



This article first appeared in the ACLDN Network's membership journal.

Armed Citizens Legal Defense Network Editor's Not by Gila Hayese: In August, I enjoyed the opportunity to spend time with Network Advisory Board Member James Fleming (see his bio [here](#)). One evening over dinner, I asked him about a persistent inquiry I receive from Network members and potential members alike: if some Network Affiliated Attorneys don't boast of a long history of winning self-defense litigation, why does the Network list them as resources for Network members?

Knowing Jim could give a good explanation of the various roles attorneys play at different stages in the time line that follows self-defense actions – from police questioning up through trial – I asked him for a reality check on the commonly expressed wish among armed citizens to find an experienced attorney who would represent them from beginning to end.

His answer was so comprehensive and educational that I asked him to write it down and we share it here with our readers.

How To Find the Right Attorney by James Fleming

You have raised some good questions, Gila. Let me see if I can answer them.

First let's deal with the popular misconception that attorneys, in order to be "good" must have been featured on television news programs and they must have handled "high profile" cases. This is interesting, because people seldom demand the same level of notoriety from their physicians, dentists, CPAs or other professionals. But the simple truth is that out of the thousands of well-qualified, experienced and talented attorneys practicing in the United States at any given time, only a small percentage of them are going to end up handling a case during their careers that will generate the type of media attention that people often mistakenly attempt to equate with "competence."

Of course, there are attorneys who will seek the camera or the printed page, in an attempt to play to the misconception. That does not mean that they are more skilled, experienced or talented than other attorneys, it simply means that they have learned how to stay in the public eye. Many skilled, smart and courageous attorneys toil quietly, and effectively, studiously avoiding the camera lens or the reporter's microphone.

The same is true of the infamous "won-lost record." Attorneys are often asked to recite this number, as though it was a baseball player's batting statistics. Any good trial attorney knows that such a statistic is meaningless. All of us have won cases we should have lost, lost cases we should have won, and very few serious trial attorneys keep track of such empty statistics. It is about as useful as asking an attorney who has been in practice for over twenty years what his class rank was in law school. Even if he/she remembers, it simply has no relevance in determining the skills, talents and abilities that attorney has acquired over the intervening years of their practice.

During the course of my career as a law enforcement officer and later as an attorney with over twenty-seven years of practice in the State and Federal courts, it has become my opinion that if an attorney can quote you his/her won-lost record, and also their law school class rank, you probably might want to think twice about employing that attorney in the first place. But hey, that's just me.

The attorney's reputation in the legal community, the community at large and your own perception of that attorney after meeting the attorney face to face, are much more useful in helping you decide if this is a professional that you can work with easily and put your complete trust in when it matters most.

At the same time, the members must understand that the defense of a self-defense case requires a sub-set of special skills and knowledge unique in the practice of criminal defense. The criminal defense attorney working in this area of practice has been specially trained to understand the impact of psychology, physiology, ballistics, forensics and many other scientific fields on the self-defense case. He/she is knowledgeable of firearms, ammunition, and other weapons, as well as the laws that govern their possession and use. This attorney is experienced in working with the experts who will investigate the facts of the case, the artifacts, physical evidence, statements, and scientific test results, and who will ultimately present a theory of defense to the attorney, who will then assume responsibility for the presentation of that case to the finder of fact (typically a jury).

So, the attorney that members have identified as their “first responder,” the one who comes in response to their initial request for representation in the immediate aftermath of a self-defense encounter, may or may not be the attorney who ultimately takes their case to trial. That first responder may have the knowledge, experience and skills necessary to take the case through to trial. Or, alternatively, that attorney might feel more comfortable handing the case off to an attorney much more well versed in the special procedures and disciplines required by the self-defense case.

As an illustration, consider a case occurring in the mid-1970s in Texas. A doctor, summoned by his son late at night to an upstairs window, observed an individual removing something from under the hood of his car. Seeking only to frighten the thief away, the doctor fired a round from a .22 rifle at the ground near the thief’s feet. For whatever reason, the round instead struck the young thief in the head, killing him instantly. The doctor was charged initially with a criminal homicide. However, his defense attorney invoked a law found in the Texas statutes that protected a homeowner from criminal liability in such cases. The criminal charge was dismissed. However, the family of the deceased also brought a civil action, seeking damages for the negligent actions of the doctor that caused the death of their young relative.

The original criminal defense attorney declined to handle the case since he was primarily a criminal defense attorney, not a civil trial attorney. Another attorney, an experienced civil litigator, handled that case and at the same time tendered notice of the civil claim to the doctor’s homeowner’s insurance carrier. The insurance company brought in their own lawyers to work on the defense of the case and at the same time brought a declaratory judgment action, seeking to have the court declare that the insurer had no duty to insure the doctor against claims arising from such an intentional act.

It would be common in such circumstances for seven or eight different attorneys to have been involved in representing the doctor before the matter was concluded. And each team would have a distinctly different agenda.

If your first responder does hand off the case, it may well be that they hand it off to an attorney who [at the Network’s behest] comes in from out of state, using a procedure known as *pro hac vice*.

Pro hac vice is a Latin phrase, used in the law to describe a procedure where an attorney not licensed to practice in a particular state, petitions to be admitted to practice under the supervision of an attorney who is licensed in the state. The attorney is admitted for the limited purpose of providing representation for a client in a single case, operating under the supervision of the attorney who agrees to be responsible for the out of state attorney’s actions and conduct. So, it would be very common for the “first responder” attorney to call upon the expertise of an experienced self-defense attorney from another jurisdiction to either assume primary control of the case, or to work hand in hand with the local attorney to represent the client.

I hope this discussion sheds some light on these questions for the members. The best advice I can offer is to find an attorney with a solid reputation for skill, knowledge, diligence and honesty and spend time discussing the situation with them to gain an understanding of what you can expect from them, and what they will be expected to do for you.

Closing editorial note: First, a big thank you to Attorney James Fleming for his insights into various aspects of legal representation. Interestingly, Jim started with the Network as an affiliated attorney for our Minnesota members. Later, he agreed to serve on our advisory board, and has now become pivotal to development of a Continuing Legal Education program (slated to launch in 2012) through which we will provide training for attorneys in the subject matter he identified earlier as important to the lawyer who will defend use of deadly force cases.

Now, a brief explanation for members regarding the affiliated attorney lists: The Network develops affiliations with attorneys as a way to help Network members find gun-friendly lawyers with whom they can comfortably consult. The choice of the attorney is ultimately the member’s decision, and no member is ever “assigned” an attorney, as many members ask, nor is using the services of an affiliated attorney a requirement for receiving the deposit against attorney fees after a self-defense incident. The affiliated attorney list is merely offered as a starting place to help our members who are having trouble locating a gun-friendly attorney. It is up to the individual member to be sure they are comfortable with the attorney that they choose.

The role of the affiliated attorney is to attend to the member’s needs during the days and weeks immediately following a self-defense shooting, including being present during questioning, arranging an independent investigation of the incident and keeping the Network informed of the member’s needs. As described above, if the case goes to trial, the Network can work with the member to assemble a defense team to achieve the best outcome.