

# Fox Law Report

## Your Legal Consumer Newsletter



SELECTING THE RIGHT LAWYER -- CONTINGENCY FEES -- YOUR RIGHT TO FIRE YOUR LAWYER

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### 1. HOW TO FIND A GOOD LAWYER? -IT'S NOT EASY!

Think about it. What is it that you really need for your case - no matter what type of case it is: medical malpractice? auto accident? (or any other case!). The answer, at least to begin with, is simple: a lawyer who knows and cares!

First, let's take a look at the lawyer who "knows". You want a lawyer who understands the "ins and outs" of your kind of case from experience in handling many such cases over the years. This requirement immediately "rules out" the inexperienced lawyer - either young or old - no matter how "sharp" he or she appears to be, no matter how posh the law office, no matter the TV, radio, or other communication that brought you to that law office. Don't be overly influenced by gray hair: it is amazing how misleading age can be - the existence of gray hair will not guarantee the lawyer in question knows about your kind of case, or has gone through a number of jury trials in similar cases. A very practical way to determine if the lawyer in question has the experience you need, is to use the attorney check list of "Questions" provided in item 2. Questions 1 and 2 on that list will help you to answer this question.

Equally important as employing an experienced attorney, or one who "knows" your kind of case, is the second basic requirement - to hire an attorney who "cares". So let's think about this: how to locate an attorney who is conscientious, who really cares about your case. This is probably more difficult than finding one who "knows". Again, in a way it is similar to locating the right spouse, but in some respects, even more difficult. You will surely be

employing an attorney with more than one case - yours. And you should want to employ a busy attorney - one who other clients have found does a good job. So, how to balance the need to find a lawyer who cares, yet not have a lawyer so busy with other cases that he will not give your case the time and attention it needs? Again, use the attorney check list of Questions. It will help you to both select Mr. or Ms. Right to begin with and also to monitor the lawyer as time goes by. Also, remember: if the attorney does not "measure up" you have the absolute legal right to fire your lawyer at any time you wish! (See "Your Right To Fire Your Lawyer" at the end of this report.)

### 2. QUESTIONS TO ASK BEFORE YOU HIRE YOUR LAWYER

Okay. You hope you have found a good lawyer. And perhaps he or she comes well-recommended by a friend. Or perhaps he or she is a "high-profile" TV lawyer who you saw on one of those interesting ads/commercials: "hire so and so - he gets millions for his clients", etc. But be smart: ask the lawyer some simple questions. Don't make the decision to hire unless you are comfortable with his or her answers. Also, never hire a lawyer by simply talking to a secretary, "paralegal" or "negotiator". Insist on interviewing the lawyer. Have the Questions that follow in front of you and don't hesitate to read and check them off as you get the answers. The following checklist is not all inclusive, but it will give you some essential points to consider and ask of your prospective lawyer. Most conscientious and legitimate practitioners will not hesitate to give you candid answers to the following questions. If they "get their back up" and refuse to answer

these questions fully, our advice is to look elsewhere. Los Angeles County alone has over 30,000 practicing lawyers and while there are a lot of unqualified practitioners, there are also many very good and conscientious lawyers. So, you need not "feel hostage" to any individual lawyer nor matter how "touted" his or her name, no matter what publicity the lawyer has been able to obtain. Remember: No matter how "rich and famous" is the lawyer under consideration, it is your case that you are concerned about, not the "multi-million" dollar verdict which was obtained in the past for some other client. Here are the questions:

1. Will you let me have the names and telephone numbers of four or five of your clients for whom you have handled similar cases so that I can talk to them?

Yes [ ] No [ ]

2. Will you furnish me with a list of at least three personal injury cases where you have obtained large verdicts or settlements in my type of case and give me the court number if a lawsuit was filed or some sort of verification including names of the client and the defendant or the insurance company against whom the claim was made?

Yes [ ] No [ ]

3. Will you give me the name of the attorney who will actually handle my case?

Yes [ ] No [ ]

(Find out who will actually be handling your case at the office you choose. Will it be a lawyer? A "negotiator"? A "paralegal"? Ask to meet that person. Hopefully it will be an attorney and not a "negotiator".)

4. Will you be willing to send me copies of any correspondence and legal papers generated by my case?

Yes [ ] No [ ]

(If you make this request at the beginning, it is

easy for your attorney to simply put you on the mailing list so that you can obtain a copy of every single letter and legal document generated by your case. It is surprising that almost no client ever makes this simple request; you will be amazed how much you find out if you keep such a file at home concerning your case.)

5. Will you give me status reports about what is happening in my case at least once every month or two?

Yes [ ] No [ ]

(Although a written status report is obviously preferred, even an oral status report will give you far more information than is generally being obtained every day in the millions of cases being handled in the United States; communications between clients and lawyers seems to be an ongoing and continuing problem.)

6. Will you tell me, in writing in advance, the extent to which I will be responsible for any legal costs and expenses?

Yes [ ] No [ ]

(Even though you are dealing with the attorney on 100% contingency basis for fees, legal "costs and expenses" are often another matter: get it straight in the beginning. Find out who is going to put these costs up, you or the law firm? Also, how much money will be involved.)

7. Do you carry malpractice insurance coverage?

Yes [ ] No [ ]

(If you are told "yes" then ask how much insurance and with what insurance company. Unlike auto drivers, lawyers are not required, in California, to protect their clients. In fact, due to a State Bar change of rules, lawyers are not even now required to tell their clients whether or not they are insured. If lawyers are not insured, This means that if a legal error is made, it can either cost the client many thousands of dollars or, depending on the error, it can mean that the entire case will be lost. And if the lawyer has neither substantial assets nor insurance, the

client is "out in the cold". Lawyers can make mistakes and because of that, Fox & Fox carries \$2,000,000 in liability insurance to cover such problems. Some of the law firms - even big ones - that do not have insurance did have it in the past but after several claims for negligence, their insurance companies canceled them. Better find out whether you are hiring a lawyer with malpractice insurance before you sign the employment agreement.)

8. If my case is not settled, will you personally take the case to trial?

Yes [ ] No [ ]

(If the case is not settled, will the law firm you have hired try the case or will they send it out to a different law firm who has "trial lawyers"? The best advice is to try to find and employ a law firm who will handle the case all the way through to either settle it or try it.

9. If my case goes to trial, will your firm put up the legal costs and expenses?

Yes [ ] No [ ]

(With certain medical malpractice and product liability claims, it may cost from \$20,000 to \$50,000 cash in advance to take the case through trial. You had better find out when you hire the lawyer if he agrees to put up that money or expects you to do so. You don't want to be "dumped" on the eve of trial because the law firm refuses to put up the money if you don't have it.)

### 3. THE WHOLE TRUTH ABOUT "CONTINGENCY FEES"

The contingency fee is very valuable for the victim of accident or injury. It has been described as the "key to the courthouse" for the person of average means. For most of us, except the very wealthy, it is the only method that exists by which the average victim can employ a "top flight" lawyer. So, to hire a good lawyer, you will not have to pay \$300 to \$500 per hour, which is what a good lawyer charges in the average American city, if you

were compelled to hire a lawyer by the hour.

So, let us take a look at what it means: First, contingency fee means that you do not owe the lawyer any fees unless the lawyer collects money for you either by settlement or trial. No matter how much money, time and effort a lawyer spends - even years - he or she gets zero in the way of fees unless there is some money recovery. Remember, we have been talking about fees, not costs or expenses. If the lawyer puts up costs and expenses out of the lawyers pocket, he or she will be repaid these sums from the recovery (settlement or verdict). But what if the lawyer won't put up costs and expenses, but says you - the client - must put up the cash in advance? Or, if the lawyer does pay costs and expenses but loses the case, do you have to repay those costs to the attorney - perhaps \$5,000 or \$10,000? These are questions that your lawyer should answer for you before you make a decision on who to hire. To help you do this, refer to "Questions To Ask Before You Hire Your Lawyer".

There is one other very important aspect you should understand about contingency fees. Should you select an attorney based on the amount of the contingency, or to put the matter another way, let us say that lawyer "A" says he will charge at 25% contingency fee and lawyer "B" says he wants 33 1/3% (one-third). Should you simply hire the lawyer who will work on a lower figure - the 25% contingency?

The answer is clear in the opinion of most good lawyers: Do not select a lawyer simply because his or her contingency fee is lower than that of another attorney. A simple example will explain the reason for this advice.

Let us say that Mrs. Jones was seriously injured when she was struck and knocked down by a speeding drunk driver. Let us also assume that her injuries are permanent; she is partially paralyzed - a paraplegic. Lawyer "A" says that he will represent the client for 25%. Lawyer "B" says that he will charge 33 1/3% (one-third). What to do? First, try to find out which attorney will do a better job. Who has more experience? More conscientious? Smarter?

More aggressive? These items are covered in the checklist of Questions to help you ask the right questions before you employ the lawyer. Admittedly, it is not an easy job, but with the help of some careful inquiry, you should be able to do it.

Now, the second part of the answer. Let us say that the 25% lawyer ("A") likes quick settlements (who doesn't if they are enough!). Let us also say that lawyer "A" will obtain \$100,000 after a few months. Disregarding lawyer's costs, the lawyer's fee is \$25,000 and the client will net \$75,000. Maybe that sounds okay - so far. But let's take a look at what the other attorney - lawyer "B" might do. This the lawyer who wants a third, instead of 25%. Lawyer "B" may suggest that the case not be settled so quickly, and may advise that more time is needed to prove that the injuries are permanent. After a year, lawyer "B" will negotiate a settlement for \$500,000. Disregarding costs and expenses, after the lawyer deducts his 33 1/3% fee of \$166,666.00, the client will net \$334,334.00 despite the fact that lawyer "B" is charging about 8% more than lawyer "A".

So, the client should understand that they are far better off with a competent, experienced, aggressive lawyer like "B" who cares and will fight. It will be well worth the higher percentage fee. It will not be easy to find a

good lawyer like "B", but you can do it. Again, don't forget the questions previously mentioned.

#### 4. YOUR RIGHT TO FIRE YOUR LAWYER.

The law in California is clear: You can fire your lawyer at any time. This is true even if you have signed a written agreement to pay the lawyer a percentage fee (1/3, 40%, etc.) and even if the agreement says you won't fire the lawyer. So, you need not think that you are "hooked" forever, if you feel, after a fair trial, that your selection of the lawyer was a mistake. The sad truth is that it is tough - very tough - to select a good lawyer.

It is true that when you fire your lawyer, you may be required to pay the "reasonable value" of the services, if any, that were performed. This amount will almost never be the contingency agreement you signed for and often winds up being no more than a few hundred dollars, if any fee is payable at all. But let this problem be handled by your new lawyer. In the vast majority of cases, an acceptable deal can be made with the first lawyer by your newly hired lawyer.

One final word of advice before you fire your lawyer: Make a personal appointment with the lawyer (not the secretary and not a "paralegal"). Take your checklist of "Questions" with you, and make sure you receive satisfactory answers. Good luck! Remember: You have the power.