

A Guide to Selecting an Attorney In Cases of Traumatic Brain Injury

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INTRODUCTION

There are many people with traumatic brain injury who never receive adequate compensation for their injuries. This happens because many lawyers simply do not have the education or experience to analyze, prepare, understand or present a case involving traumatic brain injury. In today's legal climate attorneys who do "personal injury" are not all equally competent to handle traumatic brain injury cases. Just as a person with traumatic brain injury needs special medical care, so too they need special legal representation. In Nevada, and throughout the United States, and because of contingency fee agreements, every person can afford to hire the most qualified lawyer to handle their case.

It is easy to assume that a "big firm" is most qualified to handle "any case." However, this is simply not so. The trend of firms handling Plaintiff's cases is to network with specific attorneys in the particular field. For instance there are a number of attorneys nationwide who are known for their handling of traumatic brain injury cases. Consumers need to know if attorneys in their jurisdiction are members of such special expertise groups.

The purpose of this article to assist and guide people with traumatic brain injury, and their families, to select and retain the most qualified attorney for these types of cases.

CONTINGENCY FEE AGREEMENTS

In most states, including Nevada, persons with injury have the ability to hire an attorney by using a contingency fee agreement. This is a situation where the attorney agrees to be paid out of the amount recovered. In the meantime, the attorney customarily advances the case costs and receives reimbursement, also, from the amount recovered. This empowers anyone to retain the most qualified lawyer since lawyers from both ends of the spectrum enter into the same contingency agreements with consumers. This, unfortunately, is where many consumers of legal services are lead astray. Injured persons in our society have the ability to hire the most qualified attorneys and need not settle for or accept unqualified, inexperienced or incapable attorneys for their injury cases. This is especially true in cases of traumatic brain injury. A lawyer should have significant experience with and knowledge of the injury.

What to ask the lawyer before you decide

What most people are good at and familiar with is buying stereo systems, VCRs, cars and similar goods. However when deciding on services, like legal services, many consumers lack the information necessary to make the best decision. After all isn't that why they hire accountants and doctors and plumbers - because they do not know what these professionals know? And so it is with legal services. It is hoped that this article and attached checklist will make it easier for people to make this most important decision.

As consumer, you have the absolute right, in the initial interview, to ask the attorney various questions about his or her background and work in the area of closed head injury. Remember, the lawyer is applying for the position of representing you in your case. Do not be afraid to ask questions. The results of your lawsuit will likely have a very long term and life long impact. Therefore the more qualified your attorney the better the result is likely to be. Please take the information in this article with you to the initial interview with the attorney and use it in questioning the attorney about education, experience and competence in handling cases similar to yours. At the end of the interview, ask the attorney to sign it acknowledging that the answers are true and accurate.

The following questions are suggested:

1. How many cases have you been involved with over the past three years?
2. What percentage of your practice of law is devoted to handling cases and injuries similar to mine?
3. What were the results in terms of settlements or verdicts of the last 5 cases you handled that were similar to mine?
4. What associations do you participate in that deal with injuries like mine?
5. List three textbooks that you own and refer to when discussing injuries similar to mine?
6. Show me a text you have read regarding my injury within the last 6 months.
7. Name the seminars dealing with my injury you have attended in the last two years.
8. How many articles have you written over the past three years that deal with any aspect of injury similar to mine?
9. Would your law firm be able and willing to spend in advance as much as \$50,000 in the investigation, preparation, and presentation of my case, if necessary?
10. How do you plan to prepare and present my case and what experts do you plan to use?

Fundamental Knowledge

An attorney who you are considering

must know, at an absolute minimum, that doctors and neuropsychologists involved in clinical practice, diagnosis and treatment of persons with traumatic brain injury agree that a person can have a serious, permanent and disabling injury even though:

1. A person typically does not perceive a head injury for weeks and months after the trauma.
2. Loss of consciousness is not necessary to have an altered state of consciousness or brain injury.
3. Persons may appear “ok” at the accident scene and even be exchanging insurance information.
4. Injury to the brain does not necessarily accompany broken bone or open wounds.
5. Normal skull x-ray, CT scan, MRI, EEG and other tests are expected.
6. Persons with traumatic brain injury are often misdiagnosed by general practitioners and other doctors.
7. There are reports of vision and hearing problems despite normal eye and ear exams.
8. They continue with their employment or school.
9. Problems may be described as depression or faking (which is caused by the brain damage not the other way around).

CONCLUSION

All too often people assume that the “family lawyer,” whether the one who

formed the family corporation or one who a friend referred who handled their “car accident,” is appropriate to handle a brain injury case. After all isn’t *any* lawyer capable of handling *all* injury cases? Certainly not! That is akin to assuming all heart surgeons are equally qualified as back surgeons to fuse a disc. Traumatic Brain Injury litigation requires not only extensive experience but devotion to the study of brain injury as a distinct topic. Further, consumers deserve dignity and respect and need an attorney who understands the losses they experience every day.

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