

Personal injury law is a description utilized to cover all types of cases where people are injured allegedly as a result of the fault of another. It includes injuries from auto accidents, medical malpractice, defective products, falls caused by trips and slips and toxic exposures among others. It does not include injuries that occur at work unless someone other than your employer or a co-worker were at fault or you are hurt in a construction site accident. That area of law is covered under the Workers' Compensation topic treated elsewhere on this website.

You should also be aware that the better your case, the more interest you will have from attorneys wishing to represent you. Conversely, the harder your case is to win the fewer options you will have. This is a basic function of the contingency fee system. Attorneys working on a contingency do not get paid unless the case is successful. Few attorneys will take a case that has a low probability of success. Therefore, if you have difficulty finding a top lawyer to take your case this could be an indication that your case is not likely to be successful.

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

Have you handled a case like this before?

Like all areas of law, there is no substitute for experience. However, it is not only the number of years of practice or the number of trials that an attorney has had in the field, it is also the experience with your particular type of case. For instance, an attorney experienced in representing automobile accident victims but without any experience in medical malpractice cases may be a poor choice for your medical malpractice case despite his or her overall experience.

What are your peer ratings from other attorneys?

Some attorneys are better salesmen with a prospective client than they are representatives after they take the case. That is why peer-reviews are important. "Peer-review" refers to the process where other attorneys and judges are asked to rate an attorney's qualifications and there are several reputable sources for obtaining peer-review information on lawyers.

1. Martindale Hubbell
2. Best Lawyers in America

Do you belong to any specialty bar associations or organizations dedicated to trial or personal injury practice?

In addition to general bar associations such as the Monroe County Bar Association, the New York Bar Association or the American Bar Association, there are specialty bar associations that are specific to certain areas of law. For instance, the New York State Trial Lawyers Association and the New York State Academy of Trial Lawyers are specialty organizations whose members practice personal injury law on the side of the injured plaintiff. There are other organizations that include trial attorneys who represent both plaintiffs and defendants but membership is limited to attorneys with a certain level of experience who are invited to join. Two relevant organizations to personal injury law are:

1. **The American Board of Trial Advocates** This organization is limited to attorneys who have tried at least 20 civil jury trials. A personal injury attorney that is a

member of this organization is sure to be experienced in the field and highly regarded by his or her colleagues. The website for ABOTA is abota.org where you can find out the local chapter members as well as other information about the organization.

2. **The American College of Trial Lawyers** this is also an organization composed of the most experienced trial lawyers in the country. Members must be invited to apply and there is a rigorous application process involved. Again, if your personal injury attorney is a member, it is a sign of high competence. For more information on ACTL, this organizations website is at actl.org.

Have you been asked to lecture other attorneys in topics relevant to my case?

Attorneys are required to take a certain number of hours of continuing legal education credits each year in order to retain their license to practice law. These seminars are organized and sponsored by bar associations and also private companies. Leading attorneys in their fields will frequently be asked to speak at these seminars. If your attorney is one who is frequently asked to speak, again it is a sign of his or her standing among his or her colleagues.

Have you ever been disciplined?

Attorneys are strictly regulated by the State of New York through the Attorney Grievance Committee of each of the four Appellate Divisions. It is completely appropriate to ask if an attorney has ever been disciplined and, if so, for what offense.

Who will work on my case?

The attorney you first meet at a firm is not necessarily the one who will do most or any of the work on your case. It is appropriate to have others with less experience or training work on your case but it is important that you know who the lead attorney will be and that you are comfortable with him or her.

Do you have malpractice insurance?

Attorneys make mistakes because they are human like everyone else. If a mistake is made in a personal injury case, such as failing to file a case within the appropriate statute of limitations period, your claim against the person that injured you will be lost and replaced by a claim against the attorney. However, that claim will not do much good unless the attorney carries sufficient malpractice insurance. For a personal injury attorney, the coverage should be at least \$1,000,000 if the attorney is representing people with significant and catastrophic damages. You should ask to see a copy of their policy to verify this coverage.

What will this cost me?

Almost all attorneys who practice in this area work on a contingency fee basis. This means that they are not paid for their legal work, unless there is a recovery. The amount these attorneys can charge as a contingency fee is regulated by law. For most types of cases, the maximum is 33 1/3% of the net recovery (gross recovery less the expenses incurred). For medical, dental and podiatric malpractice, the fees are on a sliding scale between 30% and

10% of the net recovery based upon the amount of the recovery. Virtually all attorneys who work on a contingency fee will offer you a free consultation to discuss your potential case. Be wary of any attorney that tells you that you are not responsible for the expenses incurred. It is a violation of ethical standards to make such a promise. Attorneys are permitted to advance the expenses but if the case is lost those expenses must remain the responsibility of the client. For this reason you should ask what the likely expenses will be and ask to be kept up to date on the total amount of the expenses being spent on your case as it progresses.