

CHOOSING A MATRIMONIAL LAWYER

By David M. Wildstein, Esq.

Choosing the right attorney may be your most important decision in ending your marriage and successfully beginning the next phase of your life. The right matrimonial lawyer can help provide you with financial security. The wrong lawyer may lead to the loss of marital assets that are rightfully yours or even may result in your losing custody of your children.

You need an experienced and concerned attorney to fight for you, to guide you through the legal process, and to respect your needs. Litigants in divorce cases often change lawyers before the conclusion of their case. Part of the problem is that often clients do not put enough time and effort into selecting their attorneys. To keep this from happening to you, you should choose your lawyer carefully.

Before making your decision, interview at least three attorneys so you have a basis for comparison. Allow a wide range of factors to weigh into your decision. Do not choose a lawyer based solely on what others say. The fact that your friend or relative recommended a particular attorney does not mean he or she is right for you. Be discriminating.

Your selection can best be accomplished by establishing criteria that are important for you and then matching up the attorneys against the following standards:

1. Experience and Knowledge of Divorce Law

The most important criteria for selecting a matrimonial lawyer are knowledge of and experience in family law. An experienced matrimonial lawyer will be familiar with the law, its trends and the legal system. When a problem or crisis arises in your case, the seasoned lawyer is less likely to be caught off guard and more likely to be prepared to handle it. Pose the following questions to each matrimonial attorney you interview to determine the lawyer's level of knowledge and experience:

*How many years have you practiced law? A lawyer who has practiced 10 or more years is more likely to have a strong base of knowledge and experience.

*During the past ten years, what percentage of your practice has been devoted to divorce law? You should look for a lawyer who devotes at least 50 percent of his or her practice to matrimonial law.

*How many contested divorce trials have you had during the past five years? Although a lawyer may otherwise be knowledgeable, he or she may have limited courtroom experience.

*How many contested custody cases are you presently handling? Custody cases require special and unique skills. A lawyer may be experienced in divorce cases but have minimal experience with custody matters.

*Do you frequently handle complex or large asset cases? You don't want to be the guinea pig for a lawyer who is just learning the ropes or who handles only simple cases.

*Have you written any articles or publications related to any aspect of matrimonial law? A lawyer who has written on various subjects of divorce law has demonstrated knowledge of the law.

*Have you presented any lectures on the subject of divorce law and to whom? Lawyers who lecture to the bench and bar are often acknowledged by their peers as experts in the field.

*Are you a Fellow of the Academy of Matrimonial Lawyers? As a member of the Academy, a lawyer is acknowledged as an expert in divorce law and has met stringent standards for admission.

*Have you received public recognition for your expertise in divorce law? Martindale-Hubbell is a directory that rates lawyers by confidential questionnaires presented to other lawyers. The ratings are divided into two categories: legal ability and general ethical standards. Another book, Best Lawyers in America, published by Woodward/White, Inc., and compiled by Steven Naifeh and Gregory White Smith, lists the best lawyers in America by specialty. For example, matrimonial lawyers are listed under "Domestic Relations."

2. Rapport With Your Lawyer

As a client, you deserve to be treated with dignity and respect. In this area, your "gut feeling" about the lawyer can be your best guide. Do you feel comfortable talking to the lawyer? Do you feel that the lawyer is condescending to you? Be wary of lawyers who are abrupt and inattentive. Keep in mind that you will spend many hours with your lawyer during the course of your case. The process of a divorce is often time consuming and emotionally draining. If you are uncomfortable with your lawyer, it may be a constant source of additional stress to you.

3. Commitment and Desire to Obtain a Favorable Result

Does the lawyer want to WIN for you? This may be difficult to determine during an initial interview. However, there is a greater likelihood that the lawyer will be committed to your case if he or she is interested in and excited about your case at the onset and is not distracted or preoccupied. A lawyer's interest in your case may be revealed by a lively and energetic search for facts and detail

4. Availability to Other Lawyers and Support Staff

A matrimonial attorney often needs the assistance of other attorneys and paralegals. This is particularly true in a complex case where a team of specialized professionals may be very effective and cost-efficient. Your lawyer can delegate certain tasks, such as legal research, to junior associates or paralegals with lower billing rates. By doing this, your lawyer will spend less of his or her more expensive time doing work that the support staff easily can handle.

Similarly, a strong support staff can keep your case from grinding to a halt if your attorney is unavailable due to a prolonged trial or a vacation. In these instances, it may be necessary to talk to another attorney in the office who is familiar with your case. Ask how many lawyers in the firm handle matrimonial cases and about their availability. You may also want to meet other lawyers in the firm or department to determine whether you can establish a rapport with them as well.

5. Reputation of the Lawyer and the Firm With Whom He or She is Associated

A lawyer should have a reputation for being trustworthy, credible, well prepared and reasonable. Obviously, any questions you ask lawyers about their firms or their own reputations will generate self-serving responses. To obtain objective information, ask other lawyers, accountants or former clients of the firm. Your lawyer can provide you with references from former clients who have consented to the release of their names.

6. Diversity of Firm and Other Resources

Often divorce cases require knowledge of other fields of law, such as real estate, bankruptcy, personal injury, criminal, commercial, estates, trusts and tax law. You should learn whether the law firm has other departments that are available for consultation when needed. Also, a

matrimonial lawyer must rely on outside experts to render opinions related to custody matters and appraise assets such as businesses, real estate, pensions and personal property. Find out whether the lawyer has prominent and credible experts accessible to him or her for these services.

7. Assertiveness and Tenacity

Make sure you choose an attorney who is willing and able to adapt to your changing needs. Though you may want a lawyer who is sensitive and compassionate toward you, keep in mind that these qualities alone are insufficient. There are also times when your attorney must be assertive and tenacious, especially when dealing with your spouse, your spouse's attorney, and the Court. A lawyer who exudes strength and confidence during your initial interview is more likely to be able to be aggressive when the need arises.

8. Strategy and Focus

Every case requires a plan of action consistent with goals that the lawyer and client mutually agree upon. Unless your lawyer develops a strategy and remains focused on your goals, your case may become prolonged and costly. During the interview, ask the lawyer what result could be reasonably obtained and what strategies could be implemented to achieve your goals. The lawyer's response to this question will give you insight into his or her analytical skills and ability to develop a blueprint.

9. Proximity of Lawyer's Office

If your case is complex and contested, you may need to consult regularly with your attorney. If you consider selecting an attorney whose office is located a substantial distance from your home or office, you must weigh the additional burden against other factors.

10. Legal Fees

The Rules of Court mandate that an attorney and client have a written fee agreement. The agreement normally provides for a retainer (an initial lump sum payment that will be applied toward future bills) and an hourly rate charged by the attorney. The difference in hourly rates and retainers among experienced divorce lawyers is relatively insignificant. It is most important that you feel confident that the lawyer is trustworthy because you cannot independently verify all the time spent on each task.¹

An expensive attorney is not always a skilled attorney. Be wary of lawyers who lack the credentials to justify substantial fees. Do not assume that because an attorney is expensive, he or she must be competent. On the other hand, do not let legal fees deter you from retaining a skilled lawyer.

Remember to keep counsel fees in perspective. For example, if your lawyer obtains \$50.00 more per week in child support for your 3-year-old, after 18 years you would receive an additional \$46,800.00. An experienced lawyer may be better able to procure a bigger or longer term alimony settlement. Similarly, good lawyering may enable a litigant to maximize or minimize the value of a business being distributed. An experienced lawyer may cost more now, but the long-term financial benefits may outweigh that cost later.

Compare Your Evaluations

¹ I recommend that in the case of a mediated or pro se divorce an attorney be willing to offer "unbundled services. The attorney should be willing to offer legal services on an hourly consultation basis during the mediation process. Should mediation efforts fail in any areas, the attorney would be able to proceed with the case through further negotiation or litigation.

After you have had several interviews with matrimonial attorneys, you may want to compare the results. Depending upon your needs, you may give greater weight to some criteria and less to weight to others.

Conclusion

A divorce can be extremely stressful and painful. It can be a very difficult time for you and as well as for your children, relatives and friends. If you are getting a divorce, you do not need the added stress of wondering, "Did I choose the right lawyer?"

Your lawyer should be part of your solution, not a part of your problem. If you have a strong, experienced lawyer fighting for your best interests, you will not have to worry about your case. Rather, you can devote more of your time and energy to emotional and psychological well-being, and you can start looking forward to your new life. Don't make it harder on yourself by choosing your lawyer haphazardly. You owe it to yourself to choose carefully and to choose the best lawyer for you.

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