

The Definitive Guide
to Hiring a

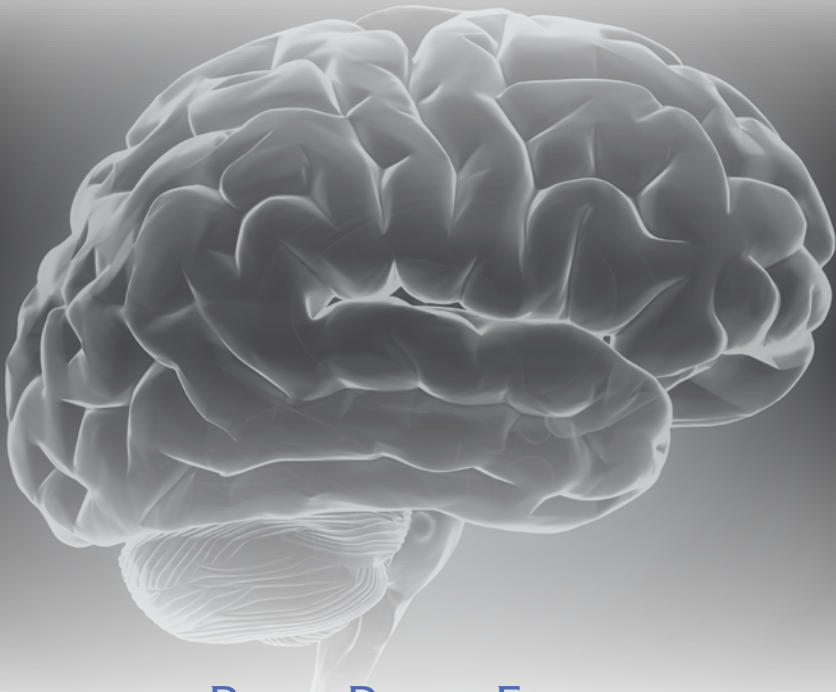
Brain Injury Attorney



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LAW OFFICES, S.C.

The Definitive Guide
to Hiring a
**Brain Injury
Attorney**



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Introduction

We have all seen the television advertisements, *“If you’ve been injured call me”* or *“My lawyer got me \$200,000 and I wasn’t even really injured!”* With these advertisements, how can the typical consumer distinguish a reputable law firm from a less than reputable law firm, especially when it comes to a serious, disabling injury such as a Traumatic Brain Injury?

The central goal of this book is to assist the brain injury survivor, or their loved one, in the search for the best Traumatic Brain Injury attorney for their particular case. Although we cannot guarantee success in this endeavor, the purpose of this book is to educate the reader about how to select – and just as importantly – deselect certain lawyers through an informed decision-making process.

This book is designed to help the brain injury victim understand whether they have a valid claim and if so, it also provides the reader with a step-by-step method for choosing the right Traumatic Brain Injury lawyer for their case, along with a detailed list of proposed questions to ask a potential attorney.

If the reader only takes one thing away from this book, we hope it is that one should NOT hire a Traumatic Brain Injury attorney until that lawyer has fully answered all of their questions. Not all lawyers are the same, just as not all cases are the same. Be sure your Traumatic Brain Injury attorney is the right one for your case, as the right brain injury lawyer can make all the difference.



Why Was This Book Written?

I have devoted my professional career to advocating on behalf of Traumatic Brain Injury survivors. Shortly after graduating law school, I decided this pursuit would be my professional calling. Before then, it was rare for a personal injury attorney to develop such a unique niche as Traumatic Brain Injury litigation. However, I did not let this fact dissuade me from my goal, for unlike other types of personal injury cases, the right personal injury lawyer in a brain injury case can make a tremendous difference to the future of the Traumatic Brain Injury survivor.

My devotion to the protection of the rights of victims of Traumatic Brain Injury remains unwavering. Nothing has been more professionally rewarding than the ongoing relationships I have developed with many of my former clients whose lives have drastically improved due, at least in part, to my ability to win their case. My ability to prove their brain injury case has resulted in them receiving the care, treatment, rehabilitation and medication they so deeply need for the remainder of their lives. For many of my clients, my ability to prevail

in their case has also resulted in them being able to live semi-independently with the aid of an in-home assistant, as opposed to living fully dependently at an assisted living facility or nursing home.

In speaking with Traumatic Brain Injury survivors, along with their friends and family members, it became quite apparent that the average survivor does not understand personal injury lawyer advertisements, contracts, fee structures, and the proper steps to take in order to make an informed decision in the hiring of a lawyer for their Traumatic Brain Injury case.

At the beginning of my research, I decided to look in the Yellow Pages and analyze their ads. I was disappointed. Then I started paying attention to the personal injury lawyer television ads and law firm website content. I became frustrated. The underlying theme of the vast majority of these lawyer ads consisted simply of a generic slogan with minimal actual substance. Even the ads that listed their membership to specific legal or medical organizations failed to explain the significance of these organizations, and why it might benefit the consumer. Finally, some ads were downright misleading.

There was a clear disconnect between the majority of lawyer ads and what was really important to a Traumatic Brain Injury survivor in choosing the right lawyer for their personal injury case. What was even more clear was that this disconnect was the fault of the lawyers running the ads, NOT the injured person viewing the ads. I was not able to find any ads that actually educated the Traumatic Brain Injury survivor or their loved one about lawyers or the legal process.

For example, do the following slogans have any actual meaning?

- *“No Fee Unless You Win”*
- *“Free Consultation”*
- *“Home and Hospital Visits”*
- *“Serious Injuries”*
- *“24 Hour Availability”*
- *“One Call... That’s All!”*
- *“Don’t Drop the Ball. Make the Call!”*
- *“Don’t Settle For Less”*
- *“Full Service Law Firm”*
- *“We’ll Fight For You”*
- *“AV-Rated”*
- *“Wisconsin Super Lawyers”*
- *“Rated Best Lawyers”*
- *“50 Years Combined Experience”*
- *“\$20 Million Verdict”*
- *“Extensive Experience”*

Once I overcame my initial disappointment in lawyer ads, I reflected. The majority of the public has a negative view of lawyers in general. The public attitude towards personal injury lawyers is even worse. Then I considered the fact that, fortunately, the majority of the public actually has no need to contact a lawyer, let alone a personal injury lawyer. Therefore, for many people, the only contact they have is what they see on TV or in other advertisements. This explains much of the negativity, especially for personal injury lawyers. If personal injury lawyers would realize this and take pride in the fact

that they are actually in the business of helping people – and advertise with this in mind, then perhaps public perception of personal injury lawyers would improve. As a result, perhaps the truly injured would be able to access the service they deserve.

“The underlying theme of the vast majority of lawyer ads consisted simply of a generic slogan with minimal actual substance.

About the Author

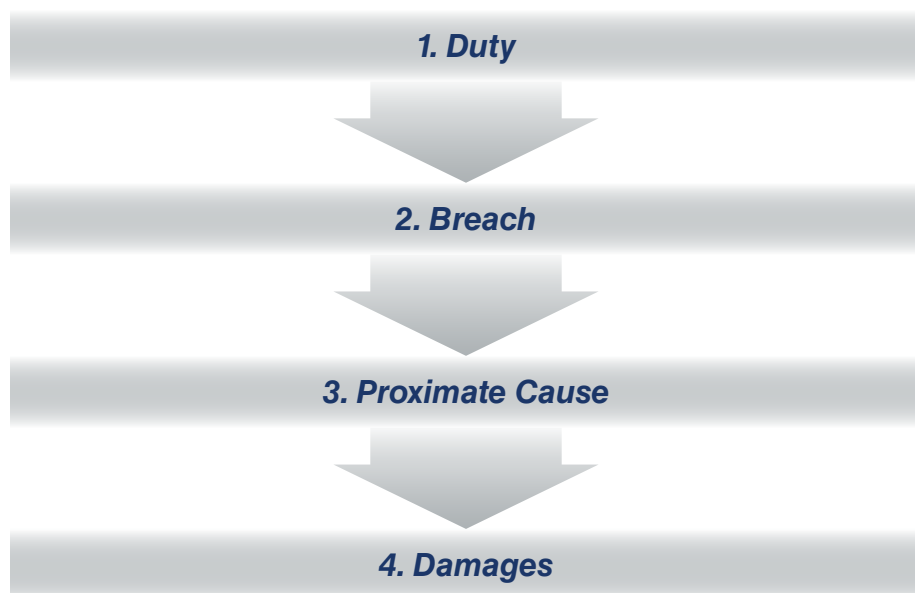
Wisconsin attorney Randy Rozek has devoted his professional career to representing individuals harmed by the negligent or intentional conduct of others. Randy has successfully taken on many large corporations and insurance companies throughout the United States. Attorney Rozek has his own office, ROZEK LAW OFFICES, S.C. in Milwaukee and Madison, Wisconsin.





Personal Injury Claims

A primary question you will likely need answered following a Traumatic Brain Injury is, “*Do I have a valid personal injury claim?*” In the legal field, a claim for personal injuries is technically referred to as a “*tort.*”



1. *Duty*

In general, duty refers to the reasonable amount of care a person should use in a particular circumstance. For example, in the case of an automobile accident, all drivers are required to obey the Rules of the Road. These Rules of the Road are contained in the Wisconsin Statutes and are clearly explained in a State of Wisconsin, Department of Transportation booklet, which is reviewed and taught in driver's education classes.

Different Rules of the Road apply to different types of drivers. Professional drivers are generally held to a higher standard of care than people who do not drive for a living. For instance, professional truck drivers must comply with federal regulations that limit everything from how many hours they can drive without rest, to how much weight they can transport.

There are many personal injury claims that do not involve automobile accidents. Common examples of other "*torts*" include premises liability (slip-and-fall), product liability, medical malpractice, and nursing home neglect or abuse. In each of these cases, there is an identifiable obligation involved. Landowners have an obligation to treat guests on their property with fairness. Manufacturers have an obligation to the consumers involving authentic representation of their product. Doctors have an obligation to use their every effort in healing their patients. Nursing homes have an obligation to care and tend to the specific needs of their residents.

To identify these obligations, lawyers refer to federal regulations, state statutes, state administrative codes, and even local ordinances. However, some obligations are not clearly defined in the law, making it necessary for a lawyer to take into consideration the particular area where the personal injury occurred. For example, in nursing home neglect cases, a lawyer should refer to the federal and state regulations, the particular nursing home's policy and procedure manual, and general nursing manuals that apply to all nurses in order to determine the applicable obligations that specific nursing home has to its residents.

In most states, lawyers also have the benefit of accessing different rules set forth in their states' pattern or form jury instructions. These form jury instructions typically provide the most comprehensive and organized set of rules that can be utilized in the majority of personal injury cases. Most experienced personal injury lawyers rely on the anticipated jury instructions in framing all aspects of the case from the beginning of the client's case. If your lawyer is just beginning to think about potential jury instructions on the eve of your trial, you may have a problem.

TIP An experienced Traumatic Brain Injury Attorney will immediately begin preparing your case as if it is going to trial at some point down the road. If your case is properly prepared for trial from the beginning of your case, then your case will be in the best position to settle for the most amount of money, which in a brain injury case typically means that the survivor will recover for all of their harms and losses and obtain the necessary, optimal future treatment required.

2. Breach

Once a duty on the part of an individual is established, it must be shown that someone breached that duty. In an automobile accident example, the duty is that drivers must stop for a red light; the breach of the duty is the act of not stopping for a red light.

A breach can be proven by either direct evidence or indirect evidence, or a combination of both types. Direct evidence can be shown through eye witness testimony of people involved in the accident, or independent witnesses who directly observed the actual accident. Indirect evidence is more common and oftentimes more reliable. In many automobile or truck accident cases, indirect evidence would typically include skid marks at the accident scene and photographs depicting the property damage sustained to the different vehicles involved in the crash. This indirect evidence can then be used to reconstruct and recreate the details of the crash.

3. Proximate Cause

Proximate cause simply means that the injuries are caused by the breach of the duty. Lawyers use a variety of means to prove proximate cause. Most commonly, a medical doctor testifies that the injuries and medical bills are due to the injuries sustained from the accident.

At this step in the process, the insurance company will usually put up their biggest defense. Typically, they will find doctors willing to testify that the medical condition of the injured party is due to other reasons.

4. Damages

Damages refer to an individual's harms and losses from an injury. Damages for serious personal injury cases can include the following:

- Past medical bills
- Past wage losses
- Past pain, suffering, disfigurement and disability
- Future medical bills
- Future wage losses
- Future pain, suffering, disfigurement and disability

Determining whether it is economically feasible to pursue a personal injury claim will depend on the value of the total damages in the case. If an individual sustained relatively minor injuries, and it would cost thousands to pursue the case, then it may not make economic sense to pursue the claim. This is often a difficult decision, because although it is clear that the person was hurt, the case would result in the client receiving very little compensation, because most of the award will go to proving the case.

With Traumatic Brain Injury cases, it is essential for the survivor's treating physicians to medically document ALL of their symptoms. This is extremely challenging because survivors will typically be treated by Primary care physicians with little or no experience in

addressing common symptoms following brain injury. Additionally, the brain injury survivor oftentimes has difficulty expressing, or even remembering, all of their symptoms in the brief 10-15 minute meeting with their doctor. Our office deals with this common problem in a variety of different ways:

ONE: We always recommend that a close friend or family member accompany the brain injury patient to the appointment so that they can add to what the patient forgets to address. (See Appendix A).

TWO: We provide our clients with a form listing the majority of common symptoms following Traumatic Brain Injury. We provide copies of these forms for close friends and family members. We ask that our brain injured client bring the completed forms to their treating physicians and ask that they be made part of their chart.

THREE: We attempt to speak with the brain injury patient's physicians early on in the process to be sure the physician understands the significance of their symptoms.

FOUR: We provide the physician with governmental and other authoritative publications about Traumatic Brain Injury. For example, in severe brain injuries we advocate for our clients that the treating physicians follow the Brain Trauma Foundation's recommended guidelines for rehabilitation regardless of health insurance mandates. In mild Traumatic Brain Injury cases, we provide treating physicians with governmental publications regarding the common symptoms that can be expected following such injuries.





Common Myths Conveyed in Lawyer Advertising

Myth

Lawyers who advertise in the Yellow Pages must be successful, and lawyers who advertise on television must be even more successful.

Truth

An advertisement in the Yellow Pages or on television is not necessarily a sign of success. Some law firms spend hundreds of thousands of dollars each month on TV ads in an attempt to generate a high number of cases. This leads to them having less money and time to spend on each case. Thus, these lawyers choose to settle the cases without any intention of ever going to trial. More often than not, this tactic results in the injury victim receiving much less than they truly deserve. Brain Injury victims need individualized representation, not a high volume firm.

Lawyers or law firms with several offices are more successful than those with only one office

More offices does not necessarily mean better representation. In fact, it may actually mean more clients and less time to personally attend to each individual case. Again, “*high volume*” does not equal great personal representation.

Common Myths Conveyed in Lawyer Advertising

Myth

Truth

Lawyers who appear in television ads are the ones who will be handling my case.

It would be impossible for “*high volume*” lawyers to represent every Traumatic Brain Injury survivor who comes into their office. Many times the cases at large law firms are passed down the line to a less experienced attorney, or sometimes even their support staff.

Lawyers cannot advertise for Traumatic Brain Injury unless they are knowledgeable, experienced in brain injury, and have successfully represented victims of Traumatic Brain Injury.

Lawyers are legally allowed to advertise for any type of injury case. There is no guarantee that the attorney advertising for Traumatic Brain Injury cases has any particular knowledge of Traumatic Brain Injury, or has had success in handling such cases.

A lawyer who advertises for many different areas of practice must be good at all of them.

In today’s modern world, it is difficult to stay abreast of one area of the law, let alone several different ones. There simply isn’t enough time in the day to stay current with all different areas of the law. It may be best to find an attorney who truly specializes in your particular type of case.

Common Myths Conveyed in Lawyer Advertising

Myth

Truth

All lawyers have the same training and experience.

All lawyers have gone to law school. However, true education for most lawyers comes after law school. Perhaps what is more important than where the lawyer has gone to law school, is the ongoing legal education received by the lawyer since graduating law school. All lawyers are required to attend ongoing legal education. Obviously, lawyers that spend a considerable amount of time attending and speaking at brain injury conferences will likely have substantial training and experience handling Traumatic Brain Injury cases.

All lawyers take cases to trial on a regular basis.

Unfortunately, many lawyers in “high volume” law firms never take cases to trial. They simply have too many clients. Trial, and preparing for trial, is very time consuming. Insurance companies keep track of which lawyers never go to trial. The insurance companies then know that they can “*lowball*” the attorney on the eve of trial and the case will typically settle.

Common Myths Conveyed in Lawyer Advertising

Myth

Truth

An attorney who belongs to impressive sounding organizations must necessarily be a great attorney.

There are many professional organizations that can greatly benefit lawyers in their ongoing training. However, there are also a number of companies that are in the business of making money by getting lawyers to join their groups. While the names of these groups may sound impressive, there may be no membership requirements other than paying a lot of money. It is important to research the particular professional organizations to which a lawyer belongs.

A lawyer who has obtained a million dollar settlement for one particular client will be able to get a million dollars for me.

Case value is determined on an individual, case-by-case basis. No two Traumatic Brain Injury cases have the same monetary value. Any lawyer who promises you otherwise is not being honest. It costs lawyers tens of thousands of dollars to develop cases into million dollar cases, even Traumatic Brain Injury cases. Make sure your lawyer is willing to invest in your case.

Common Myths Conveyed in Lawyer Advertising

Myth

A lawyer who promises a quick settlement must know what they are doing and must have my best interest in mind.

Truth

A quick settlement in a Traumatic Brain Injury case is typically a big mistake and usually does not equal a fair settlement. A fair settlement must take into account all of your harms and losses. Insurance companies love quick settlements because they rarely take into account all of the injured party's losses. Remember, you only get one chance to obtain full recovery for all of your harms and losses.





“Serious Personal Injuries!”

Several years ago I was contacted by a very nice young lady. We will refer to her as *Ms. A*. She was injured in a car accident just outside of Denver, Colorado three and a half years earlier. She was calling me to see if I would take her case.

She had suffered a Traumatic Brain Injury and permanent neck injury when the vehicle she was driving was struck nearly head-on by a distracted driver coming in the opposite direction. *Ms. A* had an attorney since shortly after the crash. She had called one of the TV lawyers that advertised for “Serious Personal Injuries.” Since *Ms. A* knew she had a Serious Personal Injury she felt this was the law firm for her. Unfortunately, this law firm was a “mill” that simply contracted with as many clients as possible. Clients were then distributed to the different attorneys within the office, with no system in place to distribute the brain injury cases to the attorney or attorneys with more experience handling such cases.

Ms. A’s lawsuit was filed but her case was far from fully developed. *Ms. A* had not yet seen a true brain injury specialist. She was being treated by her primary care

physician but, not surprisingly, this general practitioner had no experience addressing the combination of the many common symptoms following Traumatic Brain Injury, all of which *Ms. A* was experiencing, including the following:

- *Headaches*
- *Memory deficits*
- *Word-finding problems*
- *Attention difficulties*
- *Increased agitation*
- *Decreased insight into her condition*
- *Loss of sense of smell/taste*
- *Dizziness*
- *Visual disturbance*

Furthermore, at the time *Ms. A* came to our office, she had not seen a neuroimaging expert. She had also not yet seen a competent neurologist or neuropsychologist. She had not even seen a vocational expert to establish her loss of future earning capacity (*Ms. A* had unsuccessfully returned to work post-accident, but had to quit after 3 months and never returned to work). *Ms. A* had not yet seen a life care planner to evaluate her future medical care and medication needs.

Ms. A was calling me because her lawyer told her that he was withdrawing from her case. It became clear to me that the lawyer was not interested in spending the tens of thousands of dollars that were necessary to allow *Ms. A* to recover for all of her harms and losses. As is common with TV-advertising law firms, they cannot spend the necessary money that truly “*Serious*” cases require.

Fortunately, I was able to help *Ms. A* prove her case and recover for all of her harms and losses. However, once I received the file from the prior lawyer, I found that he had done very little from very early on. There were no photographs or witness statements. There was no investigation into the facts of the crash, the available insurance coverage, or the background of the driver that injured *Ms. A*.

We were eventually able to prepare the case for trial. It is our practice to prepare every case for trial. If a client's case is not ready to be tried, then it is not ready to be settled. Not surprisingly, we received a decent settlement offer on the eve of trial, but we likely could have done better had we had the opportunity to develop the case properly from the beginning.



Rules for Lawyer Advertising

In order to be able to tell the difference between an honest, reliable, respected lawyer and one that is not highly regarded, one must first understand the history and rules surrounding lawyer advertising.

Lawyer advertising in the United States has a long tradition, dating back at least to the days of Abraham Lincoln, who advertised his legal services in local newspapers around Springfield, Illinois. Since that time, different lawyer organizations and different state bar associations attempted to limit, or in some cases, altogether ban lawyer advertising. This was done in an attempt to raise the standard of the profession. From the early 1900's through the late-1970's lawyer advertising was banned altogether.

Then in 1977, in the landmark decision of *Bates v. State Bar of Arizona*, the United States Supreme Court ruled that lawyers had a constitutional right to advertise. The ruling prohibited states from declaring an outright ban on advertising, but it left the door open for states to limit advertising. Since that time, various states have struggled with how to limit advertising in an attempt to maintain a sense of dignity in the legal profession.

Lawyers are required to comply with the “*Rules of Professional Conduct*” for their particular state. These rules are drafted by the highest court in the state and are typically based upon the American Bar Association’s model rules for professional conduct. These rules attempt to address lawyer advertising, but there are limits to what can be prohibited and still be considered constitutional under the United States Constitution and the Freedom of Speech protections.

The Rules of Professional Conduct concerning advertising address several different areas of advertising

First, lawyers are typically not allowed to directly contact potential clients, either in person, via telephone, or via email. As with most rules, there are certain exceptions to this prohibition. For example, if the person being contacted is a family member, a close personal friend, a lawyer, or a former client, then direct contact is typically allowed in the majority of states.

Lawyers may also be allowed to send solicitation letters, audio/video recordings, and emails to potential clients. However, the solicitation materials must usually be clearly labeled “*Advertising Material.*” Copies of these solicitation materials may also have to be filed with that state’s Office of Lawyer Regulation.

Second, a lawyer cannot usually claim they are a “*specialist*” in a particular field of law. Again, as with most rules, there are exceptions. If the particular organization that certified the lawyer as a specialist has been accredited by the American Bar Association, then the lawyer can use that certification in an advertisement, if he or she clearly identifies the organization that has created the certification. Unfortunately, there is currently no accreditation by the American Bar Association for Traumatic Brain Injury Specialist.

Third, lawyers are typically not allowed to pay others to refer clients to the lawyer. This prevents lawyers from directly paying people to give them cases. However, it also prohibits lawyers from giving “*kickbacks*” to doctors, chiropractors, or any other healthcare provider, for reciprocal referrals.

Recently, a lawyer's license was suspended for operating a kickback scheme with a chiropractor. The lawyer was eventually convicted of federal conspiracy to commit mail and wire fraud charges for his involvement in the kickback scheme. His law firm, however, continued to operate and represent clients during his imprisonment. The lawyer, now out of prison, has been reinstated through his state bar, despite his state's Office of Lawyer Regulation recommendation that he not be allowed to practice law.

Fourth, lawyers cannot make false or misleading advertisements concerning their services. An example of a false or misleading advertisement would be if the lawyer on television would declare, *"I will get you a million dollars for your case."* Obviously, lawyers do not come right out and make such ridiculous claims. However, as you have probably seen, some lawyers come very close. It is important to listen to the exact language in the advertisement. For example, there is an important distinction between *"We can get you \$1 million!"* vs. *"We have gotten a past client \$1 million."*

Advertisements can be considered false or misleading if they leave out certain information, which if it had been included, would have led the consumer to a different decision. This leads to a gray area that has not yet been explored by many different states lawyer regulation offices.

Some lawyers run television ads that have former clients, or even paid actors, stating something along the following lines: *"Call my lawyer. He got me one million dollars for my car accident claim, and it only took two months."* The former clients or actors appear healthy, with no obvious signs of permanent injury. The portrayal of an average looking citizen, with no apparent injury, receiving one million dollars in a couple months can lead the viewer to think of only one logical conclusion: *"Even if I am not hurt, this lawyer can get me a million dollars for my accident case in a couple months."*

These types of advertisements omit the truth about the client's injuries. Personal injury victims are allowed to recover reasonable and necessary money damages for property damage, out-of-pocket

expenses, past and future medical bills, past and future wage loss, and past and future pain and suffering. These former clients or actors conveniently leave out any information about the individual client's injuries, medical bills, wage loss, or pain and suffering.

The American Bar Association publishes comments and recommendations concerning lawyer advertising. They suggested that television advertisements that lead a viewer to conclude that they may obtain a similar result as these former clients or actors without an explanation of the legal or factual conditions of each of the past clients' cases could be considered misleading.

An unfortunate side-effect of such advertising is that it fuels the common misperception that a personal injury lawsuit is the equivalent of a lottery ticket. This belief can be traced back to the insurance industry's conscious decision in the 1980's to attempt to change public perception through the use of targeted advertisements of certain "*outrageous*" jury verdicts. In fact, the lawyer ads mentioned earlier and the ads run by the insurance industry have a very similar underlying theme, i.e. that juries are unpredictable. The lawyer runs these ads in an attempt to retain victims of personal injuries, while the insurance industry runs similar ads in an attempt to convince the public that the jury system has run wild. Neither the lawyer, nor the insurance industry, is forthright with the consumer. There are very few "*outrageous*" jury verdicts. The few "*outrageous*" jury verdicts are usually reduced by the trial judge or reversed on appeal.

It should be obvious that lawyers running such ads do not spend a lot of time in the courtroom, in front of real jurors. It is also likely that they do not intend to spend much time in front of juries, or they would not be poisoning the jury pool with such misleading claims. These law firms tend to take any injury case that walks in the door, all in an attempt to obtain some type of settlement from an insurance company-- no matter what the facts of the particular case. These law firms are known in the industry as "*personal injury mills*." Mill is the operative word, as their offices are usually run like a mill or an assembly line, where the client becomes just another

part of the system. The secretary or paralegal usually handles the majority of the work, while the actual lawyer may not even be assigned to the case until the client has been discharged by their doctor.

An unfortunate side-effect of such advertising is that it really fuels the common misperception that a personal injury lawsuit is the equivalent of a lottery ticket.







Types of Lawyer Contracts and Fees

Prior to hiring a Traumatic Brain Injury lawyer, it is critical that the consumer have an understanding of the terms of the agreement with the lawyer. This agreement is commonly referred to as the “*Retainer Agreement*” or in a personal injury case a “*Contingent Fee Agreement*.” A “*Retainer Agreement*” or “*Contingent Fee Agreement*” is simply a contract between the client and his or her lawyer. It should set out the duties and responsibilities of the lawyer, as well as the duties and responsibilities of the client. It should also explain who is responsible for paying out-of-pocket expenses, such as expert witness fees, court filing fees, service fees, deposition fees, travel expenses long distance calls, and photocopy expenses.

In most states, the retainer agreement will likely be one of the following types:

- *Contingency Fee Agreement – most commonly used in Traumatic Brain Injury cases and most Personal Injury cases*
- *Hourly Rate – the most common retainer agreement*
- *Traumatic Brain Injury survivors; their guardianship attorney may utilize an Hourly Rate Fee Agreement*
- *Flat Fee – sometimes used by guardianship lawyers*

- *Statutory Fee* – some states have statutes that govern the amount of attorney's fees; examples for Traumatic Brain Injury cases can include medical malpractice fee agreements and worker's compensation fee agreements
- *Hybrid* – a combination of two or more of the above-listed fee agreements

In Traumatic Brain Injury cases, Contingent Fee Agreements are by far the most common, and typically provide that the lawyer receive a percentage of the total settlement or jury verdict awarded. Contingent Fee Agreements in Traumatic Brain Injury cases also usually provide that the lawyer pay or “front” the costs that are incurred as the case progresses. However, these costs are usually passed on to the client at the time of the settlement or jury verdict. Most Contingent Fee Agreements provide that the fee is taken out prior to any other expenditures, such as unpaid medical bills or the costs associated with prosecuting the claim.

The percentage of fees can range from 25% to as high as 50% of the total recovery. Sometimes, less experienced attorneys will offer their services at a 25% contingent fee in an attempt to generate clients and undercut competition. A word of caution: you usually get what you pay for. Most established personal injury lawyers will charge 33 1/3%. This is the “standard” contingent fee amount. In Traumatic Brain Injury cases, it is not uncommon for Contingent Fee Agreements to stage their fees, for example the contingent fee may be 33 1/3% of total recovery if the case settles without the need for a lawsuit, but if a lawsuit is required, then the fee may go up to 40%. The theory behind a staged contingent fee is that much more time and money is required if a lawsuit is required to prosecute the case. Some states limit the amount an attorney can charge, or require court approval if the fee charged is more than a certain amount.

Sometimes, the lawyer may ask that the client pay out-of-pocket costs to the lawyer as they are incurred by the lawyer. This is not customary and it is especially difficult in Traumatic Brain Injury cases because the client is usually facing financial hardship due to the injury. Sometimes, this type of agreement is used in difficult

cases, where both the client and the lawyer understand that the case may be difficult to win, so both parties agree that the client will take the risk associated with pursuing the case. On the other hand, such agreements could also be an indication that the lawyer does not have sufficient funds to prosecute the case.

NOTE: Many lawyers advertise “No Fee Unless You Win.” This means they are using Contingent Fee Agreements. Therefore, the lawyer gets paid a contingency of the final settlement amount or jury verdict. However, notice the language in the ad “No FEE Unless You Win.” It doesn’t say anything about costs.

Almost every contingent fee agreement addresses out-of-pocket expenses paid by the lawyer. These are the “costs” associated with prosecuting your case. Almost every Contingent Fee Agreement also provides that the client is ultimately responsible for such costs. (Examples include hiring experts, paying healthcare providers for your medical records, paying an investigator, paying doctors to testify, paying other witness fees, mileage reimbursement, travel expenses, etc. Some personal injury lawyers even charge for postage, long distance telephone calls, facsimile charges and photocopies. However, this is relatively uncommon.)

While these ads offer you “No Fee Unless You Win,” they fail to explain that if your lawyer loses your case, the contract will likely hold you responsible for the out-of-pocket costs that the lawyer spent prosecuting your case.

Most reputable law firms will not attempt to collect their outstanding costs from the client, should the case be lost at trial. However, for some law firms, it is standard practice to sue their clients for all the costs if they lose at trial.







The Importance of Choosing the Right Traumatic Brain Injury Attorney

Traumatic Brain Injury cases are different than most other types of personal injury cases for a variety of reasons. Victims of Traumatic Brain Injury must use the utmost care and diligence in selecting an experienced Traumatic Brain Injury attorney. Unfortunately, many times the judgment of the victim of the Traumatic Brain Injury has been compromised due to their injury. It is critical that friends and family members assist the Traumatic Brain Injury survivor in their search for the right attorney.

The right personal injury lawyer can make all the difference to the future of the traumatic brain injury survivor.

Obtaining the Best Medical Treatment & Rehabilitation for the Brain Injury Victim

The right lawyer can be of great assistance to the brain injury victim in obtaining the necessary medical treatment. Victims of Traumatic Brain Injury are in a very difficult position in that their injury oftentimes limits their ability to communicate with their healthcare providers. The personal injury attorney can play a critical role in

ensuring their clients receive the necessary medical diagnosis and treatment from health care providers experienced with brain injury victims.

In the case of a coma, the victim is unconscious and unable to communicate at all. The coma victim needs not only a guardian to protect their rights, but also a personal injury attorney with experience representing Traumatic Brain Injury survivors. If the coma patient is not getting appropriate rehabilitation, the experienced personal injury attorney may be able to get the patient into an aggressive rehabilitation program. Studies have shown that aggressive early and long-term rehabilitation has a direct correlation with improved long-term outcome following severe brain injury.

Unfortunately, many doctors allow health insurance carriers to dictate the level of rehabilitation following severe Traumatic Brain Injury cases. Too often, this results in the patient being sent to a nursing home with no hope for future cognitive improvement. Since the experienced brain injury attorney will oftentimes know different brain injury professionals and rehabilitation facilities, they may be able to get their clients the necessary rehabilitation despite the lack of health insurance coverage for such services. Some rehabilitation facilities will accept these patients if they know the personal injury attorney will pay them for this care at the end of the case. This can sometimes be the difference in favorable long-term outcome for the brain injury survivor.

Obtaining the Necessary Advanced Imaging

The right lawyer can also assist the brain injury victim in obtaining the necessary advanced imaging of the brain. Neuroimaging can include any or all of the following:

- *Computed Tomography (CT)*
- *Magnetic Resonance Imaging (MRI)*
- *Functional Magnetic Resonance Imaging (fMRI)*
- *Susceptibility Weighted Imaging (SWI)*

- *Positron Emission Tomography (PET)*
- *Electroencephalography (EEG)*
- *Near Infrared Spectroscopy (NIRS)*
- *Single-Photon Emission Computed Tomography (SPECT)*

It has long been well known by Traumatic Brain Injury attorneys that the results of advanced neuroimaging can make or break a case for the brain injury survivor. However, I have witnessed first-hand how advanced neuroimaging has helped my clients receive better healthcare treatment. Many times the extent of my client's disability has been questioned by their treating physicians early on in the case. Then I have been able to obtain advanced neuroimaging for the patients. Not surprisingly, the advanced imaging techniques show objective evidence of damage to the exact areas of the brain one would expect based on the symptoms experienced by the patients. No longer can the treating doctors question the extent of the brain injury survivors' deficits, when those complaints are consistent with the area of damage shown on the advanced imaging techniques.

Developing the Legal Case with the Right Experts

The right lawyer can assist the brain injury victim in obtaining the necessary opinions to fully account for all of the Traumatic Brain Injury survivors' damages. Experienced brain injury attorneys realize there are certain harms and losses unique to Traumatic Brain Injury survivors.

Vocational Experts with Brain Injury Experience

The majority of Traumatic Brain Injury victims will sustain a loss of ability to earn money in the future. This may be a direct inability to work since the injury, or the brain injury victim may have returned to work but now cannot work as long or may earn less. It is important to keep in mind that studies have established that Traumatic Brain Injury victims will also have a shortened work life expectancy. If they are fortunate enough to return to work after their injury, they will likely leave the work force before non-brain

injured people. The experienced brain injury attorney must retain a Vocational Expert that has the necessary training and experience in brain injury to put a value on this loss. Otherwise, the Traumatic Brain Injury victim is not fully recovered for all of their future losses.

Life Care Planner with Brain Injury Experience

The majority of Traumatic Brain Injury victims will need future medical care. Of all the clients that come to me after they realize they have hired an attorney without adequate experience handling brain injury cases, the failure to account for future medical care is the most common mistake the prior attorneys have made. The appropriate expert will accurately and credibly calculate the value of future medical care, treatment, therapy, rehabilitation and medications. In a brain injury case, this category is typically the largest amount of any of the tangible, special damage categories (the others are past medical bills, past wage loss, and future loss of earning capacity).

Future Health Care Problems

Experienced Traumatic Brain Injury attorneys should understand that their clients are at an increased risk of developing numerous health problems later in life. Studies have established a link between even a single Traumatic Brain Injury and the following medical conditions:

- *Early Cognitive Decline*
- *Early-Onset Dementia*
- *Alzheimer's Disease*
- *Parkinson's Disease*
- *Epilepsy*

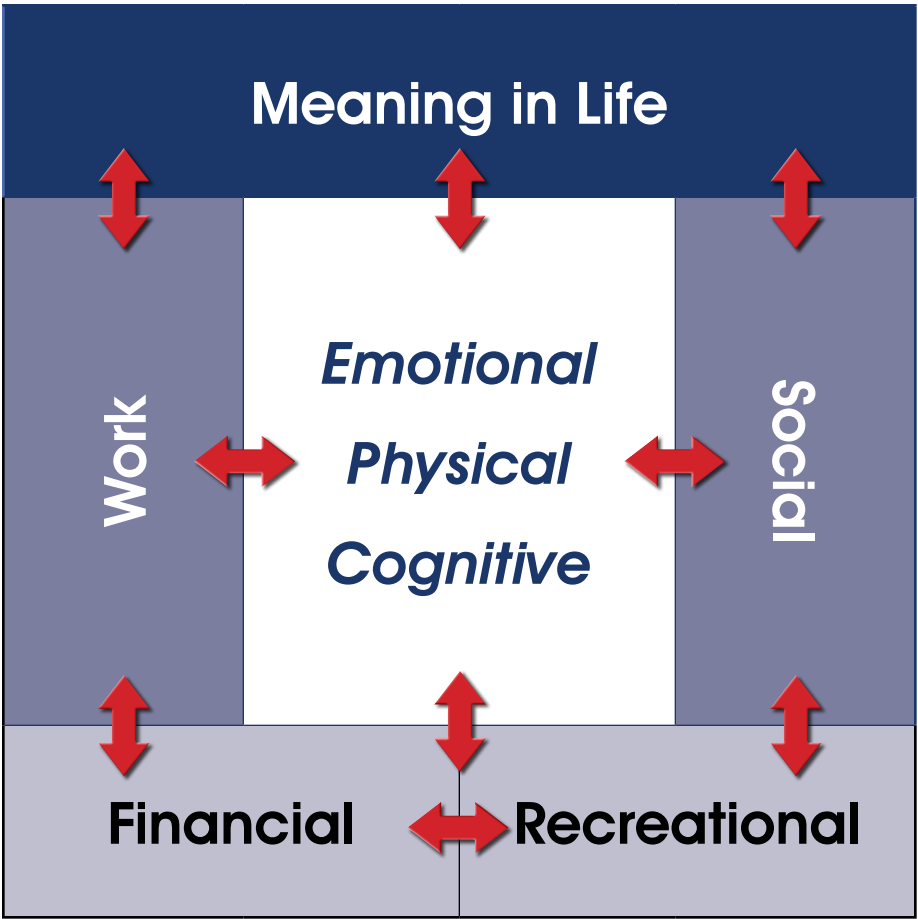
Life Care Planners with a background in working with Traumatic Brain Injury survivors will understand the increased risk of developing these debilitating diseases later on in life. There is an incredible cost associated with caring for individuals with any of the above diseases and such costs must be accounted for in the life care plan.

Experienced brain injury attorneys will also understand that the costs associated with the increased risk of developing these debilitating long-term medical conditions are not the only element of damages. The Traumatic Brain Injury survivor's anxiety and fear of developing these conditions can cause a great deal of stress and conflict with loved ones, as well as feelings of insecurity. This anxiety and fear is entirely separate subcategory within the Future Pain and Suffering category of damages. It is essential that Traumatic Brain Injury survivor or their guardian make an informed decision before hiring a lawyer for their injury case.

Personal Losses

Any Traumatic Brain Injury survivor will tell you that their personal losses are the most devastating. These personal losses may include the inability to concentrate, forgetfulness, change in personality, quickness to anger, inability to emotionally connect with anyone, mood swings, anxiety, depression, and many others.

One of the best ways to conceptualize these problems is one formulated by the great neuropsychologist, Ronald Ruff. He categorized the problems following Traumatic Brain Injury into the following different areas: physical, emotional and cognitive. Once the losses following Traumatic Brain Injury are placed into these three areas, it is easy to identify the interplay between these losses and their effect on the totality of the injury victim's life. I have found that it often helps for an outsider to keep in mind that a brain injury is an injury to a person's MIND. The mind defines us as a person. Therefore, an injury to one's mind completely changes that person. In his excellent treatise, *Mild Traumatic Brain Injury and Neural Recovery: Rethinking the debate*, by Ronald M. Ruff, *NeuroRehabilitation* 28 (2011) 167–180, DOI 10.3233/NRE20110646. Dr. Ruff utilized the “*Patient-Based Perspective*” diagram on the following page to depict this interplay:





Making an Informed Decision: The 5-Step Process for Choosing an Attorney

The key to finding the right Traumatic Brain Injury lawyer is to utilize an organized system to assist you and to stick to that system.

Make Sure the Attorney Has Experience Representing Brain Injury Victims

Instead of handling all types of injury claims, many highly successful personal injury lawyers limit their practice to specific types of injuries. This allows the attorney to better focus their time on those types of injuries. They are not learning new medicine for every case. They are very comfortable with the best experts in the fields of medicine in which they practice and they are not intimidated when faced with medical experts that have been retained by the insurance companies to say that their client was not injured or the client does not have permanent disabilities as a result of the injury. Attorneys that develop a particular area of expertise are in a much better position to obtain more money for their clients with those particular types of injuries because they have a better idea as to the amount a jury may award for these kinds of injuries

Many attorneys advertise for Traumatic Brain Injury cases, but very few have the necessary experience, knowledge, connections and vast resources required to develop these cases to the fullest extent. The internet is a great resource for researching an attorney. If the attorney or law firm has a page or pages regarding Traumatic Brain Injury, review the pages carefully. If the attorney or law firm has generic, stock brain injury text, then they typically do not have the experience you are looking for in a brain injury attorney.

A Traumatic Brain Injury victim needs an attorney that has the passion and patience necessary to deal with the unique challenges present in most brain injury cases. You are looking for an attorney that belongs to several professional organizations involving Traumatic Brain Injury advocacy. You should also look to see if any of the attorney's past cases involve Traumatic Brain Injury and if the case results appear impressive. Finally, look to see if the attorney presents to other attorneys on brain injury related topics. This is another good indication of the attorney's passion and dedication to Traumatic Brain Injury survivor's advocacy.

Identify the Severity of the Traumatic Brain Injury

Research the severity of your particular Traumatic Brain Injury. The representation of brain injury survivors involves unique challenges depending on the severity of their brain injury. For example, in severe brain injury cases it is typically critical for the attorney to do all they can to get the survivor into a reputable rehabilitation center as quickly as possible. This typically means getting the guardian appointed as soon as practical and then making contact with different facilities depending on health insurance, government benefits and assets. It may also include offering facilities payment at the resolution of the personal injury case.

In mild brain injury cases, it is important to find an attorney that has experience proving such cases. This is typically done through the use of the following:

- *Advanced Neuroimaging*
- *Expert Neurologists*
- *Expert Neuropsychologists*
- *Expert Neuropsychiatrists*
- *Expert Psychiatrists*
- *Treating Doctors*
- *Treating Therapists*
- *Credible friends and family members that can confirm & contrast the difference between the brain injured person before the injury as opposed to after the injury.*

When interviewing a potential brain injury attorney, be sure to inquire as to whether they have experience handling your particular brain injury, i.e. mild, moderate or severe. If you are fortunate, you will find an attorney that has experience in handling all types of brain injuries. As such, they will likely have access to the best experts in order to prove the injury and the damages as a result of the injury.

Search Nationally for Potential Brain Injury Lawyers

Technology has allowed many attorneys to take their expertise national. Many attorneys, at least those that embrace new technology, now have a national practice.

For example, our office makes a conscious effort to stay abreast of technological advancements that improve our law practice. From advancements in video conferencing to trial exhibit presentation software, our office has stayed at the forefront of new technological advancements. This has allowed us to handle cases across the country while maintaining real time, secure client communication, as well as communications with our local counsel or referring attorneys, who we always associate with in cases outside of our home state.

TIP You need not limit your search for a brain injury attorney to local lawyers. Remember, technological advancements allow exceptional attorneys to easily and efficiently represent clients across the country. Ask yourself, “Do I want the best brain injury attorney in my city?” or “Do I want the best brain injury attorney in the country?”

Request Written Material From the Law Firm

As was explained, it is absolutely critical that you choose the right Traumatic Brain Injury lawyer to represent you or your loved one. You obviously have the option of calling a lawyer and setting up an appointment. However, if you first get written material from the lawyer, then you cannot be pressured into signing something you may later regret. You will be able to first read the lawyer’s materials, research the lawyer online, and then decide on your own time whether this lawyer is right for your case.

If you call a law firm for written materials and instead of politely sending some information, they attempt to get you into their office, then beware. If they do not have informative, written materials, or if they are pressuring you to come in and sign a retainer, then they are probably not reputable.

In some states, lawyers are allowed to send out mailers to accident victims after obtaining their name and address from motor vehicle accident reports or other sources. If your state allows attorneys to do so, then there is nothing wrong or unethical about this and you may simply throw them all in the garbage. However, keep in mind that the goal of this process is to educate yourself about potential lawyers BEFORE retaining a lawyer. Read the materials and see if there is anything of interest in the materials. Some lawyers spend the majority of their marketing money on these materials. Since that is where they spend their money, then the materials may actually contain some useful information.

Keep in mind that the ethics rules in most states prevent lawyers from directly contacting you in person, by telephone, or by email. If this happens you should report it to your state bar.

“Free Chiropractic Visit”

I recently heard the unfortunate story of a lady who was trying to fire her lawyer. He had her case for over two years and had done nothing with it. She was completely disabled as a result of the accident but even that didn't get the lawyer motivated to move forward with her case.

Then I learned of how she met her lawyer. Shortly after her car accident, she received a call from a chiropractor offering her a “Free Initial Examination.” She was in pain and it sounded ideal, so she went in for a visit.

Upon attending her free appointment, the chiropractor seemed nice enough. Then, in the middle of the first treatment session, the chiropractor asked her if she had a lawyer yet. When she answered “no,” the chiropractor insisted that she meet his friend, the lawyer, who just happened to be in the neighborhood, and would be stopping by as soon as her chiropractic appointment ended.

Apparently, the chiropractor and the lawyer had a secret agreement and since the lawyer couldn't call the lady directly without risking being disbarred, he had the chiropractor do his soliciting for him.

It would be unlikely that a reputable law firm would solicit clients in this manner.

Schedule a Telephone Appointment Ask the Important Questions

Now that you are comfortable that you have done the necessary background research, it is time to set up a telephone or video conference with the lawyer or lawyers. Think of this as your chance to cross-examine the lawyer. Ask the tough questions and don't let the lawyer side-step around any of the important questions. If they attempt to do so, then object as non-responsive and force them to answer your question, just as the lawyer would do in the courtroom. If the attorney is an experienced, competent Traumatic Brain Injury attorney, then he or she will appreciate your persistence and will answer your questions much more directly.

So what questions do you ask? See Appendix B for a non-exhaustive list of questions to ask a potential attorney. NOTE: Many of the questions can likely be answered by researching the attorney online prior to the telephone consultation.

Do not hire a traumatic brain injury Attorney unless you, your family members, loved ones and/or guardians are 100% comfortable with that attorney. You only get one chance to recover for all of your harms and losses and your attorney is the key to recovering these losses.



In Conclusion

One of the most important decisions you must make following a Traumatic Brain Injury is choosing your lawyer. Finding the right personal injury lawyer for your case can be a daunting task and it is hard work. It should not be taken lightly, because the right lawyer can make a big difference in not only your legal case, but also in your recovery from the brain injury. We wish you the best of luck in choosing the right brain injury lawyer for your case and we also wish you the best of luck in your recovery from your injury. If you would like to arrange for a time to speak with me, please do not hesitate to call or email.

Sincerely,

Randy Rozek

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Appendix A

Brain Injury Symptom Checklist

- ☐ Headaches
- ☐ Fatigue
- ☐ Dizziness
- ☐ Blurred vision
- ☐ Trouble concentrating
- ☐ Bothered by noise
- ☐ Bothered by light
- ☐ Irritability
- ☐ Loss of temper easily
- ☐ Memory difficulty
- ☐ Anxiety
- ☐ Insomnia
- ☐ Personality
- ☐ Emotional Volatility
- ☐ Wide mood swings
- ☐ Decreased judgment
- ☐ Negative attitudes
- ☐ Argumentative
- ☐ Tactlessness
- ☐ Apathy
- ☐ Fearfulness
- ☐ Loss of self-confidence
- ☐ Immature behavior
- ☐ Loss of sense of self
- ☐ Reduced stress tolerance
- ☐ Depression
- ☐ Personality changes
- ☐ Temper problems
- ☐ Explosive irrational anger
- ☐ More suspicious, paranoid
- ☐ Defensive
- ☐ Impatience
- ☐ Loss of initiative
- ☐ Lack of self-esteem
- ☐ Coordination problems
- ☐ Sleep disturbance
- ☐ Sudden emotional outbursts
- ☐ Withdrawal from family and friends
- ☐ Attributes bad motives to others
- ☐ Decreased attention span
- ☐ Confusion
- ☐ Stuttering
- ☐ General processing ability
- ☐ Decreased ability to plan
- ☐ Word-finding difficulty
- ☐ Decreased perception
- ☐ Difficulty expressing self
- ☐ Loss of sense of purpose
- ☐ Slower thinking
- ☐ Slower reading
- ☐ Loss of creativity
- ☐ Difficulty following conversations
- ☐ Difficulty understanding others
- ☐ Decreased academic functioning (reading, spelling, math, etc.)
- ☐ Decreased comprehension
- ☐ Problems understanding ideas
- ☐ Loss of intelligence
- ☐ Change in sense of smell
- ☐ Hearing loss
- ☐ Ringing in ears
- ☐ Nausea
- ☐ Vision problems – focusing or blank spots
- ☐ Sense of taste or food preference altered

Appendix B

Questions To Ask A Potential Traumatic Brain Injury Attorney

- *How long have you been practicing law?*
- *How much experience do you have handling cases like mine, i.e. Mild, Moderate or Severe Traumatic Brain Injury?*
- *If so, how many? How did they turn out?*
- *Have you ever represented people injured in the manner I have been injured, i.e. car accident, truck accident, etc.?*
- *If so, how many? How did those cases turn out?*
- *Do you belong to any professional organizations that are pertinent to my case? Examples include the following:*
 - *American Association for Justice – Traumatic Brain*
 - *Injury Litigation Group*
 - *Brain Injury Association of America*
 - *The Attorney's State Brain Injury Association*
 - *North American Brain Injury Society*
 - *0International Brain Injury Association*
- *Have you ever been formally or informally disciplined by the*
- *State Bar of any state? If so, for what?*
- *Is your practice nationwide or limited to one state or city?*
- *Do you have access to the best brain injury experts from across the country?*
- *Do you embrace new technology?*
- *How will new technology play a role in my case?*
- *What percentage of your current caseload is limited to*
- *Traumatic Brain Injury cases at the present time?*
- *Do you stay abreast of recent advancements in*
- *Traumatic Brain Injury and if so, how?*
- *What is the most difficult thing about my case?*
- *What is the process involved in handling my case?*

- *How much money do you typically invest in cases such as mine?*
- *Who will be working on my case, i.e. will you personally handle it or will it be referred out?*
- *How long will this process take?*
- *How much is your retainer fee and how is it structured?*
- *What is your Avvo.com rating?*
- *Have you been named as a SuperLawyer?*
- *Have you presented to other attorneys in professional organizations regarding Traumatic Brain Injury?*
- *Have judges or doctors ever referred you Traumatic Brain Injury cases?*





About the Author

Attorney Randy Rozek has devoted his professional career to representing individuals who were harmed by the negligent or intentional conduct of others. Randy has successfully taken on large corporations and insurance companies throughout the United States on behalf of those who were wronged. Randy manages and runs his own office, Rozek Law Offices, S.C., with offices in Milwaukee and Madison, Wisconsin. Randy routinely lectures to other attorneys throughout the United States and he devotes a substantial amount of time to various advocacy groups.

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