

CLIENT ALERT

You and Your Attorney: Your Next Big Relationship

Do I need an attorney? Say you and your spouse want to work amicably toward a low cost divorce outcome. Consulting with an attorney – especially if you do not tell your spouse about it – can feel like a betrayal. Worse, if you do tell your spouse about it, he or she may become angry. (“You promised we wouldn’t lawyer up!”)

Just as you would not sign yourself up for heart surgery without learning about your condition and your options, you should not try to settle with your spouse without having at least one consultation with an experienced family attorney. Your attorney will explain the law and how it applies to your situation. Everything you tell him or her is confidential – even the fact that you were there in the first place! When you learn about your legal rights, obligations, and options – as well as those of your spouse – you will feel the power that can only come from knowledge. There is no substitute for that.

Believe it or not, it’s better for you if your spouse does the same thing.

Can’t we just use the same attorney? In most jurisdictions, attorneys are prohibited from representing both of you. And that makes sense, once you think about it. A homemaking mom’s goals and incentives differ from those of her husband: an attorney representing mom usually seeks a high level of financial support for as long as possible, while counsel for husband seeks to minimize the support obligation and may offer an increased portion of the marital assets in lieu of sharing her client’s income.

I’ll make the appointment: now what? Your attorney should spend one to two hours with you. Expect to pay for the meeting. When you contact his or her office, ask whether there is a charge, the amount, whether payment is expected at the meeting, and whether the firm accepts payment by credit card. Think about how you will pay for the appointment if you do not wish for your spouse to know about the meeting. (If you pay with cash, your attorney should give you a written receipt.)

Ask whether you should bring any documents and expect to be asked to bring your last tax return, paystubs for you and your spouse, and a basic outline of your assets and liabilities. Know the amounts of certain monthly bills, such as your mortgage, real estate taxes, and homeowners insurance, so that the attorney can run a support calculation. Don’t be afraid if you don’t have all of that stuff – just do the best you can. Bring along a list of all your questions. When you make the call for the appointment, be ready to provide your spouse’s name and employment information, so that the attorney can run a conflict search before you get there. (This is particularly important with larger law firms, where another attorney at the firm may have already

met with your spouse or the firm may already represent your spouse's employer or family members.)

If you and your spouse signed any agreements together, including a Prenuptial Agreement, bring them along. The more information you can supply, the more useful the attorney can be. Most jurisdictions use grids or guidelines in assessing child and spousal support obligations. These are usually based on incomes and/or living expenses of the parties and their kids. If a spouse or child has special needs or unusual expenses, such as medication or therapy, bring that information along.

What will I learn at this meeting? As long as you bring the necessary information, your attorney should give you an overview of support, custody, and property distribution. The attorney should answer all of your questions and treat you with compassion and respect. Expect to become emotional and maybe even to cry during the meeting. Your attorney should listen to you, not interrupt you, and not lecture you.

Your attorney should be able to speak to you clearly and in plain terms. If he or she bristles at your concerns, is high-handed, or makes you feel stupid, thank him or her for the time and end the meeting. No experienced attorney should be threatened by your questions. At the same time, however, remember that things you may have read about divorce on the Internet or heard from the folks at your neighborhood bar are not always correct.

I have retained an attorney: what's next? Your attorney should give you a written summary, often called a fee agreement letter, of exactly how and when you will be billed. Read it carefully and do not sign it if you have questions, concerns, or if you do not understand it. Expect to receive invoices monthly and insist that they set forth detailed charges so that you always know exactly where you stand. If your attorney seems uncomfortable answering your reasonable questions about any charges, that's a red flag. Tell your attorney how you feel and if he or she is not responsive, it may be time to move on to someone else.

You and your counsel should map out a strategy that meets your goals and concerns. That means that you have to be able to identify and articulate those goals and concerns, at least on a basic level. For example, you may want your attorney to get as much money for you as possible, but without being ugly or combative. Your attorney may point out that those goals conflict if your spouse is hiding money from you. That should prompt a healthy discussion about how far your attorney can go in issuing subpoenas and other legal documents before you will become too uncomfortable. Then, talk about what happens after that..

Similarly, be as clear as you can be about your preferred child custody arrangements. If you are a dad who is just fine with alternating weekends, make sure your lawyer knows that so that he or she does not start demanding equally shared custody on your behalf.

As you go along, keep a file of your notes, all correspondence, all emails, and other papers such as pleadings and financial information. Make sure your attorney and his or her assistants do not send emails and other communications to your workplace, unless you want them to do so. (Think carefully about that, by the way.) Clarify expected response times. (In this age of instant

responses, some clients demand instant answers to complex questions -- that's not such a good idea.) Plan your phone calls and email exchanges so that you keep your costs down. When you are anxious and upset, it's easy to ask the same questions over and over again: if you can take careful notes and then refer back to them when you get upset, rather than calling your attorney, you will save money on legal fees. Talk with your counsel about what you can do on your own to contribute to your case and keep your fees down. For example, you may be able to gather and copy documents, or even to prepare summaries of financial information. Just remember that your attorney must read and understand it all in order to make an effective presentation on your behalf.

Remember that no reputable, experienced family lawyer is threatened by a well informed client who seeks to reduce his or her legal fees! At the same time, however, if you find that you are constantly second-guessing or questioning your counsel, he or she will begin to feel mistrusted and not respected. If that goes on for too long, the relationship may fail. If you start to feel that things are not going well between you and your attorney, speak up.

If you have to attend any Court or other legal proceedings, your attorney should explain to you exactly what is expected of you, how much time will be involved, and what will likely happen that day. Will you be cooling your heels in the hallway with your spouse while the attorneys speak with the Judge? Will there be any decision that day? Court is not like what we see on TV and in the movies – there is a lot of waiting. Judges have heavy caseloads and they do not always have the time to read the file before we get there. You can arrive eager and ready for action, only to find yourself 15th on a list of 20 cases.

Attorneys are people too. Sometimes your relationship with your spouse plays out in your relationship with your attorney. The spouse of an aggressive and overbearing spouse retains an aggressive and overbearing attorney. That client gets swept along in an emotionally and financially costly exercise without ever being in control. Because that's business as usual for that spouse, he or she may not even be aware of it. No personal growth occurs for that client. As a result, he or she may never be able to move beyond the divorce.

Even if your relationship with your counsel is perfect, he or she may head off confidently in directions that you do not want. When that occurs, it's often because your attorney has grown to care deeply about you and wishes to do whatever it takes to protect your future – sometimes without checking with you first! If you feel that your attorney has raised the battle flag and run headlong into a skirmish that you have no interest in waging, speak up!

While no divorce is ever pleasant, if you have a good relationship with a good attorney and you work as a team, you can expect to come through the process strong, solid, and confident.

About the Author: Ms. De Shong is one of Pennsylvania's leading family law attorneys. She has counseled hundreds of men and women on all aspects of divorce, child custody, distribution of assets, support, and alimony, as well as property settlement agreements, prenuptial agreements, cohabitation and partnership agreements, family business agreements, protection from abuse matters, and more. She is a Fellow of the American Academy of Matrimonial Lawyers, a national organization of approximately 1600 highly skilled litigators and negotiators who represent individuals in all areas of family law. (For more information about the academy, please visit www.aaml.org). A past Chair of the Montgomery Bar Association Family Law Section and its Continuing Legal Education and Law Reporter Committees, she lectures, writes and plans courses on family law matters for the Montgomery Bar Association, the Pennsylvania Bar Institute, the Pennsylvania Bar Association and the Pennsylvania Institute for Certified Public Accountants. If you would like further information concerning family law or if you have a family law matter that you would like to discuss with our lawyers, please email Ms. De Shong at adeshong@wispearl.com.

This article is intended to be used only for informational purposes. Neither this article, nor the contents of this article, are intended to be nor should be construed as legal advice.