

Commercial Litigation involves disputes over contracts, trade secrets, the uniform commercial code, unfair competition, acquisitions and divestitures, technology and intellectual property matters, and restrictive covenants, among other things.

The term Commercial Litigation generally covers any business or contract dispute, other than those involving employment and insurance matters which are covered under Employment Litigation and Insurance Litigation. In determining whether a particular attorney is appropriate to handle your case, you should ask the following questions:

### **Questions to Ask and Information to Obtain About your Prospective Attorney:**

***Have you handled a case like this before?*** Even though a lawyer may have expertise with some types of commercial litigation, he or she is unlikely to have expertise in all areas of commercial litigation. For example, a lawyer may have experience handling unfair competition cases, but may have no experience handling intellectual property matters. It is important to determine whether the lawyer and/or firm you are considering has experience handling the precise type of matter for which you are seeking representation.

***Are you recognized in the commercial litigation field?*** Ask the attorney you are considering whether they belong to any specialty bar associations or organizations dedicated to commercial litigation. Bar associations such as the **Monroe County Bar Association**, the **New York State Bar Association** and the **American Bar Association** generally have litigation subcommittees. Ask the attorney you are interviewing whether he or she belongs to any litigation committees.

***Do you have experience practicing before the New York Supreme Court Commercial Court?*** In many counties in New York State, a specialized commercial court has been established. It is important to know whether the attorney you are considering has practiced in Commercial Court and is familiar with its specialized rules and procedures.

***What is the attorneys general reputation?*** There are many sources of information regarding the attorney's "peer review" rating. "Peer review" refers to the process where attorneys and judges are asked to review an attorney's qualifications. There are several sources for obtaining peer-review information. Some of these are **Martindale Hubbell** and **Best Lawyers in America**.

***What are the types of fee arrangements available for the matter?*** Most commercial litigation matters are handled on per hour fee basis, meaning that you will be charged a certain billable rate per hour. It is important that you understand the billing rates of everyone who will be working on your matter and you should ask for a general estimate of the fees involved in this type of litigation. Realize, however, that it is virtually impossible for an attorney to precisely estimate the costs involved in a litigated matter. There may be some commercial matters that a lawyer or firm will take on a contingency basis, which means that the lawyer will take a percentage of the amount recovered on your behalf. In commercial cases a contingency fee can exceed 33 1/3%, which is the normal contingency in a personal injury matter. If your matter is a relatively small one, you may have fewer fee options. Many times commercial litigation of minor matters is not cost effective and you may wish to explore other options such as mediation, arbitration or small claims court.

***Has the attorney ever been disciplined?*** Attorneys are regulated by the State of New York through the Attorney Grievance Committee. It is appropriate to ask the attorney you are considering whether he or she has ever been suspended from the practice of law and, if so, for what.

***Does the attorney have malpractice insurance?*** If not, you should seriously consider finding another attorney. For sizeable commercial matters, you should inquire as to the amount of malpractice insurance the attorney or firm carries.

***Who will work on my case?*** The attorney you first meet is not necessarily the one who will do most or any of the work on your case. It is appropriate to have other attorneys with less experience assisting on a case, but it is important that you know who the lead attorney will be and that you are comfortable with him or her.