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A Perfect Fit

How to find a lawyer tailor-made to suit your unique needs.

By Diana Shepherd

"So far, Jane's divorce has cost us about \$120,000. It'll probably be closer to \$150,000 by the time the dust settles." Micheal, a Chicago-based architect, is speaking about his fiancée's extremely bitter split with her ex-husband. "We hired the best lawyer money could buy, and it was worth every penny," he asserts forcefully.

On the other side of the coin is Susan, an assistant editor at a Toronto newspaper. "We each entered the marriage with nothing, and we left with nothing," says Susan. "No kids, no money, no investments, no assets. Since we managed to remain on good terms throughout our separation, we opted for a do-it-yourself divorce. Our divorce agreement basically consisted of us saying, 'You take the microwave, I'll take the TV set,'" she adds.

If you're like most separated North Americans, your situation is probably somewhere between Jane's and Susan's: you've acquired some assets -- or children -- during your marriage, and you and your ex are relatively civil to one another most of the time. You've also probably never had occasion to retain a divorce lawyer before, and may have no idea how to go about finding the lawyer who's right for you.

The search begins

"Unfortunately, many people spend less time searching for a lawyer to handle their divorce than they do shopping for a new car, home, or apartment," says Lester Wallman, a partner in the New York firm Wallman, Greenberg, Gasman, & McKnight and the author of *Cupid, Couples & Contracts: A Guide to Living Together, Prenuptial Agreements, and Divorce* (Mastermedia). "It's shocking when you consider that their future, money, property, and the custody and support of their children may be forever affected by the quality of the lawyer they choose."

Finding the right lawyer is critical for your divorce and you can begin your search by talking to those you know: ask for recommendations from a close friend or family member (*your* friends and *your* family -- *not* your spouse's) who have been through divorce themselves. If you can't get any personal recommendations, there are professional organizations that offer lawyer referral services, such as The American Academy of Matrimonial Lawyers (312-263-6477, www.aaml.org), The American Bar Association -- Family Law Section (800-454-8432 or 312-263-6477, www.abanet.org), and The Law Society of Upper Canada (800-268-8326 or 416-947-3330, www.lsuc.on.ca). Ask for two or three names of local lawyers who devote their practice to family law. Also, check your phonebook for the number of your local Bar Association.

Visit a library and take a look at the "Martindale-Hubbell" -- a seven-volume compendium of lawyers categorized by state and ability. Read the biographies, and make sure the attorneys you select specialize in matrimonial or family law. You could also visit a courthouse in order to see lawyers in action; call the clerk's office to obtain dates and locations of cases and hearings.

"How much" lawyer do you actually need? The best (and most expensive) litigator money can buy, or someone who can handle the whole thing quickly and inexpensively? Is it important to find a lawyer who's "compatible" with you: one who understands and respects your thoughts and feelings about your divorce? Or can -- and more importantly, should -- you handle your divorce yourself?

Your answers to these questions will be determined by your own unique circumstances. Here are some basic guidelines to help put you on the right track.

Finding a lawyer

Choosing which lawyer will represent you may be the most important decision you'll make during your divorce proceedings. As in any profession, there are good lawyers and bad lawyers. It's up to you to do your homework -- and to ask the right questions -- to determine which group your attorney falls into.

"The ideal lawyer lets you participate in a discussion about your situation and is not afraid to tell you at the outset things you may not want to hear," states Michael Cochrane, a Toronto-based lawyer and mediator with Ricketts Harris, and the author of *Surviving Your Divorce: A Guide to Canadian Family Law* (John Wiley Canada, 1999). "After spending 30 minutes with this lawyer, you can answer three questions: Do I feel comfortable with this person? Do I respect his or her opinion? Does this person respect mine?"

Look for someone who:

- **Practices matrimonial or family law.** A lawyer who specializes in taxation, even if he or she's your best friend, isn't going to be much help to you.
- **Can work with other professionals.** As a matrimonial lawyer, he or she must be able to work with accountants, appraisers and other expert witnesses to track down and evaluate assets.
- **Has a lot of experience.** If your lawyer is fresh out of law school, make sure he or she has an experienced mentor at the firm -- one with an excellent knowledge of relevant law -- to go over his/her cases.
- **Is a skilled negotiator.** If your case can be settled without a protracted court battle, you'll probably save a great deal of time, trouble, and money.
- **Is firm.** If you do end up going to court, you don't want your lawyer to crumble at the first obstacle.
- **Is reasonable.** You want someone who'll advise you to settle if the offer is fair, and not to have the case drag on and on to satisfy your need for revenge.
- **Is compatible with you.** You don't have to become best friends, but you must be comfortable enough with your lawyer to be able to tell him or her some of your deepest, darkest secrets. If you can't bring yourself to disclose information relevant to the case, you'll be putting your lawyer at an extreme disadvantage. "It's important to find a lawyer you can work with -- one who's on your wavelength," confirms James C. MacDonald, a partner in the family law practice of MacDonald & Partners in Toronto and founding chairman of the national family law section of the Canadian Bar Association. Your lawyer isn't your therapist or confessor, but he or she does need to be aware of all pertinent facts in order to do a good job for you.
- **Is totally candid.** Your lawyer should be up-front about what he or she thinks your divorce will cost, if there are holes or any problems with your case, and whether or not you have any aces up your sleeve.
- **Is not in conflict with your best interests.** Don't share a lawyer with your spouse; don't hire your spouse's best friend (even if he's a friend of yours, too), business partner, or any member of your spouse's family to represent you -- even if you're on good terms with them. Aside from the obvious conflict of interest involved, you'll have created enemies -- and probably a whole new family feud -- before your divorce settles.
- **Is more than a pretty face.** This may seem painfully obvious, but given our frail human nature, it bears noting here: don't choose a lawyer based on physical attractiveness. You're looking for competence -- not for a date on Saturday night.

Choose a Specialist

In each divorce, different issues come up that require special attention; so it is best to find a lawyer who concentrates on the specific issues that may arise in your divorce. Here are some examples:

- **Men's/Fathers' Rights.** "To find a good fathers'-rights lawyer, my first piece of advice would be to pick up the *Yellow Pages*," says Henry James Koehler, a leading Beverly Hills fathers'-rights lawyer. "Call every lawyer listed under 'divorce' and ask them if they win custody for fathers. If they say 'yes', ask them for a consultation." Koehler also suggests asking them for phone numbers of their clients so you can call them to share ideas and problems and to learn the technique of this particular lawyer. "Ask questions like: 'Does he settle? Does he fight? Does he build a team out of

himself and the client?" Koehler advises. Some lawyers, however won't provide clients referrals in order to protect their clients' privacy.

- **Women's/Mothers' Rights.** As a woman, you may have the right to a share of the assets (including your husband's pension), the family business, or property attained during the the marriage, whether you worked outside the home or not. "A women's-rights attorney can help women get past the gender stereotypes to ensure they receive their fair share," says Arlene Coleman-Schwimmer of the Beverly Hills law firm Coleman-Schwimmer & Warren. "A women's right lawyer knows the language and the issues and has the experience to get past the barriers that women face in divorce."
- **Custody.** If you believe custody of your children will become a major battle, then going to a lawyer who concentrates on custody issues is very important. "Finding a lawyer that has an expertise in child custody will help achieve the most favorable outcome," says Susan Cartier, a partner in the Connecticut firm Cartier and De Matteo. "You want someone who has the experience and a good working knowledge of the law surrounding custody. Without this knowledge of the specific legal process the children involved could be negatively impacted."
- **Small Business.** If one or both of you owns a small business, you should "seek a lawyer or a firm that has knowledge of businesses and corporations as well as family law," says Gemma Allen, a partner in the Chicago law firm Ladden & Allen. "Having the knowledge will guarantee that you get your fair share. Your lawyer will have to look at the worth of the business, cash flow versus debt, and evaluate corporate partnerships, real estate, and your liability."
- **International.** If your divorce deals with out of state/country property, or if there is a threat of having your child removed from the country, hiring a lawyer who knows international laws and policies is essential. "Not every lawyer can handle cases such as these," says Lawrence Bloom, a New York lawyer who regularly handles international cases. "You need someone who has the experience and the knowledge of other countries' laws and views on custody and property."
- **Bankruptcy.** If one or both of you is facing bankruptcy, hiring a lawyer who understands bankruptcy law can save you lots of time and money. "When bankruptcy occurs within a divorce, it can complicate things," says David Neale, of the Los Angeles law firm Levene, Neale, Bender and Rankin. "You will want someone who has the know-how to serve your best interests -- and that includes knowing the law around bankruptcy to ensure that your case isn't put on hold due to the federal matters."

Little firm, big firm

You also need to decide whether you'd like to be represented by a sole practitioner or a full-service law firm. Your choice will be partially dictated by your spouse's choice: if the divorce is relatively easy and friendly, you can probably agree on what kind of representation you need. If the divorce is very bitter; if there are children, money, or large assets at stake; or if your spouse is just plain "out to get you", consider hiring a "top gun" -- whether that be a well-respected individual or a team of lawyers at a prestigious firm.

The main advantage to hiring a sole practitioner is that you know exactly who will be working on your case; in bigger firms, the lawyer you speak to initially may not be the one who does the bulk of the work on your case. You will get to know your sole practitioner well, which should make office visits or phone conversations a little more comfortable.

"Many people prefer to have this kind of one-on-one relationship with their lawyer," says Lois Brenner, a Manhattan lawyer and co-author of *Getting Your Fair Share* (Crown Publishers). "Divorce is a very personal and psychological thing. Having a closer connection with a lawyer allows a client to feel comfortable and offers him or her the chance to give input." A sole practitioner will usually be less expensive than a big firm, although some top practitioners can be quite pricey.

If you're looking for a firm to represent you, remember that they come in all types and sizes. A firm can be three lawyers and a few paralegals, or 100 lawyers and more than 20 paralegals. You can hire a general practice firm that deals with various areas of the law and has a smaller department that handles divorce and family law, or a matrimonial firm that handles only matrimonial matters. "In this world of specialization, it can be essential to have an attorney or firm that deals with matrimonial cases on a regular basis," says Bernard Rinella, a Fellow of the AAML and a partner in Rinella and Rinella, one of the oldest matrimonial law firms in Illinois. "A general practitioner wouldn't know the everyday workings of the law that a matrimonial attorney would deal with daily."

Donald Schiller of Schiller, DuCanto and Fleck, the largest matrimonial law firm in the US, agrees. "In a divorce, there's a lot at stake and a lot of issues. Having a matrimonial firm allows a client to have a huge fund of knowledge and several lawyers to back them up on every aspect of matrimonial law."

A full-service firm can give you access to specialists in other fields if your case requires it. "You can get everything done in-house," says Malcolm Kronby, a Certified Specialist in Family Law practicing at Epstein Cole and the author of *Canadian Family Law* (Stoddart Publishing, 1997). A full-service firm can handle complications such as shareholders' agreements, business organization or reorganization, tax-driven settlements (including asset transfers), establishment of family trusts, real-estate transfers, or estate planning. There may be a number of people handling your case at a big firm, which has its own set of pros and cons. One advantage is that you get the experience of a senior lawyer while lower-priced associates, paralegals, and legal secretaries handle some of the standard elements of your case, saving you money.

But most importantly, Cartier stresses the importance of looking at your individual lawyer's ability handle your case. "Size doesn't always matter," she says. "If your particular lawyer listens to your wants and needs and does all he can to achieve them, it doesn't matter if he is with a law firm of two or of fifty."

The initial interview

The outcome of your divorce proceedings will change the course of your life forever, so invest the time and money to find the lawyer who will do the best job for you. "When looking for a lawyer, you should interview two or three prospective professionals before deciding who'll represent you," advises Phyllis Soloman, a New York City lawyer and the former president of the National Conference of the Women's Bar Association. Remember: it's your responsibility to retain a lawyer who's not only good at his or her job, but one whose personality and outlook are compatible with yours.

Here are the questions you should ask during your initial interview:

- **Do you practice family law exclusively?** If not, what percentage of your practice is family law?
- **How long have you been practicing?**
- **What is your retainer** (the initial fee paid -- or, sometimes, the actual contract you sign -- to officially hire a lawyer)? Is this fee refundable? What is your hourly fee?
- **What is your billing technique?** You should know what you're paying for, how often you will be billed, and at what rates.
- **Approximately how much will my divorce cost?** The lawyer will only be able to provide an estimate based on the information you provide -- and your realistic estimation of how amicable you and you spouse are. If you think your case is extremely simple, but your spouse's lawyer buries your attorney in paperwork, you can expect your costs to increase.
- **What do you think the outcome will be?** Remember, you're looking for truthfulness here -- not to be told a pretty story.
- **If your spouse has retained a lawyer,** ask your prospective lawyer whether he or she knows this lawyer. If so, ask: "Have you worked with him or her before? Do you think the lawyer will work to settle the case? And is there anything that would prevent you from working against this lawyer?"
- **What percentage of your cases go to trial?** You actually want to choose a lawyer with a low percentage here -- a good negotiator who can settle your case without a long, expensive court battle.
- **Are you willing and able to go to court if this case can't be settled any other way?**
- **How long will this process take?** (Again, the answer will be an approximation.)
- **What are my rights, and what are my obligations during this process?**
- **At a full-service firm, ask who will be handling the case:** the lawyer you're interviewing, an associate, or a combination of senior and junior lawyers and paralegals?
- **Should I consider mediation?** Ask if your case $\text{\textcircled{D}}$ at least in the initial stages $\text{\textcircled{D}}$ might be a good one for mediation. If there has been violence in the relationship, or one spouse is seriously intimidated by the other, this may not be a viable alternative.
- **Should I consider Collaborative Law?** "In a collaborative practice, the clients themselves conduct settlement negotiations with their lawyers acting as advisors to the clients instead of taking charge of the process," explains MacDonald, who is the founder and current president of the Toronto Collaborative Family Law Group. "Each party has to find a collaborative lawyer to represent him or

her." MacDonald recommends Collaborative Law for most divorce cases -- except when violence or vengeance is involved.

- **What happens now?** Do I need to do anything? And when will I hear from you? Finally, if there's something you really need to know, or if you don't understand something the lawyer said, don't be afraid to ask for clarification. "There's no such thing as a stupid question," says Susan Cartier. "If there is something you want to know, ask. It's your life on the line." Bring a list of questions with you to the initial interview; that way, you'll know if all of your concerns have been handled.

Sometimes, despite their best efforts, people end up choosing the wrong lawyers. "Normally, a client will gravitate to the lawyer who will fulfill his or her needs -- whether that be for a tough litigator or low-key negotiator," observes David Wildstein, who heads the matrimonial practice at Wilentz, Goldman & Spitzer in NJ. If it's clear that you've chosen the wrong lawyer, he says, don't compound the problem by sticking with them to the bitter end. "You'll either prolong the process unnecessarily, or end up with an unacceptable settlement," says Wildstein.

What your lawyer needs to know

You'll also need to provide information to your prospective lawyer during your initial interview. The better prepared you are for this meeting, the more you'll get out of it. Just as you're searching for the ideal lawyer, the lawyer is hoping you'll be the ideal client: calm, businesslike, competent, and well prepared. "Ideal clients are organized; are willing to work together with me to attain their goals; and are willing to listen to my advice, pay their bills on time, and settle if possible, instead of tapping into their children's college fund," says Soloman.

Of course every case is unique, but the following checklist will give you an idea of what information your lawyer is looking for during your first meeting. You need to disclose:

- **Why you are seeking a divorce.** What caused your breakup? Are you sure you want to end the marriage, or is the visit to a lawyer meant to be a wake-up call to your spouse? "You need to be sure that you actually want a divorce," says Wildstein. "If you're secretly hoping for a reconciliation, then you and your lawyer are working towards different goals."
- **Personal data.** Bring as much personal data about you, your spouse, and your children (if any) as you can gather. Write down your names (maiden name too, if applicable); your home and work addresses and telephone numbers; your ages and places of birth; your Social Security Numbers; your states of health -- both mental and physical; your Green Card(s) and immigration papers (if applicable).
- **Facts about your marriage.** When and where did you get married? Did you sign a prenuptial agreement? If so, bring a copy of the agreement with you. Have either of you been married before? Bring the details of your previous divorce(s) with you.
- **If there was there any abuse in the marriage.** Your lawyer will need to know if you were ever a victim or a perpetrator of abuse. Despite the fear you may have revealing this kind of information, your silence will prevent your lawyer from doing his or her job in representing you. Knowing about the abuse also allows your lawyer to acquire orders of protection for you and your children.
- **Whether there will be custody or access issues.** Do you have children, and are there issues that will involve them -- such as custody, joint custody, and access? "If so, be prepared to discuss these issues in some detail on your first visit to your lawyer," says Philip Epstein, senior partner at Epstein Cole in Toronto. "This is more important than financial information, because until you know what's happening with regard to the children, you can't plan anything with respect to your settlement." Kronby agrees, but notes that "some couples are able to defer custody issues and get the financial issues out of the way first."
- **Financial information.** What assets and debts did each of you bring into the marriage? What are your incomes and what are your expenses -- jointly and individually? What are the names and addresses of your employers? How much money do both of you have invested: in the bank, the stock market, etc.? Has either of you invested in insurance or a pension plan? What property do you own (a house, car, boat, income property, etc.)? Was the property purchased before or after the marriage? Do you have a mortgage, and how much is still owed? Prior to your appointment, create a budget detailing how much you spend every month on items such as housing, food, clothing, personal grooming, gifts, vacations, etc. If you have children, and expect to be their primary caretaker, make sure you factor their costs into your budget.

- **Legal documents.** Bring copies of prior or pending lawsuits, bankruptcy suits, judgments, and garnishments.
- **What you want to get out of your divorce.** Be very specific about your goals in terms of division of property and other assets, custody and visitation, and support payments. Telling your lawyer that "I just want my fair share," or "I want to take that cheating louse to the cleaners!" will *not* help him or her to assess your case.

Should I handle my own divorce?

People are attracted to do-it-yourself (also known as *Pro Se*, which is a Latin phrase meaning "for yourself") divorces because they are supposed to save both time and money. Unfortunately, most divorces are relatively complicated -- involving complex property transfers and their tax implications; plus the issues of support, custody, and access if children or an unemployed spouse are involved. You'll also have to be able to prove grounds for your own divorce (to learn more about this, select the article entitled "Ground Rules" in the "Legal Briefs" department of the "Reading Room").

If you want to try the *pro se* route, there are some resources available to help you. Check with your local community college, adult education center, or community center to see if they offer classes on divorce. There are some low-cost legal clinics that will fill out your forms and review your separation agreement to make sure the paperwork is complete before it's filed with the court.

"Lay people can get themselves into more trouble when they try to handle their own divorce because they don't know the procedural ropes, where to file, etc.," cautions Connolly Oyler, a family lawyer and past-president of the Santa Monica Bar Association in California. "They also don't know substantively what they're entitled to. There are a hundred and one pitfalls."

If you *do* create your separation agreement yourselves, both you and your spouse should each retain an independent lawyer to check all papers before signing -- even if the divorce is "friendly" and you think your agreement is very straightforward.

A quality do-it-yourself kit or book will provide a good introduction to the divorce process. If your divorce is very simple and completely uncontested, a kit may be all you need. But if things turn nasty, or you suspect your spouse is trying to trick you into agreeing to a settlement that really isn't in your best interests, you'll need to consult a lawyer -- who may have to charge you even *more* money to undo what you did prior to retaining him/her.