

A FREE GUIDE FOR MOTORCYCLISTS

Motorcycle Laws in South Carolina Piecing It All Together



BY STEPHAN FUTERAL, ESQUIRE AND THOMAS NELSON, ESQUIRE
COPYRIGHT © FUTERAL & NELSON, LLC, ALL RIGHTS RESERVED

Copyright Notice

**Motorcycle Laws in South Carolina
Piecing It All Together**

Stephan V. Futral, Esq. & Thomas Nelson, Esq.

© 2015 Futral & Nelson, LLC, All Rights Reserved

Self Published

www.charlestonlaw.net

This book contains material protected under International and Federal Copyright Laws and Treaties. Any unauthorized reprint or use of this material is prohibited. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from the author/publisher.

Foreword



Long before I became an attorney, I enjoyed doing some side work by custom airbrushing motorcycles. In those days, a motorcycle was my sole means of transportation. Unfortunately, one day I took a spill on I-26 near Summerville after being cut off in traffic. Although I hit the highway going over 55 mph, by some miracle I didn't suffer any permanent injuries. As a lawyer, I've helped many others who've experienced similar troubles.

The law hasn't changed a lot since I first got my M-Class license, but the engineering and the safety features for motorcycles have. Although many of the changes are for the better, some bikes are so feature-rich that things can get a bit distracting and, consequently, more dangerous. Plus, bikers have to put up with more distracted drivers than ever as folks continue to text on their phones and do other things besides concentrating on the road.

This book isn't about safety tips. Instead, this book is a quick guide on the laws every motorcycle rider in South Carolina should know. Maybe you know them all, or maybe this book brings a few to your attention. Either way, it can't hurt to keep yourself current and to keep it "legal" while you're out enjoying the road.

Best wishes,

Stephan Futeral

About the Authors

Stephan Futral has been a criminal defense and a personal injury attorney since 1993. He was a judicial clerk for the Honorable C. Tolbert Goolsby, Jr., Judge of the South Carolina Court of Appeals, and he has been a law professor at the Charleston School of Law. He was granted membership to the National Trial Lawyers Top 100 Criminal Trial Lawyers. He practices law in Charleston, South Carolina with the law firm of Futral & Nelson, LLC. For more information on Stephan Futral's professional background, please [tap here](#).

Tap to follow Stephan Futral on:



Thomas Nelson was recognized by Super Lawyers as a "Rising Star" as a General Litigation attorney in 2013 and 2014 and was granted membership to the National Trial Lawyers Top 100 Criminal Trial Lawyers. He is a partner in the law firm of Futral & Nelson, LLC.

For more information on Thomas Nelson's professional background, please [tap here](#).

Tap to follow Thomas Nelson on:



[Family Law](#) | [Criminal Defense](#) | [Personal Injury](#)

843-284-5500

Other eBooks by Futral & Nelson:

[Divorce in South Carolina - Piecing It All Together](#)

[DUI in South Carolina - Piecing It All Together](#)

[Gun Laws in South Carolina - Piecing It All Together](#)

Disclaimer

This book is for informational purposes and is not intended to give detailed legal advice. Transmission and receipt of this book does not constitute an attorney-client relationship. Stephan Futral and Thomas Nelson practice law in South Carolina and they do not seek to represent anyone in any jurisdiction where this book does not comply with applicable laws and bar rules.

Readers should not act upon the information in this book without first seeking the advice of an attorney licensed to practice in your area.

South Carolina's Motorcycle Laws

South Carolina's laws that relate to motorcycles are scattered through various statutes. To keep you from having to search for them or from overlooking something important, this chapter pulls the statutes together regarding licensing, equipment and gear, riding, and parking.



SECTION 1

Getting Your License

IN THIS SECTION

1. Two-Wheel Motorcycles
2. Two-Wheel Motorcycles with Side Cars
3. Three-Wheel Motorcycles
4. Getting Your Motorcycle License

Under South Carolina law, a “motor vehicle” is a self-propelled vehicle (except mopeds) that doesn’t run on rails. A “motorcycle” is a motor vehicle with no more than two permanent functioning wheels on the ground and a saddle seat for the operator. A motorcycle three-wheel vehicle means a motor vehicle with no more than three permanent functional wheels on the ground and includes motorcycles with detachable side cars (a rig), having a saddle seat for the operator, and handle bars or a motorcycle type steering device, but excludes an automotive three-wheel vehicle (which is an “automotive type steering device”).

TWO-WHEEL MOTORCYCLES

A Class M motorcycle license allows an individual, 15 years of age or older, to operate any type of motorcycle, including: a two-wheel motorcycle, a motorcycle with a side car, and a three-wheel motorcycle.

TWO-WHEEL MOTORCYCLES WITH SIDE CARS

Effective November 2009, individuals who only want to operate a motorcycle with a side car permanently attached will need a special S3 restriction with their Class M motorcycle license. Operation of a two-wheel motorcycle without a side car attached is prohibited with this restriction. Please note that only SCDMV offices that offer commercial driver testing can administer a motorcycle skills test with a side car. For a list of office locations, [click here](#).

THREE-WHEEL MOTORCYCLES

Three-wheel motorcycles and automotive three-wheel vehicles may be operated with any class license except a Class G moped license. Special endorsements are no longer required to operate these types of vehicles.

GETTING YOUR MOTORCYCLE LICENSE

Here are some of the key requirements for getting your motorcycle license in South Carolina, according to the SC Department of Motor Vehicles:

- If you're 18 years of age or older, you must bring your birth certificate, Social Security card, proof of residency, and insurance information to the DMV. Also, you must pass the vision and road skills tests.
- If you are 15 years old and have held another class beginner permit for 180 days, you're eligible for a motorcycle beginner's permit by taking the vision test and motorcycle knowledge test. If you have a conditional driver's license, you can get a motorcycle conditional license by taking the vision test, the motorcycle knowledge test and the motorcycle skills test.
- If you're 15 years old and have never had a license or beginner's permit, you must have your motorcycle beginner's permit for at least 180 days before you can apply for a motorcycle license.

- If you're under 18, you must (1) bring your parent or legal guardian with you to the DMV to sign your application; (2) bring your beginner's permit; (3) submit Form PDLA that certifies you have (a) completed a driver's education course, (b) had satisfactory school attendance, and (c) practiced driving with your licensed parent or guardian for 40 hours, including 10 hours of driving practice at night; and (4) you must pass the vision and road skills tests.

SECTION 2

Plates, Equipment & Gear

IN THIS SECTION

1. License Plates
2. Footrests & Rear View Mirror
3. Helmets
4. Goggles or Face Shields
5. Wind Screens
6. Bumper Stickers
7. Head Lamps
8. Height of Head Lamps
9. Use of Multi-Beam Lights
10. Road Lighting Equipment
11. Low Speed Road Lighting Equipment
12. Restrictions on Lamps
13. Horns
14. Use of Horns
15. Mufflers

SECTION 56-3-1240. DISPLAY OF LICENSE PLATES; MOTORCYCLES EQUIPPED WITH VERTICALLY MOUNTED BRACKETS; MISSING PLATES.

License plates issued for motor vehicles must be attached to the outside rear of the vehicle, open to view. Every license plate, at all times, must be fastened securely in a horizontal and upright position to the vehicle for which it was issued so as to prevent the plate from swinging. However, if a motorcycle is equipped with vertically mounted license plate brackets, its license plate must be mounted vertically with its top fastened along the right vertical edge. The bottom of the plate must be at a height of not less than twelve inches from the ground in a place and position clearly visible as provided in Section 56 5 4530, and it must be maintained free from foreign materials and in a clearly legible condition. No other license plate, lighting equipment, except as permitted in Section 56 5 4530, tag, sign, monogram, tinted cover, or inscription of metal or other material may be displayed above, around, or upon the plate other than that which is authorized and issued by the Department of Motor Vehicles for the purpose of validating the plate. It is not unlawful to place a decal on the license plate if it does not obscure any letters or numbers. It is unlawful to operate or drive a motor vehicle with the license plate missing and a person who is convicted for violating this section must be punished as provided by Section 56 3 2520.

SECTION 56-5-3650. FOOTRESTS; REAR VIEW MIRROR.

- (A) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, must be equipped with footrests for its passenger.
- (B) A person shall not operate any motorcycle unless it is equipped with a rear view mirror which will afford the operator ample vision to the rear at all times.

SECTION 56-5-3660. HELMETS SHALL BE WORN BY OPERATORS AND PASSENGERS UNDER AGE TWENTY-ONE; HELMET DESIGN; LIST OF APPROVED HELMETS.

It shall be unlawful for any person under the age of twenty-one to operate or ride upon a two-wheeled motorized vehicle unless he wears a protective helmet of a type approved by the Department of Public Safety. Such a helmet must be equipped with either a neck or chin strap and be reflectorized on both sides thereof. The department is hereby authorized to adopt and amend regulations covering the types of helmets and the specifications therefor and to establish and maintain a list of approved helmets which meet the specifications as established hereunder.

SECTION 56-5-3670. GOGGLES OR FACE SHIELDS.

It shall be unlawful for any person under the age of twenty-one to operate a two-wheeled motorized vehicle unless he wears goggles or a face shield of a type approved by the Department of Public Safety. The department is hereby authorized to adopt and amend regulations covering types of goggles and face shields and the specifications therefor and to establish and maintain a list of approved goggles and face shields which meet the specifications as established hereunder.

SECTION 56-5-3680. WIND SCREENS.

The provisions of Section 56-5-3670 with respect to goggles and face shields shall not apply to the operator of a two-wheeled motorized vehicle equipped with a wind screen meeting specifications established by the Department of Public Safety. The department is hereby authorized to adopt and amend regulations covering types of wind screens and specifications therefor.

SECTION 56-5-3885. UNLAWFUL TO DISPLAY OBSCENE BUMPER STICKER.

- (A) No person may operate a motor vehicle in this State which has affixed or attached to any part of the motor vehicle which is visible to members of the public not occupying the vehicle any sticker, decal, emblem, or other device containing obscene or indecent words, photographs, or depictions.

(B) Obscene words, photographs, or depictions must be defined and interpreted as provided in Section 16-15-305(B), (C), (D), and (E).

(C) A sticker, decal, emblem, or device is indecent when:

- (1) taken as a whole, it describes, in a patently offensive way, as determined by contemporary community standards, sexual acts, excretory functions, or parts of the human body; and
- (2) taken as a whole, it lacks serious literary, artistic, political, or scientific value.

(D) A person who violates the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding two hundred dollars.

SECTION 56-5-4490. HEAD LAMPS REQUIRED ON MOTOR VEHICLES AND MOTORCYCLES.

Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle. Such head lamps shall comply with the requirements and limitations set forth in this article. Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this article.

SECTION 56-5-4500. HEIGHT OF HEAD LAMPS FROM GROUND.

Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in Section 56-5-4480. However, this section shall apply only to new vehicles sold in this State after June 30, 1949.

SECTION 56-5-4780. USE OF MULTIPLE-BEAM ROAD-LIGHTING EQUIPMENT.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 56-5-4450, the driver shall use a distribution of light or composite beam directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

- (1) Whenever the driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver;
- (2) The lowermost distribution of light or composite beam specified in item (2) of Section 56-5-4770 shall be aimed to

avoid glare at all times, regardless of road contour and loading; and

(3) Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this section other than the uppermost distribution of light specified in item (1) of Section 56-5-4770.

SECTION 56-5-4800. ROAD-LIGHTING EQUIPMENT ON MOTOR-DRIVEN CYCLES.

The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every such head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five or more miles per hour, and any such motor-driven cycle shall be subject to the speed limitations in Section 56-5-1550;

(2) In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps, the upper beam

shall meet the minimum requirements set forth above and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in item (2) of Section 56-5-4770; and

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

SECTION 56-5-4810. ALTERNATE ROAD-LIGHTING EQUIPMENT AT LOW SPEEDS.

Any motor vehicle may be operated under the conditions specified in Section 56-5-4450 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in Sections 56-5-4770 and 56-5-4790, provided that it is at no time operated at a speed in excess of twenty miles per hour.

SECTION 56-5-4830. SPECIAL RESTRICTIONS ON LAMPS; DEGREE OF INTENSITY; RED, BLUE AND FLASHING LIGHTS.

Any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, and school

bus warning lamps, which project a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

A person shall not drive, move, or park any vehicle or equipment upon a highway with a lamp or device on it displaying a red or blue light visible from directly in front of the center of it. This section shall not apply to a vehicle upon which a red or blue light visible from the front is expressly authorized or required by this chapter.

Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow-removal equipment, or on any vehicle as a means of indicating a right or left turn or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

SECTION 56-5-4950. HORNS AND WARNING DEVICES.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or whistle. No vehicle other than an authorized emergency vehicle shall be equipped with nor shall any person use upon any such vehicle any siren, whistle or bell.

SECTION 56-5-4960. USE OF HORN.

The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his horn but shall not otherwise use such horn when upon a highway.

SECTION 56-5-5020. MUFFLERS.

Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke and no person shall use a muffler cutout, bypass or similar device upon a motor vehicle upon a highway. The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes and smoke.

SECTION 3

Riding

IN THIS SECTION

1. Speed Limitation (Head Lamps)
2. Driving Upon Sidewalk
3. Stop & Turn Signals
4. Rights and Duties of Operator of Motorcycle Generally
5. Manner in Which Motorcycles Shall Be Operated
6. Motorcycle Entitled to Full Use of Lane; Riding Two or More Abreast; Overtaking and Passing; Operation in other Instances
7. Time When Motorcycle Lights Shall Be Turned On
8. Traffic-control Signal Legend

SECTION 56-5-155o. SPEED LIMITATION ON MOTOR-DRIVEN CYCLES.

No person shall operate any motor-driven cycle at any time mentioned in Section 56-5-4450 at a speed greater than thirty-five miles per hour unless such motor-driven cycle is equipped with head lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead.

SECTION 56-5-3835. DRIVING UPON SIDEWALK.

No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

SECTION 56-5-218o. SIGNALS SHALL BE GIVEN BY HAND AND ARM OR SIGNAL LAMPS.

(a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps except as otherwise provided in subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter

measurement shall apply to any single vehicle or to any combination of vehicles.

SECTION 56-5-3610. RIGHTS AND DUTIES OF OPERATOR OF MOTORCYCLE GENERALLY.

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the drivers of motor vehicles, except as to special regulations or other provisions of law which by their nature would not apply.

SECTION 56-5-3630. MANNER IN WHICH MOTORCYCLES SHALL BE OPERATED.

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(c) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(e) No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on the roadway.

SECTION 56-5-3640. MOTORCYCLE ENTITLED TO FULL USE OF LANE; RIDING TWO OR MORE ABREAST; OVERTAKING AND PASSING; OPERATION IN OTHER INSTANCES.

(a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This shall not apply to motorcycles operated two abreast in a single lane.

(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle between lanes of traffic, or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) Items (b) and (c) shall not apply to police officers in the performance of their official duties.

SECTION 56-5-446o. TIME WHEN MOTORCYCLE LIGHTS SHALL BE TURNED ON.

- (1) Any person who operates a motorcycle or motor-driven cycle on public streets or highways shall, while so engaged, have the headlights of such motorcycle or motor-driven cycle turned on except for those vehicles exempted by Section 56-5-4470.
- (2) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars or be imprisoned for not more than ten days.

SECTION 56-5-970(5). TRAFFIC-CONTROL SIGNAL LEGEND.

Notwithstanding any other provision of law, if a driver of a motorcycle or moped, or a bicycle rider, approaches an intersection that is controlled by a traffic-control device, the driver may proceed through the intersection on a steady red light only if the driver or rider, as the case may be:

- (a) comes to a full and complete stop at the intersection for one hundred twenty seconds; and
- (b) exercises due care as provided by law, otherwise treats the traffic control device as a stop sign, and determines it is safe to proceed.

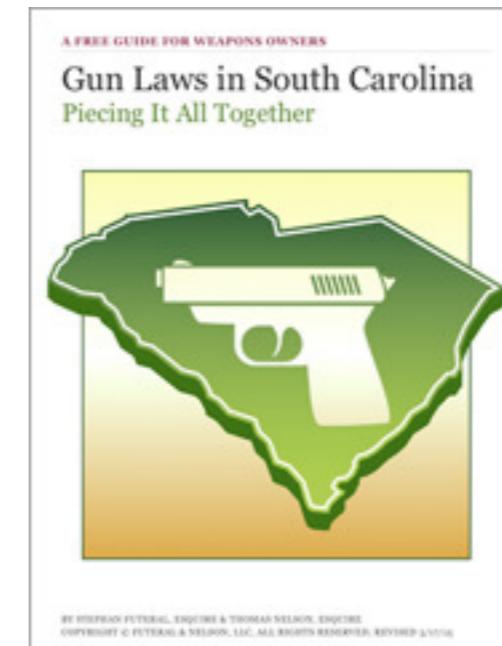
SECTION 16-23-20(16). UNLAWFUL CARRYING OF HANDGUN; EXCEPTIONS.

It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

* * *

- (16) Any person on a motorcycle when the pistol is secured in a closed saddlebag or other similar closed accessory container attached, whether permanently or temporarily, to the motorcycle.

NEED MORE INFORMATION ON SOUTH CAROLINA'S GUN LAWS?



**[CLICK HERE](#) to download our free eBook
“Gun Laws in South Carolina - Piecing It All Together.”**

SECTION 4

Parking

IN THIS SECTION

1. Stopping, Standing or Parking Outside of Business or Residential District
2. Officers Authorized to Remove Vehicles
3. Towing and Storing
4. Stopping, Standing or Parking Prohibited in Specified Places
5. Stopping, Standing, or Parking on State Highways
6. Left Curb and Angle Parking
7. Parking at Right-Hand Curb
8. Parking of Unattended Motor Vehicle
9. Disabled Veterans, Purple Heart Recipients & Parking Meters
10. Parking Violations; Grace Period

SECTION 56-5-2510. STOPPING, STANDING OR PARKING OUTSIDE OF BUSINESS OR RESIDENTIAL DISTRICT.

(A) No person shall stop, park, or leave standing a vehicle, whether attended or unattended, upon the roadway outside a business or residential district when it is practicable to stop, park, or leave the vehicle off the roadway. An unobstructed width of the highway opposite a standing vehicle must be left for the free passage of other vehicles and a clear view of the stopped vehicle must be available from a distance of two hundred feet in each direction upon the highway.

(B) This section and Sections 56-5-2530 and 56-5-2560 do not apply to the driver of a vehicle which is disabled making it impossible to avoid stopping and temporarily leaving the vehicle in the roadway.

SECTION 56-5-2520. OFFICERS AUTHORIZED TO REMOVE VEHICLES.

(a) Whenever any police officer finds a vehicle in violation of any of the provisions of Section 56-5-2510 he may move the vehicle or require the driver or other person in charge of the vehicle to move it to a position off the roadway.

(b) Any police officer may remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway, bridge, causeway or in any tunnel in such

position or under such circumstances as to obstruct the normal movement of traffic.

(c) Any police officer may remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

- (1) A report has been made that the vehicle has been stolen or taken without the consent of its owner.
- (2) The person in charge of the vehicle is unable to provide for its custody or removal.
- (3) The person driving or in control of the vehicle is arrested for an alleged offense for which the officer is required by law to take such person before a magistrate or other judicial official without unnecessary delay.

SECTION 56-5-2525. NOTICE TO AUTHORITIES OF TOWING AND STORING OF MOTOR VEHICLE WITHOUT PERSON'S KNOWLEDGE; EXCEPTIONS; RETURN OF VEHICLE.

(A) For purposes of this section, " vehicle" means a motor vehicle, trailer, mobile home, watercraft, or any other item that is subject to towing and storage, and applies to any vehicle in custody at the time of the enactment of this section.

"Vehicle" includes:

(1) items that are towed and left in the possession of a towing, storage, garage, or repair facility;

(2) contents contained in the vehicle; and

(3) personal property affixed to the vehicle.

(B) A towing company which tows and stores a person's vehicle without the person's knowledge must immediately notify the police department of the municipality where the vehicle was parked, or the sheriff of the county, if the vehicle was parked outside the limits of a municipality, of the location from which the vehicle was towed, the name of the company which towed the vehicle and the place where the vehicle is stored.

(C) A towing company failing to give this notice within one hour of the time the vehicle was towed is not entitled to any compensation for the towing and storing operations. The provisions of this section must be posted in a conspicuous place in all public areas on the premises of the towing company. The law enforcement agency that receives this notice must draft a towing report and furnish the towing company with the report's document number within a reasonable time. Notification to the law enforcement agency is not required when the towing is performed at the direction of a law enforcement officer.

(D) A towing company that tows away a person's vehicle without his knowledge and stores it is not required to return

the vehicle to the person after the company's normal business hours.

SECTION 56-5-253o. STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES; EXCEPTIONS.

(A) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand or park a vehicle:

(a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.

(b) On a sidewalk.

(c) Within an intersection.

(d) On a crosswalk.

(e) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings.

(f) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic.

(g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.

(h) On any railroad tracks.

(i) On any controlled-access highway.

(j) In the area between roadways of a divided highway, including crossovers.

(k) At any place where official traffic-control devices prohibit stopping.

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge passengers:

(a) In front of a public or private driveway.

(b) Within fifteen feet of a fire hydrant.

(c) Within twenty feet of a crosswalk at an intersection.

(d) Within thirty feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway.

(e) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite to any fire station within seventy-five feet of the entrance when properly signposted.

(f) At any place where official traffic-control devices prohibit standing.

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

- (a) Within fifty feet of the nearest rail of a railroad crossing.
- (b) At any place where official traffic-control devices prohibit parking.
- (B) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.
- (C) This section does not prohibit a federal postal service carrier from stopping, standing, or parking along a rural roadway for frequent short intervals during delivery of mail, parcels, or packages. As used in this section, "rural" means an area outside the incorporated areas of the county.

SECTION 56-5-2540. STOPPING, STANDING, OR PARKING MAY BE PROHIBITED ON STATE HIGHWAYS.

The Department of Transportation with respect to state highways may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where, in its judgment, such stopping, standing or parking is deemed by the Department of Transportation to be hazardous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs

and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

SECTION 56-5-2550. LEFT CURB AND ANGLE PARKING MAY BE PERMITTED.

The Department of Transportation with respect to state highways and local authorities with respect to highways under their jurisdiction may permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb on one-way roadways and may permit angle parking on any roadway of sufficient width to permit angle parking without interfering with the free movement of traffic. But local authorities shall not permit such left-hand parking on one-way roadways nor angle parking on state highways except upon written approval of the Department of Transportation.

SECTION 56-5-2560. PARKING SHALL BE AT RIGHT-HAND CURB NOT MORE THAN 18 INCHES FROM CURB.

Except as otherwise provided in Sections 56-5-2540 and 56-5-2550, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

SECTION 56-5-2570. PARKING OF UNATTENDED MOTOR VEHICLE.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

SECTION 56-5-2585. DISABLED VETERANS AND PURPLE HEART RECIPIENTS EXEMPT FROM PARKING METER FEES.

Disabled veterans and recipients of the Purple Heart are exempt from the payment of municipal parking meter fees when their vehicles bear a disabled veteran's or Purple Heart license plate issued by the Department of Motor Vehicles.

SECTION 56-5-2600. PARKING VIOLATIONS; GRACE PERIOD.

A local governing authority that has issued a citation to a person who violates a provision that regulates the parking of vehicles shall allow the person thirty days to pay the original fine assessed before the local governing authority may increase the fine by any amount.

Dealing with an Accident

Now matter how carefully you ride, motorcycle accidents are a real possibility. After I was cut off by another driver, I dumped a motorcycle on the interstate doing over 55 mph. I was very lucky and I didn't suffer any permanent injuries. Some riders aren't so lucky. Hopefully you'll never experience an accident while you're riding. However, if you ride, you need to plan for the worst.



At the Accident Scene

No matter how careful you may be on the road, there's always the chance that you may find yourself in an accident. Most people don't think about that possibility and they don't have a plan in case they are involved in an accident. Having said that, knowing what to do after an accident can make a huge difference to any insurance claim or legal claim you might have against the other driver.

Stay Calm - Of course, this is easier said than done. You may be in shock or experience a rush of adrenaline, feel anxiety, or suffer from pain. Nevertheless, you must stay calm despite the confusion surrounding the accident. If you start to panic, take a few moments to calm yourself by taking deep breaths.

Take Stock of the Situation - Before you do anything, take stock of what is going with you and around you. Check to see if you or anyone else is injured. Also, note any dangers such as leaking fuel, a fire, or oncoming traffic. Afterwards, do what

you can to get yourself and others to safety before taking any other steps.

Dial 911 - Make sure that you contact emergency services immediately. Even if you are unsure whether you or others need medical treatment, ask for an ambulance. Better to have emergency services there, even if it turns out you don't need them, than to wait too long for help.

Administer First Aid - If someone is injured in the accident, try to administer CPR if the victim needs it. If you're unfamiliar with life-saving techniques such as CPR, leave that to others or to the paramedics when they arrive. Also, don't try to move an injury victim unless it is ABSOLUTELY NECESSARY to avoid oncoming traffic or some other hazard. If you move someone with a back or spinal injury, you may cause them further harm. Just leave the victim where you find him or her and try to keep them conscious until help arrives. If there is excessive bleeding, try to stem the flow of blood by putting pressure on the wound. If possible, get personal information from the victim including their full name, date of birth, and an emergency contact name and a number. This information may help if the victim is unconscious when the paramedics arrive.

Get Witness Driver & Accident Information – Record the names, phone numbers (business, home, and mobile), addresses, license plate information, and make, model, and color of all of the vehicles of the accident victims and the witnesses. Get the driver's license number and the insurance

information of all of the accident victims. Also, write down detailed information about the damage to any vehicles involved in the accident.

Get Police Information - Get the full name, the badge number, and the police report number (along with a copy of the report, if possible) from the officer in charge at the scene.

Document the Damage to Your Motorcycle – Before making any repairs to your motorcycle, make sure ALL damage is well documented, measured, and photographed. If possible, preserve any broken pieces that came off of your bike. All of this information may be used as evidence at a later date.

IMPORTANT

Don't make ANY statements to others, except law enforcement, regarding what happened in the accident. Any statement you make after an accident can be used against you in future criminal trial or civil law suit, so you must be careful to provide accurate information.

Preserve the Clothes You Wore During the Accident – Rips, tears or blood stains on your clothing can provide insight into the accident, how it occurred, and what injuries you suffered.

Take Pictures of the Accident Scene – Most people have a camera built-into their cell phone or smart phone. Use it! Take photos and/or video of the entire accident area from different angles and distances. Make sure you get photos of any skid marks, accident debris, the positions of vehicles in the accident, damage to all vehicles, street signs, visual obstructions, and any unusual road conditions.

Write Down Every Detail You Remember - As soon as possible after the accident, write a detailed report of everything you remember about the accident. Be sure to include the time of day, the weather, and the road conditions at the time of accident. Remember, the longer you wait, the more details you are likely to forget.

SECTION 2

After an Accident

Medical Treatment - Obviously, you should seek immediate medical treatment for your injuries. For minor injuries, consider seeing your regular physician who should already have your basic information and your medical records. For serious injuries or a specific injury, seek medical treatment from a specialist.

Your primary goal is to recovery from your accident to the fullest extent medically possible. Don't be a "bad" patient; if you're not a good patient, not only will you harm your chances for a full recovery but you will likely cause problems with any claim you have against insurance or legal claim against the person or persons who caused the accident. Here are three common mistakes "bad patients" make that have a negative impact on their health and their legal claim:

1. Attempting to do too much too soon - Some people are "stubborn" when it comes to following their doctor's

orders. They will start engaging in strenuous activities against the advice of their doctor and not follow the doctor's instructions. Take all the medications you're prescribed, get plenty of rest, complete your rehabilitation or physical therapy program, and follow ALL of your physician's orders.

- 2. Downplaying pain and medical condition** - Some people don't like to complain about their situation. They will tell their doctor that everything is "fine" or that they're feeling better when they're still suffering. It is crucial that you are 100% honest and accurate about whatever may be going on with you medically. By accurately reporting your problems, your physician can accurately diagnose your condition and plan the best course of your treatment. Also, it's important to remember that everything your doctor records in your medical records will be reviewed by insurance companies and even lawyers to evaluate any claim you make for your injuries. If you inaccurately report that you're healthy, it will become difficult, if not impossible, for you to claim that you were injured in the accident.
- 3. Canceling appointments with doctors or physical therapy** - Insurance companies and their lawyers will latch on to any reason to avoid or to reduce payment for your injuries. When you cancel or miss medical appointments, the insurance company and their lawyer will be quick to claim that you either you didn't need the treatment or that it's your fault that you aren't recovering from the accident.

SECTION 3

Common Injuries

Statistics show motorcycle riders are sixteen times more likely to die and three times more likely to be injured than occupants of automobiles. Because motorcyclists are more exposed than the occupants of an automobile, they're more vulnerable to certain types of injuries.

Head Injuries – Head injuries are the leading cause of death in motorcycle accidents. A National Highway Traffic Safety Administration (NHTSA) study shows that wearing a motorcycle helmet can reduce the likelihood of a fatality by approximately 29%.

Skin Abrasions – These are some of the most frequent, but least serious, injuries resulting from a motorcycle accident.

Orthopedic Injuries – Lower-extremity injuries are the most common injuries followed by upper-extremity and head injuries. While lower-extremity injuries are more frequent, head, chest, and abdominal injuries tend to be more severe.

Injured motorcyclists sustain more leg injuries than any other type of lower-extremity injury, with bone fractures being more common than soft-tissue injuries. Most incapacitating and fatal injuries occurred when the initial point of impact was the front of the motorcycle.

Psychological Trauma – An accident victim may experience psychological trauma known as Post Traumatic Stress Disorder (PTSD). PTSD symptoms usually start soon after the traumatic event, but they may not appear until months or years later. They also may come and go over many years. There are four basic symptoms:

- 1. Reliving the event.** This includes bad memories or nightmares (flashbacks).
- 2. Avoiding situations that remind you of the event.**
- 3. Negative changes in beliefs and feelings.** This may include feelings of fear, guilt, or shame.
- 4. Hyperarousal.** You may be jittery, always alert, and on the lookout for danger. This includes trouble concentrating or sleeping.

SECTION 4

Legal Issues & Lawyers

The more serious your accident may be, the more likely you'll need the help of a lawyer to deal with complex medical issues, insurance coverage issues, and issues surrounding fault for the accident. Regardless of whether you believe your accident to be a simple matter, it's always a good idea to meet with a lawyer as soon as possible for several reasons. You should meet with a lawyer to ask questions about insurance and the law to make sure that you have a strategy behind any claim you may make for your injuries. Most personal injury lawyers work on a contingency basis, so there shouldn't be any fees to meet with a lawyer. Also, even if you meet with a lawyer, you aren't obligated to hire that lawyer. So, you should take the time to meet with more than one attorney to choose the one you feel will do the best job for you.

Here are several issues that demonstrate why you should meet with a lawyer, if not hire one, to help you with any claims for injuries:

Dealing with the Insurance Adjuster - The person who is the primary contact with the other driver's insurance company is called an "adjuster." Usually there will be two adjusters for that company: one to handle the property damage claim and one to handle the personal injury claim. Remember one thing, the adjuster isn't your friend. As friendly as he or she may be on the phone, they have one job - **TO PAY AS LITTLE AS POSSIBLE ON YOUR CLAIM.**

IMPORTANT

One thing we can't emphasize enough is getting the most insurance you can possibly afford. South Carolina law only requires drivers to obtain \$25,000.00 of insurance coverage. In all but a minor accident, this coverage simply isn't enough to cover the type of catastrophic injuries that can occur in a motorcycle accident. That's why you need as much underinsured motorist coverage as possible. Underinsured coverage will bridge the gap between the coverage the other driver has and the coverage you truly need for your injuries.

The adjuster will often tell you that they need to take your statement before processing your claim. Actually, in most cases, they can process the claim based upon the accident report and the statement they take from their own insured driver. They will be looking for things in your statement that may assist them in denying or devaluing your claim. They will look for things to use against you to claim that the accident was partly your fault or that you aren't as hurt as you claim to be. When adjusters ask me if they can take our clients'

statements, we reply by saying we'd be happy to allow it if they allow us to take a statement from their insured. We've never had them agree to this request. We see no fairness in allowing our client to give a statement if their driver won't give one to us. Overall, any statements you give to the insurance company could hurt you a lot more than they help you.

Dealing with Insurance Claims - Handling personal injury claims takes experience in knowing the laws of insurance. Some insurance policies offer personal injury protection (PIP) coverage. Sometimes there may be others at fault that you didn't realize. Sometimes the other driver's policy limits are not enough to compensate you for your injuries, and you need to know what else might be out there. For example, there may be more than one insurance policy that covers the accident. In this situation, a personal injury lawyer is trained to identify insurance coverage that can be "stacked" between policies. The law regarding stacking of insurance is, in a word, **complicated**. For example, a common mistake is to settle with the other driver and then try to go after your own underinsured motorist policy for the difference. If you don't use the right language in the settlement paperwork, you can actually prevent yourself from being able to pursue your own insurance policy.

Valuing Your Claim - Handling a personal injury claim is often more difficult than people realize. For example, it may be tough to figure out what your claim is worth. You may forget to include your lost wages. You may not know exactly

how much compensation for pain and suffering you're entitled to. You might not realize how important your medical records are in building your case, and you might even have difficulty reading the records. You might not realize that a case in one county of South Carolina is worth a totally different amount in another county because the jury pools in two neighboring counties can be completely different. The tendencies of the jury pools are huge factors in driving a claim's value. In all, having a skilled personal injury lawyer on your side can only help to maximize your financial recovery.

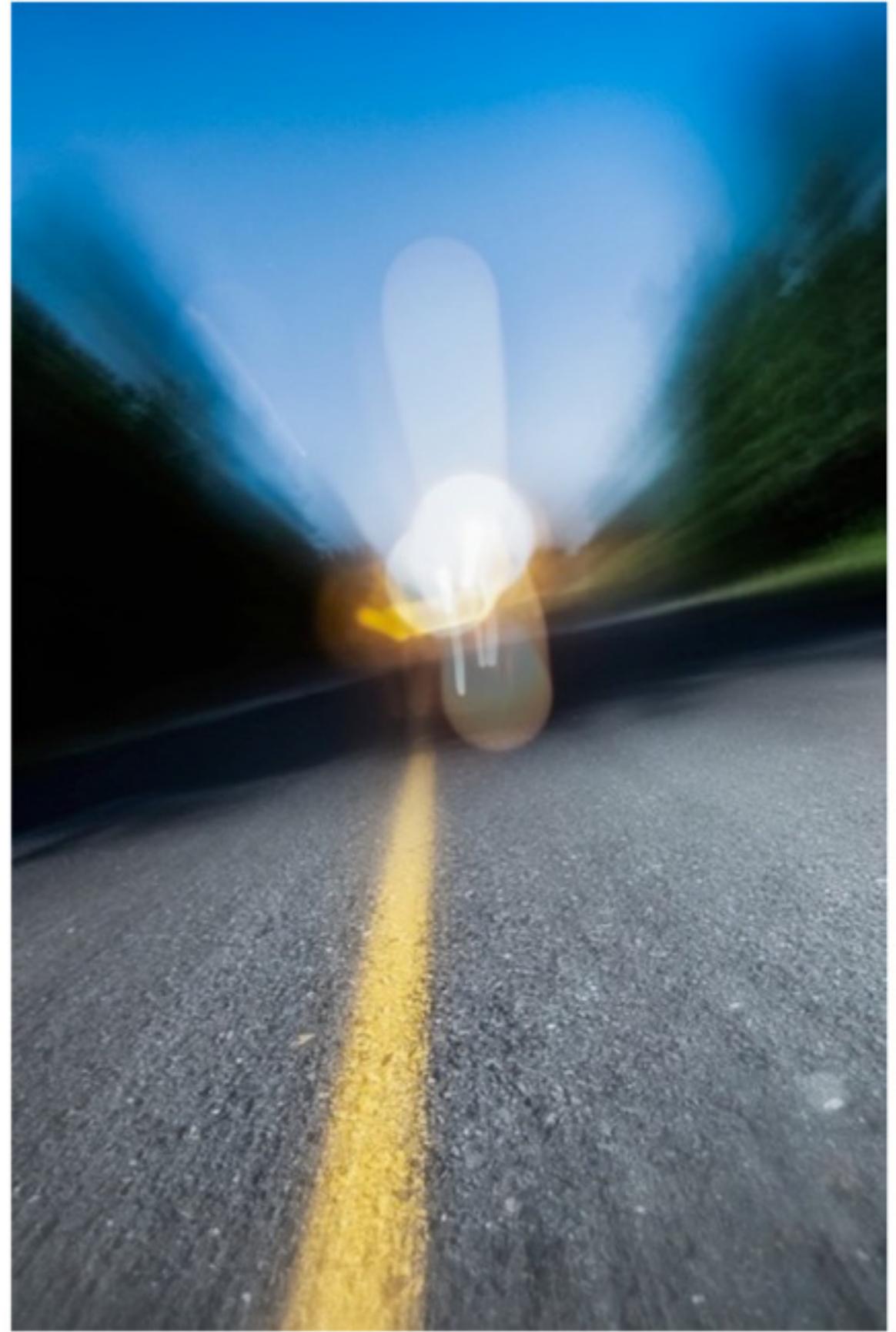
Understanding Personal Injury Law - Knowing personal injury laws takes experience. Unless you're a personal injury professional, you may be unfamiliar with all the laws that pertain to your claim. In other words, because you probably don't know what you are legally entitled to, the insurance adjuster will probably take advantage of you. For example, in South Carolina, if you're injured then your spouse also has a claim for "loss of consortium" because you may be unable to help around the house with chores, taking care of children, and more. An insurance adjuster won't tell you that your spouse is entitled to compensation. Insurance companies profit by under-compensating injured persons, so some companies will offer a lower settlement to you if you don't have a personal injury lawyer on your side.

Maximizing Your Chances for Financial Recovery - An internal insurance company study showed that on average, insurance companies pay 2.1 times more on claims filed by attorneys than claims filed by individuals without an attorney.

So, if you hire an experienced attorney, you may benefit from the attorney's work by saving time, energy, and receiving a larger settlement award from the insurance company.

Drinking & Driving

In South Carolina, it is illegal to operate a motorcycle while impaired by alcohol (or drugs). However, it isn't illegal to have a drink and drive in this state.



South Carolina's DUI statute provides:

"It is unlawful for a person to drive a motor vehicle within this State while:

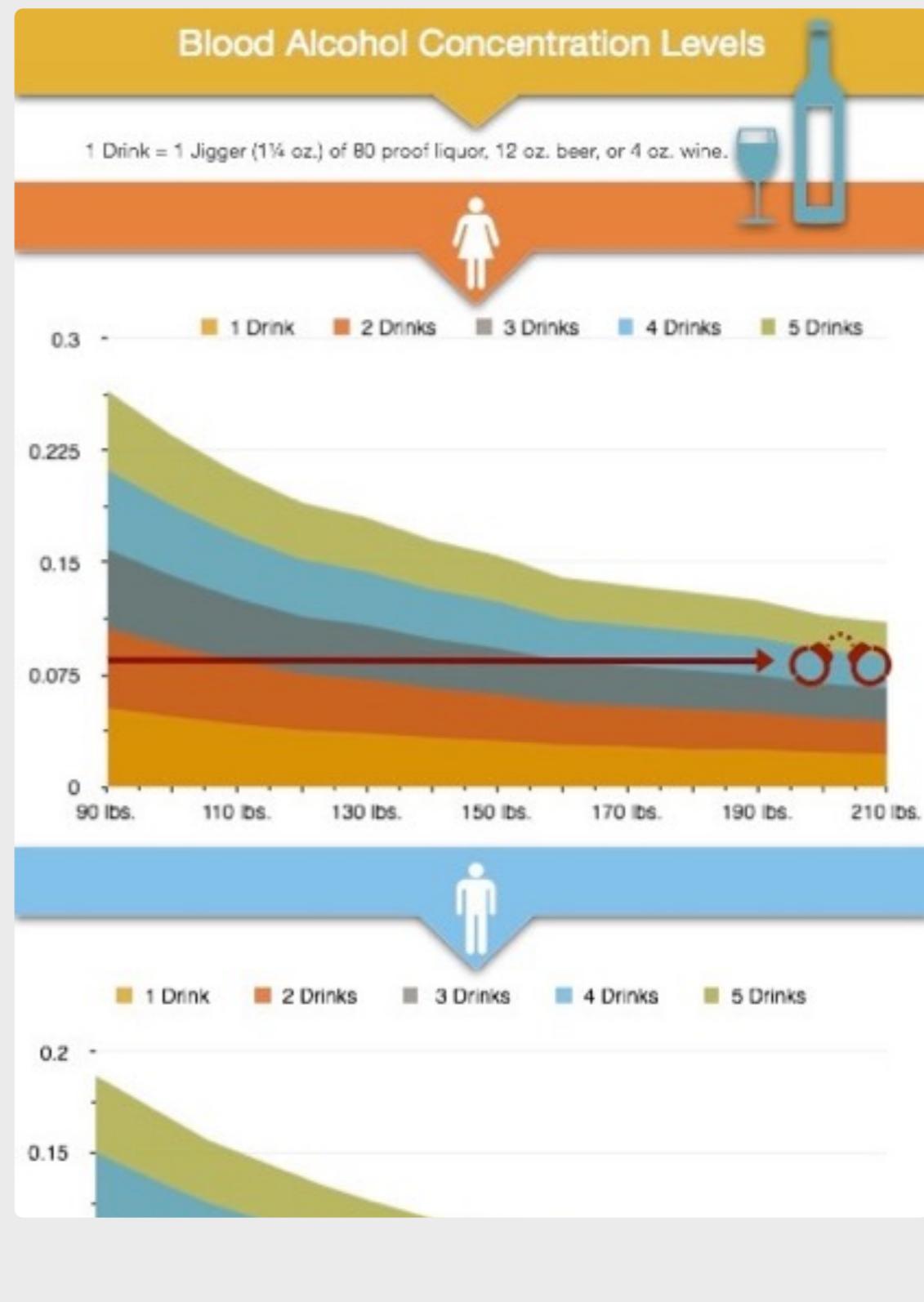
- (1) under the influence of alcohol to the extent that the person's faculties to drive are materially and appreciably impaired;*
- (2) under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; or*
- (3) under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired."*

Under South Carolina law, the legal blood alcohol (BAC) limits are:

Less than .05 - It is conclusively presumed that the driver was not under the influence of alcohol.

Greater than .05 but less than .08 - No inference whether the driver was under the influence of alcohol, but that fact may be considered with other evidence in determining the guilt or innocence of the driver.

ILLUSTRATION 3.1 Blood Alcohol Levels & Elimination Rates



(3) Greater than .08 - It may be inferred that the driver was under the influence of alcohol.

Proof of Impaired Driving

Typically, prosecutors prove a DUI by showing, among other things: (1) the driver had observable signs of intoxication such as slurred speech, bloodshot eyes, strong odor of alcohol, staggering, or swaying; (2) the driver failed field sobriety tests (reciting ABC's, standing on one leg and counting, etc.); or (3) the driver couldn't maintain control of the motorcycle (weaving, driving off the shoulder, etc.). Additionally, DUI prosecutors may show evidence that the driver had a BAC (Blood Alcohol Concentration) level above the statutory legal limit.

Driving With Unlawful Alcohol Concentration (DUAC)

South Carolina has a statute that makes it illegal to drive a motor vehicle "while [a person's] alcohol concentration is 0.08 percent or more." Unlike a DUI, being "impaired" isn't an element to DUAC which means that although you may be perfectly capable of driving, you are guilty of DUAC if your blood alcohol concentration (BAC) is 0.08% or more.

The prosecution has the choice of convicting a driver for a DUI (proof of impairment which may include proof of BAC) or a DUAC (proof of BAC .08 or greater and the driver is guilty). A driver can only be prosecuted for a DUAC if the breath (or blood) test is performed within two hours of the

time of arrest and probable cause (a reasonable belief that a person has committed a crime) existed to justify the traffic stop. A driver can't be prosecuted for a DUAC if the driver was stopped at a traffic road block or driver's license check point. Further, a driver can't be prosecuted for both a DUI and a DUAC for the same stop.

DUI vs. DUAC

When defending a DUI, we rarely recommend that our clients plea to a DUAC because the penalties for a DUI or DUAC are virtually identical. For example:

- Neither charge is eligible for expungement from your criminal record.
- The fines and/or jail sentences are identical.
- The charges have the same impact on your driving privileges.
- Both offenses require the offender to complete the Alcohol and Drug Safety Action Program (ADSAP).
- Both offenses require a driver to have SR-22 insurance for 3 years.
- Both charges may enhance a subsequent arrest for either DUAC or DUI to a second offense, causing it to be prosecuted in General Sessions Court.

Underage Drinking and Driving - Zero Tolerance

If the driver is under 21 and law enforcement suspects the driver is under the influence of alcohol or drugs, then the arresting officer can charge the driver under traditional DUI laws. However, the officer can charge the underage driver under South Carolina's Zero Tolerance Law. If the charge is a traditional DUI, then the legal limit is 0.08%. If the driver's blood-alcohol content is over .08%, then it can be presumed the driver was under the influence of alcohol. Under the Zero Tolerance Law, the legal limit is 0.02%. For most underage drinkers, one drink will put them over this limit. If the underage driver is suspended under the Zero Tolerance law, there can be no criminal prosecution for DUI.

If the underage driver gives a sample and registers a 0.02 or higher, the person will be suspended for 3 months on a first offense. If the driver has a conviction for DUI or has been suspended for refusing to blow or blowing over a 0.02 within the past 3 years, the person will be suspended from driving for 6 months.

Implied Consent

Driving in South Carolina is a privilege, not a right. By driving on the roads of South Carolina, a person has impliedly given consent to submit to breath, blood, or urine testing for the purpose of determining the presence of alcohol, drugs, or both if the person is arrested for DUI or DUAC. A driver has the right to refuse this test. However, if the driver is charged with felony DUI, which means the impaired driving allegedly

caused death or great bodily injury to someone else, the driver may not refuse the tests, and the police officers can force the driver to give a blood sample if they don't blow into the breath test machine.

Refusing the Breath or Blood Test

If you refuse the breath test, your license will be immediately suspended for at least 6 months. You will also have to enroll in and complete the Alcohol & Drug Safety Action Program (ADSAP). You may be eligible to receive a route-restricted license during this 6-month period to enable you to go to work and school, to your ADSAP classes, and to any other court-ordered alcohol programs.

Your refusal may be used against you in court. If you've had a previous conviction for DUI or DUAC within the past 10 years, the suspension period will be 9 months. If you've had more than one conviction within the past 10 years, the suspension period will be even longer. You will receive from the officer a Notice of Suspension form, and the arresting officer probably will take your driver's license.

Taking the Breath Test

If you take the test, the breath test machine will give you a written report showing your blood alcohol content (BAC). The reading is admissible as evidence at your DUI or DUAC trial. If your blood alcohol content is less than 0.15%, then there is no immediate suspension of your driver's license. If your BAC is 0.15% or greater, then you will be immediately suspended

for at least 30 days, and you will have to enroll in and complete ADSAP. If your reading is 0.05% or less, then for purposes of a criminal trial, it is conclusively presumed that you weren't under the influence of alcohol. If your reading is 0.08% or higher, then it may be inferred by the judge or jury that you were under the influence of alcohol, but the judge or jury may consider other evidence when making a final verdict.

Inability to Take the Test

If you are physically unable to provide a breath sample because you had an injured mouth, you were unconscious, or for any other reason considered acceptable by licensed medical personnel, the police officer may request that you provide a blood sample. Refusing a blood sample has the same consequences as refusing a breath test. If none of these circumstances apply, and you attempted to take the breath test but don't blow enough air into the machine for it to make a reading, then you will be considered to have refused the test.

Urine Sample

If the police officer has reasonable suspicion that you're under the influence of drugs other than alcohol or under the influence of drugs and alcohol, the officer may order that a urine sample be taken.

Independent Tests

If you submit to a test, you have the right to have a qualified person of your choosing conduct additional tests at your expense on the night of the arrest. The arresting officer must provide you affirmative assistance if you request additional tests. "Affirmative assistance" at least requires the officer to drive you to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. If you requested your own test, and the police didn't provide you affirmative assistance, then your BAC reading may be excluded from evidence at the DUI trial.

Challenging a Driver's License Suspension

If your license is suspended because you refused a test or because your reading was 0.15% BAC or greater, you may request an Implied Consent Hearing (sometimes referred to as an Administrative Hearing) within 30 days. If you miss the 30-day deadline, you lose the right to challenge your suspension. There is a \$200 filing fee for requesting a hearing.

This hearing is completely independent of your DUI or DUAC charge. In other words, whether you win this hearing will have no bearing on whether you get convicted of DUI or DUAC. Ultimately, you could have to serve the 6-month suspension for the refusal and have to deal with the driving consequences if you're later convicted of DUI or DUAC.

The Implied Consent Hearing

The hearing is held before an Administrative Hearing Officer who isn't a judge but still presides over the hearing in the same manner as a judge would. The police officer who made the arrest must be present. If a different officer administered the breath test, that officer must also be present. The officers give testimony and present evidence, and your lawyer has the opportunity to cross-examine the officers. Depending on the unique facts of your case, you may also testify at the hearing. Regardless, the burden of proof is on the police to show that your license should be suspended.

At the implied consent hearing, the Administrative Hearing Officer doesn't decide whether you are guilty of DUI. Instead, the Hearing Officer only decides whether your license should be suspended.

At the administrative hearing, you can challenge whether the arrest was lawful. This is usually done by arguing that the arresting officer didn't have probable cause to make the arrest or wasn't within his or her jurisdiction at the time of the arrest. You can also challenge whether you were adequately warned of the consequences of taking or refusing the breath test. Although officers generally read your implied consent rights from an advisement form, they sometimes make mistakes in doing so or they make other comments that invalidate the advisement. Finally, if your BAC reading was 0.15% or greater, you can challenge whether the DMT DataMaster machine was working properly.

Driving While Waiting on an Implied Consent Hearing

Usually within a week or so of requesting a hearing, you will receive from the DMV paperwork permitting you to obtain a Temporary Alcohol License. This license costs \$100 and will allow you to drive in South Carolina without restrictions for six months. After six months, the Temporary Alcohol License expires.

NEED MORE INFORMATION ON SOUTH CAROLINA'S DUI LAWS?



CLICK HERE to download our free eBook
“DUI in South Carolina - Piecing It All Together.”

If You're Going to Court

Hopefully you'll never be in the position of having to go to court to defend yourself for a traffic violation or to make a claim for injuries from an accident.

However, if you do, you need to understand what your role is in court and to know the best means of sharing the truth while you're on the witness stand.



SECTION 1

Preparing for & Attending Court

IN THIS SECTION

1. Before You Go to Court
2. Dressing for Court
3. What to Bring & Not to Bring to Court
4. Arrive Early to Court
5. How to Behave in and Around the Courthouse
6. How to Speak to the Judge

For most persons, court can be an intimidating experience. Here are some pointers for anyone who has to go to court in South Carolina.

1. BEFORE YOU GO TO COURT

Try to get a good night's rest before you go to court. Furthermore, most courts don't allow food or drink, but they do have water fountains. Don't go on an empty stomach. When you are tired, hungry, or thirsty, you aren't at your best!

2. DRESSING FOR COURT

Dress properly and conservatively for each court hearing. Dress "business casual" or "dress like you are going to church." Failure to dress appropriately could result in your case being continued or you being excluded from the courtroom during the case. The judge hearing your case will associate your attire with the level of respect you are giving to the court.

Women should wear dresses which are knee length or longer or tailored slacks and a blouse. Men should wear tailored slacks and a shirt with a collar. Clothing should be clean.

Some examples of clothing that are *not* allowed include baseball caps, sleeveless tops, halter tops, backless dresses, low cuts dresses, miniskirts, shorts, blue jeans, t-shirts, flip-flops, and sandals. Tuck in your shirt.

Remove any piercings other than one pair of ear rings for women, covering any tattoos if possible, and having a conservative hair style and color. Even if you feel these things represent a particular belief or who you are, remember that you are presenting in front of a judge who may be deciding your fate. A “middle-of-the-road” appearance will minimize the chance of offending the court or jeopardizing your credibility. While most people don’t like being “judged,” that is exactly what going to court is all about.

3. WHAT TO BRING & NOT TO BRING TO COURT

Bring your entire file, which includes every document, CD-ROM, or thumb drive that relates to your case. You never know what could happen, and it’s best to be prepared. Even if you have a lawyer, some portion of your lawyer’s file may have accidentally stayed on his or her desk at the office, and you can actually save the day by having a copy of some document handy.

In some counties, you aren’t allowed to bring your cell phone, so it’s best to just leave it in your car if you’re unsure. If you’re allowed to have your phone, turn it off or put it on silent! If your cell phone goes off in the courtroom, the judge can take your phone and can possibly hold you in contempt (put you in jail). In fact, one Charleston County judge made the local headlines by putting a participant in a holding cell because her phone rang during court. At a minimum, the judge may take a ringing cell phone as a sign of disrespect.

For security reasons, you can’t bring any knives, scissors, nail files, tweezers, or other sharp objects into court. Also, you can’t bring in any mace.

You can bring a friend or a family member for moral support if it would make you more comfortable. Although this person won’t be able to sit at the table with you, he or she will at least be there in the courtroom to talk to you before and after.

4. ARRIVE EARLY TO COURT

The court won’t wait on you if you’re late. Talk to court staff upon arrival to make sure you’re in the right place and waiting outside of the right courtroom.

Another advantage of arriving early is that you’re able to sit down, to relax, and to gather your thoughts as you wait on your hearing. You’re more likely to present well in court if you walk inside in a relaxed state than if you’re running down the hallway trying to make your hearing on time.

5. HOW TO BEHAVE IN AND AROUND THE COURTHOUSE

You may find yourself waiting in a hallway outside of the courtroom. Be aware that people around you could be lawyers, witnesses, jurors, or others involved in your case. Don’t talk about your case because you never know who might overhear you. Also, don’t “cut up” or joke around (as many nervous people will do) as it could give someone a bad impression of you.

Even when parking your car, be polite and let other cars in front of you. Don't cut people off or exhibit frustration towards other drivers. You never know when your judge is in the other car.

If you find yourself waiting inside of the courtroom, just sit there, watch, and be silent. Judges may take whispering to your neighbor, sleeping, or certain other acts as a sign of disrespect. Your sincerity, or lack thereof, will be noticed. If the judge isn't telling a joke or laughing at a joke from one of the lawyers, you shouldn't be laughing either. Also, don't chew gum in the courtroom.

When your case is up, meaning you and your lawyer are addressing the court, continue to maintain a sincere demeanor at the table even if you don't like what others are saying. We've seen people scolded by judges on numerous occasions for making facial expressions, talking, or shaking their head in protest of what a lawyer or a witness is saying about their case. If you must speak, do it through your lawyer. Showing respect is of utmost importance. If you don't have a lawyer, be very careful of how you make any objections and be sure not to be disruptive to the proceedings.

6. HOW TO SPEAK TO THE JUDGE

Be humble, respectful, and polite. Address the judge as "Your Honor," "Sir," or "Ma'am." Address parties, witnesses, and lawyers as "Mr." or "Ms." I can't emphasize enough – show absolute respect, and it will likely be returned. Don't speak

unless the judge asks you to. Stand up when you speak to the judge unless he or she tells you that you can keep your seat. If the judge cuts you off, let it happen. We've seen numerous instances of people attempting to "talk over" judges, and it doesn't usually go well for that person. We've also seen people penalized by the judge for being too argumentative.

IMPORTANT

One BIG pet peeve of many judges is when a witness doesn't directly answer the question asked. If the question calls for a "yes" or "no" answer, don't beat around the bush. Answer yes or no. If you feel that your answer needs some explanation, first answer the question and then explain it.

SECTION 2

You as a Witness

IN THIS SECTION

1. What the Prosecutor or Insurance Defense Lawyer Is Trying To Do
2. How the Other Lawyer Will Do It
3. Golden Rules of Testifying

1. WHAT THE PROSECUTOR OR INSURANCE DEFENSE LAWYER IS TRYING TO DO

If you're testifying in court, the goal of a prosecutor or an insurance defense lawyer on cross-examination is threefold:

1. To establish facts favorable to the other side through your testimony;
2. To discredit your testimony through other evidence or other witnesses; and
3. To discredit your witnesses through their own testimony.

2. HOW THE OTHER LAWYER WILL DO IT

Filling in the Gaps - Generally, the prosecutor's or defense attorney's case is made up of sketchy information from a few witnesses. The lawyer on the other side of your case will try to fill in the gaps in the case by using your testimony and the testimony of your witnesses to establish facts favorable to the other side.

Prior Inconsistent Statements - You must understand what a prior inconsistent statement is, how it is used, why it is used, and what to do when faced with one. Ideally, prior inconsistent statements are best explained away by simple testimony that a subsequent answer is based on more information and a better understanding of the facts and law.

Memory - Witnesses will never remember all details. The lawyer for the other side may ask specific questions about

details. Some will be irrelevant except to show that your witnesses' memories are not as great as you want the jury to believe. Some questions are designed to set your witnesses up to disagree with each other. Others are to elicit from your witnesses favorable facts, i.e., those which reinforce a police officer's testimony or fill in gaps in the other side's case. Finally, if you remember too many details or witnesses remember all the same details, the lawyer on the other side can argue that it is unnatural to remember so much and it was likely made up.

Bias - When you're in court, you obviously have something to lose. Friends, relatives and loved ones want, of course, to help you. The lawyer for the other side will attempt to insinuate that you and your friends would be willing to lie (perjure themselves) to help you. Unprepared witnesses can be caught off guard with questions of this nature. Some typical reactions of unprepared witnesses on which the prosecutor or insurance defense lawyer can capitalize include:

- **The reluctant witness:** A nervous or overcautious witness may repeat phrases, such as "Please repeat your question," or "I don't understand your question," or "as best as I can recall." These phrases are common stalling devices to allow the witness the time to formulate a well-reasoned response to a difficult or a tricky question. This type of witness appears too cautious and less truthful. If you know what to expect and what types of questions the lawyer for the other side will ask, there will be minimal need to clarify questions

and you won't have to hesitate and to appear reluctant to answer.

- **The volunteering witness:** Not only is this objectionable, it often gives the other lawyer food for more cross-examination. It is natural to want to explain some answers, but too much explaining may cause the jury to see you or your witnesses as insincere, biased, or prejudiced. A prepared witness not only knows what to volunteer, but when to do it.
- **The excessively opinionated, hostile, or belligerent witness:** A witness should be prepared to remain firm in his or her position. However, the witness must remain calm, cooperative, and seemingly objective. The last thing you want the jury to see is that you or your witnesses aren't objective and reasonable.
- **The "questioning" witness:** Answering a question with a question makes the witness appear sarcastic, insincere, and evasive. The jury will see this as an unwillingness to answer the question. This type of excessively biased witness defeats the purpose of his or her testimony for you because of his or her loss of credibility.
- **The professional witness:** Experts are "hired guns" and have generally been paid to testify. An expert must be properly prepared for testimony.

Prior Convictions - Many defendants and defense witnesses don't have admissible prior convictions. If you have

prior convictions, you should bring these to the attention of your lawyer so you can discuss their admissibility and how to handle that issue at trial.

3. GOLDEN RULES OF TESTIFYING

1. Tell the truth.
2. Think about the question asked, then answer it. Don't avoid the question, but don't be afraid to say "I don't know."
3. Ask the prosecutor or insurance defense lawyer to clarify the question, if necessary. Remember not to ask repeatedly to stall for time.
4. Pause slightly before answering to give your lawyer time to object, if necessary. Silence can be an attention getter, too! Listen carefully to objections. They signify that the question is potentially misleading or that the response can be potentially damaging to your case.
5. Don't argue. Remain calm and cooperative.
6. Don't be afraid to say "I don't remember" or "I'm not sure, it has been a long time since then."
7. Don't attempt to "match wits" with the lawyer for the other side.

The Best Answer to Every Legal Question

We've been helping people in South Carolina for many years, and we've been asked THOUSANDS of legal questions. Of course, there's also the most important question asked most often by any client – "What are my chances of winning or losing?"



No matter what the legal question might be, here is the BEST ANSWER TO EVERY LEGAL QUESTION. Ready? Here it is: “IT DEPENDS.”

Disappointed? Please don’t be; this is NOT a trick answer or a joke. It truly is the BEST answer that any lawyer can ever give to any client. It’s also the most important thing about any case a client needs to understand.

When Stephan Futerl was a law professor, he’d ask his students questions about different legal problems. Their answers (much like young lawyers’ answers to their clients) were always the same – “statute blah blah blah says X, Y, and Z” or “in the case of so and so, the court said A, B, and C.” Technically, their answers may have been correct, but they missed the point. The best answer to any legal question depends on many more things besides statutes or case law. The answer to any legal question, and what is more important the question of whether you win or lose, always depends on a combination of the following 5 things: The judge, the jurors, the facts, the client, and the lawyer.

There is Nothing “Absolute” About the Law

Very rarely is the law black or white; it works in shades of gray. The outcome depends on the judge, the jury, the facts, the client, and the lawyer:

1) The Judge – Despite what statutes or higher courts may have to say about the law, judges interpret the law as they see

fit. Because judges are human, sometimes they’re mistaken about the law. That’s why we have higher courts (appellate courts), to correct any mistakes (hopefully) made by the lower courts. On top of that, judges have their own personal views about the cases they hear, the parties and witnesses involved, and so on. Some judges do very little to hide the fact that they don’t like certain types of cases such as accidents. Some judges are known for being very strict when it comes to sentencing anyone convicted of a crime. So, as you can see, the answers to any legal question, and in particular the outcome of a case, depends on who the judge might be.

2) The Jurors – Every juror is unique. Some are rich and some are poor. Some are liberal and some are conservative. The list of differences goes on. In the end, you wind up with a mix of jurors from all walks of life who bring their own personal views into the court room. This too should come as no big surprise – many jurors don’t care for plaintiffs lawyers, criminal defense lawyers, or their clients. From the minute you walk into the courtroom with your lawyer, it is an uphill challenge for both you and your lawyer to convince the jurors of your sincerity and the righteousness of your case. Although the jurors don’t decide the law (that’s the judge’s job) they do decide whether you win or lose.

There is another thing that you should know about jurors. No matter how well-crafted the presentation of your case may be, they’re all going to hear and see your case differently. I’ll give you a real world example of how this happens all the time – Hollywood movies. In bringing a movie to the theaters,

incredible amounts of time, effort, and money are put into creating a single production. Despite all these efforts, not everyone sees the film the same way. Some audience members liked it and some didn't. Some laughed at parts that weren't funny and others didn't laugh at all at the punch lines. Some missed parts of the movie by fiddling around with their popcorn or talking to the person next to them. In other words, although the audience all saw and heard the same movie, they all had a different view of it. The same is true for a number of jurors sitting in a box together and listening to the lawyers and their clients present their case. So, as you can see, the answer to the question of whether you win or lose your case depends on who your jurors might be on any given day.

3) The Facts – To prove your case, you must establish the facts. Facts can be documents, witnesses, physical evidence, and all sorts of things. Some of the facts are established by “direct evidence” and some by “circumstantial evidence.” Let’s say at trial you are trying to prove to the jurors that it was raining outside. If you took the jurors outside and into the rain, that’s “direct evidence” of the fact that it’s raining. If, instead, you pointed out to the jurors that everyone walking into the courtroom was carrying an umbrella and was dripping wet, that’s “circumstantial evidence” that it’s raining. Unfortunately, many cases are based on circumstantial evidence which makes it more difficult to “connect the dots” before a judge or jury. Also, if you’re proving your facts by other witnesses’ testimony, not everyone says the same thing, some don’t have a good recollection of events, and some will

contradict the testimony of other witnesses. So, when it comes to the important question of whether you win or lose, the answer depends on the facts of the case.

4) The Client – Every client is unique. Some clients are capable of doing a great job of testifying before a judge and a jury. Some clients are nervous when they speak in public and need a lot of work to be able to share their story. Some clients are more sympathetic than others. Some clients are well-prepared and well-organized and very helpful to their lawyer. Some clients aren’t so helpful. The list of differences goes on and on. The point is, the answers to your questions and the outcome of your case, depends on you the client.

5) The Lawyer – The answers you get to your legal questions and the outcome of your case also depends on who you choose as your lawyer. Just like judges do, lawyers differ in their views and their interpretations of the law. So, it’s not surprising that when some clients speak to more than one lawyer about their situation, they get different answers. Some lawyers tell their clients what they want to hear to make the client feel better. These lawyers aren’t necessarily trying to be sneaky or dishonest; they do it out of compassion for the client. But at the end of the day, clients need to hear real, truthful answers from their lawyer and not just the things that are going to make them feel better about their case. As a client, you need to know the positives and negatives about your case so you can make the best informed decision about how to move forward such as whether to settle your claim or to take your case to trial.

Some lawyers have an excellent understanding of the law, but they're not familiar with judges or juries. Some lawyers are very prepared for court and some lawyers fly by the seat of their pants (there's no substitute for preparation). Some lawyers, despite all their efforts, just can't seem to connect with judges or jurors. Good trial lawyers must be good storytellers. They must present your case to a judge or jury, including the facts and the law, in a way that is understandable, compelling, sincere, and convincing. Just like a great, best-selling novel can be ruined by the movie director who brings the book's adaption to the big screen, the wrong lawyer can take the best set of facts and favorable law and turn it into a jumbled mess before a judge or a jury. So, the answers to your legal questions, including whether you win or lose, depends on who you choose as your lawyer.

Final Thoughts

As much as lawyers would love to give their clients a definite answer to all of their questions, the truthful and BEST answer is – “it depends.” When a lawyer tells you this, that means that the lawyer is considering ALL of the circumstances and not just what is written in a statute or a text book on case law. That’s a good thing because, in the end, whatever the answers to your questions might be, it’s the results that count.

Your Attorney

“If there were no bad people there would be no good lawyers.”

~ Charles Dickens

If you're in the situation of having to hire a lawyer, then it is time to give some thought to reviewing and comparing lawyers. Choosing from the many available attorneys also can be confusing. Here are some suggestions for how to choose the best attorney for you.



SECTION 1

Choosing Your Lawyer

IN THIS SECTION

1. Ask Yourself . . .
2. Your Legal Budget vs. Your Legal Needs
3. Do Your Homework
4. Interview Your Lawyer
5. How You Feel

If you've never hired a lawyer, you may not know where to start. If you know someone who recently hired an attorney, then they may have a personal recommendation for you. However, you may feel uncomfortable asking for recommendations or discussing your case with people close to you. That's why the Internet can also be a valuable resource to research and to compare lawyers and their professional backgrounds. Sites such as Avvo, LinkedIn, and others can help you compare the experience and reputation of various lawyers.

1. ASK YOURSELF . . .

When you are meeting with potential lawyers, you must remember that not all attorneys are created equal. Here are some questions you should ask yourself before making your decision as to which lawyer to hire:

- 1) Does the lawyer pay attention to you while you are talking?** You need an attorney who will be compassionate and dedicated to your needs. If the lawyer is distracted, taking other calls, checking emails, and so on, perhaps that lawyer is not the best for you.
- 2) Does the lawyer try to educate you and to answer your questions?** A skilled lawyer knows that educating the client is important so that the client can make sound and informed decisions about their future.
- 3) Is the lawyer assertive without being arrogant?** Some clients believe that having a "pit-bull" for a lawyer is

their best move. Obnoxious and egotistical doesn't mean better or skilled. You need an attorney that will calmly assert your rights and who will always act professionally.

4) Is the lawyer guaranteeing you results? If so, be cautious! Litigation in any court is risky and the outcome can't be predicted with any certainty. The outcome of your case depends on many things such as the present circumstances, future developments, and the decisions and the attitudes of judges and jurors. You need a lawyer who shoots straight with you, who tells you like it is, and doesn't just tell you what you want to hear.

2. YOUR LEGAL BUDGET VS. YOUR LEGAL NEEDS

As a general rule, well-seasoned attorneys charge higher fees, and newer lawyers are cheaper. You pay higher fees for experience. If you have a simple issue such as a speeding ticket and you are on a budget, then a recent law school graduate may fit the bill. However, if you are facing complex legal challenges, then your legal needs may justify the costs of a more knowledgeable attorney. Additionally, although younger lawyers may charge a lower hourly rate, it may actually take them longer to do the work (meaning more fees) than a veteran attorney who has been performing the same service for years. If you have a personal injury claim, then your lawyer should work on a contingency basis.

3. DO YOUR HOMEWORK

When you're searching for lawyers on the Internet, you should read beyond the marketing rhetoric if you really want to know who you are hiring. Here are some examples:

- If you visit a website that has plenty of descriptions of the lawyer's services but little information about the lawyer, then you may be missing the most important part of the picture – **the lawyer's experience**.
- If the lawyer's biography doesn't include the year that the lawyer graduated from law school, then chances are likely that the lawyer hasn't been practicing for very long and he or she has left this information out of their website for "marketing" purposes. This doesn't necessarily mean that the lawyer isn't able to handle your case, but it may mean that the lawyer is still "learning the ropes."

Here are some resources to learn more about your lawyer's background and experience:

- Look for the lawyer's Martindale Hubbell Rating. The Martindale Hubbell® Directory has been rating lawyers for the past 140 years. According to Martindale, "Peer Review Ratings™ help buyers of legal services identify, evaluate and select the most appropriate lawyer for a specific task at hand." Using information supplied by other lawyers and judges, Martindale rates lawyers based on performance in the areas of: (1) legal knowledge, (2) analytical capabilities, (3) judgment, (4) communication ability, and (5) legal

experience. The highest rating a lawyer or law firm may have is AV Preeminent. For more information about how the rating system works and to search for a lawyer's rating, visit www.martindale.com.

- A newcomer to the business of rating lawyers is Avvo. Avvo rates lawyers by "using a mathematical model that considers elements such as years of experience, board certification, education, disciplinary history, professional achievement, and industry recognition-all factors that are relevant to assessing a lawyer's qualifications." Their ratings rank from the highest of 9 – 10 (Superb) to the lowest of 1.0-1.9 (Extreme Caution). Also, Avvo posts reviews and comments by both other lawyers and by clients. Avvo's website can be found at www.avvo.com.

4. INTERVIEW YOUR LAWYER

Often when people meet with a lawyer for the first time, they are under significant stress because of their legal problems, and the conversation tends to focus solely on those problems. While you're discussing your case and seeking answers to your questions, take the time to ask the lawyer about his or her background and experience such as:

- How long they've practiced;
- Whether the lawyer has handled any cases similar to yours;
- How many similar cases has the lawyer handled;

- Who will handle the case (sometimes other lawyers within a firm besides the one you meet with will handle some of your work, and you should know more about the legal team working on your case); and
- Whether the attorney has malpractice insurance (malpractice insurance isn't required for many lawyers).

Here are two common questions that clients ask that will NOT help you to choose the right lawyer for you:

- "How many cases have you won?" - As any seasoned lawyer will tell you, "You can't win them all." Even if the lawyer has won every case up to that point, your case may be the first that they lose. So, if the lawyer boasts about their track record or gives you the impression that you can't lose, then perhaps you're not dealing with the most straightforward attorney.
- "What are the odds of winning my case?" - Although a lawyer may comfort you by telling you what you want to hear, you're better off getting a straight answer from the very beginning. The honest answer is - "It depends." Every case is unique, and your case's outcome depends on many variables which, realistically, cannot be predicted from "day one."

5. HOW YOU FEEL

The final, and perhaps the most important, thing you should consider when you hire your attorney is how you feel about

your first meeting. The bottom line is that if, for any reason, you don't feel comfortable with the lawyer you met, then go interview others (and there are many) until you're satisfied that you're choosing the best lawyer to represent you.

SECTION 2

Working with Your Lawyer

One of problem is that many people try to oversimplify their situation. There are many aspects to any type of case or legal problems, so the more your attorney knows about your case, the better it is for you.

1) Tell your lawyer the ENTIRE truth. Some folks are embarrassed about their situation. Some are concerned that they'll be criticized or judged by their lawyer if they share all of the truth. If you don't tell your lawyer the truth, you're hurting your chances of a favorable outcome. The more your lawyer knows about the "bad stuff," the more your lawyer can prepare to deal with any claims thrown your way. Remember, your lawyer took an oath of confidentiality. EVERYTHING you tell your lawyer stays with your lawyer. Don't hold back; tell the entire truth to your lawyer.

2) Explain without venting. There are many ways you can make your lawyer's job easier and to keep your legal fees and

costs down. First, you should tell your lawyer as much as you can about your current situation. However, you shouldn't spend too much time venting about your situation. Lawyers understand that their clients are going through an emotionally difficult time in their lives. Often, however, you would do better to talk to your friends, family, or a counselor to address these issues (and the cost is usually much less than paying your lawyer to listen).

3) Read everything your lawyer sends you. Another way to work better with your attorney is to read carefully everything that is sent to you. Some paperwork requires that you respond to the other party or the court within a certain time period, otherwise you may jeopardize your case. In all, there is no substitute for early, thorough preparation. Do all that is required of you within the time frames that your lawyer gives you, and your case may run smoother.

4) Don't contact a judge about your case. If you're represented by a lawyer, let all official communications come through and from your lawyer. Additionally, there are rules that prohibit one side or another from communicating directly with a judge.

5) Be patient. As a final note, you should understand that legal cases take time. First, it will take some time for your lawyer to gather all the information needed to proceed with your case. Part of this time depends on how quickly you provide the information your attorney requests. Then, your attorney may need to request information from the other side

through “discovery.” Afterward, it will take some time, depending on the court's schedule, before your case is resolved. In fact, some cases can take years. So, try to have patience with your attorney and with the courts. Impatience will not speed up the process but it will cause you more concern and could cost you more money.

SECTION 3

Are “Aggressive” Lawyers “Effective” Lawyers?

Practicing law in South Carolina is remarkably genteel. In fact, the practice of law in Charleston, where we practice, is so well-mannered that in 2001 the ABA Journal ran, as its cover story, an article regarding southern collegiality and practicing law here in the Lowcountry. Of course, there are always exceptions, but overall our Bar prides itself on supporting one another and acting as professional colleagues and not as professional antagonists. To echo that sentiment, members of the South Carolina Bar must take an “Oath of Civility” toward one another and to members of the public. Unfortunately, lawyers throughout the country are not exactly revered for their congenial nature or their civility toward each other. To make matters worse, TV, movies, and dramatic fiction play to an audience that expects lawyers to shout at the witness during cross-examination - “YOU CAN’T HANDLE THE TRUTH!” The unfortunate “truth” is that even in the real world, many lawyers market themselves as being “aggressive” or are endorsed by other lawyers as such.

If you look up the word “aggressive,” you will find definitions that include “ready or likely to attack or confront,” “pursuing one's aims and interests forcefully, sometimes unduly so,” or “characterized by or tending toward unprovoked offensives or attacks.” Being “aggressive” is not the same thing as being “zealous.” “Zeal” is defined as “great energy or enthusiasm in the pursuit of a cause or an objective.” Zealousness is an admirable attribute; aggressiveness is not. Here is why:

1) Aggressive Lawyers Are On The “Short-List” -

Judges don't care for “aggressive” lawyers. Ask any judge, and they'll tell you that they are worn out from baby-sitting lawyers who can't get along with one another, who quibble over the most mundane aspects of their case, who accuse other lawyers of misdeeds, who complain about imagined slights, who hold hard-and-fast to deadlines without accommodation or courtesy, and the list goes on. Lawyers who place themselves on a judge's “short list” of intolerable lawyers are doing a great disservice to their clients.

Regrettably, many of the lawyers who place themselves on the “short-list” are either oblivious to (or “willfully dense” to) how their attitude negatively impacts upon the court's scheduling of matters, the court's receptiveness to the lawyer's concerns (“Cry Wolf Syndrome”) or even, at times, the court's rulings.

2) Aggressive Lawyers Get As Good As They Give -

We've let other lawyers out of default or extended firm deadlines as a professional courtesy. We can unequivocally state that in those cases, the outcome was positive for the clients and, in some cases, made more positive by acting

professionally. Of course, there will always be those parties, or their lawyers, who foster a hard-line approach to the case.

However, perhaps a better practice is to set a positive tone from the beginning before you come out swinging the day the client walks into your door. If you're a lawyer who sets negative, aggressive tone from the outset, then don't be shocked when opposing counsel doesn't return your phone calls, doesn't grant you any extensions you request, doesn't work with you to complete discovery, etc. In all, what goes around does, indeed, come around. In the end, it would be best to have a reputation as being respected and a "lawyer's lawyer" than to be the attorney to whom everyone else is looking to dish out a little "payback."

3) Good Lawyers Don't Just "Try" Cases; Good Lawyers Try to "Resolve" Cases - Before we hop down off of our soapbox, there is one last point to be made. "Scorched earth" policies and aggressive behaviors don't benefit clients (except in the movies). Aggressive behaviors run up legal fees. Sparring with opposing counsel or writing threatening "paper tiger" letters or emails is, in a word, useless. As we say here in the South, "you catch more flies with honey than with vinegar."