

8 Mistakes you can make in hiring a Lawyer for your accident case

If you have been injured in an accident, or worse, lost a family member in an accident, you are dealing with an enormously stressful time of your life. There is stress that is caused by dealing with the injuries and need for medical care, there is the financial stress of dealing with unplanned medical expenses and lost time from work, and the stress of dealing with the other person's insurance company which is after you to give a statement, sign some forms, and tell them how much you want to settle your case.

You may be at the point where you have decided that you need to take some of this off your plate and that you may need a lawyer after all. The decision about who to hire as your lawyer is another stressful decision, and is one that is sometimes made too quickly and for the wrong reasons.

Making a bad decision about which lawyer to hire for your personal injury case can be a real disaster for you. Not only do you run the risk of hiring a lawyer who does not know what they are doing, if you decide to change lawyers, it may not be so easy to find a new one. Our firm very rarely accepts cases after another lawyer has been working on them, and never after a lawsuit has been filed.

In fifteen years of practicing law, I have spoken with dozens of people who have made bad decisions about who to hire to represent them in their personal injury case and who wished that they made a better decision from the get-go. To help people make better decisions about how to hire a lawyer, I have written this guide outlining 8 mistakes that people make in hiring a lawyer and giving you some smart questions you should ask any lawyer you are thinking about hiring.

1. Hire a lawyer who solicits clients.

Fortunately, this does not happen often, but I listed it first because it is the worst of the worst. The Illinois Rules of Professional Responsibility (the ethics rules for Illinois lawyers) forbids lawyers from soliciting potential clients for employment. This is true whether it is done directly or by a representative. Any lawyer who does this is behaving in an unethical manner and is at risk for losing his license.

When you contact a lawyer first, such as by e-mail, it is perfectly permissible for the lawyer to respond by phone or by e-mail. In fact, they should. However, when you hear from a lawyer without either you or a family member reaching out first, this should set off alarm bells.

2. Hire a lawyer who promises to loan you money

Many people who are involved in accidents are in tight financial straits – they have been put of work by the injuries they suffered in the accident and have bills coming due for medical care. Too many families live with such a slim financial margin that when the

added pressure of dealing with the financial fallout of an accident starts to hit home, hiring a lawyer who is able to offer a “loan” against your settlement starts to look like a very attractive option.

There is a real problem with that though: it is against the Illinois Rules of Professional Responsibility for a lawyer to loan money to his clients, even when the client promises to pay the lawyer back when the case is settled. Any lawyer who loans money or offers to loan money to a client or potential client is committing a serious ethical violation, and risks having his license suspended or getting disbarred. Even if you would never turn a lawyer in to the disciplinary board for this, it is still problematic on at least two levels. First, do you really want to get involved with a lawyer who would violate ethical rules with you right when you first meet him? Second, if he does get suspended or disbarred, where does that leave you and your case?

Lawyers are permitted to advance money on behalf of clients for case file expenses needed to work the case up, and in the personal injury field, it is actually customary for lawyers to do so. Our firm does. This would cover things like court filing fees, court reporter charges, subpoena fees, and medical record copying charges. Money advanced on behalf of the client for case file expenses must be paid back at the conclusion of the case.

3. Hire a lawyer who gives you an estimate of your case value during your initial meeting

In every case, the question of, “How much is my case worth?” is of utmost importance to the client. In the end, a case is “worth” only as much as a jury says it is worth. Short of going to verdict, lawyers try to make the best guesses they can as to what a fair settlement value is. In making these evaluations the lawyer has to take into account numerous factors, including: the facts of the accident; the nature and extent of the injuries; the extent of the recovery made by the client; the impression that the client, the defendant, and the witnesses make; the amount of the medical bills and lost wages; the identity of the insurance carrier and the amount of coverage; and the anticipated costs of prosecuting the case further. These are factors that a lawyer cannot properly evaluate during an initial phone call or during an initial meeting. I cannot properly evaluate a case until I have had a chance to fully review all of the file materials and spoken to the opposition. Only then can I come up with a range where I think that a settlement would be fair and reasonable to the client. To be sure, a lawyer can easily recognize that a serious injury is likely to result in a substantial verdict or settlement, but placing a precise dollar figure on any case during a phone consultation or initial interview is really impossible.

So, what to make of a lawyer who will give you a precise figure during an initial interview? There are two basic thoughts that I have. First, he is doing a total sales job on you to get the case, hoping that by giving a large figure he will get you excited enough to hire him or that by expressing a high figure, he will show that he has confidence in his ability or belief in your case and convince you that you should hire him. Notice the motivation – what is good for him (getting hired) and not what is good for you (giving

you solid information and advice that you need to make important decisions about your case and your life). Second, he doesn't know what is doing. Either reason should be enough to make you run in the other direction as fast as your legs will carry you.

4. Hire a lawyer who promises you a quick settlement

Fast settlements are often cheap settlements. Everyone wants to have their case resolved quickly, but reaching a fair resolution of your case should never take a back seat to having the case resolved quickly. Anyone who advertises that they get case settled faster than another lawyer is screaming out to the whole world his personal philosophy – I am a quick buck artist who doesn't like to work. Insurance companies know who these lawyers are – after all insurance adjusters watch TV and get the Yellow Pages at home, too, and they know that they can settle cases with these lawyers at a substantial discount because they are not willing to do the work needed to handle cases properly. Even if you really have a truly significant injury, you can be assured that insurance companies will not treat you fairly if you hire a quick buck artist.

5. Hire a lawyer who refers you to “his” doctor

There are lawyers and doctors out there who have been working together for years. The lawyer refers the doctor patients, and the doctor refers the lawyer clients. Many lawyers who are involved in this kind of relationship use this to assure potential clients that this will ensure that their case will be resolved for top dollar – after all, the doctor is already in his pocket. The problem with this is that insurance companies track how often a lawyers and doctors end up on the same case, and when it happens too often, the case gets referred to what insurance companies call the “special investigations” unit, and what lay people refer to as the “fraud” unit, and once a referral is made to the fraud unit, the chances of reaching a fair and timely settlement are almost zero.

There are a number of other problems with being pulled into the middle of a doctor-lawyer relationship:

- The doctor may order excessive treatment and unnecessary diagnostic testing in order to help the lawyer artificially increase the value of the case, at great expense and inconvenience to you;
- The lawyer is less likely to challenge excessive charges and to seek reductions of your bills where appropriate at the time of settlement;
- If your case goes to trial, jurors will likely regard your claim as fraudulent. I once watched a defense lawyer ask the injured plaintiff, “So did you not need a doctor until you saw a lawyer?” to drive home the point that the medical care was being driven by the legal case. The jurors did not return a favorable verdict.

6. Hire a lawyer who has a “relationship” with your doctor

This is really the flip side of avoiding a lawyer who sends you to “his” doctor. You should also be careful when a doctor sends you to “his” lawyer, especially when you either do not have health insurance or if you have health insurance but the doctor's office

wants to “bill the accident instead.” Going this route can cost you thousands of dollars at the end of your case.

I am not telling you that getting a referral to a lawyer from a doctor is necessarily a bad thing. Many doctors who frequently treat injured people, such as chiropractors, orthopaedic surgeons, neurologists, neurosurgeons, and pain specialists, frequently have to deal with lawyers and many times know who the ethical and skilled lawyers are. However, you should be careful to ask both the lawyer and the doctor about their relationship, and if it looks like a “I’ll scratch your back and you scratch mine” kind of relationship, you should look elsewhere for legal representation

7. Hire a lawyer based solely on meaningless TV or Yellow Page advertising promises

There is a lot of bad lawyer advertising on TV and in the Yellow Pages. I don’t have a problem with lawyer advertising in and of itself (after all, this brochure is a form of advertising), but too much of it leaves a poor impression with the public of my profession. The other major problem with most lawyer advertising is that it does not give people who are looking for a lawyer any useful information on which to make a good decision about who to hire to represent them in their personal injury case. Many ads contain photos of the lawyer’s whole staff, buildings with columns, American flags, ambulances, wrecked cars, and snarling dogs. How does this help you decide whether the lawyer is the right lawyer for your case? Besides the useless visuals, the content is almost always just as bad. A short list of the useless things said in lawyer ads includes:

- We fight for you!

This is the essence of what personal injury lawyers do. There is nothing here that helps you distinguish one lawyer from another.

- We are aggressive!

It is a nice sentiment, but what does this really mean?

- We care about you!

I want to believe that all lawyers care about their clients. Any lawyer who is not smart enough to say that they care about their clients is one who is lucky to have graduated law school.

- Free initial consultation!

Almost every personal injury lawyer offers a free initial consultation. Nothing special here.

- Home and hospital visits!

Most lawyers will meet with potential clients at their homes or in a hospital if needed. What makes this lawyer special?

- No fee unless we win for you!

Virtually every lawyer who handles personal injury cases works on a contingency basis where they are paid a percentage (typically a third) of the verdict or settlement. If the verdict or settlement is zero, a third of zero is still zero.

- Over ____ years of combined experience!

This “combined experience” is usually computed by adding together the number of years that every lawyer in the firm has been practicing, without regard to what they have been doing their whole career or how well they have been doing it. I have been practicing law for 15 years. Does this mean that you would be better off hiring a firm that has 4 lawyers who have been practicing law for 4 years each?

8. Hire a lawyer who doesn't really focus his practice on personal injury or wrongful death cases

One of the reasons that I have a problem with most lawyer advertising is it leaves the public with the impression that just about any lawyer can do it, and do it well. There is nothing further from the truth: the lawyer needs to understand the underlying factual issues, the legal issues, the medicine involved, AND be able to present that in a cohesive, compelling, convincing way to an insurance adjuster and eventually a jury in order to get the client a fair settlement or verdict.

When you hire a lawyer who focuses his practice elsewhere, or devotes a significant part of his practice to other areas of the law, you run the risk of having mistakes made in the handling of your case which will cost you money down the road.

I know that in many of the more rural areas of the state, many of the lawyers have to devote a significant part of their practice to handling things other than personal injury cases, and if you want to hire someone local, you should be careful to ask the lawyer about his experience handling personal injury and wrongful death cases. However, you should know that if you have a case involving serious personal injuries or wrongful death, lawyers from outside your community will travel to represent you. For example, my office is in Chicago and I do most of my work in Cook County and the collar counties (DuPage, Kane, Will, Kankakee, and Lake Counties), but I have either handled or am currently handling cases in Winnebago, LaSalle, Peoria, Sangamon, Macon, McLean, Grundy, Champaign, Jasper, Iroquois, Ford, Madison, Macoupin, Rock Island, Henry, DeKalb, Putnam, Carroll, and Williamson Counties.

Some good questions to ask a lawyer you are thinking about hiring ...

- How long have you been practicing personal injury law?

I have been practicing personal injury law exclusively for the last 15 years. Lawyers who have been practicing much less than that do not necessarily have the experience needed to serve you, and lawyers who have been practicing much longer than that may not be staying on top of the latest jury research and techniques for presenting cases at trial.

- How many cases have you tried to verdict?

Between jury trials, bench trials, and arbitration hearings (mini-trials done before a retired judge or a panel of lawyers), I have tried over 40 cases to verdict. Being willing to try cases to verdict is an important trait for a personal injury lawyer because it shows insurance companies know that you are willing to pass on low offers and find out what a case is really worth.

- Which bar associations do you belong to?

The two most important bar associations for personal injury lawyers are the Illinois Trial Lawyers Association and the American Association for Justice (AAJ, formerly known as the Association of Trial Lawyers of America). I belong to both, and am a member of the Nursing Home Litigation Group, the Interstate Trucking Litigation Group, and the Traumatic Brain Injury Litigation Group of AAJ. I am also a former co-chair of the Tort (Personal Injury) Litigation Group for the Young Lawyers Section of the Chicago Bar Association. If a lawyer is not involved in bar association activities devoted to the representation of injured people, he is probably not focused on helping injured people in his practice.

- Have you published any articles?

I have published an article on wrongful death cases for Trial Journal, the official publication of the Illinois Trial Lawyers Association. I have also written a number of seminar papers on accident reconstruction, wrongful death cases, complex issues of causation, insurance bad faith, and pre-trial discovery. I have also published articles in the Senior News about selecting a nursing home and on fall prevention.

- Have you held any academic positions?

I am a former Adjunct Professor of Law at Loyola University of Chicago School of Law, where I taught legal research for 4 years to first-year law students.

- How did you satisfy your continuing legal education requirement?

Every two years, Illinois lawyers are required to have 20 hours of continuing legal education. This is primarily met by attending seminars. During the last few years, I have

attended a one and a two day seminar on nursing home litigation, a two day seminar on prosecuting trucking accident cases, a two day seminar on jury persuasion, and a three day college on presenting damages at trial. The trunk of my car and my I-pod are filled with continuing legal education seminars on the representation of injured people. If the lawyer you are considering has fulfilled his requirement by taking seminars on other things, that says a lot about where the focus of his practice is.