

Personal Injury Lawyers Through The Eyes of a Former District Attorney



Prince Holloway, Esq.

Kolsby, Gordon, Robin, Shore & Bezar

Prior to joining a plaintiff's personal injury practice, I had the distinct privilege and pleasure to serve my community as an Assistant District Attorney in Montgomery County. I prosecuted violent crimes as a member of the Major Trials Team, and worked closely with crime victims, police officers, public defenders, and, on occasion, civil attorneys.

When it came to interacting with civil attorneys or personal injury lawyers, I learned over time that the relationship between a prosecutor and personal injury lawyer representing the crime victim should NOT be contentious or antagonistic. To the contrary, prosecutors and personal injury counsel share a common interest in ensuring that crime victims achieve a full measure of justice for their injuries in both the criminal and civil justice systems. As a civil attorney you already have common ground with a prosecutor because you both have the victim's best interest in mind and want to see the victim made whole, whether it be physically, emotionally, psychologically and/or financially.

When I was contacted by a plaintiff attorney it almost always involved a request to review the criminal file and obtain a copy of the evidence from the criminal case. This makes for an interesting dynamic. On one hand, the prosecutor wants to help the crime victim as much as possible. On the other hand, he has to consider whether releasing information from the criminal file, prior to trial, will adversely affect the criminal prosecution.

Before a plaintiff attorney requests information from a prosecutor, he should consider the prosecutor's goals and objectives and be mindful not to interfere with those objectives with his request. In order to get information from a prosecutor he/she needs to trust you and have the full confidence that you are not going to sabotage his case. One way to build trust with a prosecutor is by a phone call, not an email or a demanding "lawyer" letter. It makes sense to talk about your own experience as a former prosecutor, criminal cases that you have handled, and to let the prosecutor know that you are involved in crime victim rights advocacy groups, like, for example, MADD. The message that you want to convey is that you care deeply about cause of victim rights beyond the one case.

When you speak to the prosecutor, the conversation cannot simply be about what the plaintiff lawyer needs. Rather, the discussion should also include the consideration of the needs of the prosecutor. You can help the prosecution get the victim through a

traumatic, difficult and emotional process. Because personal injury counsel represents the crime victim, and as a result usually has more contact and a closer relationship with the victim, he can assist the prosecutor's office by facilitating communications with the victim, guaranteeing the client's attendance at court hearings, and supporting decisions made by the prosecutor's office to engage in pleas bargains with criminal defendants and explaining to the client why such a plea bargain makes sense under the circumstances.

Further, the information exchange can also be a two-way street. Keep in mind, a civil lawyer may have conducted a pre-suit investigation that yielded photographs, videos, surveillance tape, witness statements, results of expert inspections and other important physical evidence that the prosecutor does not have in his file. Generally speaking, aside from the police investigation, the prosecution has no ability or opportunity to engage in the type of extensive discovery that many civil lawyers routinely utilize to build and strengthen their civil cases. For example, it is rare, if ever the case, that a prosecutor will be able or permitted to take the "deposition" of a fact witness in a criminal case. On the contrary, if a civil case has been filed during the pendency of a criminal matter, personal injury counsel may have taken numerous depositions of crucial witnesses slated to testify on behalf of a criminal defendant. The deposition testimony can be used to undermine

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the credibility of defense witnesses who provide inconsistent testimony at the time of the criminal trial. It could make the difference between a guilty verdict and an acquittal. There is no reason why counsel should not share this material with the prosecutor's office, if doing so helps to advance the cause of justice for the crime victim.

It is true that a valid concern that a prosecutor may have is that a victim who has filed a civil lawsuit seeking money damages during the pendency of a criminal case may have his or her credibility attacked in the criminal case. Whenever possible, a courtesy that a plaintiff lawyer can provide to a prosecutor is to delay filing suit until the criminal case is disposed of. If counsel is up against the statute of limitations, and a civil suit must be filed or lost forever, a

prosecutor should understand that financially compensating victims for injuries suffered is consistent with the notion that the victim must be made whole. If a criminal attorney wants to argue that the victim should not be believed because he is motivated by money, then a prosecutor should be able to present evidence concerning the extensive damages that victim has suffered at the hands of the defendant, including future medical care, physical therapy and mental health counseling, much of which will not be fully or readily recoverable in the criminal justice system.

In sum, there is no question that prosecutors and civil attorneys can coexist and be valuable resources for one another. It is imperative for a prosecutor and personal injury lawyer to develop a relationship based on mutual respect and trust. Both should realize and

appreciate that they are on the same side. A prosecutor and personal injury counsel share virtually the same roles in our justice system, albeit in different settings and contexts, and share a common and overriding interest in achieving justice for the injured crime victim. That alone should be reason enough to forge a working alliance and join forces. ♦

Editor's Note: Prince Holloway is an associate at Kolsby Gordon, where he focuses his practice on representing injured persons in medical negligence, auto accidents, and product and premise liability matters. Mr. Holloway joined the firm after several years serving as an assistant district attorney in Montgomery County, Pennsylvania, where he worked in the county's Narcotics and Major Crimes Unit. You may contact Mr. Holloway at: pholloway@kolsbygordon.com.