

PERSONAL INJURY 201: CHOOSING THE RIGHT ATTORNEY TO HANDLE YOUR INJURY CASE



***THE INSURANCE COMPANIES
ARE THE REAL “AMBULANCE
CHASERS”***

By

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If you can answer YES to these six questions, I may be the lawyer for you.

- 1 Do you expect to have medical bills and lost wages that total at least \$2,500?
- 2 If you were in an automobile accident, is there visible property damage to your car?
- 3 Was the accident someone else's fault?
- 4 Did you seek medical treatment promptly after the accident?
- 5 Have you followed your doctor's instructions and faithfully attended your appointments?
- 6 Did your accident happen within the past 18 months?

If you can answer YES to each of these questions, give me a call at 815-569-4280.

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Not all Attorneys are Created Equal

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I wrote this book so that you can be empowered. Read it in the privacy of your own home BEFORE you hire a lawyer and BEFORE you talk to the insurance adjuster. (Hopefully, you haven't signed forms yet!) You may not even need a lawyer to settle your claim.

FOREWORD-WHY THIS BOOK?

I wrote this book primarily for people who have never been in an accident. You are getting calls from insurance company representatives wanting to ask “just a few questions.” The insurance adjuster calls every day asking you to sign a few forms “so we can get your records and handle everything for you.” You are overwhelmed and feel the need to hire an attorney.

You begin looking for a lawyer. After starting the search, you become frustrated because most lawyer advertising doesn't provide any useful information that can be used to evaluate ability. You soon realize that all lawyer ads basically say the same thing, “no fee unless you get money,” fistfuls of cash, gory accident scenes or platitudes like “We Care For You” or “We Are Aggressive”. These are meaningless.

Here are some other “Meaningless Headings” you might see in the Yellow Pages.

- We Fight for the Money You Deserve!
- Seriously Injured?”
- Free Consultation
- No Fee Until You Collect
- We're the Law Firm that Cares About You

REALLY NEED AN ATTORNEY TO SETTLE YOUR CASE?

You definitely do not need an attorney for every small injury case. I do not accept cases with minimal property damage or minor injuries. Why not? Simple. In small accident cases, attorney fees and costs gobble up your settlement money and leave you with very little or nothing after you pay the medical bills. I don't believe that is right. If you decide to handle your case on your own and need some help, give me a call. I charge a small consulting fee for limited scope representation.¹ This may save you thousands of dollars!

¹ "Limited scope representation" is a relationship between an attorney and a person seeking legal services in which they have agreed that the scope of the legal services will be limited to specific tasks that the attorney will perform for the person.

BEFORE You MAKE AN APPOINTMENT

Before you make an appointment to see a lawyer, ask them to send you a package of written information containing the following:

- A sample fee agreement.
- A listing of recent verdicts, settlements and references from former clients.
- A detailed written explanation of the steps involved in a personal injury lawsuit.
- Written confirmation that they carry errors and omissions insurance (you'd probably be surprised to see how many lawyers carry NO legal malpractice insurance).
- A thorough explanation of fees and costs, the difference between the two, and how the fee is calculated.
- A professional resume that covers their entire career.

Attorney Involvement Increases Value of Claim

A study conducted by Allstate Insurance Company states "our analysis to date suggests that attorney involvement creates SIGNIFICANT value for claimants."

Allstate is correct. In 1999, the insurance industry performed a study to find out if people who were represented by an attorney received more money than those who handled their own claim. The study was performed by the Insurance Research Council (IRCweb.org), a non-profit organization that is financially supported by leading property and casualty insurance companies. The mission of the IRC is to advance the insurance industry's vision on matters vital to insurance companies. The IRC found that people who hired an attorney received, on average, 3½ times more money than those individuals who settled on their own.

FINDING A QUALIFIED PERSONAL INJURY ATTORNEY?

Choosing an attorney to represent you is an important task. You should not hire a lawyer based solely on advertising—anyone can buy a slick commercial produced by a public relations/marketing firm.

You need to find a lawyer in your community that has the skill to handle your case. Candidates need to be identified and interviewed. During the interview you must ask questions that will identify their qualifications. The answers will help determine which one is the best fit for your legal situation. This process will involve time and effort on your part, but it is vital to the outcome of your case.

Personal injury claims are complicated and much too specialized for an attorney who does not handle them on a regular basis. I have received calls on many occasions from general practitioners, tax lawyers, criminal lawyers and family law lawyers who could not get a case settled and needed a trial lawyer to file suit before the statute of limitations runs. That situation is a recipe for disaster. You need an attorney who limits their practice to personal injury and the insurance companies respect. They are out there.

Insurance companies are well aware who the attorneys are that actually go to court and try cases and those that do not. They use this information to evaluate their risk. One of the first questions insurance adjusters ask when a serious claim comes in is: who is representing the injured victim? I've heard insurance defense lawyers laugh as they head to trial against one of these non-personal injury attorneys! It's like shooting fish in a barrel for them. If this information is important to the insurance company, shouldn't it be important to you?

Washington Supreme Court Slams Allstate Insurance Company

The Washington Supreme Court in *Jones v. Allstate Insurance Co.*, 140 Wash 2d 291 (2002), hammered Allstate several years ago for its “Quality Service Pledge.” The pledge said: “because you have been involved in an accident with an Allstate policyholder, we will provide you with quality service Your claim representative is dedicated to carrying out this “Quality Service Pledge.” Allstate’s internal rules directed the adjuster to act as the individuals claim representative for unrepresented claimants.

In *Jones*, an injured woman settled her case with Allstate based on its “Pledge” and the extensive “help” the claims adjuster provided. Later, after she learned her damages were much greater than first thought, the woman tried to return the \$25,000 settlement Allstate had paid her and reopen the claim. Allstate said “no, you signed a full release.” The women filed a bad faith lawsuit against Allstate. Allstate asked the Washington Supreme Court to dismiss the woman’s case.

The Court allowed the injured woman to proceed with her bad-faith claim against Allstate. It referenced Allstate’s own internal policy in its decision: “Allstate had a stated goal of reducing attorney involvement in the claims process to achieve a higher rate of return on settlement claims.” Basically, the Court determined Allstate’s motivation behind the Pledge was profit driven, not the best interest of the injured victim.

The Washington Supreme Court condemned Allstate’s conduct stating: “Here, Allstate’s claims adjuster’s conduct fell below the standard when she advised the Joneses to sign a release of liabilities, did not properly advised the Joneses that there were potential legal consequences of signing a settlement check and the release of all claims or refer them to independent counsel, and did not fully disclose the conflict of interest she presented.”

HOW DO YOU FIND OUT WHO IS GOOD IN YOUR AREA?

Here Are Some Tips:

1. Go to my web site at www.bryntesonlaw.com and get my book, *Can You Believe It: Lawyer Advertising Exposed*. It will help you “understand” lawyer ads.
2. If you know an attorney in your community, ask them for a referral. He or she should know someone who limits their practice to your area of legal need. If you live close to me and need an attorney outside my practice area, give me a call. I'll help you find the appropriate lawyer for your case.
3. Yellow page ads rarely provide any useful information about a lawyer's skill level. However, they are a good source of candidates to interview. You need to keep three things in mind about yellow page ads: First, not everyone advertises in the Yellow Pages. The vast majority of my cases are referred to me by other attorneys and satisfied clients. Second, be suspicious of ads that list multiple areas of law. No one can do everything well. Third, be wary of full-page ads. They attract many frivolous cases that can overwhelm an attorney. Make sure that the attorney you hire is selective about the cases he or she accepts. Your case is important, and you do not want to be just another “file in the pile.”
4. Contact the local bar association. Most offer a lawyer referral service. Member lawyers sign up to be listed in the service and usually identify the areas of law they limit their practice to. This is another good source of prospects. Remember, before you interview a prospective lawyer, call and request the written information I listed above.
5. Interview several attorneys. During the interview, ask for the names of other attorneys in the area that handle your type of legal matter. If they won't give you any names, leave. Ask every attorney you interview this question. The names that keep showing up are probably the attorneys that are handling your type of case on a regular basis.
6. Think twice about hiring any attorney who pressures or rushes you to sign a contingent fee

agreement. Before you sign any agreement, you should take it home, read and understand it.

7. Run from any attorney who calls you first.

8. Beware of “runners.” A “runner” hangs out at the police station or listens to the police radio so they can “run” to accident scenes or hospital rooms to encourage victims to sign contracts with attorneys. Disgraceful does not begin to describe this practice!

9. Beware of any attorney who contacts you in writing just after you have had an accident for the sole purpose of soliciting your claim. If you are contacted “cold,” it should be for the sole purpose of providing free information that you can study in privacy of your home, on your own time, and does not solicit your case.

10. Beware of any attorney who has a stable of doctors he wants to refer you to. You can tell who these attorneys are by the rack of doctors’ business cards they keep in their office. Run away from any attorney who has a stack of doctor or chiropractor business cards in his office. Local insurance defense attorneys have told me that when an attorney refers a client to a doctor for a garden-variety case, it is the “kiss of death” for that case.

11. Here are factors to consider and questions to ask prospective attorneys. Note that not every lawyer will meet all of these criteria, but the significant lack of the following should raise a red flag.

- Experience – Experience is a big factor in any case. The longer a lawyer has been practicing in a particular field of the law, the more they will know.
- Experience actually trying cases — if your legal need requires going to court, ask the attorney how many times a month they are in court. Also, find out how many cases he or she has actually tried. Ask them for a list of their verdicts and settlements to look at? Don't accept the “All my cases are confidential” line! The greater the number of cases actually tried and substantial verdicts and settlements attained, the more likely the insurance companies will respect that attorney. Past results are not a guarantee of future outcomes, but past results do demonstrate some level of experience and success.

- Respect in the legal community—does the attorney lecture at Continuing Legal Education (“CLE”) courses? Attorneys are required to attend CLE classes every year to keep their license to practice law in good standing. Attorneys that teach these courses are usually the best of the best.
- Membership in trial lawyer associations. In our area, look for a lawyer who is a member of the Illinois Trial Lawyers Association (ITLA) and the American Association for Justice (AAJ). These organizations provide extensive education and networking for trial lawyers.
- Publications—has your attorney written any articles that have been accepted for publication in legal journals? This is another sign that the legal community respects the attorney’s skills and experience.

12. Ask your attorney if he or she is licensed in the state where your case will be filed. I believe that an attorney who is not licensed in the state where the case will be filed is at a disadvantage when it comes to negotiating with the insurance company. The insurance companies know if a lawyer is, or is not licensed in a particular state. The exception to this rule is if the out of state lawyer has an established relationship with a licensed attorney in the state where the case will be filed to act as local counsel.

You need to know how your attorney will keep you informed about case progress. Many attorneys send a copy of every piece of correspondence and court documents to the client. Others may send detailed monthly reports. Regardless, your attorney should explain the process that governs your case and the time frames in which you can expect activity to take place.

Make sure that you meet each member of the litigation team that is assigned to your file and understand their role. There are many transactions that happen with a case file that do not require the senior attorney's attention. If you are familiar with the role of each litigation team member, you will know who to contact with specific questions. On the other hand, if you are hiring an attorney because of his or her trial skills, make sure that he or she is the person that will be trying your case.

Insurance Companies Will Stop At Nothing to Destroy Your Claim

Progressive Insurance Company hired private detectives to join a church in order to discredit a couple suing the insurer. The detectives worked their way into and taped support group sessions the couple attended. Progressive's Chief Executive Glenn Renwick later apologized for the use of private detectives in this manner, stating:

“What the investigators and Progressive people did was wrong- period.” Renwick, head of the third-largest U. S. Auto insurer, said in the statement. “I personally want to apologize to anyone who is affected by this.”

This conduct is despicable but, unfortunately, standard operating procedure for most insurance companies. Accident victims must be ever vigilant, because these companies will stop at nothing to destroy your personal injury claim. Progressive has been sued on this matter and based upon the admission of its CEO, should expect to pay millions.

WHAT DOES AN EXPERIENCED PERSONAL INJURY ATTORNEY DO FOR YOU IN A CASE?

Once you have hired an Attorney, make sure you both understand “your” goals and how the relationship will work.

Here is a list of tasks your attorney may be called on to do in your case. Remember that each case is different, and not all of these tasks will be required. They are:

- Initial interview with the client
- Educate client about personal injury claims
- Gather documentary evidence, including police accident reports, medical records and bills
- Analyze the client's insurance policy to see whether there are any coverages which the client has that may pay all or a portion of the medical bills while the claim is pending

- Analyze the client's insurance coverages and make suggestions as to what coverages should be purchased for future protection
- Interview known witnesses
- Collect other evidence, such as photographs of the accident scene
- Analyze the legal issues, such as comparative negligence and assumption of the risk
- Talk to the client's physicians or obtain written reports from them to fully understand the client's condition
- Analyze the client's health insurance policy or welfare benefit plan to ascertain whether any money they spent to pay your bills must be repaid
- Analyze the validity of any liens on the case. Doctors, insurance companies, welfare benefit plans and employers may assert that they are entitled to all or part of the client's recovery
- Contact the insurance company to put them on notice of the claim, if this has not already been done
- Decide with the client whether an attempt will be made to negotiate the case with the insurance company or whether to file suit
- If suit is filed, prepare the client, witnesses and healthcare providers for depositions
- Prepare written questions and answers and take the deposition of the defendant and other witnesses
- Produce to the defendant all of the pertinent data for the claim, such as medical bills, medical records, and tax returns
- Go to court to set a trial date
- Prepare for trial and/or settlement before trial
- Prepare the client and witnesses for trial
- Organize the preparation of medical exhibits for trial
- Organize the preparation of demonstrative exhibits for trial

- Prepare for mediation and/or arbitration
- File briefs and motions with the court to eliminate surprises at trial
- Take the case to trial with a jury or judge
- Analyze the jury's verdict to determine if either side has good grounds to appeal the case
- Make recommendations to the client as to whether or not to appeal the case.

If you don't know who to call for a referral outside my practice area, call me. I know many different lawyers in several different practice areas and can usually point you in the right direction.

THE TRUTH ABOUT LAWYERS AND LAWYER ADVERTISING

- Not all lawyers have the same training. Warren Berger, former Chief Justice of the Supreme Court, once warned, "A lawyer is not qualified, simply by virtue of admission to the bar, to be an advocate in trial courts for matters of serious consequence." Many lawyers continue their professional training throughout their careers, but for some, the last time they learned anything new about their craft was in law school.
- The state regulatory agency that licenses attorneys does not control whether a lawyer can advertise that he is a divorce lawyer or a "personal injury specialist." There are practically no restrictions on the type of law for which a lawyer may advertise. Once an attorney graduates from law school, he or she is allowed to handle virtually any case.
- Not all lawyers go to trial; some who advertise for personal injury or medical malpractice cases have never gone to trial.

- Not all lawyers have the same experience. This may seem obvious, but many people (and some lawyers) think “a lawyer is a lawyer is a lawyer.”
- Not all lawyers have legal malpractice insurance. It is perfectly legal for a lawyer not to purchase malpractice insurance. Astonishingly, they are not required to tell you who they are! You must ask for this information.
- A full-page ad in the Yellow Pages or massive TV advertising is not necessarily a sign of success. Some lawyers run a “volume practice,” hoping to make a little money off each case—usually by settling most, if not all, of the cases. Shockingly, in some offices paralegals handle virtually the entire claim. The only time you see the lawyer is if his face is on TV, a billboard or Yellow Page ad.

Please Note: I do not accept cases in which another local attorney has already been involved. If you are currently represented, use this book to increase your knowledge and ask questions, but please don't ask me to take on your case. I won't.

THIS BOOK IS NOT LEGAL ADVICE!

The Illinois Attorney Registration and Disciplinary Committee requires that I inform you that this book is for informational purposes only and is not legal advice. I'm not your lawyer unless we both sign a written agreement for me to represent you. Please do not take anything in this book to be legal advice about your case. Each case is different, and an attorney can only give you quality legal advice after he or she has completely investigated your case.

PLEASE REFER A FRIEND TO GET OUR FREE NEWSLETTERS

If you do not get my monthly newsletter, request to be added to its mailing list. You can also request it for your family and friends. They too can learn how to deal with insurance company dirty tricks, learn to find the best lawyer to handle their case, and read the "inside story" about the frivolous lawsuit lie. You can also get some practical advice about buying insurance from someone who does not sell insurance.

Just send a request by either e-mailing me at mdb5107@gmail.com or faxing me at 815-459-4075. You can also send a request by U.S. Mail to Mark D. Brynteson, 2969 Rolling Meadow Court, Belvidere, Illinois, 61008. If you request the newsletter for your family and friends, I'll send a note with their newsletter letting them know that you ordered it for them. Don't worry, I don't spam! If they don't want to get it, there's a toll-free number to call and get off the free subscription list.

ABOUT THE AUTHOR

Mark Brynteson has been representing individuals against insurance companies since 1989. He limits his practice to accident, injury and wrongful death cases. Visit his web site at www.bryntesonlaw.com. It provides a lot of information about Illinois car accident cases, settlements and verdicts.

Mark grew up in Northern Illinois. He has a Bachelor of Science Degree in Biochemistry and earned his Law Degree from Regent University School of Law in 1989. He is the father of four, ages 16-26 and has been married to his wife Cindy for 29 years.



MY CASES AND VERDICTS

You can see a sampling of the cases I have handled during my career by visiting my website at bryntesonlaw.com. Please do not construe these results as a representation of what YOUR case is worth. All seasoned trial lawyers have won cases they should have lost, and lost cases that they expected to win. I am no different. Once a case is in the hands of the jury, it is out of my control. However, lawyers that have significant trial experience in big cases and a noteworthy record of settlements and verdicts have the advantage.