

# How to Select a Family Attorney

by

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## **Note to readers:**

For simplicity, I have opted to refer to attorneys in the masculine. This is not meant to demonstrate a preference to male attorneys or slight women attorneys in any way. It has merely been done for the benefit of easier reading. (I often refer my clients to several female attorneys in my area depending on the situation, the judge and other key factors.)

This chapter on attorneys is excerpted from my upcoming book: *101 Tips Every Divorcing Dad Needs To Know!*

More than likely, you will need an attorney to help you with your divorce. There are several ways to utilize one depending on your situation:

1. If you and your spouse are in agreement with all the issues, things can be relatively simple. Depending on the laws of your state, you may even be able to hire one attorney to handle the paperwork once you have made your decisions regarding finances, custody, parental responsibilities and shared parenting time with your child/ren. Some states require both parties to have their own attorneys. If all you need an attorney for is to address the proper statutes or codes and include the terminology required in your state in the necessary documents to be filed with the court, you will not need an expensive, highly skilled, trial attorney.
2. If your ex-partner has filed for a divorce and has already retained an attorney, it would be wise to do the same. How adversarial she is will help you to determine the type of attorney you should seek out. The more aggressive she is, the more cautious you may wish to be. If this is the case, you should consider hiring a more experienced attorney.

3. If your ex-partner and her attorney are very aggressive, especially if they are claiming false accusations against you, do not hesitate to locate the best attorney you can afford – preferably one with extensive trial experience.

In all professions, there are those people that are good at what they do and, those that are not. The field of law is no different: there are good attorneys, mediocre attorneys and bad attorneys – and then there are the “attorneys from hell.” This type of attorney is a separate breed. They thrive on purposely complicating and inflaming issues between couples rather than working towards solutions. Although they appear to be, they are not concerned about their client, their client’s children, and especially their “opponent.” They are only interested in “billable hours.” They know full well that the meter is ticking with every motion they file, every delay they can cause, and every communication they can distort. They are skillful at preying on their clients’ emotions, making the client think that he or she can win by initiating legal procedures. All too often, the unsuspecting client believes them and continues to believe them until finally realizing how horrible and out of hand the situation has become.

Now the good news: There are excellent attorneys. You may have to search diligently in order to find one, but they do exist and they are worth every penny that you pay them.

The key to coming out ahead in a divorce or custody battle is knowledge and preparation. It is critical to understand as much as you can about the legal system, the laws, attorneys, and your rights as a parent (regardless of how good your attorney is). Knowledge is power, and the more understanding you have about these aspects of divorce the less chance you have of being taken advantage of in the process.

**Select your attorney carefully.** You just got home from work and checked the mail. You look at the return address on a letter and it’s from an attorney. You open it and find that your wife is filing for divorce. Panic sets in! You grab the yellow pages, call several attorneys and make an appointment with the first one who can see you. You end up giving him a retainer of \$5,000 and the case is underway. This is not a good approach.

When you receive a letter like this, unless the letter states otherwise, or an emergency hearing has been set, you generally have 20 plus days to respond. That gives you plenty of time to start calling friends, relatives, men's groups or perhaps an attorney you have worked with in a business relationship as a way to locate a good referral. Do not rush this process. Careful selection of an attorney is absolutely critical. The outcome of your case may be determined solely on his ability to perform. Begin your search immediately but DO NOT REACT out of fear.

**A good example of this is my ex-partner.** She hired an attorney who was not only incompetent, but pushed her into making decisions that cost both of us large sums of money and put our son through hell. Her attorney complicated and dragged out the process when simple resolutions were available. The meter was ticking and billable hours were accruing. And while the lousy advice given to my ex, in a legal sense, ultimately worked to my advantage, the same could not be said for my ex; her attorney initiated battles she could never win because there was no real basis for her claims. This is a situation you should try to avoid at all costs. Your search for a competent attorney must be a conscious and deliberate one or you will suffer the consequences.

**Attorneys from hell.** A bad attorney will prey on the emotions of the client. They will attempt to inflame those emotions whenever possible. Decisions made from a place of anger, fear, confusion, or even worse; revenge, amount to money in the attorney's pocket. Behind the scenes, they will lead you to believe that you have a strong chance of winning a specific issue, even when you don't. They will purposely distort communications and hinder progress. They will create strategies that are counterproductive to your goals. Then they will totally disregard the damaging impact these tactics have on you, your ex-partner and your children. Meanwhile, you are trusting them to make the right decisions and the right strategic moves for you and your family. Nothing could be further from the truth. This is why you MUST become aware of the divorce process and question your attorney's recommendations without hesitation. It helps to notice your attorney's body language as he rationalizes his recommendations.

**Incompetence.** The first attorney I had who reviewed the Settlement/Parenting Plan (Custody) and Child Support Agreement that my ex-partner's attorney constructed, caught some of the mistakes that the other attorney had made in regards to codes or statues and corrected them. But she failed to inform me of the repercussions of several points that were not in my or my son's best interest which could have been removed, rewritten, or at the very least argued. She also failed to add essential points that should be included in *every* Parenting Plan. This lack of protection (a serious breach of an attorney's duties) eventually caused serious legal problems between my ex-partner and I. In fact, my ex and her attorney were able to use some of these points in an attempt to gain full custody of our son. Although justice ultimately prevailed, the mistakes my attorney made cost me several thousand dollars and untold amounts of stress for both me and my boy.

**Finding a good attorney.** The best way to find a good, qualified attorney to handle your case is through a referral from a friend or a local men's group. Ask your friends and their friends who have been through a divorce or a custody battle for names of good attorneys. **Once you have a list of half a dozen, whittle that down to the top three. Begin calling and** set up appointments to interview all of them. Only use the yellow pages to locate an attorney as a last resort.

**Consultation fee.** Some of these attorneys may charge you a fee for the consultation, others will not. The ones who charge are doing this because if you do not retain them, they will be disqualified from taking your ex-wife on as a client. Since you have disclosed confidential information regarding the case, the attorney cannot accept your wife as a client. So keep in mind that each attorney you divulge confidential information to CAN NEVER become your opposing attorney. Keep good records of who you spoke with, including dates, times and the details that were discussed.

If your ex already has an attorney you might try to use this as a rationalization for why you shouldn't be charged a fee. It may not work but it's worth a try.

**Sound legal advice.** Sound legal advice can save you many thousands of dollars and years of frustration and anguish. You must trust your attorney. You need someone who will follow through and file necessary motions or countermotions, actively pursue discovery, and have the ability to be your advocate in a court of law. In other words, he or she must be able to get the job done effectively.

**Hire the best.** If you are literally fighting to keep your rights as a dad intact – and defend the rights of your children to have their dad in their lives – hire the best attorney you can afford. You can also do some of the work yourself (gathering information, locating the specifics he needs to defend you, etc.) to take some of the load off of him; this will save him time, and you money. If you do end up in a court of law, you will want to have an attorney who can get the job done. This is why some attorneys charge more than others. You are paying for experience, expertise and a greater chance of winning. But remember, in a court of law there is never a guarantee. Even if you have a strong case and a great attorney, judges are unpredictable and you might still lose. This is why I recommend staying out of the courtroom, if at all possible. Keep in mind that just because the attorney's fees are high, excellence is not ensured. You still must check the attorney out thoroughly and ask the right questions during the interview process (explained later in this chapter).

Another good reason to hire the best is that women tend to throw every penny they can at winning their case – often spending your money. They will spend enormous amounts of time collecting evidence, convincing mutual friends to become witnesses against you and even attempt to turn your children against you. They are formidable opponents when angered and emotional, and can easily convince their attorney that you are the worst father in the world, regardless of the truth.

**Tell all.** Reveal the skeletons. Tell your attorney *everything*. If you have any skeletons in the closet, inform your attorney. This is critical for him to defend you properly. If you have an alcohol or drug problem, a criminal record, if you have abused your ex or your kids, if you have a Swiss bank account, let him know. It will be kept confidential and cannot be used in

court unless the other side discovers it on its own. Let your attorney decide what to reveal. It's better to be honest about all of these things because most likely the other side will find out anyhow. If they do dig something up about you and your attorney is unprepared, it will cost you big time in court. It will also erode your attorney's trust, and he may no longer wish to represent you. It is far better to have an attorney that likes you and is a zealot for your cause. It is also better to be prepared to deflect a negative than to get caught off guard.

**Bring a support person.** It may be helpful to bring a friend or family member to interviews with prospective attorneys or to any future sessions that you may have once you have selected one. Most likely, you will be in a highly charged state, especially during your initial interviews, and your support person can be there to observe the attorney and pick up on his body language and other clues that might help to determine whether or not you can trust him.

**There are four key things to look for in an attorney.**

1. *Honesty and trustworthiness.* You must find an honest attorney. You need to know that he is actually doing the work that he is supposed to be doing and that he is not illegitimately billing you for time not spent. You need to know that he is giving you, to the best of his ability, straight-forward advice.

2. *Competence.* Yes, he is an attorney, has graduated from a school of law and passed the bar exam, but can he accomplish all of the necessary tasks? Some of these tasks are more difficult than others. The most important is representing you in a trial, if your case reaches that critical stage. Is he competent in this area of law?

3. *Reliability.* The attorney must follow through with his commitments to you and take action when needed.

4. *Effective.* Is he excellent, not good, but excellent at what he does? Your attorney must be more than competent. He has to be effective and able to get the job done. This is

where you come in. You have to dig until you find out everything you can about the man or woman who is representing in a court of law.

***Before Seeing a Prospective Attorney.***

**Create a “position statement.”** Sit down at your computer and write out a description of what has happened so far, beginning with the date of the event. Fill in as many blanks as possible and stick with the facts. Hand it to the attorney when you meet, or send it via email before you arrive. He will be prepared and know what questions to ask you when you arrive; the meeting will take less time. Do this each time you present something new. *For example:*

- January 3, 2000 – My wife left with the kids without notifying me and moved in with her parents.
- January 10, 2000 – We made a verbal agreement that I would have our child from Friday evening at 4 p.m. until Monday at 5 p.m. and this worked out well for about 5 weeks. We did not put anything in writing.
- February 15, 2000 – My wife called and refused to let me pick up our son and has not allowed me to see him since then.

Get the picture? Leave all anger and opinions aside and stick with the facts. It will allow your attorney to get the information needed to understand the situation without your *emotions* (which is something most attorneys do NOT want to deal with). Do this each time you present something new, and you will have an ongoing record of all the events and when they happened. This will keep you organized and you will save time and money. It also helps to keep a date log of all the events that have happened between you and your ex-partner as evidence for the court if needed.

In your position statement, you may also want to include the outcome you would like to achieve and your reasons for wanting this. *For example:*

- I would like joint legal custody and an equal split in parenting time (physical custody) since my child is 4 years old and I have been just as involved in her life as my ex-partner has.

As your coach, I can help you write your position statements when needed.

**Trial attorney.** Choose a “trial attorney” who is experienced and has a reputation for winning. This may be your only shot with the issue at hand, so if you must go to court, go to win. Your rights as a father may depend on it.

**Here is a list of questions to ask the attorney in the interview:**

1. *Can you see a way for me and my ex-wife/partner to resolve our issues?* Ask this after the attorney has read your position statement. If he is a good attorney, he may come up with a number of suggestions to resolve the issues between you and your ex-partner. This is why it is important to interview several attorneys. Notice how much attention he gives to this question. I would favor the attorney who seems the most creative at finding a solution (knowing – at the very least – that he is attempting to resolve your case rather than prolong it to increase the billable hours). But keep in mind that the opposing party may not be as solution-oriented, or agree with a creative proposal. In this case, your attorney may have to become aggressive rather than continue to attempt to negotiate.
2. *How much of your practice is family law?* It should be at least 50%, but in my opinion, 70-100% is ideal.
3. *How long have you been practicing family law in this area?* If the attorney has been practicing for a number of years in your local area, he will know the judges and many of the expert witnesses such as: Special Advocates, Psychological Evaluators, Parenting Coordinators, etc. He will most likely have experience

dealing with the judge assigned to your case, and understand how he or she thinks about certain issues. This will come in handy in developing your strategy or approach.

4. *What is your hourly rate?* Good attorneys are expensive. Plan to pay at least \$200 per hour for a decent trial attorney or more for a top-notch litigator. You can also find a good, honest attorney for a lower fee, who, although new to the practice of law, will go the extra mile to make a name for himself to build his practice.
5. *What increments do you bill in when we talk on the phone.* Ten to fifteen minutes is acceptable, thirty minutes is not.
6. *Do you require a retainer?* If so, how much?
7. *Is the retainer refundable?* Ask, “If for some reason your fees total less than the retainer [perhaps he negotiates an early settlement for you, etc.], will the unused portion be refunded to me? How long will the refund process take?” Many states now have laws protecting the client whereby a refund is mandatory, but it’s important to find out. If this is not a law in your state then it would be wise to include this in the contract between you and the attorney.
8. *Are you a parent?* If so, it’s all the better.
9. *Have you been through a divorce?* If he has, this is also to your advantage. He knows what it’s like.
10. *What is your approach to divorce and custody issues?* What you are trying to find out here is the attorney’s basic strategy. Is he aggressive or more “resolution-oriented?” Will he negotiate for you if necessary? It is good to have an attorney who has the capacity to be both depending on the situation at hand. You probably don’t want a shark or someone too aggressive because it will generally cost you

more money and some judges don't like this approach. Hire an attorney who is resolution-oriented, unless it is obvious that a fierce battle is looming ahead and you have to fight fire with fire. If this is the case, strongly consider all your options. It's also very important to be realistic and recognize that it may not be worth going to battle, especially if you have a weak case, little money, or if the judge assigned to your case has a strong female bias.

11. *Do you think dads are capable of being custodial parents?* Try to get a sense of his feelings about how a dad fits into a child's life.
12. *How many times have you gone to trial?* It is important to find out how good your attorney is in court. You will want an attorney who has been in court many times. Another possibility is to go to a custody trial and see first hand how the attorney handles himself in court. I would definitely do this if your case is scheduled to go to court. And I would do it as far in advance as possible. Why? If the attorney talks like a pro when he is behind his desk but proves to be incompetent in court, you will want to have enough time to locate alternative counsel.
13. *How often have you succeeded in gaining joint or full custody for fathers?* On average, only 10% to 15% of fathers actually gain custody if the mother "contests" the case. If the attorney's average is 50% or better, he is getting pretty good results. This is what you want: a results or action-oriented attorney.
14. *What percentage of your cases are settled out of court?* If the number of cases that end up in court is more than 75%, this attorney may not be very good at negotiating a settlement, which is almost always preferable to going to court.
15. *How often will I need to meet with you?* This is more for your information and your schedule.

16. *How often will you send me an invoice detailing specific charges?* Make sure that you will receive an itemized monthly bill, with all charges spelled out.
17. *Will you send me copies of all correspondence from the opposing attorney? How quickly will you do this?* You should receive this information within 3 - 5 business days so you can be part of the decision making process if one needs to be made.
18. *What do you think about mediation?* Many attorneys will mediate for you at your request, or you can obtain a professional who specializes strictly in mediation. Mediation can be an invaluable tool to resolve the differences with your ex and an excellent alternative to court.
19. *Can I reach you if there is a real emergency?* Make it clear that you are not talking about some minor infraction that your ex has done, but a true emergency such as she just skipped town with your child, or you are being accused of sexual abuse, or something needing immediate attention.
20. *Do you feel it would be wise to include arbitration in our settlement agreement?* Even if you use an arbitrator rather than a judge, you will still need your attorney's advice. If you use "binding arbitration," you will most likely spend less money than if you go before a judge. And, people are generally more satisfied with the results from arbitration versus a courtroom battle. (NOTE: An arbiter is a judge who the parents can interview and actually select to hear their case in order to avoid the harms associated with the courts: long delays, high costs, public hearings in front of many people, everything said is public record, and finally, having to go before a total stranger who will make decisions about the lives of everyone in your family).
21. *Do you have time for my case?* This question could come out after you have fully explained your current situation and what you are trying to achieve. The attorney

will then have a better sense of the strengths and weaknesses of the case, and therefore, a better feel for the difficulties that may lie ahead.

22. *How does a judge usually view this type of issue?* He should be able to give you a feel for the likely outcome for your specific situation. Beware of the attorney who says, “You have a certain victory.” No one can be absolutely certain what will happen in a court of law. Seek a second – or even third – opinion so you can determine if he is being honest.
23. *How long will this case last?* This is another question that is often difficult to answer but worth asking, especially if you are dealing with an isolated issue that may be relatively simple to resolve.
24. *How much will this cost?* Hopefully he can give you an educated guess, but one never knows for sure. It will all depend on how you, your ex, and her attorney play it out. The more conflict either of you creates the more expensive it gets and the harder it is on you and your children. Always keep this fact foremost in your mind.
25. *Knowing the facts, how would you approach this case?* Try to find out the type of strategy he will use to win your case. This will tell you a lot about the attorney and his way of thinking about your situation. You will discover important information with this question. Once you have asked several attorneys this question you will have vital knowledge about the process you’re going to undertake.
26. *What happens if we lose?* What is the downside if we proceed in this way? How bad could it turn out if our strategy doesn’t work? These are important questions for you to get answers to so you can decide how to proceed.

27. *Ask for 3 client referrals.* Call these clients and ask very specific questions about how the attorney handled their case. Ask them if there were any areas where they felt the attorney had dropped the ball. If so, consider finding another one or be very aware if the same context comes up in your case, and watch your attorney closely.

**Check out your attorney.** Once you have decided upon an attorney, you may wish to check him out in the following ways.

- Talk to members of local men's support groups and find out what they have heard about this particular attorney.
- Call the grievance committee in your area to find out if the attorney is under investigation for misconduct.
- If the attorney will not provide you with referrals, or you believe that the referrals may be limited to his successes, you can always go to your local court and seek records from his previous cases (which are open to the public). Then, locate the clients and get honest feedback about the attorney's actual performance from the client directly. Additionally, you could go to one of his trials and see him in action.

**NOTE:** Watching an actual courtroom battle unfold is a mind expanding process. You will learn more about the court system from this one experience than anything else. I recommend this to all my clients. It is a very important step to take for anyone who is scheduled to appear in court to get the feel for how it is done. It will also help to relieve some of the tension you might encounter when it is your turn to take the stand.

### ***Communications.***

**Email.** Locate professionals (attorneys, mediators, arbiters) who use email. This is critical, because all of your communication with your ex should be via email, turnover journal and certified mail. I cannot emphasize this enough. If done properly, email not only keeps a

record of all your communications (for future evidence), it also makes it extremely easy to quickly forward vital information to your attorney, mediator or arbiter as needed, or to generate hard copies for a judge. This will save you enormous amounts of time, and you will need all the time you can get if things become adversarial.

**Never speculate or assume.** Always get the hard facts from your attorney or other professional for the specific issue at hand. What you think might be real or might happen from a legal perspective, may be totally off base. The legal system does not always take into account logic, fairness, or what's best for a family. One simple mistake on your part, caused by an erroneous perception or a lack of accurate information, might stop you from acting at a critical stage or cause a serious flaw in strategy or judgment. This could potentially cost you thousands of dollars, years of anguish and the loss of some of your rights as a father.

**Keep good records.** Take notes and tape record all your meetings with your attorney if he allows it. Write down all statutes he cites in your behalf for future reference.

**Clarify everything.** Carefully read over every document your attorney creates for you. Ask for clarification about anything you don't understand. Specifically, ask him NOT to file with the court or send anything out to the other side until it has been "approved by you." Also, do everything possible to make things clear for your attorney. When speaking to him about issues, refer to points in your settlement/parenting agreement (if you already have one), cite the facts, and provide documentation or evidence whenever possible. This can include, but is not limited to, notes you have sent back and forth, financial statements, pay slips, and/or medical records. Tell your attorney exactly what you want, not how you feel.

**Take time to understand everything your attorney is doing for you.** Question everything your attorney does so you feel comfortable and informed. Never undermine him, but try to understand his reasoning. Ask about the case law that supports your position. If he has it in his head, great! If not, he will be obliged to research it.

**The “down-side.”** Have your attorney explain the pros AND cons of every decision or strategic move. Many attorneys gloss over the negatives or never mention them. It’s up to you to ask! You need to be fully informed of the downside of all strategic moves if you’re to make sound decisions. Remember, you must make the final decisions on each issue because you and your children are the ones who have to live with the consequences.

**Listen to your attorney.** If your attorney is good, you should follow his instructions diligently. Ask him for the simpler (non-legal) tasks that you can do to help. This will save you money in the long run.

**Watch your attorney like a hawk.** The vast majority of men I have polled said that their attorney made mistakes. There were a few who said their attorney did an excellent job, but this was rare. Most agree that the attorneys, no matter how much they are being paid, are not perfect. This is why it is absolutely critical for you to watch your attorney closely. Most men think “Well, I am paying my attorney top dollar, he must be doing a good job.” If this is your philosophy, good luck!

**Discovery.** Always make sure that your attorney is doing his share of the discovery process. If he is not actively digging up evidence to support your position or to weaken your ex’s, he is not doing his job, which could seriously jeopardize your case. This is grounds for termination, so question him throughout the discovery process to see what he has or hasn’t “discovered.”

### ***Questions to Ask During the Process.***

Attorneys generally do not offer much information unless you ask questions like:

- What is the downside if we take this route?
- What if my ex does \_\_\_\_\_ (fill in the blank)?
- Could we approach this in a different way?
- How could we resolve this without going to court?

### *Strategy.*

**If you are unsure.** If your attorney recommends a specific strategic move on any given issue and you are unsure whether this is the correct move, or have a bad feeling about it, don't hesitate to get a second or even a third opinion – especially if major repercussions could occur by following this advice. If both the second and third attorney agrees with yours, there is a high likelihood of success. If both disagree with what your attorney believes will be the outcome, this should give you cause to question the real intent of the recommendation. Is your attorney truly acting on your behalf, or is the meter ticking? It may be a question of competence.

### *Finances.*

**Hourly Rates.** Some attorneys will negotiate their hourly rate if you are in a difficult financial situation. If you really like the attorney, give it a try.

**Itemized bills.** If your attorney refuses to give you an itemized monthly billing (60 days maximum), find someone else. Thirty days is standard, and personally, I would insist on this.

**Time all phone calls.** Keep a log of phone calls with dates and the length of each call and then compare them with each invoice you receive (at least for the first few months and go rent “The Firm” with Tom Cruise and you'll understand even better).

**Retainers.** Make sure that all retainers are subject to refund, depending on the amount of time the attorney has put into your case. Apparently, in some states, unless it is clearly spelled out in the contract that “a refund is due if the retainer is not fully exhausted,” the attorney may keep the entire retainer, even if he did very little work.

*The following points should be included in the agreement with your attorney...*

### **SAMPLE RETAINER AGREEMENT**

1. My hourly rate is \$\_\_\_\_. The hourly rate of my staff, which includes a:

- Junior attorney        \$\_\_\_\_\_
- Paralegal                \$\_\_\_\_\_
- Secretarial services    \$\_\_\_\_\_
- The client will also be charged \$\_\_\_\_\_ for each photocopy of all materials needed.

2. The retainer for this case will be in the amount of \$\_\_\_\_\_. This retainer will be spent as follows: Each month, as the case proceeds, the hourly fees for the attorney and the assistants, combined with expenses for copies and other materials, will be deducted from the retainer. Each aspect will be reflected in the itemized invoice sent to the client monthly, and will also reflect the balance of the retainer. Once the retainer has been exhausted, the client will pay \$\_\_\_\_\_ on the first of each month to defray expenses and legal fees for the upcoming month.

3. The attorney will send to the client an invoice on a monthly basis itemizing and detailing all expenses, including labor and material costs.

4. The attorney will keep the client informed as to the status of his case and provide copies of all correspondence and documents prepared on his behalf, or received from the court or opposing counsel within 5 business days after receipt of such documents. This will include copies of motions and countermotions, all information recorded in the process of discovery, court orders, and evaluations by custody experts, including, but not limited to, Special Advocates or Guardian ad Litem, and any other important records involved in the client's case. (And yes, it is important to read all of these yourself so nothing falls between the cracks.)

5. The client will review the itemized bills sent to him by his counsel and will raise any objections within 30 days of receipt if the client has concerns. There will be no charge for any time spent in discussion or explanation of fees to client.

6. If the client disputes the attorney's fees at any point, he may seek arbitration as a way to resolve the dispute. The attorney will then provide the arbiter with all materials and information necessary or requested by the client to help resolve the dispute. The arbiter's decision will be binding on the parties and carry the full weight of the law.

**NOTE:** The points in the above agreement are reasonable and fair. There is a good chance that the attorney (especially if the case involves substantial assets or the custody issue appears extensive) will ask you to sign his standard retainer agreement. Be aware that any agreement written by the attorney will most likely favor the attorney. Be sure to look the agreement over very carefully and have another attorney offer feedback if you have concerns about any of the points. You can always negotiate the terms of the agreement and ask to incorporate your points. Strike out the terms you will not agree to, negotiate them until they meet your satisfaction, or find another attorney.

**Negotiate the retainer.** You may be able to negotiate the amount of the retainer if you feel it is unreasonable or you cannot afford it at this time. Suggest a smaller retainer that suits your budget, which will be replaced as soon as it is exhausted. Make sure that any retainer agreement you sign is written in simple, clear language rather than the traditional legal language, which may be difficult to understand or interpret.

**Exorbitant fees.** If your case gets out of hand, the legal fees can easily exceed your savings and the net worth of all your assets. Unfortunately, many attorneys do not seem to have a problem with this. It's not hard to understand why. The majority of this gain ends up in their pockets. I recently spoke to a man whose attorney fees had reached \$768,000 and the case was still in progress. In truth, it's not the attorney's fault that you and your ex can't work things out in a fair and equitable manner through negotiation and cooperation. This is why I strongly recommend that you do everything possible to be fair

and act honorably with your ex during the process of divorce (regardless of how she is acting). If you do, you will more than likely save a ton of money and lessen the harm that will come to you and your children.

**Get copies of all your records as your case proceeds.** Apparently, in most states, if you fire your attorney, he has the right to withhold your files from you until he is paid – even if you are totally justified in your decision. You can avoid this issue by asking for copies of all documentation as you go (See point #3 in Retainer Agreement). As an involved client who wants to understand the process, participate in the decision-making process, and stay informed of all developments (which is critical), asking for these documents as the case proceeds is a reasonable request. This way, you will already have all of your records on-hand if you decide to find an attorney who better serves your needs.

**Credit.** Many attorneys will begin with a retainer and continue to represent you although you are unable to afford representation. This is an honorable approach by the attorney for a client who is financially incapable of “paying as he goes.” But let’s just say the total expenditure for your case is \$25,000, which is slightly higher than the average divorce/custody dispute. Most attorneys charge 18% interest per year on the balance, which would mean that you would end up paying roughly \$375 dollars in interest every month without even making a dent in the principal. Although he may be doing you a favor, you will basically end up in debt up to your ears. In some states, if you are unable to pay your legal fees, an attorney can force you to sell your home for his compensation.

**Marital settlement agreements.** Sometimes attorneys will attempt to incorporate their legal fees into the marital settlement agreement. This agreement is made between you and your ex, and it details how property will be divided, how any outstanding debts will be paid, and who will have custody of the children. The settlement agreement then becomes part of the final divorce decree with the attorneys fees included. Once the judge approves it, this becomes a judgment that will be taken out of the final settlement. If you have received itemized bills to date and they have been accurate, this may be an alternative way to pay off your legal bill. Unfortunately, once the fees have been deducted, there

may not be much of your family's estate, if any, left over for you, your ex-partner and your children. Bear in mind that you will need every dollar you can hang onto to help rebuild your life after a divorce.

**Confessions of judgment.** Never sign a "Confessions of Judgment" document until you have accurately analyzed the billing statement for that period. Once you have signed this document, you are liable for this debt, and the attorney can file it with the court and place a lien on your property. The attorney could then literally foreclose on your home to satisfy this debt.

**Promissory notes.** A promissory note is another debt instrument which is used to assure the attorney that he will receive his fees. Some attorneys have been known to present a promissory note the day you go to trial in hopes of getting you to sign it. Not only is this method unfair (although not illegal), it will of course put undue pressure on you during an extremely stressful time. If you have not followed my previous suggestion of getting an itemized monthly statement of all billings, the promissory note may be much higher than it should be. If you do not sign it, the attorney may threaten to withdraw from the case at its most crucial point. Think ahead! Do not allow yourself to be put in this type of situation. *Work out all financial arrangements at the beginning.*

### ***Your Rights.***

**Disputing attorney fees.** You have the right to dispute an attorney's fees. If you feel the fees are exorbitant or do not accurately reflect the time spent. You can go to court and have a judge make a determination.

**Lack of performance.** At the first sign of neglect, lack of performance, or any other event that signals you that your attorney is not doing his job properly, examine the situation carefully; you might even consider seeking alternative counsel. At the very least, get a second opinion from another attorney that you respect. If he misses a court appearance, fails

to file a motion on time, does not follow through with discovery, then strongly consider the option to settle your bill and fire him. Make sure you have alternative counsel in place first.

**Forced to settle.** Sometimes attorneys will attempt to force you to settle a case for their own purposes. You do not have to do this; you have a right to go before a judge and have your case heard, unless there is a state law requiring mandatory mediation.

**If your attorney withdraws from your case.** In most states, your attorney must have “just cause” to quit your case and still collect any legal fees owed. The attorney must also receive formal approval from the judge in order to do so. Explore this with another attorney in your state if it happens to you.

### *General.*

**Never bargain for your child.** If your attorney ever suggests using your child as a bargaining chip for financial gains in a settlement, (even though the courts will at times allow this), don’t do it. Personally, I would strongly consider finding alternative counsel.

**Attorneys who mediate.** Many attorneys now offer mediation as part of their services. This can be a very effective way to resolve the issues at hand without going to court. In many states, mediation is now mandatory before proceeding to court. If your attorney is going to negotiate points of your shared Parenting Plan, make absolutely certain that the attorney has studied child-centered needs. I have seen agreements mediated by attorneys that are horrible for the kids. Some of these agreements were written by family law specialists with many years of experience. An attorney’s focus and knowledge is about law – not psychology.

**Clarity.** Remember, since the court may need to enforce parts of an agreement in the future, agreements should both conform to the law and be clearly written. I have seen many agreements (written by attorneys) that were almost impossible to interpret. If you can’t understand what the attorney has written into an agreement between you and your ex, it may come back to haunt you later. Make sure that all the points your attorney puts

into writing for you and your ex are clearly written and easily understood so you don't end up in court fighting over the meaning. Anything ambiguous or lacking in clarity should be rewritten. This is especially crucial with your Parenting Plan because this is the agreement you and your ex will have to abide by for many years to come. Simplicity is the key here.

**Intuition.** There are times when your attorney will advise you to make a strategic move. Attorneys make decisions based on their experience and the laws governing their state. But remember, you are really dealing with other humans; most importantly your ex-wife and your children. If an attorney suggests a strategy or the filing of a motion on a specific issue; he may only be taking into account the legal ramifications and not the emotional ones, which when fully considered, may outweigh the legal rationale. In other words, if you take a specific action that may harm your ex, or one that provokes a vengeful reaction, everyone (except the attorney) may regret it. If you have a strong feeling that this is the wrong course to take, it may be your intuition guiding you. You may still wish to follow your attorney's advice, but at least consider this inner voice. If nothing else, you may wish to get a second opinion.

I understand that the above questions for the attorney, concerns and second opinions may seem overwhelming. While it may appear that this will add to the expense of your case, the consequences of not getting all the information from the prospective attorney – or the attorney you select – may leave you ill prepared to make an informed decision. And remember, you may end up paying this person tens or even hundreds of thousands of dollars. You have a right to not only ask, but also to receive answers "in writing" to your questions, which I highly recommend. Don't be shy. You are worth a considerable sum of money to an attorney if the case goes to court.

**Final Note:**

Thank you for ordering this special report. I'm sure it will help you to understand many of the important points you will need to think through to select a good attorney who will truly be of service to you.

I'm happy to help you with all aspects of your divorce (which are listed on the link page "[Divorce Coaching](#)") on my website <http://divorcecoachfordads.com/>.

Please feel free to call or email me if you have any specific questions...

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