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CHOOSING A LAWYER

Mark Twain is supposed to have said that "The only thing I fear worse than death is being involved in a lawsuit." But if you find yourself in one, or have a problem or a claim that looks like it is heading for litigation, where do you turn for help?

Most people have no desire to sue anyone unless it's as a last resort. But sometimes you have no choice. You have a car accident and the medical bills pile up and you cannot pay them or your own insurance runs out. Or you have bought a home with problems from a builder who won't fix them. Or you find yourself in a lawsuit some way or other.

Most people don't know what to do next. Some sit and wait, hoping things get better. But the longer you do that, the more likely that the deadline for the statute of limitations or some statutory prerequisite to sue passes, depriving you of the right to a remedy. In some states, if you have a claim against a public entity (city, county or state) you have to give written notice of your intent to sue within a short period, like six months or even less. There is a notice requirement in a suit against the federal government as well. If you fail to give the written notice, the court will probably not hear your case. So you need to get off the couch and do something to educate yourself and find the right lawyer for the job.

But how?

Most people turn to the phone book -- yellow pages or one of the similar directories that are out there. Others look on line. Still others call the state bar organizations and ask for a referral. Some people ask friends who have had a similar problem and ask which attorney they used. Some pick a large respected law firm and assume they have a bunch of good lawyers there or they would not be so prosperous. All of these methods can work, but they can also lead to disappointment.

THE PROBLEM WITH YELLOW PAGE ADS

This is where most people start. They look for a person that has a nice ad and maybe a trustworthy face and make a call, often a single call. They think that most lawyers are pretty competent and are basically alike. And this is a painful and difficult decision, so they want this task over with so they can get on with their case. But think about it. Do you buy the first car you see on a lot without even a test drive? Do you tell the man selling a puppy you want to train to be a hunting dog "Just give me the biggest one" or do you look them all over and see which one you like the best? Do you go into a voting booth and pick the candidate with the snazzier brochure, or do you scrutinize the candidates carefully? See my point? Yellow page ads are just that, an advertisement. They are designed to make the attorney look good and make you call, Put it another way, a fishing lure is designed to make you buy it, whether it catches fish or not, you paid the money. Now, marketing is one thing, but being the attorney that you can count on has nothing to do with how cool your yellow page or web site is.

Many gifted attorneys do not advertise in the Yellow pages. They either have established clients from repeat and referral business or get business another way. And bigger is not better in the

Yellow pages. The only thing a bigger ad shows is that the lawyer agreed to pay more than other lawyers for an ad. Why would they do that? Because they know the book places the bigger ads first in the book, and they know that people often make only one call. They know that you are likely to hire them after talking to them, especially if they say all those reassuring things.

So do bigger ads mean a successful practitioner? Not always. I have a friend that once sold advertising for one of these directories. She used to tell me how she had to go out and cajole the lawyers with the biggest ads to pay when they ignored their obligations a few months down the road. Successful and reputable people pay their bills on time. So bigger may not be better. Bigger may also just mean an over inflated ego. I make a joke sometimes about some of these lawyers that “Just being (lawyer’s name) is a full time job.” Get the picture? They may win your case. But it’s about their win, not your tragedy.

Lawyers with smaller ads may be just as good or in many cases, even better than the full page guys. But they, for whatever reason, do not spend the money for a larger ad. Having a smaller ad does not mean the lawyer is less competent. Usually, the reverse is true. All the smaller ad really means is that the lawyer paid less for his ad.

So are the ads helpful at all? Well, sometimes. If you do not like the looks of the lawyer, that is not necessarily a shallow and unjustified reaction. Some people look honest and are not. Others look dishonest and are not. But you need to have trust and confidence in your attorney, so this is not a minor concern. Some attorneys use colorful prose and symbols, such as a flag or courthouse steps. That is window dressing. Ignore it. Call the lawyers and question them. They want your business, but they are not entitled to it, unless you say so.

THE PROBLEM WITH BAR ORGANIZATION REFERRAL SYSTEMS

Some people call the state bar associations and ask for a lawyer referral. These organizations usually keep a list on hand of attorneys that are accepting referrals in this manner. These attorneys on the list are usually attorneys starting their own practices and looking to build a client base. They pay a fee to be on the list. The bar rotates names to callers and they take their turn, hoping they get a good case now and then. This does not mean these lawyers are not good lawyers. They may have just decided to leave a firm and start their own office or have moved to your state after practicing elsewhere. But in some cases they are young attorneys that could not find a job. That may be a concern. So be concerned, Ask them questions, so you can see if they have the kind of experience you want in your attorney.

THE PROBLEM WITH PRE-PAID LEGAL SERVICES

There is a trend towards signing up for pre paid legal services. They state that they provide legal services when you need, and you pay a small monthly amount to guarantee service in the future. That sounds good in some ways. But the problem with these services is that you usually end up getting the least experienced lawyer in the firm doing your work, not the guy who serves as the face of the firm marketing these services.

Remember, paying less for a lawyer is like paying less for a brain surgeon.

THE PROBLEM WITH BIG FIRMS

Most attorneys practice in law firms. There is nothing wrong with that. But when you hire a law

firm to represent you, you usually meet with a more experienced litigation partner, for example. He is the face person for your case. But the reality of law firms is that most of the work is done by lower level associates. They are paid less, because they are less experienced and need the job. They are expected to bill lots of hours to justify the raise they hope to get, and because they hope to one day become a partner in the firm. There is a tendency among these underlings to think more in terms of billing hours and less in terms of exercising judgment, and doing what is necessary or at the proper time in a case. If you expect to mediate a case fairly early, you do not want a junior associate charging you a thousand dollars to do jury instructions when you are nowhere close to trial. If the case settles, there was no need for those instructions, was there? Avoid being caught up in a situation where your attorney is trying to pay for their swanky offices.

HOW TO SELECT A LAWYER

First, you need to spend a little time educating yourself about the characteristics of the right lawyer for the job. Litigation is war. Open combat. Nobody finishes second at trial. One side wins and one side loses. It is that simple. That is why most cases settle. However, cases do not settle unless you have done your work to make the other side think that they are better off settling than taking the risk of trial. That is litigation. Some call it a game, but I see it differently. Your problem is important to you, and it's damn sure not a game. Here is an excerpt from a book I am working on for law students and young lawyers:

"It is almost callous to refer to litigation as a game. These are real problems involving real people. We have rules, and it requires effort, and both sides want to win, hence the analogy to a game. Some people are great at arguing and others are great at writing. If you are someone who likes to speak in court and likes to stand up in front of people, chances are you are not someone who likes to do office work and to write briefs and memos. But if you really enjoy writing and really enjoy analyzing and researching real issues, you probably are a little bit uncomfortable going to court and arguing in front of the judge or jury. Rest assured that this uneasiness goes away with time."

Whatever method you use to build a list of possible candidates for your selection, You need to get down to the process of interviewing and choosing an attorney for your case.

Here are a few pointers.

Some attorneys state qualifications in their yellow page ads such as "over twenty years experience" or similar statements. Well, experience is important, so you are getting warmer. But "time in grade" is not everything. Many young attorneys with fire and energy have far more ability than an older "more experienced" one who has lost the edge.

Some attorneys emphasize that they are a "trial attorney." Being a trial attorney is a phrase that means different things to different people. The term has developed a kind of negative connotation in the wake of the political tort reform movement. The tort reform movement uses the term "trial attorney" to mean a plaintiff's attorney, who works on a contingent fee basis. But the defense lawyers the insurance companies hire to try to defeat a valid claim is also a "trial attorney." He goes to trial usually more often than a plaintiff's attorney does, because insurance companies, more and more, are refusing to settle for a reasonable amount. In refusing to settle, they force a jury trial. If and when he wins big, they claim it is a travesty of justice and say the system is broken and "greedy trial attorneys" are responsible. That is almost always a lie.

Political huffing and puffing aside, if you do litigation, you are a trial attorney, even if you rarely try cases. Many of us are good at strategy and motions practice. We get most cases settled because we are able to build a case from the ground up and the other side sees what we are doing

and is concerned we will win big at trial, so they settle. Remember what an old trial judge told me many years ago, “The blue chippers settle their cases more often than not.” You should remember also that a settlement is a sure thing. A trial is not. You should discount your case at least 25% for a sure thing settlement because you avoid a lot of expenses by not going to trial.

But in many cases, we have to try the case, and you need someone who is not afraid to do that. But looking for someone who goes to trial a lot is not always a great sign either. It may mean he or she is too lazy to do the analysis, pretrial motions and posturing necessary to get a good settlement. On the other hand, the lawyer’s boast about having tried a “hundred cases” sounds like a great selling point. But an attorney that has tried a lot of cases has most likely tried a lot of small, unimportant cases. And how do they define a trial? Do they consider an evidentiary hearing on a landlord’s eviction effort a trial? I certainly don’t. Many of them tried a lot of small criminal cases when they worked for the prosecutor’s or public defender’s office. But those trials do not involve building a case over months to a successful jury verdict after a three week trial. These lawyers may try two cases a day. How much thought and preparation do you think went into that process? The guy who changes your oil may do fifty oil changes in a week, and call himself a mechanic, but do you want him rebuilding your transmission?

Self-confidence is necessary to a trial lawyer, but beware of someone who exaggerates his qualifications. Still, it is a mistake to hire someone nervous about going to court. More often than not the defense will know that this guy doesn’t like to go to court or will realize that in time, and decide to play hardball and hope he or she will weaken when facing the realities of a trial. You see, trials are risky and unpredictable. You never know who is going to show up in response to a jury summons. Some defense lawyers never settle until they see who is on the jury. If they get a jury of conservative, tight fisted people, they go on. If the jury box is full of sympathetic persons who are likely to see the case the plaintiff’s way, they settle. In either case, a plaintiff’s lawyer should always expect to go to trial. He should build his case expecting to try it.

Conducting interviews.

So now that you have selected a few candidates, either from the yellow pages, referrals from friends or other sources, what do you do? Call all of them. Talk to them. See if you like their personalities. Remember, you are going to be partners for your case. Conduct a brief telephone interview. If they do not have time for you, move on. If they blow you off in the dating period, it’s not going to get any better once you have signed with them. This way you can narrow your initial list down to three or so to personally interview. Set appointments and see these people before making a decision.

You want to know as much as possible about the lawyer before you conclude the interview. Do not be afraid to pay for his time. Many attorneys offer a free initial consultation and that sounds great to the consumer, but it is really for the lawyer’s benefit. What the lawyer really wants is to get you in the door and sign you up.

Here is a list of topics to discuss. Take notes on their responses.

- How long they have been an attorney?
- What areas of law do they practice in?
- Will they be doing most of the work or one of their underlings?
- Do they do this kind of case as a regular part of their practice?
- Have they won this kind of case before?
- Tell them about your case and ask them how they would approach the case.
- Can they give you the names of clients as referrals?

- How often do they go to trial?
- What is their fee structure?
- Are they willing to pay expenses up front and be reimbursed later?
- Can they give you an estimated budget for the case?

Ask them to give you three names of attorneys, other than themselves, that they would recommend, if you could not hire him (or her). You will think of other things to ask. Just remember to compare one attorney against another. You don't buy a car without comparing your options. A lawsuit is far more important than that.