

Evaluating an Attorney's Expertise *by Paul Slager, Esq.*

In recent years, there has been steadily increasing awareness and understanding of brain injury and its consequences by health care providers and the public. Unfortunately, as is often the case, the legal profession has lagged behind the medical sciences in this area. For the attorney representing a brain injury survivor, understanding the subtle aspects of brain injury can be crucial to assessing a client's individual needs and, if the matter involves a court case, in effectively presenting the survivor's strongest possible case. To effectively represent a brain injury survivor, an attorney also must be knowledgeable about methods of evaluation and treatment of brain injury, including recent developments in radiology and other neuroscience fields.

Unlike in the medical sciences, however, there is no formal "specialization" for attorneys in brain injury or neuro-law to demonstrate an attorney's competence to effectively represent brain injury clients. Choosing an attorney would be easier if attorneys were labeled as "specialists" by a credible authority. No such formal specialty exists, so clients must find other ways to assess a potential attorney.

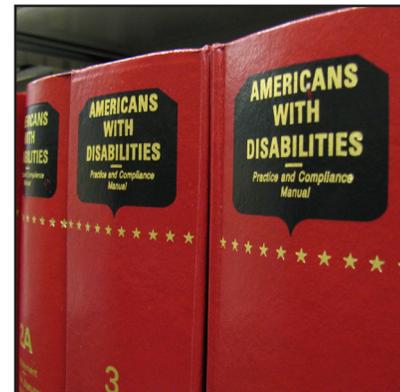
Of course, the lack of a recognized neuro-law specialty makes it difficult for injured consumers and their families to assess whether an attorney is qualified to handle the complex issues they face. Because it is so critical for brain injury survivors to be represented by well-informed attorneys attuned to the special needs of the brain injury survivor, a brain injury survivor must be an educated consumer. Precisely what to look for depends on the reasons help is needed.

Disability Law

Many brain injury survivors require assistance in an

area of law practice often referred to as "disability law" or "benefits law." People who require assistance obtaining federal, state or private health insurance benefits, or in creating estate plans to address difficult aspects of their disabilities, might need the assistance of this kind of attorney. Disability law is a broad and complicated practice area that often involves financial and disabilities planning, drafting of trusts, including special needs trusts, and familiarity with complicated aspects of state and federal benefits, including Medicare, Medicaid and other disability benefits. Although there is no formal disability law specialty, any attorney under consideration to help with these kinds of needs should have special knowledge and experience in this complex practice area.

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This level of expertise can be evidenced in a number of ways, including membership in professional organizations such as the Academy of Special Needs Planners and Center for Medicare Advocacy, which are devoted to educating members on related subjects and new developments in the law. Participation in the Connecticut Bar Association Estates and Probates Section or Elder Law Section, both of which focus on

Connecticut probate law issues and planning, also demonstrates an attorney's commitment to staying up to date on important developments in the area. Attorneys with special training and expertise in Medicare law can also become certified as Medicare Set-Aside Consultants.

A key part of disability law in Connecticut often involves advocacy of clients with disabilities in our probate courts. In assessing a disability attorney, one must understand the attorney's ability to navigate complicated probate laws, as well as probate court procedures and hearings. Disability law is complicated, so much so that, although I have long focused much of my own practice representing brain injury survivors in court, I do not consider myself qualified to counsel clients in disability or benefits law.

Litigation and Trial Law

The field of litigation and trial law obviously is much broader than the field of disability law. Attorneys who practice in this area represent injured persons who seek compensation from another who is responsible for causing their injury. There is certainly no shortage of Connecticut attorneys who practice litigation and trial law. The number of attorneys who understand the nuances of representing brain injury survivors in court, however, remains disappointingly small. As in the field of disability law, there is no recognized brain injury law specialization that distinguishes qualified attorneys, so a close look at an attorney's experience and background is critical. To effectively represent a brain injury survivor in a lawsuit, an attorney must have a sophisticated understanding of how brain injuries happen. This involves knowledge of engineering principles involving motion, injury dynamics and biomechanics. Sometimes serious injuries result from incidents that do not seem terribly traumatic at first glance, so convincing a judge or jury that a serious brain injury resulted might seem a tall order. Understanding how the brain reacts to certain forces and can become injured is crucial to an attorney's success as an advocate for a brain injury survivor.

Equally important, an attorney representing a brain injury survivor should recognize the wide variety of symptoms of brain injury, including memory loss, cognitive problems, balance and depth perception issues, personality alteration, mood disorders and a host of other problems. Many attorneys do not understand fully the nature and extent of problems that can result from brain injuries. Without this understanding, attorneys may not ensure that their clients are properly evaluated, which, in turn, can lead to smaller recoveries that do not reflect the full extent of the injury.

Finally, as with committed attorneys practicing disability law, attorneys who devote a significant part of their work to representing brain injury survivors in lawsuits should be expected to stay current on important scientific and legal developments through active participation in organizations devoted to brain injury education and awareness such as the Brain Injury Alliance of Connecticut or other state brain injury associations or alliances. Another important group devoted to enhancing scientific and legal knowledge of attorneys who actively represent brain injury survivors is the American Association for Justice Traumatic Brain Injury Litigation Group. Successful representation of brain injury survivors depends on familiarity not only with key legal principles involved, but with the scientific study of brain injury, its diagnosis and its consequences.

About the Author

Paul Slager is a partner with Silver Golub & Teitell LLP in Stamford (www.sgtlaw.com), and represents brain injury survivors in courts across Connecticut. He is the former President of the Board of Directors of the Brain Injury Alliance of Connecticut and continues to serve as its Vice President. He can be reached at pslager@sgtlaw.com or 203.325.4491.

