

How to Select a Lawyer **by J. Sherrod Taylor**

Persons with traumatic brain injury (TBI) and their families must make many important decisions in the early days following injury.

One significant decision-that of selecting an attorney-is often placed on the "back burner" while the pressing question of treatment and rehabilitation are addressed. Yet, obtaining the right lawyer as soon as practical may well be a key factor in determining the amount of damages recovered by the patient. Monetary damages secured through personal injury litigation may be used not only to compensate the person with TBI for pain and suffering and lost income, but may also be applied to fund programs of rehabilitation and therapy which are often required in these cases, and without such resources rehabilitation may not be available.

Securing a lawyer is done in much the same way as selecting a professional in any field. Lawyers are best judged by their professional reputations and their qualifications and experience.

By questioning those persons who deal on a daily basis with TBI, survivors and their families will probably be successful in identifying qualified attorneys to handle their cases. By questioning the prospective attorneys about their training, knowledge and experience in this field, they likely will be in a position to retain the right lawyer.

Steps to Identify, Screen, and Retain the Right Lawyer

Individuals with TBI and their families should consult persons who regularly concern themselves with the problems of traumatic brain injury. The Brain Injury Association (formerly the National Head Injury Foundation) or one of its state affiliates will provide assistance in these cases. The directory lists numerous attorneys who have expertise in representing persons with TBI as well as state and federal agencies that can provide assistance. Care providers, such as physicians, neuropsychologists and hospital discharge planners, may also be a source of referral to attorneys.

Prominent attorneys, regardless of their field of interest, are generally aware of other lawyers who deal primarily with TBI. If the survivor or family knows a prominent attorney in their locality, they may want to consult with that attorney to obtain a referral.

After obtaining a list of qualified lawyers, contact should be made by telephone. Most lawyers offer telephone consultation at no charge. Some even provide national toll-free numbers so that potential clients do not have to undergo the expense of calling.

During the initial telephone conference, the potential attorney should be screened to determine whether or not he or she possesses the skill and expertise to handle the case. The attorney's responses to the questions listed below will be great assistance in learning whether or not an office conference with the lawyer is in order. There should be no

reluctance to ask these questions, as most attorneys expect potential clients to make inquiries.

Among the questions that should be asked are:

- **Have you successfully represented individuals with TBI in the past?**
- **How much of your practice is devoted to such cases?**
- **Have you lectured and/or authored professional publications on the subject of TBI?**
- **Are you a member of professional legal organizations? (e.g. American Bar Association, Association of Trial Lawyers of America, Georgia Bar Association, etc.)**
- **Have you tried TBI cases before a jury and obtained successful verdicts?**
- **Have you settled TBI cases out-of-court with success?**
- **Do you work often with neuropsychologist, physiatrists, rehabilitation specialists, and life care planners?**
- **Do you favor structured settlement in TBI cases (so that long-term financial security may be obtained)?**
- **Do you carry a policy of legal malpractice insurance?**
- **Do you involve a person with TBI in determining their own needs? And in settlements and trial preparations?**

Qualified lawyers will not be reluctant, offended, or embarrassed to answer these questions.

After Screening Potential Attorneys - Arrange an Appointment

Once one or more attorneys have been "qualified" using the above screening procedure, the individual with TBI and a family member should arrange to meet with the prospective lawyer(s). During the initial office conference, the survivors and family member should further scrutinize the attorney prior to signing an attorney-client contract.

The following question must be answered:

- **Does the attorney appear to have an understanding of the TBI field?**
- **Does the attorney appear cognizant of the problems associated with TBI field?**
- **Does the attorney have in the office models, medical illustrations, and library facilities pertaining to TBI?**
- **Does the attorney demonstrate confidence in his or her ability to represent persons with TBI?**
- **Does the attorney appear to possess the appropriate respect and personal commitment to work with clients with TBI?**
- **Is the attorney honest in his or her appraisal of the strengths and/or weaknesses of the particular case?**
- **Will the attorney's workload permit him or her to undertake a substantial new case?**
- **Does the attorney have other lawyers and staff who may assist in handling the case?**
- **Is the attorney competent to handle, not only the personal injury litigation, but the other facets of TBI such as insurance, social security matters and government entitlements?**
- **Is the attorney truly interested in working on this particular legal matter?**

Retaining the Attorney

After locating and interviewing the attorney the survivor and family judge to be the best qualified to handle the case, that attorney should be retained. Traditionally, personal injury attorneys work on a contingency fee basis. That is, they do not receive payment for the fees directly from the client, but rather they take a percentage of the total amount recovered from the defendant or its insurer as fees.

Percentages vary from case to case, depending on the complexity of the case and the probability of a successful outcome.

Attorneys use a three-step analysis to determine the likely outcome of the case and to set their contingency fees:

- First, they examine the liability aspects of the case. If the potential defendant is clearly responsible for causing the injury and if the survivor bears no responsibility for causing the injury, the attorney will usually accept the case for a contingency fee in the 33 1/3% to 40% range. More difficult liability situations will lead the lawyer to charge a higher percentage. Under no circumstances should the contingency fee exceed 50%. Expenses and the costs of litigation are generally advanced by the attorney, but these ultimately will be borne by the client out of the client's share of the proceeds at the end of the case.
- Second, the attorney evaluates the extent of injury. Obviously, a greater recovery may be expected in cases with more serious injuries which require extensive periods of treatment and which result in the client being permanently disabled to at least a partial degree.
- Third, the attorney examines the ability of the defendant to pay for the injury caused. Usually, but not always, the limits of potential monetary recovery are set by the amount of insurance coverage available to the defendant. The attorney's estimate of available insurance coverage may be the determining factor in whether or not the attorney will accept employment. Even if the injury is substantial, when the availability of funds to pay for the injury is limited, the attorney may decline employment.

However, if liability is good, injury is apparent, and insurance funds are plentiful, the attorney will probably accept the case. At this point the attorney-client contract is signed to initiate representation in the case.

Develop a Plan for Action

After the attorney has agreed to represent the individual with TBI, a specific plan of action must be formulated. The attorney should advise the survivor and family of the litigation events which will take place. A timetable for these events should be established.

Litigation events in catastrophic injury cases may include: obtaining complete medical, employment, school and military record; establishing contact with the defendant and his or her insurer; attempting to settle the case prior to filing a lawsuit; filing the lawsuit; pursuing discovery of the facts by interrogatory question; requests for the production of documents, depositions, etc.; attempting to settle the case before trial; and the trial of the case in court.

Conclusion

By following the suggestions outlined above, the individual with TBI and the family likely will be able to obtain the services of a competent lawyer who will increase the opportunity for successful outcome in the TBI case.

Successful prosecution of the TBI case will lead to the recovery of ample proceeds for use in compensating the trauma victim for pain and suffering and wage loss, and in funding a lifetime of care, treatment and rehabilitation.