

# SO YOU THINK YOU WANT TO FIRE YOUR LAWYER?

ANSWERS TO THE MOST COMMON QUESTIONS ABOUT THE PROCESS

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# So, You Want To Fire Your Personal Injury Lawyer?

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Not a week goes by that I don't field a phone call from a client of another personal injury lawyer who is disgruntled and wants to fire their lawyer. Typically, one of two things cause the person to call: (1) lack of communication; or (2) their attorney received a settlement offer that the client did not like. To me, both issues stem from a lack of communication between the lawyer and the client.

The caller wants to fire their lawyer and they have several questions:

- 1) Am I allowed to fire my lawyer?
- 2) Can I meet with another lawyer to discuss my case before I fire my lawyer?
- 3) If I fire my lawyer, do I owe him/her money from my case?
- 4) Will I be able to get my file from the lawyer's office?

Below are my answers to these general questions and more. Each and every case is unique and has different circumstances. These are general principles for educational purposes and not legal advice.

## *Question I*

Am I allowed to fire my lawyer?

## *Answer:*

Yes. The relationship that you established with your lawyer is based on a contract. If your case is a "personal injury case" the contract is most likely a contingency fee contract. You are free to terminate the relationship with your lawyer but you will be responsible for attorney's fees and costs if your case resolves. See answer to question III for a complete answer regarding the attorney fee issue.

## *Question II*

Can I meet with another lawyer and receive a consultation before firing my current lawyer?

## *Answer*

Yes. You have a right to consult (get a second opinion) with another attorney before firing your current lawyer. The Florida Bar Association authored [Ethics Opinion 02-5](#) regarding this very issue. In regards to this issue, the Bar said:

“A lawyer may give a second opinion to a person who is represented by counsel on how the person’s current lawyer is handling the case or give information on the services the lawyer may provide. The lawyer should not solicit the person who is represented.”

As a general rule, I believe that folks should get a second opinion before firing a lawyer. Many times the grass is not greener on the other side and the consulting lawyer may be able to shed some light on the circumstances.

In my years as a lawyer, I have found that most folks do not have a good reason to fire their lawyer. The problem usually arises from a lack of communication. Many times the client does not understand why the case is taking so long or that the initial offer from the insurance company is artificially low. Often, the client just needs to sit down with their lawyer and go over the file to see what has been done and what will be done in the future.

Finally, even though you have the right to a second opinion with a lawyer of your choice while you are represented by another lawyer, the new lawyer cannot ethically act on your behalf.

The Florida Bar Committee stated: that a lawyer may provide a second opinion to a person who is represented by counsel at the person’s request. In providing the second opinion, the lawyer must give competent advice, and in doing so should carefully consider any limitations with which the lawyer is faced. The

lawyer should scrupulously avoid improperly soliciting the person. The lawyer may discuss what services the lawyer would be able to provide if the represented person requests not merely a second opinion, but also information about the lawyer's availability and qualifications.

Overall, the best bet for a person dissatisfied with their lawyer's handling of their case is to first try to resolve any conflict and work out the differences with the lawyer.

### *Question III*

If I fire my lawyer, do I owe him/her money from my case?

### *Answer:*

Yes. The law is pretty clear on this point. If you fire your lawyer for anything by cause, you will be responsible for his/her legal fees and costs. Florida follows a modified quantum meruit rule when deciding the legal fee issue when a client fires their lawyer.

The main case is ***Searcy, Denney, Scarola, Barnhart & Shipley v. Poletz***. In this case, there was a fight over attorney's fees when the attorney that was handling a medical malpractice case at the Searcy firm left the firm and the client followed the lawyer to another firm. The Florida Supreme Court said that a quantum meruit award of fees to an attorney who was prematurely discharged must take into account the actual value of the services to the client. Therefore the Court held that the courts must look to the totality of the circumstances surrounding each case.

The court went onto say that the judge should look at a number of factors in deciding the best way to split the attorney's fees including the fee agreement, the reasons the attorney was discharged, actions taken by the attorney or client before or after discharge, and the benefit actually conferred on the client.

### *Question IV*

Will I be able to get my file from the lawyer's office?

***Answer:***

The answer to this question is complicated. In personal injury cases on a contingency fee basis where the attorney agrees to front the expenses, he/she cannot hold onto the file until the client pays the expenses because the contingency (receipt of money from the negligence party) has not yet been met.

The Florida Bar says this regarding the issue:

In contingency fee cases, this quantum meruit action arises only upon successful occurrence of the contingency. Therefore, an attorney may not ethically assert a retaining lien for fees allegedly owed in a contingent fee case unless and until the contingency has occurred. See ***The Florida Bar v. Doe***. Similarly, if attorney and client have agreed that the client's repayment of advanced costs and expenses is to be contingent on the outcome of the matter, then the attorney may not ethically assert a retaining lien for outstanding costs prior to the occurrence of the contingency.

If the client wants a copy of the file, the attorney can charge a reasonable copy fee for the documents.

***Question V***

Can I fire my lawyer as a way to avoid paying him/her the 1/3 contingency fee?

***Answer:***

No. See response to Question III.

***Question VI***

What if I have a good reason to fire my lawyer because he/she did nothing on my file – will he/she still get paid?

***Answer:***

The issue with this question is whether you have “cause” to fire your lawyer. If your lawyer is fired for cause, he/she may not be entitled to attorney’s fees. There are pretty much two ways in which cause may be developed: (1) the lawyer didn’t do any work on the file, if he didn’t do any work, he should not be entitled to a

fee; (2) you were injured in another state and you hired a local lawyer who is not admitted to the bar in that jurisdiction. If the lawyer is not licensed in that state, she should explain to you that if the case doesn't settle, she would have to refer the matter to an attorney in that state.

### *Question VII*

What if your lawyer leaves the firm or the firm splits up?

### *Answer:*

Typically, the client will receive a letter asking them to choose which attorney they would like to stay with. Some folks will stay with the attorney that has been handling the case. Other folks will stay with the firm and others will decide to leave and find another lawyer to assist them.

### *Conclusion*

Most of the time, it is not beneficial to fire your lawyer. It is more productive to try to resolve any conflict that you have regarding your case. The better practice is to research to lawyer and interview a lawyer before you retain him/her to represent you.

## THREE STEPS THAT WILL HELP YOU HIRE THE RIGHT ATTORNEY THE FIRST TIME

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For many folks, the first time they think about hiring a lawyer is after they are injured in an accident. Below are a few tips to help you hire a lawyer that you will be satisfied with in the long run.

1) Get a recommendation from a family member or friend who used the lawyer for the same type of case. If your family member had a great divorce lawyer, you may not want to hire that lawyer for your personal injury or medical malpractice case.

2) See if the lawyer is Board Certified. Florida has a board certification process for a number of specialties. If you are looking for a medical malpractice or personal injury lawyer – you will be looking for a Florida Board Certified Civil Trial Lawyer. If you are looking for a lawyer to help you with a criminal matter, you may want to check and see if that lawyer is a Florida Board Certified Criminal Trial Lawyer.

This is what the Florida says about Board Certified lawyers: “Certification is the highest level of evaluation by the Florida Bar of competency and experience of attorneys.” To find a board certified lawyer click this [link](#).

3) To get a feel for the lawyer, check out his/her website and see what kind of educational information is available. Does the website have booklets, pamphlets or videos that provide information regarding the process? You can also call the office and ask to speak with the lawyer about your matter or ask for an in person consultation. Most lawyers will give you their time to discuss your concerns. If you cannot speak to the lawyer before you hire him/her, how available do you think the lawyer is going to be after you hire them?

*About Guy S. DiMartino*



Guy is a Florida Board Certified Civil Trial Lawyer and Doctor of Chiropractic Medicine that represents folks who have been seriously injured by medical malpractice, personal injury and nursing home abuse. My passion is helping these folks get back some normalcy in their life after being injured or losing a loved one because of negligence. As a lawyer, I have worked on both sides of the table. My trial experience has given me insight into how insurance companies and large corporations value injury cases. The fact is that insurance companies look at a specific number of factors in determining the amount of money to place on a case. Real money value is placed upon the reputation of the attorney representing the client and whether that attorney actually takes these types of cases to trial. My two backgrounds, one in health care and the other in law are to your advantage. I know the anatomy and physiology of the human body and have a "hands on" understanding of your injury. I know that people who are injured have many worries and concerns. I am available by phone to allay your fears and answer your questions.