



Roger Krause

1720 Peachtree Street, Suite 336

Atlanta, Georgia 30309

404-835-8080



CHAPTER 14

WHEN TO HIRE AN ATTORNEY AND HOW TO FIND THE RIGHT ONE

A. Hire Counsel as Soon as Possible

Its cliché, but you will want to retain an attorney as soon as possible! Why?

First and foremost, an attorney retained right away can obtain and secure evidence. The insurance company has a whole team of investigators, adjusters, and such who are usually on the scene immediately. In serious cases, they are interviewing all of the witnesses, obtaining recorded statements, and making sure that they have good contact information for all. The simple truth is that evidence gets lost; people forget and may move away. Retaining an attorney as soon as possible will make sure that you preserve crucial evidence in and for your case.

Second, an attorney will make sure that you make your way through all of the procedural barriers, making sure that the statute of limitations, the time limit when one must file suit, is not missed.

Third, an attorney can make sure that all of the defendants or potential defendants are put on notice of the claim. This is important from two perspectives, as discussed in Chapter 2. If a defendant or potential defendant is a government entity, they will require some type of advance notice of the claim. The failure to provide such notice commonly results in the plaintiff's case being dismissed. And if the defendant is a private person or entity, then the defendant's insurance company must receive notice of the claim. This is because most policies are notice claims policies. Stated differently, if one waits until the statute is about to run out, the defendant may not have any insurance, and any recovery or judgment may be nothing more than a paper win.

Fourth, retaining counsel quickly can make sure that all the proper parties are included in the lawsuit. For example, if a loved one is killed while at work, but not due to the employer's fault, a family may have two separate lawsuits, a workers' compensation claim as well as an action against a third party.

Finally, retaining counsel quickly forgoes the stress and worry of those attorneys who will target you immediately after the loss, in violation of Georgia's professional code of conduct. Furthermore, your family and friends will be relieved that you have an attorney to protect your interests.

B. How to Find Good Counsel Requires Due Diligence.

It is difficult to find the right attorney to bring a wrongful death action in Georgia and in any other state. Regardless of the source, it is our suggestion that you conduct your own due diligence.

- Friends and family are often good sources for referrals, but you must do your own due diligence to make sure that the attorney is a good one in a wrongful death action. I have seen too many occasions, in which a friend or family recommends

an attorney and that attorney had no experience in wrongful death actions. Attorneys specialize the same way that doctors specialize. If you have cancer, you want a cancer specialist, not a cardiologist. Here, you want an attorney who has significant experience in wrongful death actions.

- The internet can provide leads. At the same time, you should be careful, for the internet has allowed many people to create false impressions about their experience with these types of suits. Most of the largest websites are, in fact, created by marketing firms, which makes it easy for grieving families to be misdirected.
- TV Advertisements. This is likely the worst way to find a lawyer. TV lawyers are great advertisers, and great business people, but usually sub-par attorneys. I have never seen a TV lawyer in court, nor at any CLE seminars. Their business model is different. I would avoid going with any law firm that devotes so much of its time and money to advertising –as opposed to actually practicing law.

C. What to Look For and What to Ask

Always meet with your attorney. It is important for you to know who is working on your case. While paralegals often do important work, ultimately, it is your lawyer who will direct the case. If you never meet the lawyer, even if you speak by phone, this indicates a problem.

Always ask your lawyer how many wrongful death actions they are currently working on. Furthermore, ask how many cases are similar to yours. You want a lawyer who has lots of experience in wrongful death actions, and depending on your case, one with lots of experience, for example, in car collision cases or in medical malpractice actions.

Ask about the ratio between the number of attorneys and other personnel in the office. Specifically ask, how many attorneys are there compared to the number of non-attorneys. Why? The answer will let you know if your case will be treated individually or as just one of many. The more paralegals, the less attention the lawyer will devote to your case. While many areas of law are administrative in nature and can be done quite successfully by paralegals, with minimum attorney supervision, wrongful death claims are not ordinary matters. Thus, you want the case to be directed by an attorney. Paralegals, closely supervised, are very effective. However, how can one attorney supervise ten paralegals? The answer is – they simply cannot.

Understand the scope of representation. The scope of representation means the issues the attorney will assist you on. The death of a loved one gives rise to many different types of legal claims and issues, including the issue of probate, and the distribution of other assets such as a home, car, stocks, and bonds. There are also issues related to taxes and life insurance benefits. If you retain an attorney, make sure you know which type of attorney you have selected. If there are questions about distribution of assets, we regularly refer or recommend folks to estate attorneys. These attorneys are skilled in resolving disputes among heirs. Likewise, there are tax attorneys who specialize in estate problems. Our firm specializes in bringing wrongful death claims against third parties arising out of an automobile collision, medical malpractice, or due to a defective product.

As an important note, there may be times when you wonder about your choice of attorneys. Are they doing a good job? This could be caused by the defendant refusing to put any real money on the table, or the attacks against your counsel. Similarly, there will be long periods when you may not feel as though your case is being advanced. I think that good attorneys forewarn you

about the process and are available to discuss your concerns. If they are unavailable or do not prepare you for the upcoming process, then either the attorney is too busy or does not care about your case.

D. Is It Ok if My Lawyer Wants to Associate Other Attorneys?

The general answer is yes. So long as there are no additional fees.

The real question is: Why would an attorney bring another attorney into a matter? Sometimes, an attorney will associate with other attorneys to assist with some aspects of the case, such as conducting depositions, conducting a specific part of a jury trial, or writing an appeal. (I personally don't like writing appeals). At the end of the day, it means that somewhere along the line, your attorney must have determined that they needed help. This is a much better situation than if an attorney tries to go at it alone when they need help.

At the same time, some attorneys do not really practice law; rather, they are in the "referral business." This means that they will not work on the case, they simply want to earn a percentage of the fee. While the various bar associations have attempted to stop this practice, it seems to continue. You should ask the attorney if they anticipate associating an attorney, and ask them why. Listen to the answer closely. It will tell you some important information.

E. What About Fees? How Can I Hire a Great Lawyer Without Paying a \$100,000 Retainer?

Concerns about how to pay an attorney are real. The general model of attorney fees is based upon an hourly rate, where time devoted to the case is calculated at 1/10th of an hour, or every

six minutes. In Georgia, hourly rates vary greatly, from \$150 for new attorneys to \$1,000 or more for the most experienced attorneys. A wrongful death case usually requires a significant amount of time. Let's assume that it takes 1,000 attorney hours to complete a case and that a reasonable hourly rate for an attorney is \$350 per hour. If you were paying the attorney by the hour, the attorney fees alone could cost \$350,000. Few people can afford this fee.

In addition to attorney fees, the litigation costs also are extremely high. Almost all wrongful death cases will require at least one expert, and many times, multiple experts. Medical experts wish to receive a premium to testify, and demand anywhere between \$100 and \$1,000 per hour. These must be paid up front. Likewise, court reporters, depositions, and trial exhibits, are all extremely expensive. In wrongful death cases, litigation costs regularly range between \$20,000 and \$200,000. In product liability cases, the amount of the costs could be as much as \$1 million. Once again, few families have this type of money to spend.

A contingency fee means that the attorney only receives payment for their legal services if there is a recovery of actual money. The contingency fee model is in response to the way that most attorneys' bill based upon the hour. Given the huge costs, both in terms of attorney fees and the costs of litigation, families are able to hire top-notch attorneys in exchange for the promise of payment based upon the results. For this reason, contingency fees became a reasonable way of earning fees.

So what is a fair contingency fee? This is a difficult question because a fee must be considered in a variety of ways, including the difficulty of the case (i.e., the risk of the case), the ultimate results, and the time and resources poured into that case. The fees vary depending upon the complexity of the claims, where

the case is resolved, and special particulars about the facts and circumstances of the loss. For example, if the death was due to medical malpractice, fees will be greater, because those cases require many experts. Likewise, if a case is resolved before a lawsuit is filed, the fee is often less. If the case goes to trial, the fee is often greater. There are often additional fees if there are any appeals.

Can the attorney voluntarily reduce their fee? The answer is yes. When the recovery is low and there are not many sources of recovery, many attorneys will reduce their fees, but they are not required to do so. It is appropriate to discuss these issues with your attorney, both at the beginning of the case and the end. As a general rule, we are skeptical of attorneys whose fees are either too high or too low. Attorneys who agree to reduce their standard rate may not have sufficient experience to evaluate the complexities of a case. We often see cases that initially seem simple, but turn out to have major problems. Experienced attorneys need to consider these issues and will not usually agree to reduce their fees at the first meeting.

It has been said that the common fee in any injury case is 33% of the reward yet, we have seen fees as low as 25% and as great as 60%. The amount of the fees vary depending on the type of the case, and at what stage in the litigation the case is resolved. Many firms will increase percentages as the case proceeds to trial, and many firms charge more for cases that are complex. The increase in fee is appropriate as the attorney or firm devotes more and more resources to the case, which also increases the risk of the case and the expenses for the firm.

Selecting an attorney comes down to hiring an attorney you like. I am a big believer in the “gut.” At the end of the day, after you have done your research on the attorneys, determined what