



What to Expect When Hiring a Family Lawyer

BY MARK CHINN

When Do I Contact a Lawyer?

The most important advice we can give is that “when you wonder if you need to talk to a lawyer, you do.” Many people fear going to the lawyer. They are afraid it means they are showing lack of trust in their partner or that it will propel them unwillingly towards divorce. The opposite may be true. It is important not to be in a relationship while harboring potentially unfounded fears. Talking to a lawyer may help settle you down and allow you to improve your relationship. Of course, you might also learn that you need to act swiftly or that there are protective actions you should take. Lawyers are also skilled in helping people save marriages and often refer clients to counselors who can help. Failing to talk to a lawyer right away can create problems down the road that might not be fixable.

Divorce Is a Tragedy. How Do I Survive?

While divorce certainly seems like a tragedy, it is not an *unexpected* tragedy in today’s world. Over fifty percent of marriages end in divorce, so it is something that must be dealt with. Divorce is a life crisis. We can learn a lot about surviving divorce by looking at people who survive other life crises. Some years ago, a family of six was rescued after surviving in subzero conditions for two days after wrecking their car. Survival experts stated that they made all the right “little decisions” that added up to survival, such as staying near the car, telling others where they were going, and refusing to panic. People in divorce or other legal crises can learn from this. First, get grounded (stay by the car) and realize the best thing to do is to stay put until you know clearly what to do. Second, involve others who are close to you. Keep the group small though. Third, don’t panic. Carefully analyze with your lawyer what the real dangers might be and when they might occur. (They are not likely to be immediate). Finally, train your will to survive. A key to surviving is the determination to survive. One of the biggest problems lawyers face is clients who cannot seem to stand up to the fight. The lawyer can’t do it all. The client has to assume responsibility for their part of the fight.

How to Find the Right Lawyer

There are several steps to finding the right lawyer. The first step is to ask trusted advisors such as your CPA, financial advisor, or spiritual advisor. Ask friends who have been through divorce what their experience was with their lawyer. There are many lawyer evaluation entities, such as Martindale-Hubbell, AVVO, and Google. There are also lawyer groups, such as the American Academy of Matrimonial Lawyers and the American Bar Association Family Law Section. Client reviews are an important source of information. The lawyer should have more than just a few reviews. If there is a negative review, take a careful look at how the lawyer responded. This can tell you a lot about the lawyer. If you are in a state where there is lawyer specialty certification, check out those lists. Interview three lawyers to see which one fits your personality and your case needs.

What to Bring to the Initial Divorce Appointment

During the initial appointment, the attorney attempts to assess the following:

- What are the reasons for the divorce?
- Is there is provable fault by either party?
- What has the child rearing been like? What are likely custody outcomes?
- What are the finances? How would assets be divided? How would each person survive in the event of a divorce?
- What is the client hoping to achieve long term?

As a part of this process, the attorney will advise the

clients on the basics of the laws on divorce, custody, division of property, and child and spousal support.

At the conclusion, the attorney should provide alternative courses of action and perhaps make a recommendation.

What Can the Client Bring to Facilitate the Best Possible Initial Assessment?

1. Previously filed documents if there has been a court filing (The last order entered by a court is an absolute must if the client is seeking post-divorce advice. Certainly, if a client has recently been sued, the client must bring the suit and the summons served upon them and be prepared to say exactly when the papers were handed to them.)
2. Financial documents (Note: The idea is to provide a basic understanding of the finances. Detail will be developed later.)
 - Financial statements given by either party to lenders if you have them
 - Basic financial statements prepared by either party
 - The latest pay stub for both parties if you have them
 - The latest statements for savings, stock, and pension accounts if you have them (Note: The attorney will be interested in a basic idea of what was acquired during the marriage versus what was acquired before the marriage and what was received by gift during the marriage.)
 - Tax returns for the last three years if you have them
 - A social security earnings history if you have one
3. A basic timeline of events (Too much detail would not be useful in an initial assessment.)
4. Any proof of fault, such as telephone records, copies from Facebook, letters, recordings, cards, pictures (including ones of bruises), and doctor bills from abuse
5. Payment (Oftentimes it is important to protect against the other party knowing about the appointment, so make arrangements to pay by a method the other spouse will not be able to detect, such as cash, a cashier's check, or a checking account to which the other spouse does not have access.)

What Will It Cost?

The cost of divorce depends on many factors such as:

- Is there a lot of conflict?
- Are there children involved and disputes about custody or visitation?
- Are there complicated asset issues?
- Is one person very financially dependent on the other?
- What is the brand of attorney involved—are they litigious?
- Will the parties agree to mediation or collaborative law?

A survey of the internet reflects the average cost of divorce across the country can be between \$10,000 and \$15,000 and much more if there is custody conflict. If many matters are

agreed upon, or if there is a short marriage with no custody issues and few finances, the cost can be much less than the average. On the other hand, custody cases and high-asset cases can be many times the average.

How Do Attorneys Charge?

Talking about Fees

Most lawyers become lawyers because they want to help people. They care very much that their life's work be viewed as a service to people and to the betterment of the community and nation. For that reason, many lawyers are somewhat embarrassed to bring up the subject of fees. But lawyers know that clients need to know the basis for the charges they are about to incur. So, if your lawyer does not bring up the matter of charges, don't be afraid to take the initiative and ask how the lawyer charges. You might say something like, "Is there a charge for the initial consultation?" or "How does your firm charge for its services?"

It is important to talk candidly and often with your lawyer about your fees. Ask how much the things you are asking them to do will cost. Know the cost, or an estimate, before you embark on a course of action.

Types of Fees

Flat Fee. A "flat fee" is a one-time charge that is designed to cover all of the work. For example, a lawyer might charge \$1,500 to draft a property settlement agreement where the understanding is that the parties have reached an agreement. Another example is that a lawyer might charge a one-time fee to attend a hearing. Of course, flat fees can be designed to encompass almost any situation. The fee can be due up front or can be divided into installments. The primary attribute of the flat fee is that it will not change depending on what happens in the case or how long it takes. The flat fee has several advantages. First, it allows the client to determine on the front end whether the project is affordable. This is different from the hourly billing method, where the true cost of the project cannot be known until the very end of the project. Second, the flat fee fixes the cost for the client. As long as the project remains within the bounds of the understanding as to what is to be done, the client should not be charged more than the agreed-upon price, no matter how much time is expended by the lawyer.

Hourly Billing. The most common form of billing in the divorce world is the hourly fee. Attorneys record their time in predetermined intervals and then charge the client according to the time spent. The most common intervals are either quarter-hour intervals or sixth-of-an-hour intervals. For example, under the quarter-hour-interval method, the minimum charge for any effort is at least 15 minutes. Under the sixth-of-an-hour method, the minimum charge for any activity is 10 minutes.

The attorney keeps track of time every month and then sends the client a bill, which usually sets forth the date

something was done, a description of the activity, and the amount of time spent. The bill will vary each month depending solely on how much time it takes the lawyer to perform the work.

The advantage of the hourly billing method is that it metes out the cost of the litigation according to the amount of time it takes. If something takes very little time, then the amount of the charge will be less than if the matter drags out. On the other hand, if the matter becomes difficult and protracted, the cost to the client will increase accordingly.

Value Billing. Many codes of professional responsibility allow for what is called “value billing.” What this means is that the attorney and client negotiate a price for the work based upon what the client seeks to accomplish and the value of that work to the client. Value billing requires a lot of work between the lawyer and client to customize the price to the

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project. Because such charges are based upon “value,” there is an infinite combination of arrangements that the attorney and client can devise. For example, a client might agree to pay a certain amount of money each month for a service. Or an agreement might call for certain charges for certain tasks, such as fixed charges for depositions, hearings, or mediation.

Contingency. Contingency charging involves the lawyer taking a percentage of the amount collected on behalf of the client. In family law cases, this method of charging is generally not permitted by state codes of professional responsibility, except in child support arrearage cases, where contingency fees are generally permitted. For example, if a person is owed \$18,000 in past-due child support pursuant to an order, it is permissible for the attorney to agree to take the case and collect a percentage of the amount collected from the delinquent parent when the money is received. This is the same way most personal injury lawyers might handle a car accident case. They might collect a sizeable percentage, but they don’t collect anything unless they make a collection. The advantage of this form of charging is that the client can obtain an attorney without having to advance any funds.

Retainers. Most lawyers employ the use of “retainers.” A retainer is a certain amount of money that is obtained in advance of the work. This retainer is placed in the trust account and used as a reserve for the lawyer to charge against. Abraham Lincoln, who was a great trial lawyer, advised that a retainer is important because the lawyer then knows he has a client and the client knows he has a lawyer.

The amount of the retainer should be determined from a number of different factors. The factors are much the same as setting an hourly rate or flat fee. The advantage of a retainer is that it secures the lawyer’s representation for a certain amount of time and additional payments do not have to be made until the retainer is exhausted. Clients should always understand, though, that a retainer is not to be confused with the price for the work, and the actual cost of the project may exceed the retainer.

Refundable or Nonrefundable Retainers. Retainers can be either refundable or nonrefundable. A refundable retainer is where the amount of retainer left in trust after charges is refunded to the client upon closure of the case or termination of the representation. A nonrefundable retainer is not refunded. The attorney simply keeps whatever is left, whether they have billed for the work or not. The rules vary from state to state on whether nonrefundable retainers are permitted.

End Retainer or “Evergreen Retainer.” The end retainer is a method of holding a certain amount of retainer until the end. The lawyer takes the retainer in at the beginning of the representation but does not use it. Instead, the client is expected to pay the bill as it is incurred so the retainer is not used. Typically, the full amount of the retainer is refunded at the conclusion of the representation if all other bills have been paid. The end retainer or evergreen retainer gives the attorney comfort that their final charges will be paid.

Expenses

There are many expenses above and beyond the payment of attorney fees. These include charges for support staff such as paralegals. These are often charged at a rate of about one-quarter to one-third of the hourly rate of a lawyer. The following list contains other expenses: copying, long-distance telephone, computer legal research, service of process, court reporter fees, expert witness fees, private investigator fees, and mediator fees. These fees are usually charged to the client at the rate paid by the attorney. Sometimes attorneys charge for office expenses such as copying and long distance by adding a simple percentage surcharge, such as three percent, to the bill.

Reducing Costs

The best way to reduce costs is to ask your attorney how you can keep the cost of your case down. There may be specific suggestions that can be given to help reduce the cost of your particular case. In addition, there are some cost-cutting techniques that may be applicable to just about any case:

- Tell your attorney you do not want a copy of everything that comes in or goes out of their office. Ask for only the most important documents.
- If documents need to be copied, copy them yourself.
- Don't call your attorney unless it is absolutely necessary, and keep the calls short.
- Don't call your attorney about matters that should be discussed with your therapist.
- Ask your attorney what certain actions might cost so you can decide if you really want to pay for them.
- Suggest that your attorney tape record or video noncritical depositions in order to save reporter fees.
- Don't ask your attorney to subpoena unnecessary witnesses or documents.
- Communicate by email.
- Do record searches, such as corporate searches or deed searches, yourself.

Always be careful with attempts to cut costs. Make sure with your attorney that an effort to save a cost won't be detrimental to your case.

Timely, Regular Billing

If the billing agreement is hourly, both the attorney and the client are best served by regular monthly billing. Clients have the right to know how their retainer is being spent and how the expense of their case is progressing. Clients should feel free to ask their attorneys for statements on a regular basis, such as once a month.

Written Fee Agreement

Most states do not require that your fee agreement be in writing, but it is always best that contractual relationships be placed in writing. Ask your lawyer to provide you with a written fee agreement that outlines what the attorney is going to do for you and how they are going to charge.

Keep Open Communication

If you are struggling with payment of a bill, it is best to communicate immediately and honestly with your lawyer. The same is true if you are not happy with your lawyer's handling of something. Call your lawyer and express what is on your mind. If you are concerned about charges, be prepared to tell the lawyer exactly what charge you are concerned about and why. This will be of much more benefit to you and the lawyer than simply stating that the "bill is too high." **FA**



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