

Will a Lawyer Take My Case on Contingency?

Contingency fee arrangements are common in cases involving personal injury, medical malpractice, and product liability. A contingency fee arrangement means that an attorney agrees to defer payment of attorney's fees and costs until the client receives a recovery in the case. That means the client does not pay any money up front and only pays if the attorney obtains a recovery for the client. However, some attorneys may be willing to accept other types of cases on a contingency fee basis. So, what type of case might an attorney be willing to take on a contingency fee basis? There are certain criteria that an attorney will consider when evaluating your case, including the following.

- **Likelihood of Success.** It is not beneficial for either the client or the attorney to make the significant investment of time, effort, and expense if the case is not likely to result in a successful settlement or collectible judgment. Litigation is time consuming and can involve a significant investment of funds and resources. Therefore, an attorney will evaluate the likelihood of success before deciding whether to pursue a case on a contingency fee basis.
- **Potential Amount of Recovery.** In the most common contingency fee arrangement, the attorney is paid a fixed percentage of the recovery for attorney's fees. However, expenses of the case will also be deducted from the final recovery (e.g. expert witness fees, deposition transcripts costs, court reporter fees, filing fees, etc.). Furthermore, every contingency case involves an inherent risk of zero recovery (even if that risk is small), in which case the attorney, not the client, pays the expenses. Therefore, an attorney will evaluate the potential economic recovery to determine whether it is sufficient to justify the investment of time and expenses by the client and the attorney. Conducting this analysis up front ensures that the client has a realistic expectation of the potential net recovery the client will receive rather than being surprised by hidden costs and expenses after a recovery is obtained.
- **Potential Impact of the Litigation Upon the Client.** Litigation can be time consuming and stressful, even in contingency cases where the client is not paying attorney's fees up front. This factor depends upon the informed decision of the client after an initial consultation with the attorney. The client may have to comply with obligations required to pursue the case such as responding to requests to produce documents or physical evidence, answering written questions under oath, testifying under oath, attending mediation, and even undergoing a medical examination if the case involves personal injury. Some cases settle before significant involvement while others proceed to trial, lasting anywhere from a few months to more than a year.

Although in certain cases a successful settlement can be reached early with skilled legal counsel, there is never a guarantee that this will occur. Therefore, the attorney should educate the client on all potential outcomes, even if unlikely. Then the client can make an informed decision to initiate the lawsuit and not be unfairly surprised once the process is already started. Not every attorney will discuss these matters thoroughly at the outset of

the case, resulting in an unnecessarily stressful experience for clients. If a client is properly educated at the outset of the case, he or she can decide whether the potential economic recovery justifies the potential time and effort of the process—a decision that should lie with the client and not the attorney.

Consult with a Licensed Attorney Before Choosing a Law Firm

Consider contacting multiple law firms before you make a choice—you may be surprised at the range of experiences you encounter. Many clients prefer a more personalized approach where you meet and question the actual attorney that will be representing you before being asked to sign a contract. Contrast this with certain large law firms where a client may only speak with an attorney once throughout the entire case (and not at all before signing up) and can be left feeling like a cog in a machine. Being able to communicate with your attorney is important at the outset and throughout your case. A properly informed client can make informed decisions throughout the case and feel confident that their attorney has maximized their recovery at the conclusion of the case.