

The Initial Consultation with Your Divorce Attorney: What to Expect When You Don't Know What to Expect

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Few people truly want to consult with a matrimonial attorney relative to a divorce. When confronted with the possibility of a divorce and the potential need for a matrimonial attorney, most people have no idea what to expect during their initial contact and consultation. In fact, for most people contacting a matrimonial attorney, it will be their first contact with any attorney.

Take a deep breath and relax. While the possibility of a divorce may seem daunting, and your problems may seem to lack potential solutions, matrimonial attorneys, through their professional skill and experience, understand what you are going through and know how to solve your problems.

Contacting a Matrimonial Attorney: When placing the first call to a prospective attorney's office, know that everything you say, including your name and the reason you are calling, will be kept strictly confidential by the receptionist and attorney who answers your call. No reason exists to fear giving your name or to answer questions over the telephone. In fact, if you do not provide your name, most attorneys will not continue the conversation so as to protect you and any of his or her other clients (including perhaps your spouse, who may have already called that same attorney) from any potential conflicts of interest.

If the attorney is not available when you call, the person answering your call will know to ask (i) whether it is acceptable or "safe" for the attorney to call you back, (ii) whether the attorney should dial *67 to block the identity of the attorney returning your call on your Caller ID, and (iii) whether it is okay to leave a message if you are not available to answer the call.

When leaving a message for the attorney, try to provide a number at which you can actually be contacted. Providing a pager number usually results in an endless game of "telephone tag."

The vast majority of the wisdom and advice that you will be seeking from a matrimonial attorney cannot be provided over the telephone. In almost all situations, it will necessary for you to schedule an appointment to meet face to face with the prospective attorney. Meeting with an attorney does not create any obligation on your part, nor does it mean that you must get divorced. In fact, many times it is the matrimonial attorney who can put you in touch with a capable marriage counselor or begin a dialogue that leads to a reconciliation. Nonetheless, it will be necessary for you to make a trip to the prospective attorney's office.

What to Bring With You to Your First Meeting: There is nothing that you must bring with you to your first meeting. In fact, most people do not bring anything with them at all. While it will be your attorney's job to gather all of the relevant net worth, income,

and expense information during the pendency of any case, it is often helpful to have copies of recent tax returns, paystubs, bank statements, and other documents bearing numbers that may be lying around your home or office. Obviously, if you happen to have found that singularly incriminating love note or videotape, bring that along too.

What to Expect When You Arrive for Your First Meeting: Do not worry, when you arrive it will not be anything like going to your doctor's office. You will not be required to write your name on a sign-in sheet for the next person who arrives to inspect. You will not encounter a waiting room full of people, some of whom you may know. No one will step out from behind a closed door and suddenly summon you by announcing your name and the reason for your visit to a waiting room full of people. And, in contrast to the waiting rooms in doctors' offices, the magazines tend to have been published within last decade.

The reality is that matrimonial attorneys understand that your visit to their office is strictly confidential. Rarely will anyone be kept waiting more than a few minutes in the lobby, as matrimonial attorneys try to prevent two clients, especially new clients, from being present in the lobby at the same time, whenever possible.

What to Expect From Your First Meeting: During your initial consultation with a matrimonial attorney, expect the attorney to provide you with an overview of what to anticipate relative to at least the following five issues: (1) the divorce process, (2) matters pertaining to any minor children of the marriage, (3) division of your assets and liabilities, (4) support (both child support and spousal support), and (5) the related attorneys' fees and costs. In order to be able to address these five primary issues for you and provide you with a potential gameplan, it will be necessary for the attorney to make a substantial inquiry into all sorts of matters. Some of the questions will be name, rank, and serial number types of questions; other questions will pertain to minor children; additional questions will be related to financial matters; and other questions will be of a more personal nature in terms of any precipitating events and "who did what to whom." Know that when answering these questions the attorney-client privilege is in effect, meaning anything you tell to the attorney will not, and cannot, be repeated to anyone without your permission. With that understanding, it is imperative that you tell the attorney the truth and provide all of the related details. The quality of the advice you receive will be directly proportional to the candor with which you answer the attorney's questions.

A. The Name, Rank, and Serial Number Types of Questions:

The first series of questions usually pertains to name, address(es), phone numbers, dates of birth, and social security numbers for you and your spouse. The reason this information is needed is so that the attorney can be prepared to file a case, if necessary, on short notice should you call back in two days, two weeks, two months, or two years. What you do not want to occur is for you to call the attorney back several weeks down the road, if and when you need immediate action, and have the attorney not be in possession of the basic information to proceed with filing papers with a court on your behalf. It is okay to provide address and telephone contact information; no one is going to

call you at any telephone number or send you any mail at any address without your express permission.

The next series of questions usually pertains to the details of your current marriage and any prior marriages. The attorney will need to know when you were married, by whom you were married, and where the marriage took place. Not only must this information be included in any initial paperwork filed with a court, but sometimes issues arise relative to defects in the marriage arising out of the marriage ceremony. Similarly, the attorney will need details relative to the termination of any prior marriages, whether they ended by death or divorce (primarily in order to ascertain whether there were any impediments to the current marriage which might be raised as a procedural defense). Included in the inquiry relative to prior marriages will be questions pertaining to children from prior relationships, child support still being paid or received, and spousal support still being paid or received. All of this information has a potential impact on the attorney's assessment of your current situation.

Whether you or your spouse has previously filed for a divorce from the other, or whether your spouse has consulted an attorney, are also important parts of the evaluation process. To the extent your prospective attorney has some insight as to the identity of the judge to whom the case has been assigned (if your spouse has already filed a case) or the identity of opposing counsel, the more precise the attorney can be in advising you what to expect during the process and as a potential outcome. Each judge has different tendencies, opinions, and idiosyncracies, and every opposing counsel handles his or her cases with different degrees of sophistication and professionalism. However, in most instances, the identity of the judge and opposing counsel cannot be ascertained until a case is commenced.

B. Questions Pertaining to Minor Children:

If children were born or adopted of the marriage who have not yet graduated from high school, your prospective attorney will need to be informed. More specifically, the attorney will need to know the children's ages, dates of birth, addresses at which the children have lived during the past five years, and all health or psychological issues confronting each child. Many attorneys will also ask you for a description of each child's personality. Most attorneys will also ask for your assessment of your parenting skills and your spouse's parenting skills. The more insight you can provide into each child's personality and each parent's parenting skills, the easier it will be for your prospective attorney to assess the numerous issues pertaining to physical custody, legal custody, and parenting time/visitation. To the extent that your children may have potential preferences as to with whom they wish to live, this angle must be explored, although it is not always of significant relevance. As part of the interview process, it is imperative that you receive an honest assessment of the legal issues pertaining to your minor children, rather than be told what you want to hear. This can only be accomplished with your complete honesty and cooperation.

C. The Financially Oriented Questions:

The objective of the financially oriented questions is to gain a rudimentary and preliminary understanding of your net worth, income, and expenses/lifestyle, so that your prospective attorney can assess the issues of property division, child support, and spousal support. You are not expected to be able to answer all of the questions, and many times clients can only answer a few of the questions. Your inability to answer questions will not impact your prospective attorney's ability to handle your case, only his or her ability to provide a more detailed, preliminary assessment of your case, which in the long run is not problematic.

Relative to the support issues, not only is a person's income relevant, but his or her ability to earn a living can be very important. Thus, the initial financial inquiry pertaining to income and earning capacity usually explores your and your spouse's educational/licensing backgrounds, your employment histories, and your current incomes from employment and all other sources. To the extent that you can bring tax returns to your initial meeting, such documentation will enable your prospective attorney to better assess your matter.

Equally important to the assessment of the support issues are questions pertaining to expenses and lifestyle. Your prospective attorney's questions will be designed to gauge the magnitude of your basic monthly expenditures, but more importantly, the full nature and extent of the expense level reflective of the standard of living enjoyed by your family during the marriage. Ultimately, this information will be gathered from a review of check registers, bank statements, and credit card statements, which your attorney will obtain during the divorce process. Such information will help the attorney to understand what needs to be done to maintain the financial status quo while your case is pending and how much financial support will be required/payable at the conclusion of your case. Relative to property division issues, your attorney will be attempting to construct a basic statement of net worth listing all of your assets and liabilities and the amount of each item. The questions will tend to focus on homes and related mortgages, bank accounts, brokerage accounts, retirement accounts/benefits, business interests, life insurance policies, automobiles, and credit card debts, among many other related questions. Again, some people are able to provide a fairly detailed overview of their net worth, and other people do not even know at which bank they have a checking account. While all of this information will be obtained for you by your attorney, and carefully reviewed as your case progresses, a rough sketch at the initial meeting will enable the attorney to provide you with an initial assessment of how your estate may be divided.

In order to render such a preliminary assessment, the prospective attorney will also ask questions designed to elicit information about premarital assets, assets received as gifts, and inherited assets. Often the focus when dividing property is whether all of the property should be divided or whether some of the property is exempt from division by the court. In this area of the law there are lots of shades of gray. Thus, the attorney may ask questions in an attempt to gather information to bolster or thwart claims related to premarital, gifted, and inherited property. These questions may focus on each spouse's

contributions to the acquisition, maintenance, and improvement of various assets, title to various assets, and the possible commingling of various assets.

If you and your spouse executed any form of a prenuptial agreement or a postnuptial agreement, the prospective attorney will ask questions designed to assess the validity and potential enforceability of the agreement. These questions usually focus on the financial disclosure made incident to the execution of the document, when the document was signed in relation to the date of the marriage, the circumstances surrounding the execution of the document, changes in circumstances that may have occurred since the execution of the document, among numerous other related questions.

D. The Questions of a More Personal Nature:

Ultimately, the conversation will turn to the subject matter most people were dying to talk about at the onset of the meeting: the who did what to whom and the “whos”, “whats”, “wheres”, and “whys” associated with such events. It will be important for your attorney to know whether there was any marital misconduct or domestic violence. Understanding incidents and patterns of domestic violence will help the attorney put together a plan to protect you during and after the process. Understanding any marital misconduct will aid the attorney in putting together a strategic plan for addressing such issues to your potential benefit and/or protecting you from any related adverse consequences. In Michigan, which is commonly referred to as a “no-fault” divorce state, conduct such as adultery and abuse are irrelevant to whether or not the court grants you a divorce, but it can be highly relevant as to how the assets are distributed and the income is apportioned. Therefore, not only must your attorney know everything of which you have been a victim, but also any marital misconduct in which you have been engaged. There is nothing worse for an attorney than when a client tugs on an attorney’s sleeve in a courtroom six months into a case and says: “There is something I ‘forgot’ to tell you.”

If You Were Not Already Asked:

If you were not previously asked at some earlier point in the interview process, your prospective attorney will need to know whether you and your spouse have engaged in any settlement discussions. This inquiry is important for two reasons. First, compromises your spouse might be willing to make could potentially give the attorney insight into the positions he or she might take and the reasonableness of such positions. Second, statements that you have made to your spouse relative to settlement may potentially limit the bargaining positions your attorney can assert on your behalf. Thus, to the extent you and your spouse have not had any such discussions, do not have any until you have had an opportunity to consult with a matrimonial attorney, and you fully understand the parameters of such important discussions.

If you were not previously asked at some earlier point in the interview process, your prospective attorney will need to know whether you and your spouse have engaged in any marital counseling and whether a reconciliation may be possible. One purpose of this inquiry is to ascertain whether the attorney might be helpful in assisting you in the reconciliation process. Another purpose is to evaluate whether you have considered all of your options before heading down the path toward a divorce.

Presentation of a “Gameplan”: Once your prospective matrimonial attorney has gathered enough information to assess your situation, he or she can finally provide you with advice on the primary issues (discussed above) and the other related issues. At this point, it is important for you to listen very, very carefully as this is the most informative part of the meeting for you. At this point, your prospective attorney should be advising you in two capacities: (i) as an attorney and (ii) as a counselor. In his or her capacity as your advocate, the advice will focus on the zealous representation you will be afforded in the negotiation process or in the courtroom. In his or her capacity as your counselor, the advice will focus on what you should reasonably expect and anticipate based on the attorney’s professional experience. It is important to understand what all of your options are, but it is more important to have a realistic picture of what you can really expect.

Some people desire to hire attorneys who will tell them exactly what they want to hear, and other people seek to hire attorneys who guide them on a prudent and realistic course of action. How a matrimonial attorney presents his or her “gameplan” for your matter will be tremendously helpful in the decision making process as to which attorney can best represent you in the manner you want to be represented.

Fees for the Attorney’s Services: Once the prospective attorney has advised you relative to the process and what to expect relative to custody, parenting time, property division, child support, and spousal support, to the extent such issues are relevant to your matter, only then can the attorney intelligently discuss the attorney fees and costs associated with your matter. The attorneys’ fees that you will be quoted will be based on the following factors: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal services properly, (4) the likelihood that the acceptance of your case will preclude other employment by the lawyer, (5) the fee customarily charged in your locality for similar legal services, (6) the amount involved and the results obtained, (7) the time limitations imposed by you or by the circumstances, and (8) the experience, reputation, and ability of your lawyer.

In the vast majority of situations any projection that you are given relative to the ultimate magnitude of the fees and costs will be nothing more than a professional estimate rather than a firm quote. In most situations, it is not possible to make a final prediction with any high degree of accuracy. The primary reason why attorneys cannot precisely project your total attorneys fees is that it is impossible to predict how cooperative or uncooperative the other party, his or her representatives, or essential third parties may be. To the extent that any of these individuals are uncooperative or unreasonable, the time and labor required to represent you may increase. If and when you decide to move forward with a particular attorney, you should always be provided with a fee agreement that explains the basis on which you will be charged. Incident to signing the fee agreement you will almost always be asked to provide an initial payment. Few attorneys will agree to take on your matter and commit their time and resources without an concomitant commitment from you.

The Next Step in the Process:

At this point in the process you should have a fairly clear picture of what to expect relative to the divorce process, matters pertaining to your minor children, property division, support (both child support and spousal support), and attorneys' fees. You should have also received advice relative to related insurance issues, health care issues, tax issues, and a plethora of other issues that may arise in your matter. Now, the ball is in your court. Are you comfortable with this attorney, or should you seek another opinion? If you are comfortable with this attorney, are there reasons, based on the professional advice you received, to proceed immediately, or are there no exigent circumstances which require immediate legal action?

While the foregoing interview process may seem unnecessarily personal and revealing, remember the quality of the advice you receive will be directly proportional to the candor with which you answer your prospective attorney's questions. Now that you know what to expect from your first contact with a matrimonial attorney, take another deep breath and relax. Your problems can be solved.