, responsible police officers. How does that affect you if you are in an accident? Plenty.

Here it is. Based on my personal experience, many officers are too quick to assume that a wreck involving a car and bike was caused either partly or entirely as a consequence of aggressive riding or speeding on the part of the biker – despite no objective evidence at the crash scene to indicate that. Quite often, there may be no objective third party eyewitnesses at the scene for the officer to interview, so the officer is left only with the statement of the rider ("Officer, he just cut in front of me!") and the statement of the driver ("That maniac was flying! He came from nowhere! I had no time to stop!").

In many cases, the officer may give the benefit of the doubt to the driver by **NOT ISSUING THE DRIVER A TICKET** for failure to yield, improper lane change, or any other moving violation that may be supported by the evidence at the scene. When I ask officers about this, quite often they will simply say that it's the "unofficial policy of their department" to "let the lawyers figure it out," and that it's a "civil matter." From the

perspective of the officer, taking a “neutral” stance by not issuing a citation to either party is simply that: not taking a side. From the standpoint of the insurance carrier however, that “neutral” position is something to be used against the motorcyclist later on as evidence of an *absence* of negligence on the part of the driver. So rather than being a neutral party (which may be the officer’s reasonable intent), the investigating officer’s decision to issue no citations at all ends up favoring the driver over the motorcyclist.

Is this so-called “neutral” policy fair to bikers? No. Can it adversely affect their claim for compensation later on? Absolutely. This is because if the careless driver who caused the accident is cited for a moving violation, and ends up either pleading guilty (paying the fine is pleading guilty by the way) or found guilty, that conviction may be evidence of negligence “per se” in the eyes of the law in a subsequent civil claim for damages.¹ In such cases, the driver’s insurance carrier will be far more motivated to settle the case without proceeding to trial than they might be without such a conviction. But if no ticket is issued at all by the investigating officer, then the issue of negligence is squarely “in play,” which can have a significant downward pressure on any potential settlement amount to the injured motorcyclist who was not at fault in the accident. For more on this, see Chapter 13 on the subject of “negligence.”

Does your status as a “second-class citizen” end with other drivers and the police? I’m afraid not. Insurance adjusters are on the same bandwagon, because they know that juries have the same negative pre-conceived notions of biker responsibility as the typical driver does. Result? Adjusters believe, often correctly, that juries are less likely to believe the version of the accident told by the biker than they are the “responsible” car driver. As a consequence, it influences their estimation of what a reasonable settlement value of your claim should be, thereby pushing more cases to trial and increasing the risk that the injured biker may receive little or no award as a consequence. Fair? No. But know this from the outset. Your status as a motorcyclist may impact the perspective of a number of people who matter in a big way from the very second of impact forward, regardless of your own personal driving record, and regardless of the way you ride a bike.

Are there things you can do to balance out these prejudices and misconceptions? Perhaps not entirely, because they are difficult to gauge, and of course vary on a case-by-case basis depending on who’s involved. But by at least being aware of these tendencies, you now know that it is especially critical that motorcyclists, more than any other kind of driver on the road, *need to protect their rights to the maximum degree possible* if they are to receive a fair shake in the legal system.

¹ Precise definitions can and do vary by state, but *Black’s Law Dictionary*, a frequently cited source of legal definitions, defines “Negligence Per Se” as “[C]onduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes.” *Black’s Law Dictionary*, 5th Edition.