

ABA SECTION OF FAMILY LAW

FAMILY ADVOCATE

Working with Your Lawyer

A Client Manual

- Truth or Consequences
- Everybody's Talkin'
- Simply Surviving or Surviving Simply
- Boundaries
- The ART Lawyer



AMERICAN BAR ASSOCIATION

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and educated
about key
events
in your
case.



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Editorial Board

EDITOR IN CHIEF

Kathleen A. Hogan
 3773 Cherry Creek N. Drive
 Suite 950
 Denver, CO 80209
 kah@mcguanehogan.com

ISSUE EDITORS

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MANAGING EDITOR

Lisa V. Comforty
 lisa_comforty@comforty.com
 224-425-6833

DESIGN/PRODUCTION

TJS Design Inc., Chicago, IL
 traci@eyecatchingdesign.com

ADVERTISING

Meredith Schwartz
 Network Media Partners
 mschwartz@networkmediapartners.com
 410-584-1979

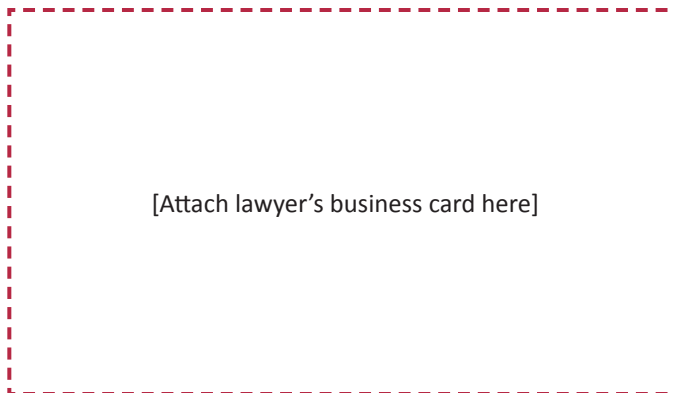
Dear Client:

This issue of *Family Advocate* is designed to provide additional support for you as you go through the process of a family law proceeding. The American Bar Association’s Section of Family Law has created it, and it has been given to you to help you make the most of your time with your lawyer. Our goal is to help you understand what you will encounter throughout the process and to offer tips for saving yourself money, time, energy, and additional heartbreak. We hope that by reading this Client Manual, you will become more comfortable, confident, and capable as you work with your lawyer to create the best result possible for your own, unique situation.

As you read the articles, consider the advice of our experts. Consult your lawyer and other professionals, including your therapist, accountant, and financial planner. If you have children, consider ways to work with the other parent to help your children through this process. Then think through your options and make the best decisions you can to launch yourself and your family into a brighter future.

Best wishes,

Kathleen A. Hogan, Editor in Chief



From the ABA Section of Family Law

Help for Blended Families

How to make it work:

- Communication
- Compassion
- Consistency
- Good Parenting Skills

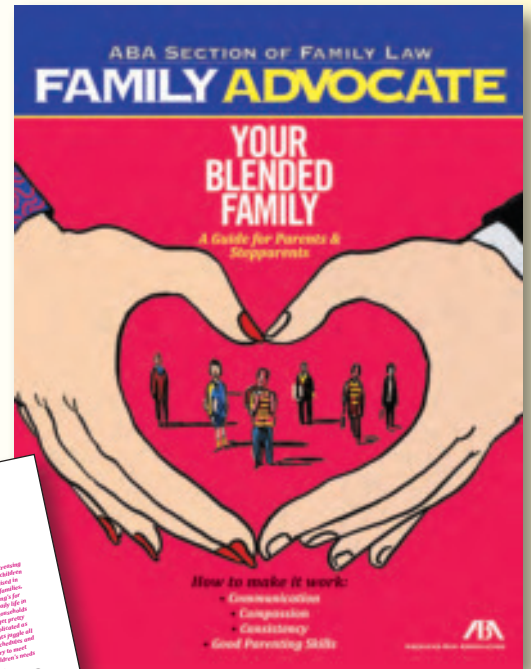
YOUR BLENDED FAMILY A Guide for Parents & Stepparents

This 40-page client handout, created by *Family Advocate* magazine, offers practical parenting and stepparenting advice, tips, and strategies from lawyers and mental health experts who have helped thousands of blended families and know what works and what doesn't.

The authors offer thoughtful, sound advice through discussions of:

- how children experience the blended family,
- devising shared-parenting schedules,
- raising an organized child,
- dealing with disputes and discipline,
- when to call a therapist,
- blending religious practices, and
- a personal story of one stepmom's experience, *What I Wish I Had Known*.

20%
of children
younger than
18 years old
reside in a
stepfamily



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Most People Really Do Need a Lawyer: What You Don't Know Can Hurt You!

By MARIANNE REBEL BROWN

You are approaching divorce. Maybe it is your choice or maybe it's something you have no choice about. It takes two to make a marriage, and if the other party is "checking out," you may be forced to deal with initiating or defending a divorce. The following recommendations can help you get your best result.

A Lawyer Can Help Protect You and Your Children.

You are facing the decisions of whether to hire an attorney, and, if do you hire one, how to choose the attorney and how to pay him or her. It's understandable that thoughts of representing yourself are running through your head. Try to keep in mind that going through a divorce can be a very emotional time. Dealing with your spouse, worrying about your children, and trying to make clear and smart decisions can be overwhelming. Having an attorney at your side will make navigating the process of divorce a much easier task with better results. It is important to have an objective advisor who knows the law. If you have children, the decision not to hire a lawyer can affect their financial and emotional stability. An objective advisor can represent your best interests and the best interests of the children.

What You Don't Know ...

Pensions
In the divorce process, what you don't know *can* hurt you. Even the process of identifying the assets of the marriage can

be complicated. Your spouse's pension earned during the marriage can be the biggest asset of the marriage and is often overlooked by divorce litigants acting as their own lawyer. After all, the pension is in your spouse's name and you never worked for that company—right? So obviously you are not entitled to your spouse's benefits—right? *Wrong!* In most jurisdictions, that pension is a marital asset to be divided.

Alimony, College Tuition, Parenting Time, Child Support, Custody

Other things you may not know:

- In alimony jurisdictions, a man can receive alimony if his income is lower than his spouse's.
- Some jurisdictions do not require the other parent to contribute to children's higher education expenses or pay support while children attend college unless this requirement is written into the divorce decree.
- The court could give parents equal parenting time. Parenting time affects child support.
- If you have children, shared, joint,

and sole custody are legal designations that carry with them legal rights and responsibilities.

Taxes

When you take the income of one household and split it between two, maintaining both households can become an overwhelming challenge. You may not know, though, that the tax consequences of splitting this income can become quite complicated. The tax consequences of alimony and child support, for example, are very important to understand. Alimony is, for the most part, taxable to the recipient and tax deductible for the payer. Also, if you just take money from a 401(k), it will get taxed and may come with penalties. You can transfer pension assets by something called a “qualified domestic relations order,” or “QDRO,” and that transfer and its tax consequences may be critical for you. The advice and guidance of an attorney will be invaluable in all of these matters.

Inheritances and Gifts

Treatment of inheritances and gifts from parents can be very complex. Even if the assets are not subject to division or “equitable distribution,” as lawyers call it, these assets may significantly affect your ability to support yourself or the children, and a legal perspective about them will be helpful to you as you move through the divorce process.

Mediation

Maybe you have decided to mediate your divorce. Remember that mediators are neutral parties. It is not their place to give legal advice. They are there to assist the parties in reaching a conclusion. Anyone going into mediation should consult with an attorney in advance of the mediation and know their rights and responsibilities. Although mediation is a good way to resolve the issues in your divorce, your lawyer should be used as a consultant in the mediation process. Mediation is often a lower-cost option, but mediation is not to be entered into to “avoid” using lawyers; rather, it is a tool to help you get what you are entitled to receive in a more amicable, and often less expensive, manner.

The Risks

Attorneys spend three years full-time in law school and are also required to take classes called “continuing legal education” after law school. They appear before the court and know what to say and how to say it. The idea that you could learn all you need to know by reading a few articles on the Internet is not very realistic. Besides, you do not want to risk the future quality of life for yourself or your children because you were ill-prepared. In the divorce process, it is often what you don’t know that affects you. Alimony, child support, equitable distribution, child custody and parenting time, medical insurance, uninsured medical expenses, life insurance—these are all issues to be decided in your divorce. How those issues are resolved can and will affect your future.

How Do I Choose a Lawyer?

The lawyer’s level of experience is important. Specifically, family law experience is important. Many jurisdictions have designations such as “Certified Matrimonial Lawyer” or “Family Lawyer.” This certification implies that the attorney has done a certain volume of cases and has passed a special state examination over and above the state bar exam that all lawyers take. In the absence of a state designation or if the lawyer you choose is not certified, you can ask the lawyer about the number of cases he or she has done and the complexity of those cases.

Although the Internet should not be your sole resource for choosing a lawyer, sites such as LinkedIn and law firm websites can list elements of an attorney’s experience such as law school attended, time in practice, and practice areas. In many cases, these sites also offer recommendations and comments. The recommendations and comments from friends and family are very important.

When you have selected an attorney, you will schedule an initial consultation. This is your opportunity to learn more about the attorney and his or her practice. Some consultations may be paid and some may be free. Free consultations may be limited in time and scope. Paid consultations may be longer and more complete. For example, my free consultation is limited to one half hour. I review child support and alimony calculations and touch on most issues. Because of time limitations, clients may choose to schedule a follow-up paid consultation in which I have the time to review documentation and give more in-depth answers. Some attorneys talk about themselves in free initial consultations and give pricing for the next step, never actually giving any specific legal advice. That being said, hiring a lawyer is an investment. If an attorney charges an initial consultation fee, that should not be cause to reject him or her.

Prepare for your interview. Bring your last tax return and documentation of pension plans. Being prepared with a list of your debts, assets, and mortgages helps the attorney understand the issues in your divorce. If there were prior court orders, bring them. Have a list of questions prepared. Understand and articulate your goals. Hire a lawyer that you are comfortable speaking with and one that explains things to you in a way you understand. It is important that you have trust and confidence in your lawyer.

What Am I Hiring a Lawyer to Do?

Be clear with your lawyer about the scope and limitations of his or her representation. Some states allow limited-scope representation whereby the attorney may only be hired to appear on one aspect of the case or to only render advice and not represent directly. In other cases, the lawyer is hired for complete divorce representation through the final judgment of divorce. Even in cases where the lawyer is hired to complete the divorce, the agreement may not include deed transfers or QDRO preparation to transfer retirement benefits. In most cases, your lawyer will not file an appeal unless separately retained for that purpose.

How Do I Pay My Lawyer?

You should be asked to sign a retainer agreement defining the terms of payment. The retainer agreement should specify the hourly rate for the attorney and any other attorney or office staff who might work on your case, plus responsibility for costs such as copies or filing fees. Read it carefully. If you are not asked to sign an agreement, I might be hesitant to hire that lawyer.

Retainer agreements require an initial payment and can be flat-fee or hourly. If you will be paying a flat fee, make sure you know how much the lawyer is doing for the money you are paying. In an hourly agreement, you will be billed for the time invested in your case. In most cases, this will include all telephone calls, emails, and texts, as well as in-person conferences and document drafting.

Initial retainer fees can be costly. You may need to draw upon savings, credit cards, and friends and family. Read your retainer. Understand what type of costs your case will entail.

How Do I Work with My Lawyer?

Understand what the lawyer is going to do for the fee charged. If you are to be charged an hourly rate, know that there are ways to decrease your costs. How effectively you work with your attorney can directly impact the cost of hourly representation.

Organize your documents. You can save money by bringing copies of documents to your attorney's office that are organized, labeled, and in separate files. If a lawyer's staff has to copy the documents and the lawyer has to organize them, it will cost you more money. When you are given a form to complete, do it as completely as possible.

Prepare a budget for your post-divorce life. Review your checkbook ledger and bill statements while you are completing your budget. The more accurate your budget, the better the result you can obtain. You must be honest with your lawyer and disclose all of your assets and liabilities. Get copies of your credit card statements and bank statements so that they do not have to be ordered or requested.

Avoid using your lawyer as a therapist. As I said, divorce can be emotional. Your lawyer is not a therapist. Therapists may be covered by your health insurance, and your therapist may be a more appropriate person to talk to about the emotional aspects of divorce. If you have children, they may benefit from therapy. I always recommend therapy for people divorcing from a long-term or abusive marriage. If you try to use your hourly billed attorney as your therapist, your costs will mount.

Keep notes on issues that arise. If you are having parenting issues or financial difficulties, list them. Call your attorney about multiple issues at one time. It is often better to call and schedule a brief phone conference with your lawyer at a time when you can have your list in front of you and the attorney can have your file in front of him or her. Unplanned telephone calls can increase costs and also frustration. Be aware that emails and text messages to your lawyer will be billed to you because the response takes lawyer time.

Do not call your attorney with every issue, but know when an emergency situation warrants a call. Some matters are critical; these would include physical harm to you or your children or involvement of the police or a social service agency. In these situations, your attorney must be contacted immediately. If, on the other hand, your spouse is ten minutes late for parenting time, note that and discuss it at a scheduled conference. Let your lawyer's assistant know if living arrangements have changed so that that can be recorded in your file. Changes in your budget need to be documented in writing and submitted in writing.

You have the right to expect monthly bills. You should promptly review the bill and immediately point out any concerns. If you receive a large bill, communicate with your lawyer's office because payment arrangements may be available. Don't let the bill get out of hand.

Make sure that you have an ethical relationship with your attorney. Your attorney should not be dating you or hanging out with you during your divorce, particularly if you didn't know each other before you hired him or her. The attorney should not be your business partner or emotionally invested in the result of your case. You should not lie to your attorney. You need an objective, well-informed attorney.

What Paperwork Will I Need after My Divorce?

After the divorce is final, review the settlement agreement and/or order. Understand who is going to prepare any deeds or orders to transfer pensions. Keeping an organized, comprehensive file with all of your information will be very important.

One of the many reasons for keeping a good file is that if you ever want to modify the amount of child or spousal support you receive, you will need much of your divorce paperwork. In my state of New Jersey, a "Case Information Statement" containing all your financial and other divorce-related information is required for each divorce case; it must be attached to any future application to modify support. So retaining your file contents will be key.

Keep in mind that you should expect your lawyer to keep you updated about your divorce by sending you everything he or she receives as developments happen. Keep your file organized. Keep these things in a safe place. You may need them in future proceedings—but the tips provided here will help you minimize costs and obtain the best results possible.

FA



MARIANNE REBEL BROWN (mbrown@mbrownlegal.com), managing partner at the New Jersey law firm of Rebel Brown Law Group, LLC, is a New Jersey certified matrimonial attorney who has been practicing for more than thirty years. Her practice focuses on divorce, child custody,

parental defense in child abuse cases, domestic violence prosecution, post-judgment enforcement and modification issues, and Social Security disability matters.



Things to Consider Before Hiring a Divorce Lawyer—From a Retired Family Court Judge

By HON. DAVID L. STOWE (RET.)

Divorce is the most emotion-filled, vulnerable, and sometimes frightening time in many people’s lives. It is a complicated process, and without legal knowledge, it can be very confusing. You will be called upon to make decisions that will probably affect the rest of your life. This is also perhaps the worst possible time for you to be making these decisions, given your likely emotional state.

A lawyer is not necessary in every divorce case. Many have successfully navigated the divorce process without one. For those whose marriages have been short (less than six or seven years), without children, and with no real estate and few other assets, and when neither party is requesting alimony, self-representation may be an acceptable option because legal forms and procedures for proceeding without a lawyer are obtainable through local bar associations, legal aid organizations, volunteer legal services, and/or online resources. Nevertheless, having an experienced lawyer “in your corner” can often be in your best interest and can even save you time, money, and peace of mind. This is particularly true if your spouse has retained counsel or your divorce is contested, has complicated legal issues or significant assets, and/or involves children.

Your Comfort Level

Your lawyer will be your advocate and counselor—the person who you will need to feel comfortable communicating with about private, personal, and sensitive issues. Whoever you choose must be able to understand you and give you the confidence and trust to know that your best interest is at all times his or her highest priority.

The family court judge who will be hearing your case generally understands what you’re going through, likely lives in your community, and often shops in the same grocery

stores as you. So do the lawyers. Selecting a lawyer from your community, one who knows the court and the court staff and has a good professional relationship with the judge, can only help you.

The Little Things

Choosing the right lawyer for yourself can also help in ways not readily apparent. It can help with the seemingly little things, such as needing an order signed on a Friday afternoon, scheduling an emergency hearing before a judge or referee whose clerk is already looking at a full court docket, or appearing before a judge after violating a provision of an order. Your lawyer is often viewed by court staff, and sometimes even by the judge, as a reflection of the client. Even though the client may in some instances be undeserving of that recognition, the right lawyer can sometimes provide help with situations such as those just described, situations that are not well-known to the general public but that can impact a case. The value of such help is difficult to quantify—but it is significant nonetheless.

Children’s Well-Being

Nothing is more important than insuring the ongoing physical and emotional well-being of a child whose parents are going through a divorce. Your lawyer needs to be able

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Truth or Consequences:

Why Honesty Is the Best Policy When Dealing with Your Lawyer

By KATIE MCCLAFLIN



Being honest with your lawyer is the first step.

You, like most people, are likely to want to finalize your divorce with your integrity intact, your finances in order, and a positive sense of emotional well-being. There are many steps you can take before, during, and after the divorce to maximize your chances of doing so. Being honest with your lawyer will be the first step, as honesty builds the foundation for all the others.

First, however, know that the advice in this article is intended to provide guidance in those cases where both spouses seek a fair result. If your spouse has a pattern of trying to control you through intimidation, threats, violence, or restricting access to information, or if for any other reason you cannot engage in fair and open negotiations, you should approach the divorce differently from the way recommended here. For more information on

how actual or threatened abuse can affect the divorce process, contact your local domestic violence shelter and request names of attorneys in your area who are experienced with helping clients through the dynamics of domestic violence. You can also visit the National Center on Domestic and Sexual Violence at <http://www.ncdsv.org>.

Choosing a Lawyer You Want (and Getting the Lawyer to Actually Agree to Represent You)

Nearly everyone facing a divorce has at least one friend or family member who has gone through the process. A 2009 study by a research team headed by Rose McDermott of Brown University found that study participants were seventy-five percent more likely to become divorced if they had a divorced friend. This ripple effect is attributed to a variety of factors. Seeing a friend go

through a divorce can reduce the social stigma associated with ending a marriage. It can also help illustrate that, painful as divorce is, it is possible to emerge from a divorce a happier, healthier, and more satisfied person. If you are considering a divorce or you want to learn more about what it would look like for your family or you learn from your spouse that a divorce is imminent, you should meet with an attorney immediately. Whether you engage in mediation, collaborative divorce, litigation, or some combination of those processes, an attorney can educate you on your options, help you determine which approach will best protect your interests, and help you achieve your goals.

When you start to search for a divorce attorney, look to those divorced friends who most closely resemble the person you want to be *after* your divorce. Your attorney will be your advocate during what may be one of the most stressful experiences you will have. If you have a terribly unhappy, bitter friend who still spends all of his or her time ruminating on an ex-spouse and the divorce, that may not be the best place to look for advice. Rather, go to friends who have navigated the process with dignity and ask them who their attorney was, whether they would recommend the attorney, and why. Some attorneys spend a lot of money to market their practice. They may use terms to describe their practice that are intended to attract the greatest number of Internet hits. So if you search online for a divorce attorney

in your town, you are not necessarily going to end up with a proper fit.

An effective advocate needs accurate, detailed information in order to protect your interests and help you navigate the divorce process from the very first meeting through finalizing post-trial details. Your honesty in supplying this information will be essential, so, as you research and evaluate potential attorneys, think about the kind of personality you are most likely to feel comfortable with. You will be delving into very personal, intimate areas of your life that include marital problems, income, and spending habits. It is crucial to choose an attorney who is not only qualified to represent your interests, but who you will feel comfortable with when discussing those most personal of matters.

The Initial Consultation: Be Organized and Honest

A consultation with a divorce attorney is truly a unique experience. You are likely to be meeting this person for the first time—and yet you are expected to disclose very personal details about your life. The purpose of the consultation is for you to gain knowledge about divorce in general and how it may affect your family in particular. But it is also a time for you to evaluate the potential attorney. The attorney will be evaluating you as well and deciding

The Consultation: How to Prepare in Advance

Trying to convey several years' worth of information can feel overwhelming, but there are ways you can prepare in advance.

➤ **Prepare a brief overview of your case.**

➤ **List your primary goals.** Identify them by thinking about what you want your life to look like six months, one year, and five years after the divorce is final.



➤ **List your assets and debts.** Think about your financial situation by listing all your assets and all your debts. If you have access to tax returns, account statements, and other financial documents, make a note of that and tell the attorney. This can help the attorney evaluate many aspects of your case, such as how long it may take, how much formal discovery (the process of obtaining evidence from the opposing side) will be necessary, and how much you can expect to pay in attorney fees.

➤ **If you don't understand your finances, say so.** If you are unfamiliar with the finances of the marriage, communicate that to the attorney and ask him or her to explain what that means for you in the divorce.

➤ **Prepare to briefly describe your marriage.** Divorce attorneys typically understand the sentiment behind the saying "the marriage is the parent of the divorce," so be prepared to describe the marriage and the deterioration of the relationship.

➤ **Create a concise list of recurring themes of conflict in your marriage.** If you think fault may be relevant to your situation, ask whether it will play a role in the financial or child-related outcomes of your divorce. Even if fault is irrelevant, the attorney may ask you to describe the marital dynamics in order to assess how those same dynamics may continue to play out in the divorce process. Rather than preparing a list of every disagreement you or your spouse ever had, provide themes of the marital dynamic. Provide an example to illustrate each theme.

— K.M.

whether he or she will be able to represent you. Your initial consultation is your first and best opportunity to establish credibility. Be open and honest. It will benefit you in the long run.

It can be difficult to know just how much detail you should provide at first. Whether you provide a general overview of your situation or delve into more detail, honesty, once again, will be crucial. In order for the attorney to accurately evaluate your case, he or she will need you to be candid. If you cannot bring yourself to discuss the details of your relationship, your finances, or your marital difficulties, that may be a sign the attorney is not a good fit for you. The attorney needs to know what the case entails, what the potential complications may be, and its level of complexity.

Nothing good can come from being dishonest or uncommunicative in your initial attorney meeting or at any phase of the divorce process. Dishonesty diminishes the mutual respect that should serve as the foundation of the attorney-client relationship. If you fail to provide honest, accurate information about your situation, you will not get an accurate assessment of your case. The attorney may refuse to represent you. He or she may withdraw from representation if it later becomes evident that you were less than honest in the beginning. Changing attorneys can be expensive and stressful. Changing attorneys repeatedly can harm your credibility by conveying a message that you are a difficult or unreasonable client.

The Hiring Agreement

Request a written engagement letter that describes the terms of your attorney's representation. Make sure you understand how you will be billed and what to do if you have a question about any aspect of your case. Ask questions at the beginning to make sure you and the attorney are on the same page. Starting off on the same page is key to *staying* on the same page with your attorney as you navigate the divorce process.

Discovery of Evidence

Assets and Debts

While divorce laws differ from state to state, the first step of the divorce process is the same no matter where you live. Marital assets and debts must be identified. Your paramount responsibility is to openly and honestly disclose all assets and debts. If you are the spouse with a more sophisticated understanding of the finances or better access to relevant documents, the onus is on you to disclose all information as early in the case as possible. An intentional failure to disclose assets will result in losing credibility with your attorney, as well as with the judge who will be making important decisions about the division of net worth and support payments. Failure to disclose assets can result in sanctions and attorney fee awards and may allow the judge

to award the undisclosed asset to your spouse. You may have legitimate reasons for wanting to retain certain assets. Your attorney's job is to zealously advocate for you and protect your interests. As you disclose all assets and debts, also state your preferences for how they should be divided. Your attorney can evaluate which strategies to employ to pursue the most advantageous result for you.

If you are less knowledgeable about the marital finances or feel disadvantaged as compared to your spouse, tell your attorney. To negotiate a fair settlement, you must have all relevant information in order to evaluate your options. This may mean engaging in the formal discovery process, demanding a sworn financial affidavit from your spouse, and reserving jurisdiction to the court to set aside for you any undisclosed (and later identified) assets. If you have access to tax returns, account statements, and debt information, gather the documents together immediately and provide copies to your attorney. You may also need to prepare to have certain assets appraised, so notify your attorney if you have any collections, art, jewelry, or other items of value.

Disclosing debts can feel intrusive and even more personal than discussing your intimate relationship. But identifying and dividing debt is an important part of a divorce. If you fail to disclose debt, you may be permanently stuck with it. If you fail to disclose debt you hold jointly with your spouse, this can cause serious and expensive problems for you after the divorce. Generate a credit report with each of the three major credit reporting agencies at the very beginning of the divorce process. Generate a follow up report before you finalize the divorce, particularly if more than ninety days have passed since your initial report.

Other People's Information

There may be people in your life who have valuable information relevant to issues in your divorce. Whether that information is valuable to you or valuable to your spouse, you should tell your attorney about any potential witnesses who may have information related to any issue in your divorce. This does not mean that if you tell your attorney about the conversation you had with your child's teacher, the teacher will be called to testify at trial. Your attorney can evaluate whether a potential witness should be interviewed or deposed as part of the divorce process.

Your Past Mistakes

You may not know whether conduct, particularly if it is potentially damaging, should be disclosed to your attorney. It may be irrelevant to any issue in your divorce. If you have children, your spouse may find it tempting to bring up past conduct in an effort to gain an advantageous child custody arrangement. Disclose potentially damaging conduct to your attorney as early as possible so your attorney is

prepared to defend and/or address it if necessary. The same is true for social media activity. Tell your attorney about your social media accounts, how you use them, and whether you have any concerns about your social media activity or your spouse's.

During the discovery process, your attorney may remind you repeatedly that you must be honest and candid. You may grow tired of completing a constant stream of forms. Your spouse's attorney may use inaccuracies or inconsistencies to portray you as dishonest. If you do make a mistake or circumstances change as your divorce case is pending, inform your attorney right away so that the mistake can be corrected. If depositions are conducted, you will be asked questions under oath. Your answers can be used at trial, so it is important to understand the question and answer it honestly. If there are questions you think may be asked of you in a deposition, inform your attorney in advance.

Settlement Negotiations

By this stage of your case, you will have discussed deeply personal and potentially embarrassing details of your life with your attorney. As you navigate settlement negotiations, be aware of your priorities and goals for your life. If you are focused on one aspect of the case and your attorney suggests pursuing an alternate route, remind your attorney what your long-term goals are. Be open and honest as you priori-

tize the settlement terms that are most important to you.

Trial

If you are unable to resolve the divorce by agreement, you will have a trial to finalize the division of net worth, support, and any other remaining issues. Lying on the stand can result in contempt findings, sanctions, and a complete loss of credibility. It is absolutely crucial that you provide truthful testimony.

Conclusion

An honest and candid approach is crucial from the beginning to the end of the divorce process. You may lose half of your net worth in the divorce, but you can maintain your dignity. And that will be essential to the successful beginning of your new life. **FA**



KATIE MCCLAFLIN (kmcclafin@mklawkc.com) of the Law Offices of Manson Karbank in Overland, Kansas, focuses her practice on complex divorce and child custody matters, as well as drafting and litigating premarital and postnuptial agreements. She is currently the president of the Johnson County Bar Association and chair of the Civics Outreach Committee.

Things to Consider

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to understand that without you even mentioning it. You shouldn't have to interview a lawyer very long to recognize this capacity.

Business Sense

If you are fortunate enough to have significant assets and/or a business, your lawyer also needs to have business experience, or at least the ability to read and understand a spread sheet, and to have a basic sense of economic realities. Not all family lawyers have the necessary business acumen, and their lack of such knowledge can negatively affect your settlement.

Recommendations

Everyone everywhere is a self-proclaimed divorce expert, since nearly everyone knows someone who has been divorced. Don't be afraid to ask friends and colleagues their opinions of and experience with their attorneys. Recommendations from others who went through divorce can be helpful to narrow the list of possible lawyers you may want to hire.

Interviews

If you can, interview a few lawyers, and if you're the least bit emotional, bring a friend with you who can take notes. Be prepared and ask questions: How much will you be charged?

How does the lawyer bill, specifically? Who else in an office will be working on your case experience? What part of the lawyer's practice is family law? What additional costs can you be expected to pay? The questions could go on endlessly, but you will soon develop a sense as to whether the lawyer you're interviewing is someone who can relate to you and your issues and who can insure the best possible outcome for you.

Communication

Once you hire a lawyer, never be afraid to ask questions throughout the divorce process if you don't understand something. It is your case, and the lawyer works for you. As you ask for recommendations and guidance, remember that your lawyer is the expert. At the same time, however, your lawyer should always ask for your input and listen to what you want. After determining which outcome you want, your lawyer and you will devise a strategy to reach that goal. **FA**



HON. DAVID L. STOWE (ret.) (dstowe@legacylawtc.com) retired after many years of service as Chief Probate Judge and Family Court Judge of Michigan's 13th Judicial Circuit Family Court. He was instrumental in initiating numerous programs addressing domestic violence and children's mental health and substance abuse issues, and he has presided over thousands of divorce proceedings. He currently serves as a fiduciary and mediator in northern Michigan.



A Primer on Communicating Effectively with Your Attorney

By STEVEN K. YODA

***Everybody's
talkin' at me***

***I don't hear a
word they're
sayin'***

***Only the echoes
of my mind***

— Fred Neil
"Everybody's Talkin'"

"Everybody's Talkin'" is a song originally written and recorded in 1966 by singer-songwriter Fred Neil. A remake of the song recorded by Harry Nilsson became a Top 10 hit in 1969, when it was featured as the theme song to the movie *Midnight Cowboy*. The opening lines of the song capture the feelings of frustration and emptiness that can result from poor communication. If you are not careful, they are also feelings that can arise from poor communication during family law cases.

The purpose of this primer is to provide you with some basic tips on communicating effectively with your attorney during family law cases to maximize your chances of a favorable result. If you keep these points in mind, you hopefully will avoid some of the disasters that can result from miscommunication.

Communicating Effectively With Your Attorney

● Listen Carefully

Let's start with the basics. You hired your attorney for her expertise in family law. Your attorney will be familiar with the legal issues presented by your case. The saying that "good communication begins with good listening" applies here.

When your attorney explains the law, which is often complex, you should *listen carefully* to what she says. After all, that is partly what you are paying her to do—know the law. Let her do her job. This may seem self-evident, but all too often clients seem to resist the law. The rule of law, by definition, means that the law rules your case. Your attorney is your trusted guide to the law. By listening carefully to your

attorney, you will better understand the legal battlefield you face. The sooner you understand the law (even if you disagree with it), the sooner you can begin to intelligently plan your case. If you refuse to listen to the law, you most certainly will get lost in the fog of war.

● **Set Realistic Expectations**

You also must develop realistic expectations for the outcome of your case. Doing so will require you to understand what your attorney can and cannot do for you. Your attorney can explain the legal process, your attorney can explain the law, your attorney can help formulate a coherent case strategy, and your attorney can help put your best case forward. However, your attorney cannot guarantee results.

Clients often press their attorneys to assure a certain outcome, as in “Please assure me that I will receive at least X dollars in spousal support” or “Please assure me that I will receive at least X amount of custodial time with my children.” Such dialogue is a waste of time. Certainly, an attorney can give you her opinion about *possible* outcomes and their *probabilities*, but that is the best she can do.

Much like a doctor faced with a complex medical issue, an attorney can plan a strategy of attack and advise about possible outcomes, but she cannot guarantee results. If you fixate on an issue that cannot be guaranteed, you will not be an effective listener. So, part of communicating effectively with your attorney is understanding realistically what she can do for you.

● **“Just the Facts, Ma’am”**

Your attorney is an expert in the law. You, however, are the expert on the *facts* of your case. After all, it is your life that is being litigated. You know where relevant documents are, you know where relevant witnesses are, and you know how events transpired. Just as you should listen carefully to what your attorney says about the law, so should your attorney listen carefully to what you say about the facts. It is through this dialogue that case strategies will emerge.

When communicating the facts of your case, though, you should de-emotionalize your narrative as much as possible. Everyone knows that family law litigation can be painful. That is a given. Years of resentment, mistreatment, or abuse often boil to the surface. But you should keep the name-calling and invective to a minimum. For those who remember the late actor Jack Webb and his character Sergeant Joe Friday from the classic TV show *Dragnet*, his (often-misattributed) catchphrase “Just the facts, ma’am” is worth keeping in mind. Just convey the facts.

Clients commonly refer to their spouses as “jerks,” “bullies,” or worse. These labels are legally meaningless. Likewise, clients commonly invoke the labels of psychology, as in, “My spouse is a narcissist,” or “My spouse is bipolar,” or “My spouse is manic,” or “My spouse suffers from borderline personality disorder.” More often than not, the

speaker is not a mental health professional and there have been no clinical findings to that effect. Even if there were, it does not automatically mean that “you win.” You still would have to discuss with your attorney what legal effect, if any, such findings would have on your case.

The point is: emotionally-laden labels impede effective communication. They inflame passions and often promote a victim-like mentality. Stick to the facts. You and your attorney can then discuss how to frame those facts to maximize your chances of achieving a favorable outcome.

● **Remember: There Are Two Sides to Every Story**

While sticking to the facts, you should always remember that there are two sides to every story. You will see the facts of your case one way, and your spouse will see the facts of your case another way. To litigate effectively, you must “know thine enemy.” To quote Sun Tzu’s *The Art of War*: “If you know the enemy and know yourself, you need not fear the result of a hundred battles.” To know thine enemy, you must remain open-minded to different points of view.

Remember that your attorney must not only advance your case but also defend against your opponent’s case. The more your attorney understands your opponent, the better she will be able to defend you. To communicate effectively with your attorney in this regard, you will have to suspend your own biases and step into your opponent’s shoes. Indeed, you will *want* to understand your opponent as much as possible in order to prepare for trial. By removing your blinders to your opponent’s point of view and discussing your opponent’s case dispassionately with your attorney, you will open frank lines of communication with your attorney that will only serve to strengthen your own case.

The Attorney-Client Privilege and Its Limits

Now that you know how to effectively communicate with your attorney, you should know how the law protects those communications. You might have some vague notion, whether from the news, movies, or TV shows, that your communications with your attorney are protected by “the attorney-client privilege.” You would be right. However, you might not know how exactly the attorney-client privilege works or its outer limits. So this section is designed to give you a basic understanding of it. Keep these rules in mind when communicating with your attorney.

The U.S. Supreme Court, in the 1981 case of *Upjohn Company v. United States*, called the attorney-client privilege “the oldest of the privileges for confidential communications known to the common law.” Although each of the fifty states has its own particular rules and variations on those rules regarding the attorney-client privilege, the privilege essentially covers: (1) communications, (2) that are confidential, (3) made between an attorney and a client,

and (4) made for the purpose of obtaining legal advice.

The purpose of the privilege, according to the U.S. Supreme Court, is “to encourage full and frank communication between attorneys and their clients.” Indeed, as discussed above, you will *want* to discuss your case frankly with your attorney to receive sound advice. Most of your communications with your attorney should be protected by the attorney-client privilege, which means that no one will ever be able to discover what you and your lawyer discuss.

There are, however, limits to this rule. You should be mindful of them. Three of the limitations are discussed below.

● The Attorney-Client Privilege Only Protects Confidential Communications

First, the attorney-client privilege only protects attorney-client communications that are “confidential.” Confidential means that the communication is conveyed in confidence. In other words, the communication should not be conveyed to any unnecessary third persons.

One way to think about this is: if you do not treat your communications with your attorney confidentially, the law will not treat them confidentially, either. The attorney-client privilege is a powerful legal principle, but you must respect it. If you blab about your attorney-client communications to others, talk loudly to your attorney in a restaurant or elevator, talk to your attorney on speakerphone while others are present around you, post about your attorney-client communications on social media, or bring unnecessary people to sit in on your meetings with your attorney, a judge could conclude that the attorney-client privilege will not protect those communications. So, treat your communications with your attorney cautiously and judiciously.

As an aside, it should be noted that the attorney-client privilege does protect communications between you and your attorney’s staff, which includes paralegals, secretaries, and clerks, because they are reasonably necessary to further your legal representation. (In fact, in many instances, you may prefer to speak to your attorney’s staff members because their hourly billable rates will be lower than your attorney’s.)

● The Attorney-Client Privilege Only Protects Communications Made for the Purpose of Obtaining Legal Advice

The attorney-client privilege only protects communications “made for the purpose of obtaining legal advice.” If you speak to your attorney about a tangential matter having nothing to do with her legal representation of you, that communication will not be privileged. Or if you hire an attorney to perform nonlegal services, your communications with her will not be privileged because they are not for the purpose of obtaining legal advice.

● The Attorney-Client Privilege Does Not Protect Communications Made to Perpetrate a Crime or Fraud

Even if a communication falls squarely within the scope of the attorney-client privilege, it will not be protected if the attorney’s services were sought to perpetrate a crime or fraud. This is known as the “crime-fraud exception” to the attorney-client privilege. Its purpose is obvious: it ensures that the attorney-client privilege will not shield communications made for the purpose of committing a crime or fraud.

Different states apply the crime-fraud exception differently, but, generally speaking, in order for it to apply, the attorney-client communication must have been made with an intent to further a crime or fraud. It is not enough that the client simply revealed her crime or fraud to her attorney. Instead, the communication must have been made to *further* that crime or fraud. Also, in many jurisdictions, the crime or fraud does not actually have to be completed in order for the privilege to be waived.

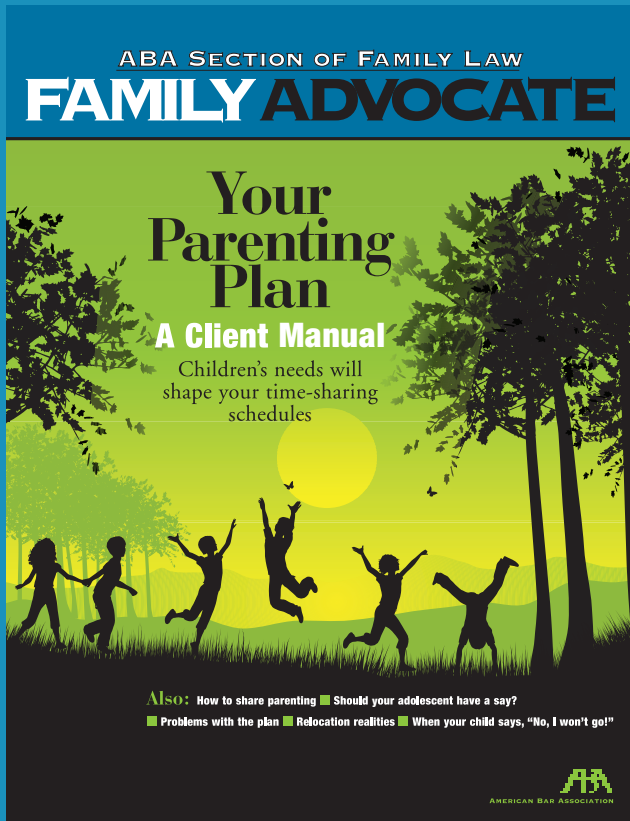
Keep in mind that the crime-fraud exception covers crimes *or* fraud. Since most clients are law-abiding citizens, they tend to dismiss this exception the moment they hear the word “crime.” “I would never use my attorney to perpetrate a crime,” they think, and rightfully so. But the exception also covers “fraud,” and it is not always clear what types of wrongful conduct constitute a “fraud” for purposes of this exception. For example, in family law cases, each party must disclose his or her finances to the other party. A client who communicates with her attorney about concealing assets from the other party could fall within the crime-fraud exception. Likewise, a client who communicates with her attorney about deleting unflattering emails or destroying relevant evidence could also fall within the crime-fraud exception.

Conclusion

If you keep these basic tips in mind, you will have the tools necessary for communicating effectively with your attorney. Effective communication will lead to better teamwork. Better teamwork will (hopefully) lead to a better result. Even if it does not, if you communicated effectively with your attorney along the way, you will at least better understand the final outcome and the process that led to it. So, in that way, win or lose, you can only benefit from communicating effectively with your attorney. **FA**

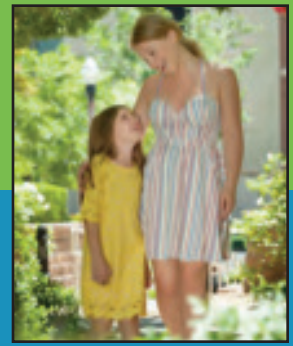


STEVEN K. YODA (sky@walzermelcher.com), a partner with Walzer Melcher LLP in Los Angeles, brings his experience as a long-time corporate litigator to clients with complex family law matters. He has served as president of the Japanese American Bar Association (JABA), a trustee of the Los Angeles County Bar Association (LACBA), and a board member of the Asian Pacific American Bar Association (APABA).



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Other Professionals: Why, When, and Who

By GARY ALLEN GARDNER

Believe it or not, every divorce case is unique.

Every one. Each family is different and made up of different individuals, so no two divorce cases are the same. Your case has similarities with others handled by your lawyer before, but no prior case *is* yours. Your marriage relationship is ending, and there is a reason (probably more than one). Almost certainly one of those reasons is that the two individuals in the marriage relationship, you and your soon-to-be ex-spouse, have different needs, different perceptions, and quite likely, different goals.

A More Efficient and Less Costly Divorce: How a Team Can Help

The task before you is nothing short of restructuring your life. Your finances change; your plans for the future change. Your relationships with your children change. Your social life changes. But only one part of your divorce is strictly legal; other very real, very important components are emotional, financial, and psychological in nature. Using the services of other professionals, coordinated by your divorce lawyer, can help you accomplish that restructuring more efficiently than your lawyer can alone.

So, how do you “do” divorce? Stake out a position and stick to it, right? Certainly you could choose to just charge ahead, heedless of what “the other side” says or does, utterly convinced of the justice and strength of your position. You and your lawyer could lay out a position and agree to take (or give) not one penny more (or less) and not one percentage point less parenting time. Given enough time and money, assuming that that position is not utterly inequitable, you might attain some of it. It is extremely unlikely that you will achieve it all; no one ever gets everything he or she wants in a divorce. But what if I told you that by using other professionals, on a team with your attorney, you might be able to reach a resolution more quickly and at less cost, both financial and emotional? Read on.

Your Lawyer as Advocate and Team Manager

Let your lawyer do legal work. Ask her to help you select and coordinate the other professionals assisting you. Start with her, and turn to her when you don’t know where to turn. Employ those professionals, the specialists, that she connects you with, for the best care and the best outcome for your case.

Using additional professionals will make my divorce much more expensive, right? Not necessarily. Think about it this way: should you pay your divorce attorney \$300/hour to counsel you through the emotional issues associated with the affair and betrayal, or \$125/hour to your therapist for that? That's an easy answer based on hourly rates alone, right? Also, doing so would assume that your attorney has the counseling and social work skills to get you through it. He or she is not as skilled as your therapist, in all likelihood. Other professionals have qualifications that your lawyer does not, while some will produce a product that your lawyer requires in order to resolve your case.



The Appraiser

To determine the value of a piece of real estate (including a house), you need an *appraiser*. Your lawyer cannot do that for you. (And neither can a realtor, by the way. A realtor can only give you a market opinion, but in most jurisdictions, that opinion would not be a

determination of market value admissible in court.) The appraiser's product, a valuation report, will be important data for your lawyer to have and for your financial advisor to use. It is also very valuable to settlement negotiation. And if it becomes necessary, that appraiser can testify at a trial or evidentiary hearing to the value of that asset. A few hundred dollars spent on that appraiser is a good investment toward the ultimate resolution of your divorce.



The Divorce Coach versus the Therapist

Mental health professionals, in all their roles, can help in a number of ways to get your case to resolution. So much of the "stuff" of a divorce is not legal; it is emotional and psychological. "How can I get beyond the affair?" "I fear that I won't have enough money for

retirement." A *divorce coach* (such as a counselor or therapist with a master's degree in social work) is better equipped to help you work through those emotional and psychological issues than your attorney.

Sometimes one spouse just gets "stuck." He cannot move beyond a problem or feeling (betrayal, guilt, anger) to rationally discuss temporary parenting-time arrangements. This is where a divorce coach can be so very valuable. That coach can help identify the obstacle and help find a path around it.

Your personal *therapist* or *counselor* may also be very helpful to you. His or her role is different from that of

your divorce coach. The job of your coach is to help you reach a resolution of the divorce case. Your therapist can help you with that process, but your therapist generally has a much larger perspective, with more long-term waypoints on the horizon. Your therapist may be helping you work through the effects of childhood trauma or problems with trust, for example. Those things will certainly affect your participation in the process of divorce, but your engagement in and completion of the divorce is a much more defined, focused task. In short, the role of your divorce coach is to help you through the process of getting unmarried.



The Financial Advisor

A very real, very important part of your divorce is financial.

- ➔ "Do we have to sell the house?"
- ➔ "Who gets the retirement account?"
- ➔ "Who gets the income tax exemptions for the kids?"
- ➔ "How are we going to pay for college?"

Questions such as these can present very real obstacles to reaching resolution and could hold pitfalls for the unwary.

Go see a *financial advisor* early—very early—in the process. Talk with your lawyer and then with a financial professional you trust. If your divorce is collaborative, that professional will help and advise you (both you *and* your soon-to-be-ex-spouse) as a financial neutral, giving you options and alternatives for dividing assets and debts and going forward separately. He or she may start by helping to compile a marital estate table. Even in a traditionally litigated case, your financial professional can give you options that you may not have considered. A financial professional can guide you through a temporary plan while the divorce is pending to answer such questions as:

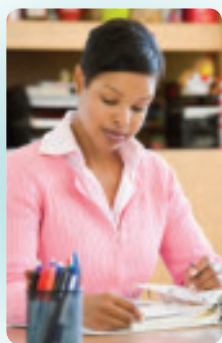
- ➔ Who pays the mortgage?
- ➔ Who pays the utility bills?
- ➔ What happens to our joint accounts?
- ➔ Who pays the credit card bills?
- ➔ Who pays for travel hockey expenses?

A financial professional can also walk you (and your attorney) through a number of options for final settlement and division of property and assets that will address other questions:

- ➔ Should you refinance the mortgage on the marital home?
- ➔ Should you take a higher percentage of assets or more spousal support?
- ➔ Should the retirement accounts be equalized or divided and how?
- ➔ Will my part of the retirement accounts be enough for me to live on?

Most lawyers are not tax professionals. Your lawyer may have some idea of the tax consequences of spousal support, for instance. But a financial professional is better equipped to determine whether you should wait until after December 31 to finalize your divorce and the relative values (relative to each parent) of the dependent tax exemptions going forward.

Frequently, a financial advisor can offer options and ideas that neither spouse had considered. Although there is, in fact, only a single “pie” (the marital estate) to be divided, a financial specialist can help you see that all of the slices are not identical. The tax rates that you and your ex-spouse will pay after your divorce may be quite different. You and your financial advisor should consider these tax rates in deciding how to “slice” that pie.



The Child Specialists

If your divorce involves children, it will almost certainly benefit from the involvement of child-centric professionals. If you do not have a firm, written parenting-time agreement in hand as you begin your divorce, see a *parenting coordinator* or *child specialist* as soon as you can. That specialist can

review proposals or thoughts that either of you may have and make recommendations for the division of parenting time that are appropriate for the ages of your children. In general, younger children need frequent contact with both parents; long blocks of time (such as “week on, week off”) do not work as well, developmentally, for them. Give serious consideration to using the expertise of a child specialist for concerns like these.

What is the role of a *custody evaluator*? A custody evaluator, who is usually a psychologist, can amass and analyze a great deal of information about your family and its members. In most cases, a custody evaluator will make a recommendation to the parents and/or the court regarding custody and parenting time.

In preparing a recommendation, an evaluator will meet with each parent, observe young children, and even interview older children. The evaluator will learn about the co-parenting relationship, how the co-parents communicate (or fail to), and what parent-child relationships have looked like up until now. He or she can gather school records, talk with teachers and coaches, and try to put together a “snapshot” of the child’s daily life. He or she can compile this information into a report to the court, which the court may use in determining custody and parenting-time arrangements.

A *guardian ad litem* (translated literally from the Latin: “guardian for the suit”), or GAL, is an attorney with the sole charge of protecting, during the legal process, the

interests of the minor child. The GAL is the voice of, and the advocate for, your child. Her sole task is to protect the best interests of the child; it is not to address the interests of either parent. In some cases, a child’s GAL can be helpful in conveying the child’s needs or interests to the court precisely because the court sees the GAL as independent expert, one who does not promote the agenda of either parent.

Your Lawyer as “Primary Care Physician” with a Team of Specialists

Your divorce lawyer is your advocate and your coordinator. She is your “primary care” professional who is coordinating the work of a team of specialists for you. You have a very serious condition with complex, interrelated symptoms and multiple courses of treatment spread across multiple disciplines. How you treat this condition will have lifelong effects for everyone involved. Your lawyer is at the center of it all—the “pivot point” for everything that happens in your case. She should coordinate the timing of your case, your consultation with other professionals, and meetings with the other side. She is your advocate and planner.

The Paralegal

When should you work with a *paralegal*? Your attorney’s paralegal works under the umbrella of attorney-client privilege and can be seen as an extension of your lawyer. Working with a paralegal for matters such as collecting documents for discovery requests and compiling documents and information can save you time and money. A paralegal can help schedule meetings with the other side and can keep you up to date on pending tasks and deadlines, upcoming hearings, and progress in your case.

A Private Investigator

Should I hire a *private investigator*? First check with your attorney. If your lawyer thinks that a private investigator (a “PI”) could be a wise investment, it may make sense to hire that investigator through your attorney. For most purposes, that puts the PI *and the PI’s report* “under the umbrella” of attorney-client privilege.



A Receiver

How about a *receiver*? A receiver is a professional appointed by a court to take control of the finances and/or operations of a business or asset of the marital estate. Occasionally, a receiver can be helpful during a divorce case if there is a “going concern” (a business or income-producing property) that cannot continue to operate by agreement of the spouses. Or a receiver might be necessary if the spouses cannot come to an agreement regarding the allocation of the income from the

business or asset. Talk with your lawyer if you think your divorce could benefit from the involvement of a receiver.



A Mediator or Other “Neutral”

What can a *mediator* do that two attorneys and their clients cannot do? The role of a mediator is to facilitate a discussion with the goal of reaching a resolution. That resolution may be a partial one or it might be a complete settlement.

A mediator is a neutral party who may not take sides or render a decision. It is not your task to “convince” the mediator of the correctness of your position; your task is to convince your spouse that your interests and needs are reasonable and can be met through your proposal. It is the job of the mediator to create a space for you to be heard by the other side. Similarly, the mediator must create a forum for you to listen, one that will enable you to hear the needs and interests of the other side.

Often, the very presence of that neutral third party changes the dynamics and tenor of a divorce. When both sides are forced to formulate their needs and interests and present them in front of the mediator, they sound different. When one spouse and his attorney are forced to look at the needs and interests presented by the other, new options or alternatives may present themselves. A mediator may even describe some options and alternatives that he or she has seen in other divorces. Use that experience; it may help you get your case resolved.

An *arbitrator* is different from a mediator. An arbitrator can decide the issues that you specify using the rules to which you agree. In effect, an arbitrator is a private judge.

An arbitrator can almost always hear your case or issues sooner than a judge. An arbitrator may be able to help you move your case forward with respect to one or more issues that have become impassable for you and your spouse.

Ultimately, a court order is required to sever the bonds of matrimony and finalize the divorce. But an agreement to use binding arbitration may enable you and your spouse to get some issues (perhaps even all issues) resolved more quickly and to make the entry of the final divorce decree a mere formality based on resolved terms.



Teachers, Coaches, Doctors, and Other Professionals in Your Children’s Lives

Consider also the existing professionals in the lives of your children: teachers, coaches, doctors, etc. Their existing relationship with you and with your children may be

able to provide some much-needed stability in a rapidly changing family structure. Don’t shut them out or keep them in the dark; let them know what is going on and how your children are dealing with it. Also, keep in mind that some of those professionals might be called—by you or by your spouse—as witnesses. If you are unable to resolve your divorce without formal court proceedings, they could become involved in that process through testimony, affidavits, or otherwise.

A Note about “Collaborative Divorce”

“Collaborative divorce” is a specific process, agreed upon and accepted by the parties, in which both spouses agree to give their best efforts to resolve all parts of the divorce before either of them starts a case in court. The parties also agree to full and complete disclosure in good faith, and they pledge that, if they are unable to complete their divorce without court intervention, both spouses must hire different attorneys. Some states now specifically recognize the collaborative divorce process in their laws. In Michigan, for instance, parties who have completed a collaborative divorce may be able to shorten the waiting period for entry of the divorce order from 180 days to only sixty days.

In collaborative divorce, your team will always include attorneys and other professionals. The team may work together synergistically, efficiently calling upon the specific skills of each professional. Whether your divorce is collaborative, traditionally litigated, or somewhere in between, a team of professionals can be very valuable to you and get you through it with less emotional and financial damage.

Conclusion: Your Team Can Shed Light on Ways to Move Forward

Every case, every couple and family, is different. Each family and couple being divided and restructured by divorce is unique. Divorce—that restructuring—is a serious condition that you are facing at a time of your life when you are likely not at your best. For the best outcome, you should rely on the skills and expertise of a team of professionals. This is a very difficult time in your life, with undeniable consequences for your future. Do not try to go it alone, in the dark—you don’t have to. Use your attorney as your “primary care” professional to coordinate that team, your care, and your case. You, your case, and your life going forward will be better for it. **FA**



GARY ALLEN GARDNER (gary@rosigardner.com) has been a practicing family law advocate for over twenty years. He is an experienced litigator, trained mediator, and collaborative divorce practitioner. Traverse City, Michigan, is where he makes his home and runs his practice, Rosi & Gardner, P.C.

Formulating a Winning Strategy While Simply Surviving or Surviving Simply

By MICHELE KANE CUMMINGS

The process of getting divorced can be far more bearable if you follow some basic, commonsense suggestions. The following will help you through some of the biggest legal, financial, and psychological challenges of divorce.

1.

Have a sense of the negotiation process.

It will be useful for you to pick up a book on effective negotiation. Even though you will have an attorney to assist you, a book on negotiation can help you develop the basic knowledge and skill set required for successful negotiation tactics. Financial issues, especially, can impact you and your children's lifestyles, so begin to identify what you are willing to do and what you are willing to concede. You will especially need to develop a perspective on whether or not you can negotiate a deal that is better than what you are likely to get in court.



2. Understand the opposing point of view.

You will negotiate and plan better if you can mentally place yourself in the other party's shoes, no matter how you feel about him or her. If you can understand his or her position and priorities, you may be able to adjust your goals and expectations so that you get what is important to you and make some useful tradeoffs. Your lawyer can be an invaluable resource on this

point. Many people wonder why their attorneys at times seem to be taking the other party's side. This is not actually what is happening. It is just a matter of playing "devil's advocate" to help you see all sides of an issue. It makes you more cognizant of certain limitations and possibilities and a much more effective planner and negotiator. Remember that, no matter what, you are going to have to be able to make some compromises.

3.

Be aware that you may ultimately suffer some “buyer’s remorse.” This is quite natural and will not mean that you made mistakes. It also will not mean that your lawyer, your accountant, or other professionals have let you down. It will mean that you are going through an extremely difficult process and “buyer’s remorse” is often just part of the game.

4.

Understand what it will mean to go to trial. If your case moves past negotiation and settlement and heads towards litigation and trial, you will need to be even more reliant on your attorney for guidance, particularly when you get into depositions and court hearings. Most lawyers generally spend substantial amounts of time with clients to prepare them for depositions and trial. I like to ask clients to engage with me in numerous role-playing scenarios in which I ask questions in my own “voice” and in the “voice” of the opposing counsel. This process allows clients to learn how to listen carefully to the questions that will arise and field truthful answers.

5.

Understand what it will mean to go to mediation. Mediation is a kind of “alternative dispute resolution” that enables clients to work with a neutral mediator to hammer out a divorce agreement. It is often less expensive, less time-consuming, and less stressful than going to court. However, you will also need to be prepared for mediation. You will need to meet with your lawyer and carefully go over the facts of the case, the issues, and where the compromises are likely to arise.

6.

Map out your goals, objectives, and priorities. One of the most important things you can do to alleviate stress is to attempt to map out your goals, objectives, and priorities. The exercise will be valuable even though your objectives will most certainly evolve and change over time. Remind yourself to be reasonable and sensible.

7.

Be discrete. Who should you confide in? Remember that once you tell someone a secret, it is by definition no longer a secret. How much should you discuss with your friends and even family? Many people cannot comprehend or identify with the emotional rollercoaster that you are experiencing. Furthermore, your friends and family members are not bound by attorney-client or therapist-patient privilege, and the one thing you do not want to happen is for your whole world to be open to public viewing. So confide only in your attorney, your therapist, and/or your forensic accountant if you have retained one.

8.

Consider how you will pay to maintain your lifestyle. One of the most important things you must consider is how you are going to afford to maintain your lifestyle. You will be splitting an income stream into two parts. If it has been difficult before to live on one income stream, you will need to carefully plan how to survive on less.

9.

Focus on your residence. Even if finances are not an issue or are at least not insurmountable, you will have to make many other decisions concerning your residence. Where are you going to live? In the former marital residence or elsewhere? Where will your soon-to-be ex-spouse live? Will either of you want to relocate? These are big factors that will impact your life and your children’s lives, including their education and their social lives, far into the future. People often feel that they will want to go back to where they grew up or where their parents or other family members live or have retired. Sometimes this can be helpful, especially when it comes to child care, but you may want to consider staying in a place where you have a support network of friends and associates and perhaps an interesting job or a successful, challenging business or career opportunity. Where your former spouse lives will also be a factor.

10.

Avoid lashing out, especially when it comes to issues concerning children.

If you have children, know that the process will often involve them and try to be as open-minded as possible. This may not be easy, especially when you are angry or hurt or both. There is a tendency to lash out against a soon-to-be former spouse, but lashing out will pay few dividends, especially when it comes to the children. You, along with your children, are embarking on a whole new journey. Emotional containment will be key.

11.

But remember that you can't always be cool, calm, and collected—or even moderately so. Emotional ups and downs are part of the nature of the beast that you will have to survive. Remember that you can survive it! Be aware that a divorce case does not focus on a single incident or even set of incidents. The divorce case, like the marriage, will have its ups and downs and will feel like being on a rollercoaster. It doesn't really matter if you are the one who initiated the dissolution of the marriage or you are on the receiving end; you still will have a myriad of emotional, financial, and legal issues, highs and lows, to deal with if you are to survive.

12.

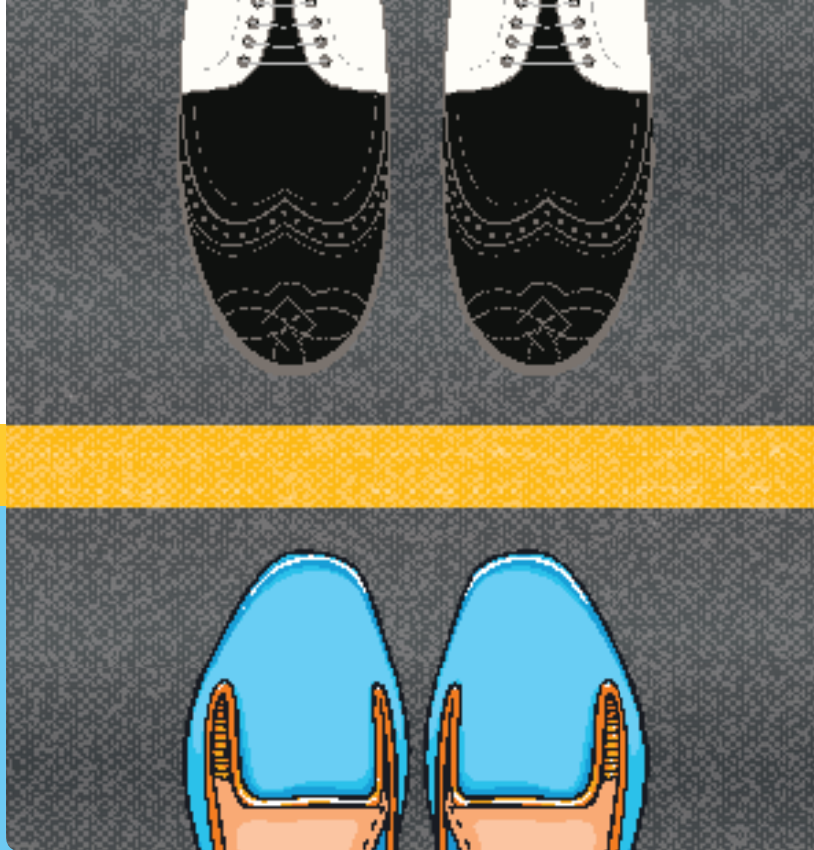
Seek counseling. Unfortunately, the divorce process will often seem like a moving target: one minute you will have found your bearings and the next minute these will seem to be gone. But the one thing you will have to take into account is the fact that this process does not simply deal with legal issues. You will confront a collection of emotional issues as well. To the extent that you can deal with the emotional issues through some kind of counseling, you will save yourself a great deal of grief and emotional torment and perhaps also money. It may be wise to seek counseling even if you feel that you do not need it. It's important, not to mention calming and comforting, to have a "sounding board," and it is remarkable how often you will begin to better understand yourself when you can actually hear yourself talk. It almost goes without saying that your attorney should *not* be your emotional sounding board. First, that would be far too costly and second, it would not be particularly effective. An attorney may be great at lawyering but have little expertise in therapeutic counseling.

13.

Remain flexible; remember that tomorrow is another day. Your life during the divorce process can turn on a dime—but your life definitely will go on. You will need to be prepared to deal with circumstances as they evolve. You will need to be able to rely on your attorney and your accountant and your other professionals to help you get through this difficult time and obtain the very best resolution possible, one that will provide you the opportunity to move forward with your life. Flexibility is probably one of the most important qualities you can develop in dealing with the divorce situation. You will so often experience a multitude of emotional ups and downs. If at times you find that you are unable to control your emotions, understand that that is not uncommon. But try to be flexible when things do not work out exactly as you would have wanted. Tomorrow will be another day—hopefully a better one. **FA**



MICHELE KANE CUMMINGS (michele.cummings@gray-robinson.com), of the Boca Raton office of the law firm GrayRobinson, focuses her practice on family law matters such as dissolution of marriage, alimony, asset distribution, child support and parentage issues, and prenuptial and postnuptial agreements. She advises and counsels clients and litigates on a full range of legal issues that arise from family relationships. She is board-certified in Florida as a specialist in the practice of marital and family law and as a family law mediator.



Proper Boundaries Between Attorney & Client

By DANIEL L. BRAY



What are the proper “environs” of your attorney-client relationship?

The word “environs” includes the concept of boundaries but implies something more than just “limits.” Working with a divorce lawyer may be a brand new event in your life, and you will

have to learn what that is all about and how to be an effective client. This article addresses generally what clients need to understand about limits that surround the attorney-client relationship, but you should ask your lawyer any questions you may have so that you are comfortable with the boundaries of being a client.

Problem-Solving Is the Fundamental Task

Effective problem-solving must be at the center of all that should be happening between you and your lawyer. There will be many objectives to be accomplished as you achieve the overall goal of effective problem-solving in your divorce. All issues in your case, no matter what they are, will require effective problem-solving. Some problem-solving events will take place in your lawyer’s office, and some, such as meetings with your therapist, interactions with a child’s attorney or custody evaluator, or calling law enforcement for your protection, will unfold outside of your lawyer’s office.

Working with your lawyer will require that many different problems be solved. The work may involve assessing the value of a business, ascertaining whether there are undisclosed assets, and determining what kind of parenting plan is really in a child’s best interests. Your understanding of the focus of the issues in your case and the boundaries of your relationship with your lawyer will matter greatly to the outcome of your case. You will have a lot to contribute—so let’s get started talking about you as the effective client.

👉 Know that Your Lawyer’s Job Is to Decide How to Present Your Case

As the client, you will make many decisions about your case—except in the courtroom, where your lawyer will make the decisions necessary to present your case. Prior to trial of your case, your lawyer’s primary role will be to discover the law and facts and give advice on all aspects of your case, while your role will be to decide and make choices. When presenting your case at trial, your lawyer will make strategic decisions about how to present your case, but you can remind your lawyer about facts and events that you think are important to the presentation. Sometimes mentioning at the trial what you think is important may actually be counterproductive, so discuss your thoughts with your lawyer ahead of time. Your goal will always be an effective presentation at trial or an earlier, effective settlement.

👉 Your Lawyer Is Not Your Friend or Therapist

Your lawyer should not be dismissive of your emotions or your family relationship concerns. After all, you are you and

you bring to the divorce how you feel. But don’t ask your lawyer to act like your therapist or even like a trusted friend. That’s not the lawyer’s role. Ask your lawyer for a referral to a therapist for you or for the children, if you feel the need for it. Your lawyer can give you some commonsense advice but cannot provide therapy or counseling.

Your relationship with your lawyer is centered on a professional relationship. Don’t encourage or allow socializing with your lawyer “just to get better acquainted.” Focus instead on meaningful conferences or other forms of communication that really put you on the path to effective problem-solving.

You will likely perceive your lawyer as detached or objective—but also compassionate and understanding. This is how it should be. Your lawyer should be able to treat you with respect, encourage your transitions through your divorce, and, at the same time, give frank opinions on your case dynamics, its facts, or the law.

👉 Communicate about How to Communicate

There are so many accepted ways to communicate these days that you should talk to your lawyer or your lawyer’s office staff about which methods of communication they consider most effective. It is hard to imagine, for example, effective client-attorney communication based on Twitter, even when limited to a privacy setting. Many offices request that emails be directed to the lawyer or legal assistant and be kept brief and informative. If the client has a lot to say, it is often communicated better in person via a scheduled telephone call or personal conference. Lengthy emails to your lawyer do not assure adequate communication or understanding about important or complex matters. Whatever means of communication is agreed to between you and your lawyer, make sure that it is secure and that it will remain confidential.

Your lawyer is your advocate bound by Rules of Professional Conduct. These Rules establish boundaries for your lawyer during his or her advocacy for you. For example, certain actions on your part could result in your lawyer being called as a witness at trial or could otherwise compromise your lawyer’s advocacy role. For example, don’t ask your lawyer to witness a child exchange “just so the lawyer understands.” Depending on what happens, the lawyer may end up being called as a witness at trial, which may preclude him or her from acting as an advocate for you in certain respects.

👉 Understand How Rights to Confidentiality Can Be Lost

Under the Rules of Professional Conduct and the law of your state, your lawyer must keep information about your case confidential, and there is an attorney-client privilege precluding others from learning what you told your lawyer. This privilege can be lost, however, in some circumstances. For example, the privilege can be lost if you tell something to

Do You Have a Real Emergency?

What should you do if there is an emergency in your case?

First, ask yourself if it is a real emergency. If your child’s other parent is a half-hour late returning your child, it is not likely to be an emergency. If your child’s other parent has not returned and has just texted you that the child is being concealed from you in another state, you have an emergency.

In an emergency, call your lawyer and ask what to do. If your lawyer is not available, let the lawyer’s office staff know that you feel this is an emergency and you need to talk with the lawyer right away. Maybe the staff can help you find other resources in the meantime to resolve the problem.

Remember: you are learning and using effective problem-solving as part of your divorce. So ask yourself,

“What is the effective response to the emergency I am facing?”

Uncertainty and fear can obscure a person’s understanding of the real facts of a situation and drive panicky feelings to the point where the person has trouble distinguishing whether a situation is an emergency. Controlling and abusive spouses often use fear and uncertainty as an instrument of power and control. If your relationship with the other person is centered on power and control struggles, then get yourself to a therapist and also talk to your lawyer to learn the best means of dealing with it. Your safety and peace of mind are very important. You can learn to assess situations and make good, calm decisions when confronted by an emergency.

— D.L.B.

your lawyer in front of other people who are not the lawyer's employees.

New clients or nervous clients often want to bring someone with them to conferences with a lawyer, and there are many good reasons for doing so. Heightened emotions, for example, make it difficult to take in everything said in a conference. Having a family member or friend along may actually enhance your communication and understanding. However, if you have something to tell the lawyer that you want to remain a protected, privileged communication, remember to ask the family member or friend to step out of the conference while you talk to your lawyer.

👉 "Who You Gonna Call?"

Remember the line, "Who you gonna call? Ghost Busters!" Before you call your lawyer, think about who else will be able to effectively help or respond. For example, if your spouse is violating a no-contact order, call 911 for immediate law enforcement help. Calling your lawyer first will not give you safety or immediate protection. On the other hand, if something has occurred that needs immediate legal intervention—for example, marital property is being sold in violation of a court injunction—call your lawyer. If in doubt, call your lawyer and ask who you should be calling.

👉 Your Lawyer's Office Is Not a Place for Kids

Effective use of your lawyer's time will be both efficient and cost-effective for you. Don't bring your children along to appointments with your lawyer, for example. If you have to care for them yourself, you may be better off scheduling a telephone conference call from home during the time you're watching the children. Your lawyer does not want to talk to your children unless your lawyer asks to do so for a specific purpose. Your lawyer does not want you distracted by the children while you are in the lawyer's office.

👉 Understand the Roles of Your Child's Attorney or Guardian Ad Litem

A child's attorney or guardian ad litem (GAL) may be appointed by the court. Talk to your lawyer to discuss what, if any, direct communications you should have with the child's attorney or GAL. Remember, the child's attorney is there to advocate for the child's wishes to the court, considering, as appropriate, the child's age, development, and capacity. The child's attorney is not there to be lobbied by the parents. If you see the other parent manipulating the child's wishes or lobbying the child's lawyer, ask your lawyer to intervene to level the playing field. The GAL has a different role—the role of making a substitute judgment on a child's behalf and making sure all relevant evidence gets before the court.

👉 Should Your Lawyer and Your Therapist Talk to Each Other?

If you have both a lawyer and a therapist, you have two independent, confidential relationships to consider. The

question is, should they be talking to one another or not? The answer is, it depends. Keeping secrets from your lawyer is a bad idea, and keeping something hidden from your therapist thwarts maximum benefit to you. Communications with both of them may be privileged—kept confidential—under the law. But there are exceptions, and you should discuss any issues with your lawyer. For example, your therapist may be required to report child abuse, so you may want to discuss this issue first with your lawyer, who is not a mandatory reporter.

Each of them may require you to sign a written release before sharing confidential information with the other. Or it could be that only one person, such as the therapist, would be releasing confidential or privileged information, and, in that case, you might receive the release only from the therapist.

👉 Know What Your Lawyer Can and Cannot Change

Your divorce is fundamentally about change and transition. Strive to learn how to recognize the difference between what your lawyer can change or help you change and what your lawyer cannot change.

Know also, however, that some things that are not changeable nonetheless can be prevented or ameliorated by court order. For example, an abusive parent posing significant harm to a child may require a court order to prevent harm and protect the child.

On the other hand, your lawyer does not have the power to change your spouse's personality or make the other lawyer improve in attitude or practice. Your spouse or former spouse may be a jerk with the insight of someone who's looking into unilluminated, windowless, dark room; your lawyer cannot change that fact. You and your lawyer—and maybe your therapist included in the conversation—can discuss how you can change or adjust interactions so that you can become more effective and reduce your frustration and anger.

👉 Adopt a New Motto

To operate well in these new environs of the attorney-client relationship, adopt a new life motto: "I will always act *effectively* in my self-interest." Everyone will be glad you did.

FA



DANIEL L. BRAY (brayklockau@bkfamilylaw), of Bray & Klockau, P.L.C., in Iowa City, Iowa, specializes in all family law matters, including complex divorce litigation, high-asset property settlements, child custody cases, adoption, mediation, and appeals. Active in national, state, and local family law organizations and the author of the law treatise *Iowa Matrimonial Law*, he is a nationally recognized expert in field of family law.

When There Are Problems with Your Lawyer

By LYNDA C. SHELY



Whether you are hiring a lawyer for the first time or the fifth time, retaining an attorney to represent your interests is an important choice. Whether to *terminate* an attorney-client relationship also can be a difficult decision. Sometimes attorney-client relationships, just like other relationships, do not work out as people hope they will. The following recommendations for how to hire—and if necessary *fire*—an attorney come from advising law firms on legal ethics issues for over twenty years to assure that lawyers work with clients competently, diligently, and ethically.

Do Your Homework before Hiring a Law Firm.

Ask People You Trust.

The best place to start when you're looking for a lawyer is with people you trust who have used a lawyer for a case similar to yours. Talk with those people. Ask if the lawyer communicated regularly, was honest, charged fairly, and obtained results within the scope of what the lawyer said he or she could achieve. Remember that every case is different, and just because your neighbors only paid a certain amount and received *everything* they wanted does not mean that your family law case will cost the same or have similar results.

Research Lawyers' Disciplinary Records.

Most states provide public information about whether a lawyer has been disciplined previously for an ethics violation. Contact your state regulators—often your state bar association—for this information. Note that most states do not maintain records about legal malpractice claims or the number of times a client has complained about a lawyer's fees. Note too that family law is one of the most common practice areas for complaints, so expect that your lawyer may have had prior complaints. Be cautious, however, about hiring a lawyer who has recently been suspended or has repeated discipline sanctions.

Be Prepared to Ask Hard Questions at the First Meeting.

Hard questions will include the following: Have you had any malpractice claims filed against you in the past three years? Have you personally been sanctioned by any judges? How often will you send me bills and what happens if I can't pay?"

All of these questions are appropriate yet rarely asked. Do not be surprised if the lawyer either is not prepared to answer the questions or does not have complete information. If, however, the lawyer *refuses* to answer the questions, you may want to consult another attorney.

Know the Proper Boundaries in an Attorney-Client Relationship.

Court is *not* what you see on TV. Lawyers must tell the truth no matter what—even if you do not want them to! The Rules of Professional Conduct that regulate lawyer conduct in every state require that lawyers tell the truth, and that includes ensuring that their clients (and all witnesses) tell the truth. Lawyers also are limited by these Rules with respect to the legal arguments they can make; they are allowed to advance only those positions for which there is a “good faith basis” in the law and the facts. So if your lawyer tells you that there is no legal way to have your spouse banned from the state or there is no basis for asserting a claim for spousal maintenance, understand that the lawyer is bound by the law. He or she cannot advance any claim just because a client wants that claim advanced.

Lawyers Should Demonstrate Empathy—But They Are Not Hired to Be Your Friend.

The lawyer's job is to advocate for your interests within the bounds of the law. Lawyers should empathize with your situation, but they are hired to be objective—not a friend. Understand that the lawyer and the law firm staff are paid to represent you, negotiate on your behalf, and defend your legal interests. They are not hired to babysit your children, be available twenty-four hours every day, or hate your spouse. Lawyers must remain objective advocates.

Understand that You Will Be Charged for Every Single Call, Email, and Office “Drop-In.”

You are hiring a professional for professional services. Unless a lawyer specifically agrees to represent a client on a “flat fee” basis, you most likely will be charged for every call, email, or office meeting you have with the lawyer or the lawyer's staff. Be organized when you contact the law firm to avoid the lawyer having to ask you more than once for the same information. Note that many lawyers may charge extra fees for late-night or weekend communications.

Do Not “Friend” Your Lawyer on Social Media.

You are hiring a professional, not a friend. Yes—I'm saying this again because it is a common misunderstanding. Do not “friend” or link or otherwise try to connect with your lawyer on his or her personal social media accounts (unless of course the lawyer needs to disclose information from your accounts as part of the “discovery” process—the process of gathering evidence). Your lawyer has a private life separate from his or her professional life and the two should not overlap. If they do, the lawyer's advocacy on your behalf may be compromised!

Know What to Expect in the Relationship.

No Lawyer Can Guarantee Results.

Do not hire a lawyer who claims to guarantee a certain result.

Tell the Truth.

Seriously. Tell your lawyer the true facts—even if you think they are “bad” facts. Your lawyer cannot tell a lie to the opposing party or to a judge. And if your lawyer learns that he or she has inadvertently provided false information (or failed to provide a material fact) to a court, a correction of the false statement will be required—even if you do not consent to the disclosure. In other words, the lawyer's duty to tell the truth to a court is greater than the duty of confidentiality.

Lawyers Have Many Clients; Make Efficient Use of Your Time (and Money).

Try to provide accurate, complete information to your lawyer, and, except in emergency situations, schedule calls and meetings in advance. Do not drop in on your law firm and do not expect to speak with the lawyer by phone unless you have a scheduled call because lawyers have many clients, which means that he or she may be in court, in a deposition, or in a meeting when you call.

Know that It Will Cost More than You Expect and Take Longer than Everyone Says It Should.

Again, your case is *not* going to be the same as your friend's or even previous cases you may have had. No lawyer can guarantee results or a fixed fee—unless the legal services are limited to *very* specific tasks. Plus, neither you nor your lawyer can control what the opposing party does, which also may add time and costs. Provide your lawyer with as much truthful information as you can about what you would like to achieve, what you expect to happen in the case, what challenges the opposing party will present, and what your priorities are in the case.

Know that You May Waive Your Attorney-Client Privilege if You Talk to Other People—on Social Media or Otherwise—about Your Lawyer’s Advice.

Do not discuss your lawyer’s legal advice, strategy, or recommendations with other people. If you do, you risk waiving the attorney-client privilege—and the other person could be called to testify about the conversation!

Similarly, do not try to have family members or friends direct your lawyer. Only you, the client, can do that. Lawyers actually are ethically prohibited from taking direction from someone who is not a client unless the client gives informed consent, which may involve explicitly waiving confidentiality and privilege.

Lawyers Are Not Law Enforcement—They Cannot Physically Remove Someone or Something.

Family law lawyers are unique in that they not only know family law but they also try to help clients through emotionally challenging situations. That does not mean, however, that your lawyer can physically control the opposing party. If you are in an emergency situation, call 911 first and your lawyer second. Keep yourself and children safe. Be candid with your lawyer if you are concerned about physical, financial, emotional, or psychological abuse so that your lawyer can take legal actions to prevent the opposing party from contacting you.

Do Not Try to Edit Every Word in Every Document; Trust Your Lawyer’s Advocacy.

Clients decide on *objectives* and lawyers decide the *means* to achieve those objectives, according to attorneys’ Rules of Professional Conduct. Clients do not decide which pleadings are filed, which depositions to take, which exhibits to produce, or whether extensions of time can be granted to the other side. Those are lawyer decisions, and that is why you hire a lawyer—to make those strategic decisions. Moreover, if you try to edit every document and demand that certain experts be hired or depositions taken, you are simply increasing the cost of representation. Let your lawyers do their job to achieve your objectives—within the limits of the law.

Actually Read the Fee Agreement.

Every lawyer should (and in some states *must*) provide you with a written fee agreement that lists: a) who the client is; b) *exactly what the scope of the representation is*; and c) how you will be charged legal fees and costs. Read this document carefully: it sets the parameters of the attorney-client relationship. The agreement also may discuss how to communicate with the office, which documents to provide, your obligations to keep the lawyer informed about material information and changes in your contact

information, how the relationship may be terminated by the client or lawyer, how documents will be provided to you, and your obligation to keep current on fees.

Note that your family law lawyer probably will not provide you with advice about business valuations, tax implications, estate plans, or any other legal issues besides what is listed in the fee agreement. Just as your dentist does not tell you what to do about a cold, your family law lawyer is engaged just to handle your family law case, and you may need to consult with another lawyer or professional about other issues.

Why Is My Attorney Doing/Saying That?

Your Attorney Owes an Ethical Duty of Candor to Judges.

Again, because it is so darn important to understand this: your lawyer *must tell the truth and cannot hide “bad” information*. Be candid and truthful

with your lawyer so the lawyer can deal with “bad” facts early. Do not try to hide the information or ask the lawyer not to disclose the information if it is material to the case. The lawyer *cannot* do that.

Court Deadlines Are Mandatory: You Will Be Sanctioned if You Do Not Comply.

Family law matters are emotional and exhausting. Rarely do people like dealing with an emotionally stressful situation, but delaying will not avoid the situation. It will cost you more money if you delay answering your lawyer’s requests for information, and you could be sanctioned by the judge for failing to comply with deadlines. Be truthful, complete, and prompt in responding to requests for information or documents.

If you fail to respond to your lawyer’s requests for information, your lawyer should fire you—really. Ethically, the lawyer may be required to withdraw from your case if you fail to communicate promptly and thoroughly. If you do not understand a request, ask the lawyer or staff to explain it in more detail and to explain why they need the information—but do not ignore their requests.

What Do I Do When “Problems” Arise with the Lawyer or Law Firm Staff?

Do You Feel the Staff is Rude or Your Lawyer is Nonresponsive?

If you ever feel that a law firm employee is rude to you, let the lawyer know. If a lawyer fails to respond to your calls or emails within forty-eight business

hours, call again and ask to *schedule a call* with the lawyer. If the firm fails to return your calls or emails within forty-eight business hours (i.e., two work days), it may be time to terminate their services—assuming that you have not sent them a dozen calls or emails within a day.

What Can You Do to Help Avoid Problems? Be Organized!

Be organized with your inquiries to save yourself both money and time. Do not email the firm multiple times each day unless a truly urgent matter arises. Remember: you will be charged for every call and email. If necessary, to maintain regular communications, ask that the firm schedule a weekly or monthly call with you so that you know when they are going to call and you can prepare and have all your questions answered in one conversation. If the firm staff members refuse to schedule a time for you to speak with the lawyer, terminate the firm's services.

If the lawyer *really* is not prepared at a hearing—for example, he or she did not bring your file or does not know the issues that need to be addressed—ask why that is and consider changing firms. But remember that the lawyer will assert the legal arguments that are legally and ethically permitted, and he or she should discuss these with you before a hearing.

What If I Can't Afford to Continue Full Representation?

Lawyers cannot guarantee how much a legal representation will cost unless, of course, the fee agreement specifically notes that you will be charged a "flat fee" for a specific task. It does happen sometimes that clients find themselves unable able to afford to continue paying their lawyer. Keep in mind that lawyers are entitled to be paid for their services, just as your phone company must be paid for phone service and your electric company must be paid for electricity. Law firms cannot afford to carry clients who do not pay because law firms must pay their bills. But if you find that you cannot afford to pay your lawyer, *talk to him or her* about a payment plan or other options.

Why Is My Lawyer Withdrawing from My Case?

Lawyers Must Withdraw in Certain Situations.

➔ If you threaten to file a bar complaint, physically threaten your lawyer, or claim that the lawyer committed malpractice, your lawyer really must withdraw as your lawyer.

➔ If you insist on lying in court or refuse to assist in your representation, your lawyer must withdraw. He or she cannot just make up answers or legal arguments. Your input is required.

➔ If you destroy evidence, engage in other conduct that causes a conflict of interest with your lawyer, or insist on having your lawyer pursue a claim that is prohibited by law, your lawyer needs to withdraw.

➔ If you fail to pay your lawyer, your lawyer may withdraw.

What Should Be Said to the Court and What Should Not Be Said?

When a lawyer asks permission from a court to withdraw as "counsel of record," the lawyer will not disclose confidential information *unless* the lawyer must correct a false statement that has been made to the court (either in court documents, in a deposition, or in person). Then a lawyer must correct the false statement before withdrawing. Otherwise, the lawyer will not disclose confidential information to the court about why he or she needs to withdraw. If you object to the lawyer's motion to withdraw and you disclose confidential information, your lawyer will have the right to respond and the opposing side may learn privileged information about the dispute. It is usually is not advisable, therefore, to object if your lawyer seeks to withdraw from representing you. Besides: do you really want to try to force someone to represent you?

When Should I Report a Lawyer to the Bar Association?

Distinguish between Actual Ethical Violations and Just Not Getting the Result You Wanted.

If you really believe your lawyer has failed to communicate with you for periods of time (e.g., he or she failed to tell you about hearings or deadlines); has missed deadlines; has lied to a court; or has been sanctioned by a court for some misconduct, it may be time to report the behavior to state bar regulators. However, you should always try to talk with the lawyer first about your concerns. Remember that reporting misconduct to lawyer regulation authorities will not automatically remove the lawyer from your case. You must terminate the services and notify the court.

Do Not Threaten to File a Complaint or Disparage Your Lawyer Online.

Unfortunately, some anxious clients will threaten to file a complaint against their lawyer in the mistaken belief that the lawyer will correct misdeeds and represent them more zealously. As noted above, if you threaten your lawyer with filing a bar grievance, your lawyer really should fire you—ethically, that is the appropriate response to a threat.

Similarly, criticizing your lawyer online (e.g. on YELP, Google, or Avvo) will not change conduct, remove him or her from your case, result in an investigation, or get money refunded. It will just make you sound like a disgruntled former client. If you have a real concern about your lawyer's behavior, talk to him or her, and, if necessary, talk to bar regulators.

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At the End of Your Case: How to Save Time, Money, and Future Litigation

By LEE S. ASHMORE

Once you have the signed and entered judgment of divorce, carefully examine the judgment and agreement.

If the judgment was made by a judge after a contested hearing, you may be pleased, surprised, hurt, or even shocked by the outcome. Try to take some time and calm down. It is always important to work with your lawyer in a calm state of mind. When you are ready, sit down and read the judgment carefully. Call your lawyer and set up an appointment to talk about the judgment.

Ask Yourself: Do You Want to Appeal or Modify?

If you are unhappy with some part of the judgment, you'll want to talk with your lawyer about your options. There are two ways to change a judgment: by asking the judge who made the ruling to modify it or by appealing the judgment. Both of these options are legal matters to be evaluated by your lawyer. Both options are limited. As a general rule, the judge who made the judgment has broad discretion to place custody, provide for financial support, and divide property as he or she sees fit. The appeals court is not likely to second-guess a lower-court judge. Your lawyer can tell you whether the judge has made any mistakes that the judge may want to change or that an appellate court may wish to reverse. Your lawyer can also tell you the likely cost of pursuing any change to the judgment.

If You Accept the Judgment, Meet with Your Lawyer to Plan How to Implement It

Once you have decided not to pursue changing the judgment, either because you're satisfied with the judgment or because you're stuck with it, plan a meeting with your lawyer about implementing the judgment. This meeting will also be the time to discuss the file that your attorney has maintained for your case. If you need any part of the file, you should ask for it at this meeting.

Make a List; Have Your Lawyer Check It

Prior to the meeting, make yourself a list of steps required under the judgment and identify who is going to perform them—there will likely be things for you to do, things for your spouse to do, and things for your attorney to do. When you meet with your attorney, go over your list and make sure it is complete.

Discuss Your Bill

You may owe money to your lawyer, particularly if the judgment was the result of a contested trial. Now is the time to discuss the outstanding bill with your lawyer. If you cannot write a check for the outstanding balance, you will need to work out a plan for paying. Often the division of marital assets after the divorce will produce funds for paying the bill; the marital home will be sold, for example, or a retirement or investment account divided. Your former spouse may have been ordered to pay all or some of your attorney's fees. In reviewing the judgment, you and your lawyer should discuss when and how any outstanding fees are going to be paid.

If you are unable to pay the outstanding fees and the division of marital property will not produce funds to pay the fees, you should discuss alternatives with your lawyer. While your former spouse may have been ordered to pay some of your attorney's fees, the ultimate responsibility for payment remains with you. Your lawyer may be willing to accept a payment plan or settle for less than the full amount. It is better to discuss the outstanding fees with your lawyer than to try to avoid contact with your lawyer. Failing to communicate with your lawyer or make arrangement for payment of fees may result in the lawyer withdrawing from your case without finishing the tasks to implement your divorce judgment.

Set Up Your Files

Now you are ready to start implementing the judgment or agreement. Review your list that you finalized with your lawyer. Create a folder for each required step: one for the transfer of the house, one for the transfer of title to the car, one for the transfer of the retirement accounts, etc. Put the documents related to each step into the appropriate file; these will include titles to property, loan documents, your will and related

documents, and statements of the retirement and investment accounts to be divided. You may want to separate the folders into tasks that you need to handle and tasks that your attorney is handling. Having these documents and tasks organized and at hand will help you keep track of the tasks and provide your lawyer with any documents needed.

Be sure to make a folder for all communications with your ex-spouse.

To the extent possible, communicate with your spouse via email, print each email, and put it in your folder. If problems arise and your lawyer needs to take steps to enforce the judgment, your record of notifying your spouse about what was supposed to have been done will be useful.

Go Down the List

Take care of your tasks and send your attorney an email when a task

Close Accounts and Change Passwords, Credit Cards, Wills, and Utility Bills

In addition to the steps required by the settlement agreement or judgment of divorce, there are a number of steps to take automatically when you divorce.

- ✓ Close all joint accounts, including your mortgage, line of credit, checking, savings, investments, rental agreements, and any online accounts. Make sure there are no outstanding checks or automatic withdrawals. If you leave money in a joint account or continue using a joint account after the divorce, your former spouse can withdraw all the money in the account at any time.
- ✓ Change your online passwords. You do not want your former spouse snooping online, wreaking havoc with your online world.
- ✓ Review all insurance (health, home, auto, and life) and make any needed changes, including beneficiary changes.
- ✓ Close joint safety deposit or post office boxes and open new ones if needed.
- ✓ Change all credit cards, including retail store charge accounts. Open a credit card in your name alone and begin using it (wisely, of course). This will build a record of using credit. Obtain a new copy of your credit report. Obtain your free, annual credit report online from each of the three major reporting agencies. Challenge any inaccuracies.
- ✓ Change beneficiaries for any pensions or retirement accounts.
- ✓ Change all wills, advanced directives, and powers of attorney. If you gave your former spouse a power of attorney, you should ensure that it is revoked in writing. Destroy all copies of the prior power of attorney. Give notice of revocation to all third parties who previously relied on the power of attorney. If the power of attorney was recorded as part of a public record, a properly acknowledged revocation should be recorded as well.
- ✓ Change the name of the utility bills to reflect who is now responsible.

Do not assume that your former spouse is of good character and would never take advantage of a joint credit card or a joint account. Your divorce attorney can tell you plenty of stories about otherwise upstanding people who did vengeful things to their former spouses after a divorce. If you leave your former spouse as beneficiary on a life insurance policy or retirement plan, he or she will receive that money when you die. If that is not the result you want, be sure to change the beneficiaries.

Remember: the terms of your settlement agreement or judgment of divorce must always be followed. If the terms call for your former spouse to be a beneficiary of your life insurance or pension, you must comply with those terms. — L.S.A.

is complete. Schedule a date and time to conduct any exchange of personal property provided for in the agreement or judgment. If your former spouse is not taking steps to remove personal property in accordance with the judgment, ask for permission to discard the items and give a deadline after which you will dispose of the property. If there were automobiles to be transferred, take care of the title, registration, license plates, insurance, and any tax issues.

Notify Your Employer, the IRS, and Social Security

When you get divorced, you need

to notify your employer. You need to give your employer a new, completed Form W-4 (www.irs.gov/pub/irs-pdf/fw4.pdf), “Employee’s Withholding Allowance Certificate,” within ten days after the divorce or separation showing the new number of exemptions. Go to www.irs.gov/Individuals/IRS-Withholding-Calculator and run the calculator to see what your withholding should be.

If you move as part of your divorce, in addition telling everyone else about your new address, you need to mail a completed Form 8822 (www.irs.gov/pub/irs-pdf/f8822.pdf), “Change of Address,” to the Internal Revenue

Center for your old address.

If you changed your name as part of your divorce, you need to notify: (a) the Social Security Administration by submitting a completed Form SS-5 (www.ssa.gov/online/ss-5.pdf), “Application for a Social Security Card”; (b) your employer, who may need to change company records, health or life insurance plans, or accounts regarding retirement or 401(k) retirement plans; and (c) your bank, credit card companies, and other financial institutions. You will need to change your driver’s license and passport. If you are going to change your name, change all of your

To Help Your Children, Be Kind to Their Parent

Part of the judgment or agreement will deal with arrangements for your children. You now have a schedule, and either you or your ex-spouse has been ordered to pay child support. Do your best to forget the problems of the past and make the schedule work. If you start out well, things tend to continue going well. If you start out badly, things tend to get worse. If you just finished a custody battle and “won” or “lost,” you and your ex-spouse may not be emotionally ready to be cooperative and communicative. You may feel like you want to get even. You may notice that your ex-spouse seems to be trying to get even. Do your best to remember that the custody and visitation arrangements that have been ordered will be a major part of your life for years to come. Try to also remember that reciprocity works both ways. People tend to repay kindness with kindness and meanness with meanness.

Follow the Schedule

We use schedules for a reason. People involved in the system—the lawyers, judges, social workers, and psychologists who work with custody and visitation every day—will tell you that schedules are usually the only way to make visitation work. Be punctual. Be courteous. Treat the other parent the way you want to be treated because the other parent will probably treat you the way you are treating him or her.

Communicate with the Other Parent

Communicate with the other parent, preferably by email. Written communication makes a record that both of you can refer to. It also tends to reduce angry, insulting exchanges that are not helpful. Always remember that when you send an email or text to the other parent, a judge may one day read that email. If you

go back to court someday for modification or enforcement, your lawyer will submit those emails to the judge. Do not write things in the emails that you would not want a judge to read. Judges want to see constructive, problem-solving communication, not insults, anger, and threats. If the other parent puts inappropriate material in emails, simply ignore it. You’ll be glad you did later when you watch a judge reading the emails.

Try to find small ways to accommodate the other parent. A little kindness goes a long way.

If you are the custodial parent, you are expected to keep the other parent informed about the children’s education, medical treatment, and activities. Do this on a regular, weekly basis. Make a file. Print the emails and the documents attached to the emails, and keep records. If the other parents ever claims that you have failed to keep him or her informed, your lawyer can simply produce the emails.

All of these files will help your lawyer a great deal if either you or your former spouse seeks to modify the judgment.

Be Careful with Child Support

Carefully review the provisions in the judgment or agreement regarding child support with your lawyer. Exactly how is the monthly child support to be paid? Directly to the other parent? Through a child support receiver? Through the child support enforcement office? By wage lien? Make sure that payments are made the way they are supposed to be made. If the order requires payment through child support enforcement and you



records. Having yourself identified by different names in different records is a prescription for a headache.

Keep Track of Tasks Your Lawyer Is Supposed to Complete

Once a judgment of divorce has been obtained, lawyers tend to move on to other cases demanding their attention. Make sure that all tasks are completed.

Monitor the Transfer of Retirement Benefits

One important task that your lawyer will need to complete after the divorce is the transfer of retirement assets. Such transfers usually require a special order called a qualified domestic relations order, or “QDRO.” A QDRO is drafted by an attorney, entered by the court, and sent to the administrator of the retirement plan. It directs the

instead make payments directly to the other parent, those payments may not count. Pay by checks and keep the canceled checks. Never pay with cash or accept cash.

Avoid getting behind on your child support payments if at all possible. A lot of bad things can happen if you develop child support arrears. If you are put in jail, lose your driver’s license, or lose your vocational license, you may find yourself getting even further behind. Do not assume that child support enforcement or the courts will be “reasonable.” When it comes to child support, their job is to collect.

If you are paying or receiving child support or alimony and you have a substantial change in your income, contact your lawyer and seek a modification quickly. Your lawyer can advise you about whether the change is sufficiently “substantial” to justify seeking a modification. Modifications can usually be backdated only to the date the motion for modification was filed. If you are ordered to pay support in the amount of \$1,000 per month and you lose your job or become disabled, you still owe \$1,000 per month until the court changes the amount. If you wait a year before filing a motion for modification, you will owe the \$12,000. That debt can be enforced by a contempt-of-court proceeding, and it cannot be discharged in bankruptcy. Consult with your lawyer immediately if changes occur.

Watch Out for Children’s Uncovered Medical Expenses

Review with your lawyer the provisions in the agreement or judgment for dividing uncovered medical expenses for the children. Usually, the noncustodial parent is expected to reimburse the custodial parent for uncovered medical expenses. There are typically steps the custodial parent has to take in order to claim reimbursement. Review those steps with your lawyer and follow them. Find out if there are other expenses for which one parent may have to reimburse the other parent. As always, be sure to keep a file of documents, email, and proof of payment for your lawyer if a dispute should arise about reimbursement.

— L.S.A.

administrator to transfer funds or set up a special account for the receiving spouse. The QDRO must be acceptable to the plan administrator, even if it has been issued by the court. Each type of retirement asset and each individual plan has its own QDRO requirements.

Funds in an IRA can usually be transferred without a QDRO by simply filing out a form provided by the plan administrator. Contribution retirement plans, such as 401(k)s, require a QDRO instructing the plan administrator to transfer funds to another plan. Defined benefit plans such as pensions require a QDRO requiring monthly payments to the receiving spouse, who is the “alternate payee” at the time of retirement. If the attorney who handled your divorce does not draft QDROs, he or she may refer you to a specialist attorney whose practice is largely devoted to drafting QDROs for other attorneys.

Larger retirement plans often offer instructions and forms for completing a QDRO. You may be tempted to follow the instructions and complete the provided form yourself. Be very cautious about doing so. QDROs are a technical minefield full of surprises, where even many experienced family law lawyers fear to tread. Have an attorney with the necessary expertise prepare the QDRO and get it accepted by the QDRO plan administrator.

Make sure that all necessary steps have been taken to secure your interest. If the work is not done correctly, you may receive nothing when your former spouse dies or you may have to chase after him or her for your share of the monthly retirement benefits, rather than receiving your share directly from the administrator of the plan. The plan administrator will usually send a letter confirming acceptance of the QDRO. The plan administrator may take six months or more to evaluate the proposed QDRO. Be sure to follow up until you get such a letter. Keep the confirmation letter in the appropriate file.

Remember: Communicate and Keep Good Files

Maintain good communication with your lawyer and keep good files of documents needed for your case and for any future issues that may arise. That will make it a lot easier for your lawyer to do a good job for you, save you money, and even help you avoid future litigation. **FA**

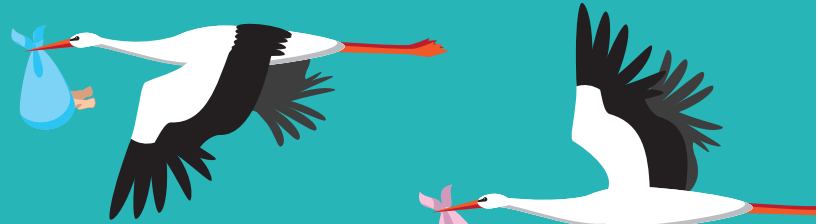


LEE S. ASHMORE (leesashmore@gmail.com), of the Law Office of Lee S. Ashmore in Brunswick, Georgia, is a divorce attorney whose practice has been devoted to family law for more than twenty years. He is a family law specialist who has developed his expertise by litigating more than 500 family law cases in the courts and negotiating and drafting hundreds of settlement agreements.

In the Course of Any Fertility Treatment:

Consult Your ART Attorney

By MERYL B. ROSENBERG



You walked into your fertility center with the dream of having a baby. You walked out overwhelmed by paperwork that asks you to make critical decisions about a future involving eggs, sperm, embryos, and children who don't exist yet. And then there are the financial papers ...

You feel very alone and perhaps weighed down by the multitude of decisions with enormous consequences for your life. Know this: you do not have to navigate the minefield of questions and choices by yourself.

Why You Need an Attorney from the Start

Assisted reproductive technology (ART) has transformed both the way people can form families and the laws applicable to these new arrangements. When you made the decision to work with a fertility center to help you build your family, you probably were not thinking about lawyers! But one of the primary reasons you will need an ART attorney on your team from the very beginning is that there will be many documents with serious legal implications that you will need to sign at every step of the way.

- You will need to sign consent forms provided by your in-vitro fertilization (IVF) clinic (the medical practice you choose to perform the actual IVF process).
- You may need to sign a donor agreement and/or a surrogacy agreement if you are working with a third party to assist you in your family formation.
- You will need to think about estate planning and what should be included in your will.

An attorney specializing in ART will be able to advise you about which legal issues you must consider and at which points in the process. *You will want to choose a lawyer experienced in the field of ART so that he or she can guide you*

through each step to ensure that you are getting good advice and are legally protected from the start.

The Initial Paperwork Is Critical

You may choose to review with your attorney the initial paperwork provided by the fertility clinic. This is a good idea. There will be fine print regarding fee structure, what is included in an “unlimited cycles” or “guaranteed cycles” plan, and many other issues. Your focus is and should be on having your baby. The professionals on your team can help you understand the legal choices you will be making to realize your dream.

Soon after you sign up with the fertility clinic, you will be presented with a number of consent documents, including one covering the disposition of gametes or embryos. What does this mean for you?

- Consent forms will include an election of what to do with any remaining eggs, sperm, and/or embryos that you may have cryopreserved (frozen) once your family is complete. Your choices will include options for donating to science, donating to others so that they can build their families, or destroying or storing for future use. If you choose to store eggs, sperm, or embryos, you will need to consider storage location and fees.
- If you are a couple going through IVF, you will also be making choices regarding frozen embryo disposition in the event of separation, divorce, or death.
- It will be important to make sure that the consent forms are consistent with other agreements you may sign as part of this process.
- You will need to make sure to address the same issues in your will.

It is precisely at the moment that you sign up with the clinic that you should engage the services of an ART attorney

When You Work with a Donor or Surrogate, Working with a Lawyer is Especially Important

What if you are working with an egg, sperm, or embryo donor or a surrogate or a combination of these? Though not every person undergoing IVF meets with an ART attorney, *every individual should meet with an ART attorney when working with a third party to assist in having a baby. Here is what that legal representation should do.*

- 1 Get it in writing.** Discussion with your independent ART attorney will allow for expectations to be clearly communicated, understood, and memorialized in writing.
 - You should engage an attorney as soon as you are matched with a surrogate or donor.
 - Legal representation will help ensure that you know and consider the critical, relevant questions with respect to whether the match is indeed the right one for you before proceeding and investing your time, emotions, and finances.
 - Working with a lawyer will be particularly critical if you found your surrogate on your own or are working with a friend or family member.
 - Your attorney should ensure that you have proper prescreening done *before* entering into the legal agreement.
 - When people enter into any third-party ART arrangement with a gestational carrier or surrogate and/or a donor (this might be an egg donor, sperm donor, or embryo donor), they should always execute written, detailed, and legally advised agreements clearly documenting their intentions and expectations regarding the arrangement. The expectation will be that the parties intend to be bound by the terms of their mutually negotiated agreements.

- 2 Anticipate changes in ART law.** The law of ART is unsettled and evolving, so these agreements will require the drafters to include all provisions currently required to comply with the applicable state statute or court cases, anticipate and address various

theoretical possibilities not necessarily known at the time the agreement is written, and address other circumstances unique to the parties.

- 3 Create legal protections for you, the unborn child, and the surrogate or donor.** In order to protect you and any unborn child, the legal agreement must be designed to create legally protected families under any applicable laws and public policy and must include a plan for the legal steps that will be taken to establish parenthood for the child while ensuring legal protections for the surrogate or other third party.



- 4 Make sure all issues are considered.** A legal agreement ensures that all parties are well-informed and advised by an expert ART attorney as to *all* issues that might arise and matters that must be addressed. It ensures a “meeting of the minds” between the parties.

- 5 Determine what kinds of contact the donor will have with the child and intended parents.** An agreement with a donor—whether egg, sperm, or embryo donor—will be critical regardless of whether the donor is known or anonymous. Such an agreement will establish: the donor’s options for future contact with the child and the intended parents, who is legally a parent, how parental rights will be enforced, and how issues relevant to your particular case will be resolved.

- 6 Address many issues common to every surrogacy agreement.** These will include:
 - all agreed-upon and negotiated expenses and fees;
 - the schedule of reimbursements or payments and a description of how they should be made;
 - the scope of the agreement and length of time the parties are under contract with each other;
 - relevant state laws and estate planning issues;
 - how and when legal parentage shall be established for the intended parent(s) and the rights and obligations of the parties until this status is established;
 - ownership and disposition of remaining embryos;
 - emergency issues, including medical emergencies and what happens in the event of the separation, divorce, or incapacity of the intended parent(s);
 - other critical issues, such as any travel restrictions, insurance coverage, confidentiality provisions, expectations regarding future contact, and decision making around thorny matters such as selective reduction or termination of a pregnancy.

When the agreement or agreements are signed with your gestational surrogate and/or gamete donor, your attorney will communicate with your fertility center to inform it that the legal agreement is complete and to address any particulars unique to your case. Once this is done, you will be able to feel secure that all legal issues have been addressed as fully as possible, and you will also be able concentrate on working with the fertility center to realize your dream. — M.B.R.

if you have not already done so. The attorney will help you to understand and think through the various choices you are making. He or she will properly advise you as to the legal consequences of each possible choice so that you can make informed and thoughtful decisions.

If Your Life Changes, What Will You Do with Frozen Genetic Material?

Why should you focus on “disposition” choices at this point? One reason is that court cases have arisen from disputes over what to do with frozen embryos after a couple separates or divorces. Legal questions have centered on who gets ownership of these embryos or how the embryos may be used in the future. Court battles have occurred when one person in the couple claims a right to use the embryos and have a child, while the other person claims a right to *not* have a child.

There are few state laws addressing the issue of disposition of frozen embryos or the use of gametes following death or divorce. Given the lack of legislation, some courts have turned to traditional legal analysis under adoption laws and principles, while others have developed new ways to analyze these cases. Some courts have found that a person’s right to not procreate—to *not* have a child—overrides the other person’s right to procreate. Other courts have reached a contrary conclusion, which has sometimes been based on the fact that the person who desires to use the frozen embryos has no other option for having a genetic child. There have also been cases in which a family member has sought to use the embryos after the death of one of the parties.

The reason, therefore, that you must address future disposition choices is that, as impossible as it may seem, you could find yourself in a situation in the future in which either you or your partner is “forced” to be the legal parent of a child one of you no longer wants to have. Or you might discover that only one of you wants to attempt a pregnancy. You will also want to be clear about any future use of your genetic material in the event of your death; you will need to consider whether there are circumstances in which it would be acceptable to you for your partner to have a child from your frozen gametes or embryos. It bears noting that, in most court cases, the judge looks to the intent of the parties at the outset; that is, the judge will look to what the parties *specifically intended when they started down the path to parenthood*.

How can and should you protect yourself from the issues that might arise if you and your spouse or partner divorce or separate and have frozen embryos in storage? The best way to ensure that each person’s intent is clear is to make sure that it is stated in a well-written and advised agreement entered into prior to the start of treatment. This agreement will clearly detail your mutually agreed-upon intent in the event of separation, divorce, or the death of one or both of you.

In addition, a full review of all consent forms and other forms you are required to sign with a fertility center *prior* to treatment will, again, ensure that these are consistent with any legal agreements you enter into as part of this process. Having such an agreement in place prior to treatment may not protect you against a future court battle, but it will provide a clear road map as to your actual and clearly thought-out intent,

avoiding any guesswork or the unintended use of consent forms as a legal agreement between the parties. You may also want to consider freezing eggs and/or sperm instead of freezing embryos, but this should be discussed with your medical provider.

You Will Need a Will

You are required to have a will in place in any surrogacy arrangement, but you should have a will in any ART situation. As noted, even the disposition of frozen gametes or embryos should be addressed to ensure that they are handled in the way you intend. There are attorneys who specialize in wills. Ask your ART attorney about this. Some ART attorneys may be able to work with you directly, and others will refer you to an expert in the field of estate planning. *Make sure this is complete prior to treatment.*

Ongoing Communication with Your ART Attorney Will Be Key

Just because you have signed all legal documents does not mean you now must go it alone. Along the way, you may encounter challenges that you do not know how to handle. Don’t be shy—connect with your attorney to discuss and make sure you understand answers to complex ART questions. These may include the following.

- Unsuccessful embryo transfers: How many transfers are you able to ask your surrogate for?
- A canceled cycle with your donor or your surrogate: What’s next?
- Consent forms: Do you have to comply with choices made on informed consent forms? Can you change your mind later if circumstances change?
- Changes in insurance or the law: What are the implications for your situation?
- Legal recognition as parents: When and how does this occur?
- Going home with your baby: What are the legal requirements?

Put Your ART Team in Place

ART professionals will be able to guide you through the minefield of seemingly overwhelming questions, and a knowledgeable attorney will work with you so that you have a sound, realistic agreement when one is recommended or required. Working with the right team removes guesswork and provides a level of comfort that will come from knowing that you have someone with your best interests in mind to guide you through the process so that you can focus on building your family. **FA**



MERYL B. ROSENBERG (meryl@artparenting.com) is an attorney in private practice in the Maryland-D.C. area who specializes in assisted reproductive law and second/stepparent adoption. She is also the director of ARTparenting, a comprehensive surrogacy program.



If You Decide to Go It Alone: A Guide for Working with Your Spouse's Lawyer

By FORREST S.
"WOODY" MOSTEN

If you have made the decision to represent yourself without a lawyer, you are a brave soul. But your decision is

understandable. It may be based on your desire to save money, take control of your own legal matters, or both. This guide is designed to help you avoid or minimize problems you may face in dealing with your spouse's lawyer and to help you achieve your goals to the greatest extent possible.

First, you need to know that the path you are taking will not be a bed of roses. Research has shown that people who represent themselves in court do not do as well as litigants who are represented by counsel. You can

also expect the same challenges outside of court—in drafting documents, working out disclosure of information, and negotiating all manner of issues.

You will find even greater roadblocks when you deal with an attorney representing your spouse, rather than with your spouse directly. It just will not be a fair fight. A family lawyer has had years of focused education and training. In addition, a practicing lawyer will be able to draw from a wealth of experience with situations similar to yours. This may be your first (and hopefully, only) case, so everything will be new. Yours will be the case of *Novice versus Experience*—the definition of the imbalance of power! Here, however, are some tips to balance the scales a bit more in your direction.

**Tasks to Be Apportioned:
A Checklist for Working with Your Lawyer**

Get a Little Bit of Legal Help: Unbundle!

You can go it completely alone or you can get *some* help from a licensed attorney on discrete tasks of your divorce. This is called “unbundled” or “limited scope” legal representation.

Here’s how it works. You stay in control. You can decide what you will do and what a lawyer will do. This is called the “allocation of legal tasks.” For example, you might draft the initial court documents all by yourself, or just do the initial draft and ask a lawyer to look it over and make necessary edits. Or you might ask a lawyer to draft these documents and you will do all the negotiation yourself.

You can make these decisions on your own or, even better, in consultation with a lawyer. Remember that experience. A lawyer trained in unbundled legal services can help you decide how to use a lawyer just like an experienced physician can help you decide how much self-medical care you should try on your own. This will be a matter of consumer choice and informed consent.

Here are two possible checklists to help you work with your lawyer. The first focuses on tasks such as drafting documents and investigating facts. It apportions the tasks between you and your

Task	Attorney to do:	Date Completed:	Client to Do:
Draft papers to start divorce			
File and serve papers			
Draft motions			
Draft affidavits and declarations			
Analyze case and advise of legal rights			
Procedural advice			
Formulating strategy and tactics			
Investigate facts; which issues?			
Obtain documents; which ones?			
Draft correspondence			
Review correspondence and pleadings			
Appear in court			
Run computer support programs			
Prepare subpoenas for documents			
Take depositions			
Review depositions and documents obtained from others			
Legal research and analysis			
Contact witnesses			
Draft or analyze settlement proposals			
Contact expert witnesses			
Draft orders and judgments			
Outline testimony			
Trial or negotiation preparation			
Review orders and judgments that client drafts			
Draft orders			
Draft disclosure documents			
Advise regarding appeal			
Enforce orders			
Draft other papers as necessary			
Other tasks:			
Dated:	Dated:		
Attorney signature	Client signature		

**Issues to Be Apportioned:
A Checklist for Working with Your Lawyer**

Issue	Attorney to do:	Date Completed:	Client to Do:
Custody/visitation dispute			
Set or modify child support			
Collect past-due child support			
Collect past-due spousal support			
Real property valuation and division			
Personal property division			
Business interests			
Bank accounts			
Investments			
Pension rights			
Stocks and bonds			
Stock options			
Value and divide employee benefits			
Health insurance			
Life insurance			
Value or divide other assets/debts			
Enforce orders (describe)			
Pursue an appeal			
Other issues:			
Dated:	Dated:		
Attorney signature	Client signature		

lawyer. The second concerns legal issues that may arise in the context of your divorce, issues such as child custody or division of pensions. It outlines which issues your attorney will handle from start to finish and which issues you will handle.

If you do decide to use an “unbundled” lawyer, be prepared to pay for that lawyer’s time. Even nonprofit organizations that offer drafting or court coaching classes or individual unbundled legal representation charge some fees. However, you are in control of the amount of work the lawyer does, so you will be in charge of the fees.

When your spouse has a lawyer, you might strongly consider evening the playing field by hiring a lawyer to do the more difficult tasks such as negotiation, legal research, drafting letters, and representing you in court.

If there is a lawyer on the other side and you unbundle your lawyer (i.e., you employ him or her to address discrete tasks or issues), the amount of your fees may be affected—up or down. Your fees may increase if the lawyers have their own conflict and/or do more legal work than you believe necessary. However, your spouse’s lawyer might also bring realistic and nonadversarial advice

← These checklists were developed by California unbundled law expert M. Sue Talia and are reprinted and adapted with her generous permission.

into play and encourage your spouse to be more reasonable. This could expedite resolution and have the lawyers work together cooperatively in a way that might lower your fees.

In almost every community, family lawyers are offering unbundled services as an alternative to their traditional full-service package. You can find lawyers who offer such limited-scope services on the Internet or through your local bar association.



Going It Alone

Although fees for an unbundled lawyer may be lower, if you feel that you can handle many tasks, you may still want to be your own lawyer even though your spouse has hired a lawyer. This is your right. In order to help you get the best result, here are a few top strategies that you may wish to consider.



Investigate the Lawyer’s Background.

Every state has a website listing the licensed lawyers, how long they have been practicing, and whether they have been disciplined by the state bar. Most lawyers have their own websites that will tell you about the lawyer’s background and approach to family law. This information will be helpful in giving you clues about how to best communicate with that lawyer.

2.

Be Positive, Open, and Accommodating.

Many people hate their spouse's lawyer (just because ...) and do not reveal their best sides when dealing with them. If you are going to represent yourself, be smart. Acting in a businesslike manner will be best, and that means attending to the business of resolving disputed issues and not letting your suspicions or emotions take over. Sanitize your letters so that derogatory or blaming language (particularly against the other lawyer) is removed. Try to say yes whenever possible. "Let it go" is a motto that works in divorce negotiations—you do not need to win every battle. Go for the long game.

3.

Be Professional.

Judges will not give you any slack. Neither will your spouse's lawyer. Meet deadlines and follow up on your promises to provide information or to follow agreed-upon guidelines. You do not tolerate tantrums or oppositional behavior from your children—do not expect your spouse's lawyer to understand your frustration. Even more importantly, if your spouse's lawyer goes low, you go high! Be a Teflon negotiator. Do not let the lawyer or your spouse's bad behavior get you off your game.

And most importantly: never take out your frustration on the judge! In litigation, not getting your way happens about fifty percent of the time. Most judicial officers have

long memories, so just keep your head down and keep your feelings to yourself (or your close friends).

4.

Monitor Your Progress and Be Ready to Change Course.

If going it alone is getting the job done, stay on track. On the other hand, if you encounter roadblocks, you might want to consider at least paying for a consultation with a lawyer willing to unbundle. Or, if you need more help, you can bring on a lawyer for part of the job. Finally, some family law issues are so complex, personally challenging, and important to you, that you may want to consider hiring a lawyer to provide you full service. **FA**



FORREST S. "WOODY" MOSTEN (mosten@mostenmediation.com) is an award-winning, certified family law expert internationally recognized for his pioneering work on methods of providing affordable legal services. He is in solo private practice in Los Angeles as a family lawyer and mediator, and he is an adjunct professor of law at the UCLA School of Law, where he teaches family law and mediation-related subjects. He is co-author with Elizabeth Potter Scully of *A Lawyer's Guide to Unbundling Legal Services* (A.B.A. Family Law Section) (forthcoming 2017); author of *The Complete Guide to Mediation* (A.B.A.) (2nd ed., 2015); and co-author with Adam Cordover of *Building a Successful Collaborative Practice* (A.B.A. Family Law Section) (forthcoming 2017). He is also author of *Mediation Career Guide* and *Collaborative Divorce Handbook*, as well as numerous articles.

When There Are Problems with Your Lawyer

Continued from page 29

Discuss Fee Disputes.

If you disagree with the fees charged, talk to your lawyer. If you do not receive an explanation as to why the fees are fair under the terms of the fee agreement and rules of ethics or you have concerns that the terms changed without notice or the fees still seem unreasonable, contact your state bar regulators to see if there is a free arbitration program to resolve such disputes. Virtually all jurisdictions in the United States have fee arbitration programs and, in many states, a lawyer must participate if you file a petition to arbitrate.

Help Make It a Successful Relationship.

In sum, do your homework before hiring a lawyer; always tell the truth so that he or she can do the best job possible to obtain your realistic objectives; remember that your lawyer is your professional advocate, not your friend; and, if you have any concerns about what your lawyer is doing or charging, talk to your lawyer. Help make this a successful relationship that will get you through this challenging time. **FA**



LYNDA C. SHELY (lynda@shelylaw.com) opened the Shely Firm, PC, in Scottsdale, Arizona, in 2003 after serving as the Director of Lawyer Ethics for the Arizona State Bar Association for ten years. She represents lawyers and other legal professionals in matters of legal ethics.

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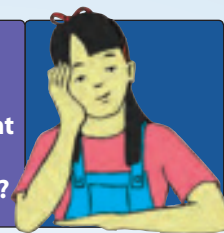
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What happens if the divorce doesn't fix things?

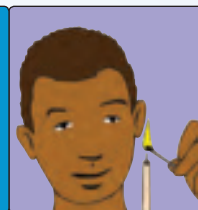
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