

Attorney Ken Goldberg Shares What It Takes to Zealously and Thoroughly Advocate on Behalf of Personal Injury Clients

Just in time to celebrate 29 years in his thriving law practice, Attorney Ken Goldberg spent some time on the podcast show, Communication Commandments with host Kimberly Calvi, Owner of Boston Edits, LLC, to discuss a sampling of the different types of personal injury cases he has handled in his legal career. Ken shared the serious and delicate topic of client suffering with his trademark compassion and sensitivity, and he even managed to explain these stories with a little bit of levity, showing that diligent care of his client's case from start to finish can result in a positive outcome, both in terms of settlement and helping clients feel supported.

"Personal injury litigation is something that I really enjoyed when I started practicing at the time with my dad," Ken began. "I really enjoyed helping people and had good success with it."

Ken's practice includes real estate, as well, but more than 50% of his practice is focused on personal injury. Within that practice area, Ken has seen a lot of different cases. "It runs the gamut. Slip and fall cases. Slipping on ice or snow. Sometimes there are car accidents that involve slippery conditions. We see dog bite cases, bad prescription cases—incorrect dosing of prescribing. I would say that 80% are car accidents and the other 20% slip and fall cases. A lot of car accidents are what we call 'soft tissue' cases, like whiplash," he elaborated. The number of bicycle accidents has increased. However, conversely, worker's compensation cases have decreased as a result of the pandemic of the last year, he pointed out.

From this catalogue of these types of cases, Ken explained several interesting claims and what he has done on his client's behalf to thoroughly represent them, often meeting with them at the hospital or at home, to begin the process, fill out the necessary forms, and hear their story. Gathering all of the information could mean going to the scene of where an accident occurred, too. "It's really important to get out to the scene. As a lawyer, you're telling a story. You have to see what happened. In many cases, I'll go out and take a look...to get a feel for what my client is telling me," Ken explained.

Every client has to sign a contingent fee agreement, which is a contract between Ken and his client articulating the terms of payment. Ken doesn't get paid until a settlement has been made. Ken's incentive is to get as much money as possible for the client. The larger the settlement, the larger the legal fee.

When it comes to slip and fall cases, Ken said that the response from the property owner or responsible party has a bearing on the outcome of a case. For example, when one client slipped outside of an office building on some ice, she broke her ankle and called the office she had just visited, seeking assistance. They left her waiting for twenty minutes outside in the snow, in pain, before someone threw down some salt. "I'm not saying that a quick apology and a caring attitude will necessarily prevent a claim. But if my clients call me after these slip and fall cases, having been treated like that by the property owner, and we showed it to the insurance

company, it really was almost like a question of how much money is this case worth," Ken remarked. In this case, he said that his visit to the site showed the ice had become frozen puddles over potholes.

Another case, which required readjusting the client's view of the issue, involved the client taking medication, the dosage of which was mislabeled. This caused breathing difficulty for the patient/client, who claimed she was headed towards a catatonic state. An ambulance came, administered an anti-histamine, and she recovered. This client wanted to file a lawsuit arguing that that she almost died. But Ken explained to her that she wouldn't be compensated for what could have happened or almost happened. Instead, he redirected her attention to the emotional distress she experienced in those moments of real worry.

"Part of my job as a personal injury attorney is to advocate for my clients. I push hard and keep pushing and am persistent in trying to get as much money as I can from the insurance companies," Ken said. "The other part of the job is to set expectations appropriately for my clients, where you're entitled to compensation for your pain and suffering, your lost wages, your future loss, your future pain and suffering, your medical bills, and certain other out-of-pocket expenses, and your emotional distress," he highlighted. This point about setting expectations is important because some injuries, especially those involving emotional distress, are not quantifiable. It's not about plugging the case into an algorithm and coming up with a figure. "That's where experience comes into play in terms of what I have for other cases for similar types of injuries," he contends.

Ken has noticed a rise in soft tissue cases, which usually involve concussions. In such cases, time is a helpful indicator regarding the strength of a claim. At first, there may appear to be minimal, if any, injury. But, over time, medical documents could reveal short-term memory loss or other serious side effects from a concussion injury. Ken has seen cases like this where the memory loss or other side effects manifest themselves over a year or longer. In one case, he relayed, the insurance company didn't see the issue. The case went to arbitration and by then, there was ample evidence of memory loss, detrimentally affecting the client's life in performing everyday tasks.

Litigating a case in a courtroom isn't as common as it has been in the past. "We negotiate settlements, including many larger cases. The parties sometimes agree to negotiate using a mediator, usually when you're about to schedule a trial. Mediation is a controlled and organized negotiation. It's very helpful for the client to be able to tell their story to the adjuster. In addition, in many instances, the client can tell their story with the insurance adjuster sitting in the room. The experience has many benefits: The client becomes a person to the insurance adjuster and it's a cathartic experience for the client. With a well prepared client and good mediator, we usually maximize settlement value," Ken said. Of course, he added, there are arbitrations where you may not see eye to eye with the adjuster on the case. Mediation and arbitration are slightly different processes from each other, but the common denominator is that

both are less formal than courtroom litigation, take less time, and are less expensive. The success rate in handling personal injury cases in a mediation or arbitration setting is high. "In thirty years of doing this, I can only recall one or two mediations that didn't result in a settlement," Ken confirmed.

In addition to offering support to a client and setting reasonable expectations, preparation and consistency factor heavily into a successful and reputable personal injury law practice. From the time Ken first meets with a client, takes notes via his own comprehensive intake form, as well as other pertinent information he records to fortify the case, to managing receipt and review of all medical records and bills, he and his staff are in regular contact with the client throughout the lengthy process. Ken assures his clients, "There's certainly a lot of documentation, not just from the beginning, but throughout. We need to stay in touch with people. They may not hear from us for a month or two, but that's because we're doing our work. We usually let them know that we've sent in a demand and we give the insurance company about a month to respond." While there's no hard and fast rule, he adds, the demands he makes on behalf of his clients are fair, but aggressive. In this way, he is presenting his client's case from a position of strength, as well as demonstrating that he's willing to play along with the insurance company.

A value-add that Ken insists on, is preparing his clients for a deposition. "If we file a lawsuit, most definitely, there is going to be interaction with the insurance company's lawyer. I can't tell you how many times I've prepped clients for depositions and told them exactly what to expect," he said. As a result of this, his clients are better prepared to stay focused on the issue and offer strong testimony on their own behalf. This time spent with clients in advance of a deposition is a productive use of time and yields a better outcome.

His ideal client is anyone who has been injured. But just as important, his ideal referral source comes from other lawyers in different practice areas.

Attorney Ken Goldberg's established personal injury practice is characterized by vast experience with a deep knowledge of the full litigation process, a keen awareness of the importance of each step and procedure towards an end that adequately and realistically compensates the client, providing the client with a feeling of being heard and supported, whether in a courtroom or in either mediation or arbitration, throughout what is typically considered an unfortunate circumstance.

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