

# FACT KIT FOR INJURY VICTIMS

From Patrick Malone & Associates, P.C.

## Eleven Questions to Ask Before Hiring A Lawyer for Your Injury Suit

*By Patrick A. Malone*

Injury victims who need a lawyer have to be very careful that they don't get hurt a second time by hiring the wrong lawyer.

Did you know that the best, most successful attorneys in your community charge fees that are no higher than inexperienced, unsuccessful lawyers?

Did you know that unscrupulous lawyers will settle your case quickly for small dollars because they work on high volume and quick turnover, even when that hurts the individual client?

I've written this special report to give you some important information that most consumers never learn about lawyers who handle injury lawsuits for victims of accidents and careless conduct.

If you follow my advice about how to find a top attorney, it will save you many potential headaches and might make the difference between winning or going home with nothing from your injury lawsuit.

Before we get to my list of steps you need to follow, let's talk about what not to do.

***First, never hire a lawyer based on a Yellow Pages advertisement.***

If you turn to the Yellow Pages, you will find page after page of bold-faced headlines from attorneys who claim to handle injury lawsuits. The ads feature claims like:

- "No fee if no recovery."
- "Free initial consultation."
- "Millions recovered for our clients."

Each of these statements can be literally true, and yet mean very little about whether the lawyer is right for your case. "No fee if no recovery," for example, is true for virtually all lawyers who represent victims in personal injury cases. And nearly all of these lawyers give a "free initial consultation." And any lawyer who has practiced more than a few years will be able to say "millions recovered" because it doesn't take many cases to reach that number.

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That's not to say that every lawyer in the Yellow Pages is bad. Far from it. It's just that the ads themselves tend to be pretty meaningless as a way to find a good lawyer.

***Second, be careful when using lawyer "referral services" on the Internet.***

The Internet is another resource where consumers need to be careful. A Google search for "injury lawyer" turns up a mixture of:

- Injury lawsuit "wannabe's." These are lawyers who would like to grab your case and either settle it quickly for low dollars for you (but a high return for the lawyer's time investment) or refer it out to a competent lawyer with a referral fee.
- Lawyer "referral services" which screen lawyers only by their willingness to pay cash to the web site that is referring them cases.



PATRICK MALONE & ASSOCIATES, P.C.

1331 H Street, N.W. • Suite 902 • Washington, D.C. 20005  
202.742.1500 • 202.742.1515 fax • [www.patrickmalonelaw.com](http://www.patrickmalonelaw.com)

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- Real attorneys who are experienced and will do a good job for you.

So how do you find a real lawyer for a serious personal injury lawsuit? Here are some resources to check first. Then I will give you some questions to ask when you interview the lawyer. (Yes, you must interview the lawyer before you hire.)

### **1. Are there reliable sources for good lawyers that use objective standards?**

The answer is yes. I know of four sources that rate personal injury lawyers based on what their colleagues say about them. (There is no other official “rating” system besides peer review.) The sources range from small and exclusive to large and not-so-exclusive. (I’ve listed them in order from choosy to choosier to choosiest.) They are:

- The Martindale-Hubbell Law Directory ([www.martindale.com](http://www.martindale.com)) has peer review ratings of more than 1 million lawyers across the country. It tends to be generous. Most lawyers I know have the highest rating: “AV.” (But the publisher says that only 21 percent of the lawyers it lists get this top AV rating.) The directory also publishes short biographies of these lawyers.

- The Best Lawyers in America. ([www.bestlawyers.com](http://www.bestlawyers.com)) The lawyers in this book have been selected by their peers as “the best” in 57 specialties, including personal injury. Thousands of lawyers are listed.

- The Lawdragon 500 Leading Plaintiff Lawyers in America. ([http://www.lawdragon.com/index.php/newdragon/nom\\_honor\\_plaintiffs](http://www.lawdragon.com/index.php/newdragon/nom_honor_plaintiffs))

***So how do you find a real lawyer for a serious personal injury lawsuit?*** Lawdragon’s list of 500 leading plaintiff lawyers was compiled by its staff from interviews with leading lawyers and from client votes. Lawdragon also rates other types of lawyers.

- Inner Circle of Advocates. ([www.innercircle.org](http://www.innercircle.org)) This has a much shorter list of lawyers than the Best Lawyers book. The Inner Circle is limited to 100 of the top plaintiffs’ personal injury lawyers in the United States. Again, the lawyers in this group have been elected by their peers for their professional accomplishments. The web site has extensive listings of each lawyer’s specialties within personal injury.

The only peer review sites I know of are listed above. There may be others, but I can guarantee that they are far outnumbered by the sites that will take any lawyer whose check doesn’t bounce.

Unless the site specifically says that it selects the lawyers listed there based on some kind of “peer review” system, chances are that lawyers are there only because they are willing to pay for their listing. Sometimes the site will say so honestly. One site called “Injury Helpline” says this at the bottom of the home page: “Advertising service paid for by participating Attorneys. Not a lawyer referral service.”

Now, here are some questions to ask any lawyer you decide to see about possibly hiring.

### **2. What kind of cases does this lawyer handle on a day-in, day-out basis?**

Some lawyers are general practitioners who do a little of everything, including personal injury practice. Their work

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may include occasional medical malpractice cases or suits against drug manufacturers. But if they don’t do this type of work every day, injured people who hire them are at a disadvantage. It takes a specialist in any legal field – whether serious personal injury lawsuits or other specialties like immigration or real estate – to really know that field backwards and forwards, to practice at the highest skill level – and to get the best results for the client.

### **3. How long has the lawyer been working in the field in which you need a lawyer?**

By and large, lawyers who do personal injury lawsuits for injured persons charge the same fee no matter how long they have been practicing. (This is the contingency fee, a percentage of the amount recovered.) That means that for the same fee, you could get a lawyer with one or two years of experience, or a lawyer with 20 years of experience. As in any other field, experience helps!



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#### 4. Does the lawyer try lawsuits in court, or is every case settled out of court or referred to other lawyers to try?

This is an important question that many lay people never think to ask. There is only one way to get top dollar for your case in a settlement. That is to show the insurance company that you are ready, willing and able to try the case in court. I tell clients that it's kind of like the Defense Department. The only way to secure a just and lasting peace is to prepare for war.

If you hire a lawyer who always settles and never goes to court, be prepared to take a substantial discount on your case.

In every city, there are “clearinghouse” lawyers who advertise heavily and get many clients as a result – and who then either settle their cases quickly or refer them to other lawyers to do the real work. (The “clearinghouse” lawyer gets a piece of the fee for making such a referral.) On the other hand, real lawyers actually go to court and try cases the old-fashioned way: in front of judges and juries. Real lawyers

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Another problem with “clearinghouse” lawyers is that the client can become confused about who their real lawyer is. They hired the “clearinghouse” lawyer, but that lawyer is not their real lawyer. Clarification: In the personal injury field, lawyers often collaborate with each other on cases. There is nothing wrong with that. It can be a good way for a client with a serious injury to get two lawyers for the price of one, because the lawyers typically share between themselves

the same contingency fee that would be charged if only one lawyer was handling the case.

#### 5. What is the lawyer’s track record of verdicts and settlements?

The longer the lawyer’s list of successful case outcomes, the better it is for the client. The insurance companies who defend personal injury and malpractice cases know who the attorneys are in your area who actually go into court to try cases and who do not. The 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?

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#### 6. Ask the lawyer, “Who will actually handle my case”?

Even if you are impressed with the lawyer you first meet, you need to ask this crucial question.

Find out if the lawyer plans to actually work on your case, or give it to someone else to work on. You need to know the skill and experience of the lawyer who will actually work on the case, not just the lawyer you first see.

There’s nothing wrong with having more than one lawyer on the case.

Top lawyers typically run teams of lawyers who handle different aspects of the case. The senior lawyer may delegate more routine functions to less experienced lawyers. Find out how the team functions.

#### 7. Does the lawyer teach other lawyers?

Lawyers who frequently lecture at legal meetings (called “CLE” – or continuing legal education) have the esteem of their peers. Lawyers who regularly write articles in legal publications also can usually be counted on to know what they are talking about.

#### 8. Is the lawyer a member of legal organizations that specialize in representing injured people?

*Remember, you want to hire the best lawyer for your case.*

Major organizations include the Association of Trial Lawyers of America (ATLA), ATLA state affiliates like Virginia, Maryland or D.C. Trial



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Lawyers Associations, the Etheridge Society (an organization of Virginia medical malpractice plaintiff lawyers), and the Inner Circle of Advocates.

All these organizations provide extensive education for their members. 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?

### 9. Has the lawyer won any honors or awards?

Remember, you want to hire the best lawyer for your case. Especially if it's a serious injury, you can attract top-level lawyers to work on your case. One mark of a top lawyer is any awards and honors they have been given by legal organizations.

Leadership of bar associations is another type of honor. Lawyers who are elected to leadership posts tend to have a lot of hustle that has attracted the admiration of their peers.

### 10. What does the lawyer mean when he or she says "no fee if no recovery"?

Consumers need to be careful, because this can mean different things. Every lawyer who charges solely on a contingency basis – that is, a percentage of the amount recovered – will charge "no fee" if they lose your case. (One-third of nothing, or 40 percent of nothing, is still nothing.) But expenses are handled differently by different law firms. On a big case, expenses can run up to \$100,000 or more. These are amounts paid to third parties to keep the case going: expert witness fees, court reporter fees, and charges from graphics designers, treating health care providers, nurse consultants, and the many other expenses that go into a personal injury lawsuit. There are different ways these ongoing lawsuit expenses are handled by different firms, depending in large part on the firm's 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.

- 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. (Example from a small case: If the recovery is \$100,000, and the lawyer and client have agreed to a one-third contingency fee plus expenses, and the lawyer has spent \$10,000 on the case, the \$100,000 will be disbursed like this: \$33,333 to the lawyer for his or her fee,

\$10,000 to the lawyer to reimburse expense outlays, and the net -- \$56,667 – to the client.)

- Another system is for the lawyer to take out a loan from a lending institution – or arrange for a loan to be taken out by the client – to cover case expenses. These loans can quickly add a lot of extra expense to the case, and should be carefully considered.

- What happens to expenses if the case is lost? In some jurisdictions, lawyers can promise the client that the client will never be liable for the lawyer's out-of-pocket expenses. Other jurisdictions prohibit this and require that the client

*It pays to hire a lawyer who has the financial resources to take a case all the way to trial.*

always be ultimately responsible for case expenses, win or lose. But even in those jurisdictions, some lawyers are more vigorous than others in chasing losing clients for reimbursement of expenses paid.

**Bottom line:** You need to find out the lawyer's practice on what he or she does about case expenses when the case is lost. And don't let the lawyer tell you "I've never lost." Every good lawyer loses some cases.

### 11. Does the lawyer have the financial and personnel resources to take on my case?

Lawsuits involving serious or catastrophic personal injuries can be very expensive to take to court. A typical 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. 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. Remember what I said about the Defense Department.



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