Choosing the best divorce attorney for you

By Trey Yates

If you are preparing to get a divorce, or just considering it, it is a good idea to begin by finding the right attorney for you. Divorce is a big step. It is an intense emotional and psychological experience, but it is also a legal process and in fact, it is a lawsuit.

You need to arm yourself with knowledge in order to make the most informed decisions. The settlement you secure is likely to impact your life for many years to come.

All attorneys are not equally skilled. For example, the lawyer you hired to negotiate a real estate transaction or draft your will, is likely not the best choice for handling your divorce.

Select an attorney who has the right skills, knowledge, experience and personal qualities that fit your case and your philosophy. By carefully selecting someone you can trust and someone who will protect your legal interests, you will be better prepared to focus on yourself and your family during this difficult time.

Skills and knowledge

In the state of Texas, an excellent way to separate the "wheat from the chaff" when looking for a qualified divorce attorney, is to look for one who is certified by the Texas Board of Legal Specialization in family law and divorce. Of the more than 70,000 attorneys licensed to practice in Texas, only 7,000 have earned the right to be publicly recognized as board certified specialists in one of 21 select areas of law. Board certified attorneys must pass rigorous testing, have significant trial experience and take about twice as much continuing education as non-board certified family law attorneys.

Each state is unique in its laws, so it is vital your attorney stays up-to-date on legislative changes that could affect your case. Plan to interview several attorneys before deciding on one.

Experience

Ideally, you want an attorney who is good in court and out. Do not assume yours has extensive courtroom experience. Ask. If you do need to go to court, it is very important that your lawyer is familiar with the system and its complexities, as well as how specific judges like to work.

If children are involved, secure an attorney with specific experience in this area. A quality attorney will recommend that during your divorce you put the children's needs first. He or she will also not pursue unreasonable demands for child support or vindictive child custody and visitation arrangements. Texas law requires family law judges to consider the best interests of the child in determining custody and visitation. When it comes to child support, the court may use a complicated formula to determine what a parent pays. This includes such factors as the cost of providing healthcare coverage for a child and other factors.

Style, personality and philosophy

It is also important to find a divorce lawyer who is on the same page as you when it comes to how your divorce is managed. When interviewing attorneys, consider your case and the various aspects of your divorce. Ask how an attorney would typically handle a case like yours. If the approach does not make sense to you, ask if he or she would be willing to consider a different approach. The response should speak volumes. Also choose a lawyer you like, because personal qualities count as well. Also, consider how you communicate with each other during the interview.

Here are a number of ways to start building a short list of good divorce attorneys to interview.

- Ask family and friends but do not rely solely on their recommendations
- If you know some attorneys, ask them who they would recommend for your divorce and why
- Ask your accountant or financial planner
- Ask your therapist or contact members of divorce support groups
- Check with family law mediators
- Ask marriage counselors who advise divorcing couples

- Check with the local or the state bar association for a list of family law attorneys who are board certified and experienced in divorce cases.
- If you know someone who has recently gone through a divorce, you may also want to contact them for a referral or just to gather advice and tips.

Once your list is drafted, contact 2-3 who best fit your needs and set up consultations. Some attorneys will charge for this meeting, others won't. Make sure you prepare a thorough list of questions for the consultation ahead of time, and try to limit your meeting to about an hour.

Divorce and taxes

By Patricia Barrett, CFP, CDFA

Taxes impact nearly every aspect of life and divorce is no exception. Yet, many couples become consumed with emotion during divorce and fail to recognize the tax implications of their settlement decisions.

If you are considering or are in the process of a divorce, you may be able to minimize your total tax liability by working with a divorce financial analyst and/or tax accountant on how your settlement is structured. Failure to take into account the tax consequences of how you structure your settlement could turn what appears to be a fair and equitable agreement into a financial disaster. The settlement agreement has to be calculated based on divorce law and IRS rules, and carefully worded in the divorce decree. The goal should be an overall reduction in taxes paid by both spouses, resulting in the greatest after-tax cash flow.

Here are some general rules to be aware of:

One is considered "married" for tax purposes if the divorce is not final by December 31 of the tax year in question. For example, whether your divorce is final on 1/1/15, or 12/31/15, you will be considered to be "unmarried" for all of 2015 by the IRS.

The typical rule for spouses filing separate returns is for each to report half of any community income and claim credit for half the income tax withheld. But a person is not responsible for the tax on community income if: 1) there is no joint return for the year, or, 2) the community income was earned by the other spouse and isn't included on the separate return. *(Special rules exist for those living apart for the entire tax year and are not detailed here.)*

When filing separately, estimated payments made jointly can be divided by agreement between spouses. If a couple cannot come to an agreement, the IRS will divide the payments proportionally based on each spouse's income reported on their returns.

Similarly, the carry forward credit for overpayments from previous years will be allocated by the IRS based on the parties' proportional income in the current year.
We frequently see a spouse underestimate income in an ill-conceived effort to reduce his or her exposure to an unfavorable property award. This can result in underpaid taxes, interest and penalties. Because both spouses are jointly liable for all taxes on a joint return, a spouse may become liable for the other spouse's tax liability.

Itemizing deductions during pending divorce

Generally speaking, when the spouses file tax returns with the IRS as "married but separate" while their divorce is pending, the spouse who pays for a particular item gets to claim the deduction for the payment. Where a home is titled in both names, the spouse making the mortgage or tax payments gets to claim the associated deductions.

An exception is sometimes made when the asset receiving the payment is specifically tied to one spouse. For example, contributions to an IRA are deductible to the spouse owning the IRA regardless of which spouse made the contributions.

Or, where a house is titled and the mortgage is in the name of one spouse only, the tax payments and interest payments may not be claimed as deductions by the non-owning spouse, regardless of who made the payments.

Gains from the sale of the home

A couple may exclude from income up to $500,000 of gain on the sale of their home, assuming they lived there for two of preceding five years. If one spouse receives the home in the divorce, he or she could end up with a large capital gains liability. If there is a $300,000 gain, the $250,000 shelters all but $50,000, resulting in a capital gains tax of $15,000. This should be included in the calculations of the final settlement and offset with assets.

Estate Planning Considerations

In addition to the above, I advise clients to consider making changes during the divorce process to ensure that the current spouse is removed as power of attorney, trustee or beneficiary of IRAs, qualified plans, non-qualified plans or life insurance policies.

Finances before, during and after divorce:
A client manual from the American Bar Association

The decision to end a marriage is hardly ever an easy or happy one, and the process itself is often filled with many questions and uncertainty. However, the process of collecting and weighing financial data while time consuming, can be beneficial for both spouses. In particular, you are likely to gain far more knowledge about your monthly spending habits, financial dealings and choices than you had before this process. Among other things, this experience may cause you to rethink spending decisions and other lifestyle priorities.