

The
Throwaway *Wife*
FIGHTS BACK:



A L A W Y E R ' S
P E R S O N A L H A N D B O O K
T O E N D
H I S U N F A I R A D V A N T A G E

Hal Chase, Jr. with Peter Borromeo

Divorce advice for women.

The Throwaway Wife Fights Back: A Lawyer's Personal Handbook
to End His Unfair Advantage

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THE THROW AWAY WIFE FIGHTS BACK:

A Lawyer's Personal Guidebook to End His Unfair Advantage!

By

Hal Chase Jr.

With Peter Borrormeo

The Three Minute Lawyer LLC

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The Throwaway Wife Fights Back: *A Lawyer's Personal Guidebook to End His Unfair Advantage*

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Three Minute Lawyer, LLC

First Electronic Edition: September 2008

Electronically Published in the United States of America

ISBN 978-1- 60725-366-2

Disclaimer

We offer this book to assist litigants in overcoming obstacles and pitfalls commonly encountered in dissolution actions. Our purpose is to warn you of certain dangers, and to present strategies that may assist you in becoming a more effective litigant facing a lawsuit you did not desire or seek to be in. We suggest ways to use this adversity to become a better and more self-reliant person. This is, ultimately, our goal for you.

However, before we begin, a few important disclaimers are in order.

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Second, *we do not provide legal advice*. Most legal proceedings are too complex for you to go it alone. While you may fake it for a motion or two, there is only an infinitesimally small chance that you will ever get a good result for yourself. You will need a lawyer's advice and representation. Lawyers are your champions, the direct descendants of the knights of old.

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Chapter 1 - *The Most Important Decision You Must Make.*

"The only cure for grief is action." ~ George Henry Lewes

My secretary peeked through the door and told me that Jenny, my 1:30 appointment had arrived. I began to scoop piles of paper on my desk into open drawers. I don't mind appearing busy, but I hate looking like a slob and I had been preparing for three nasty hearings, all document- intensive. Jenny's Dad, John, an old college friend, called me the day before and asked if I could give her an hour of my time. The only thing he seemed to know was that she and her husband, Mike, were having problems.

I looked out into the reception area. Jenny sat thumbing nervously through a copy of *Newsweek*. She was a woman in her early 30s and attractive. A closer look, however, displayed the telltale symptoms of a woman who was not sleeping well. The dark circles that rimmed under her eyes showed that she was under terrible strain. She seemed sad and haggard. Also, she was clearly in the latter stage of pregnancy.

I raised my eyebrows and waved my hand, inviting her into my office. I pointed to the sofa, where she might be more comfortable, rather than in the wooden seat by my desk. I took the chair across from her and tried to find some casual way to start our conversation.

"Your Dad and I go back a long way," I said. "We were best buds in college. How are he and your mother doing?"

"They're fine." She offered me an alert, beaming smile that reflected a nice, pleasant person underneath all the stress. "Dad asked me to send his best. He wants you to visit their ranch in Wyoming sometime soon."

We exchanged pleasantries for a few more minutes and then I got to the point. "Not too many people come to see me because things are going well in their lives. What brings you here today, Jenny?"

That was all it took for the dam to break. Tears rushed forth in great sobs. I let her cry.

"I'm sorry, Mr. Chase. I told myself I wasn't going to cry. But I couldn't help myself. My . . . life . . . hurts."

I handed her a box of tissues.

"You won't be the first person to have that reaction," I told her. "Actually, it's more common than you think."

"I don't know where to start," she said, still sniffing.

"Why don't you do so at the beginning?"

She sat rigid, composing herself. "Mike and I met in college. We fell in love and got married. I dropped out of school and waited on tables to support us while he finished college and grad school." She offered a bitter laugh.

"We used to call it the *P.H.T.S. Degree*. '*Put Hubby Through School*.' Pretty stupid of me, huh?"

I shrugged and waited for her to continue.

"Well, he got his MBA, finished his internship, and started working for this large consulting firm. Our agreement was that when he career took off I would quit my job and start a family. Everything was going as planned. His job went well and I got pregnant. I've never been happier." She absentmindedly caressed her stomach.

"But then . . .?"

"Last week he disappeared. I was worried sick. I thought something bad had happened to him. I called his office. They didn't help. His parents wouldn't talk to me. I called everyone we knew. I was just about to contact the police when I received a call from his brother." She started to cry again. "Mike is staying in the apartment of one of his clients. He's begun divorce proceedings." She opened her purse and pulled out a legal form, which read **Summons** in big bold letters. "Last night a process server came to the door of our house – our house! -- and dropped this off. Why

didn't talk to me first. Why is he treating me this way? What have I ever done to him except give him support or care?"

She looked down at her lap and paused for a long moment. Then she said in the softest of voices, "It's over."

"Yes," I said softly, "It would seem so."

"I don't have a dime to my name. He took care of all of the finances." She looked at me, eyes urgent and while. "What do I do? Who can I talk to?"

Jenny was right about one thing. Her marriage was over. The person who promised to stay with her and build a life together was now a stranger. In fact, he had become her adversary. The one who swore to cleave to her, "till death do us part" was now casting her away with his wedding vows.

Let me ask you, "Have you reached this point?" You were once a team, but now you are alone. Worse, he is now gathering assets to begin a battle to end the marriage and take everything he can with him.

You also are probably wondering, "Who can I talk to?"

This is what I told Jenny. Like all wives being sued for divorce, she faces two situations that require action. What are they?

Situation No. 1: When your spouse leaves, or tells you to get out, take him at his word, your marriage is ending. When these things occur, know that the season is changing and the storm is coming.

Situation No. 2: If you have been "served" with a legal document that has words like: "Petition", "Dissolution", "Summons", "30 Days to Respond" and "Default." You must act fast!

I know taking action is hard. One wants to deny things; pretend it's a bad dream and that you will soon wake-up and find that all is well.

That is magical thinking! Do not talk yourself into believing the bad things will go away. You are having legal process thrown at you. You must prepare to act. The consequences of not doing so can be very, very grim.

A friend of mine, a crisis counselor, arrived at an accident scene where a child had just died. The grandmother was shaken, numb and in denial. She kept walking in circles, pointing at the sheet-covered body covered.

“That isn’t him in there!” she said over and over. “That isn’t my grandson.”

It was all the poor woman could do. Faced with an unbearable reality, she chose to deny the facts that were right in front of her face. This makes sense from a psychological perspective. It is a form of self-protection. The loss had traumatized her.

Divorce often has the same effect on wives. My crisis counselor friend told me of a book called Choice Theory (Harper Perennial, 1998) by Dr. William Glasser. In his book Dr. Glasser points out that:

? All we do is behave.

? Almost all behavior is chosen, and

? Our genes drive us to satisfy five basic needs: survival, love (belonging), power, freedom and fun.

When the one person you invested “love and belonging” in no longer reciprocates, it is devastating. Even more painful is the thought that he has “moved on” to somebody else he views as younger, fresher, more sensual. Who wouldn't want to just lie down and pretend it isn't happening? You cannot allow yourself that luxury. To do so can be very dangerous. You must decide, no matter what happens, to stand up and fight. Are you going to accept the scraps, or are you going to fight back? It is your future. Decide to fight for it. And be passionate as you do so.

As a lawyer, I want my clients to be willing to listen to reason. However, I also want them engaged. Why would any attorney want to mount an expensive and time-consuming legal defense for a client who is half-hearted, unsure and unwilling to act? Lawyers can spoon feed you the

best advice in the world, but if you do nothing with it, nothing will happen. If you don't care about your rights, why should anyone else to do so?

I can't give you the motivation to fight. It has to come from within you. However, I can tell you that when you are faced with a dissolution petition you do not have the luxury of taking it easy. A clock is ticking and you must take measures to protect yourself, your children, and assets.

Those who lie down in the face of adversity rarely get up. Once in a while you see them on the streets, wandering around with dazed looks on their faces, as if the Mack Truck of life has just run them down. Why do they behave that way? They have surrendered. Yes, it is easier to be passive; to just let events happen, but remember; it is the way of death! If you find yourself giving up, remember, *"Only dead things float downstream."*

Always keep in mind that there are **two** of you who need care. The first is the "you" is in the here and now, the one facing the problems of life. The second "you" is the future you, the person you will become. This person will be formed, and possibly confined, by the decisions you make today.

Trust me, that person deserves a future. That person is worth fighting for.

Decide now, "No matter how hard it seems, I will take action." Decide to assume responsibility for your life. Out of your choice comes your destiny. In the movie, "The Renaissance Man," Danny De Vito's character makes a poignant statement. "The choices we make dictate the lives we lead."

Going back to Jenny, I asked her what she wanted to do. After all, it was her decision to make. We scheduled a second meeting for later that week. I gave her a sheet of paper and told her to read it and bring it back to our next appointment, filled out. It looked something like this:

APPLICATION

Consider the following carefully and then, only when you are ready and sure in your own mind, review and sign the affirmation below. Do not do so until you unequivocally agree with it:

STARTING TODAY, I, _____, HAVE DECIDED TO TAKE ALL NECESSARY ACTION TO EFFECTIVELY DEFEND MYSELF IN THIS DIVORCE. I REFUSE TO BE A “THROW AWAY WIFE”.

Signed _____

Dated _____

Chapter 6 - *Who Will Speak for You?*

“The lawyer with the smallest hourly fee usually isn’t the cheapest. You get what you pay for.” ~ Courthouse adage.

I started out my next meeting with Jenny by telling her an old proverb.

“There’s a saying in Spain, *“I would rather be a mouse in the paws of a cat than a person in the hands of a lawyer.”*”

She crooked her head, trying to make sense of what I had just said.

“I want you to be on-guard,” I said. “There is truth in that old adage.”

“But what does it mean? You’ve been very good to me.”

“I’ve tried to coach you a bit, but I can’t take your case and you need to find a good lawyer soon. I know a very accomplished family law lawyer.”

“I was hoping you could represent me,” she said.

“I’m flattered, but I can’t. I have too many clients and not enough daylight hours as it is. I never refer you to anyone who wasn’t extremely

competent. Even so, choosing a lawyer is a very personal thing. A lot goes into the selection and much of it boils down to chemistry.”

“You’ve been so good to me,” she said, a lump was building up in her throat. “Like money for instance . . . You’ve never asked for a dime. How can I make a lawyer interested in my case? Mike has all of the money.”

“You said he makes six figures?”

She nodded. “The bastard has stock options also.”

“Then things are perhaps not as dire as you may think. Let me give you some pointers about finding a good lawyer.”

Family law is loaded with sharks and inexperienced bottom feeders. Some call themselves “collaborative lawyers”, meaning they work for the bones other lawyers throw them, on a project by project basis. The ads in the phone book promise you the moon, but after the first fee application is granted by the court, many just stop working for the poor wife.

I want to give you some tools to avoid the *shysters*. It is important that you find the best lawyer you can afford. Believe me, this will be one of the best use of your money.

For purposes of this chapter, I assume that your husband has kept you in the dark about most of the family finances during the marriage. I also assume that when he left, he took a lot of the information with him. As a

result, you may believe you have limited financial resources. Fortunately, this need not prevent you from retaining a good lawyer.

This chapter answers three questions:

(1) Do you *need* a lawyer?

(2) How do you *find* a good lawyer?

(3) How do you *pay* for a good lawyer once you have found one?

Do You Need a Lawyer?

It is a very rare situation where a wife in a marriage dissolution is not better off with a lawyer. Ideally, lawyers are there to selflessly protect your rights.

In reality, they are expensive and they fight endlessly with one and other, which may cost you money. On the positive side, they are the professionals who walk you through the intricacies of the court system.

You cannot do this by yourself. Even if you fake a few motions in court, you will not really know what you are doing and you are almost certain to get a poor result for yourself.

Consider that brilliant strategist, Heather Mills during her recent divorce from Paul McCartney. Marry Paul McCartney, collect a hundred million pounds, a cinch, right? After months of litigation, she decided that her lawyers rubbed her the wrong way. She fired them and wound up getting less in the end than what Sir Paul offered to pay her in the beginning.

Heather needed objective help to understand the process, negotiate and be advised when she was reaching for too much (and also when to keep her mouth shut!). She is a perfect example of being able to lead a horse to water but not being able to make it drink.

Here is what I view as an iron-clad rule: If your spouse has a lawyer, then you need one also. There are only a few instances where this may not be the case. Let us dispose of them now so we can move on.

Mediation

Some spouses opt to use mediation in the dissolution of their marriage. Mediation involves a professional skilled in dissolution matters who meets with both the husband and wife in order to hammer out a fair *marital settlement agreement* dividing the parties' property and disposing of their claims against each other.

Mediation may be the way to go if the following applies:

- (1) You and your spouse have no children and very little in the way of community assets.
- (2) You and your spouse have many assets, good financial advisors. Mediation works best when both parties are satisfied that there has been a full and fair disclosure of the finances and neither one wants to waste resources on a legal fight.

(3) You and your spouse are able to discuss things amicably and you both trust each other.

(4) You and your spouse both trust each other on money matters.

The mediator will advise each party of the law and what they could reasonably expect if the action were tried in court. Both sides have to place a lot of trust in the mediator.

One critical point: No one should ever consent to a mediator if he or she has been the other spouse's lawyer, chosen by the other spouse, or is someone who has worked with or for the other spouse's lawyer.

Even if you have a mediator, it is wise to retain your own lawyer to stay in the background, answer questions, review the final agreement before you sign it and to make sure the process is a fair one.

How do you best choose a mediator? So long as the proposed mediator is not too close to one of the parties, recommendations are also a good way to get one. You may want to contact your local county bar association also. Further, there are mediation referral services.

Extreme Youth and/or Poverty

Another instance where a lawyer may not be necessary is when you and your spouse simply have no assets to speak of. While that may have made for a miserable marriage, it leaves very little to fight about. These

type marriages usually occur when the couple is very young and married in haste.

In such instances, go to legal aid and get help filling out the basic dissolution papers. Scrape together the filing fee and try to do better with your life.

When Do I Need a Lawyer?

In Jenny's case, she needed one yesterday! For purposes of flow of the story and the information I am presenting, I have not dealt with getting her a lawyer, which truly is her first need (after all, how could I impart all of this wisdom to her if I sent her packing to another attorney after the first meeting?).

Why? Because Jenny, and any other woman served with a Petition for Dissolution, is holding a ticking time bomb. Once you are served with a petition, you have only 20 or 30 days to "appear" in the action and file a responsive pleading.

So many bad things can happen if you do not swiftly obtain legal representation. Consider this:

- (1) Your default may be taken if you fail to answer the petition on time. That means you could lose your right to participate in the litigation and your spouse might get everything.

- (2) Even if your default is not taken, you may lose important initiatives as your spouse's lawyer obtains important pre-trial orders limiting discovery, scheduling trial, and deciding the order of proof.
- (3) You may lose your right to disqualify the judge or commissioner assigned to your case. May jurisdictions allow litigants the chance to make one *peremptory challenge* to a judge. That means you can get rid of the judge without showing any reason. Usually a party only gets a few days after they have "*appeared*" (a legal term of art) in a lawsuit to take advantage of this important right. Most lawyers do not use this challenge, but a good lawyer will know if a particular jurist is incompetent, or tends to favor one side (*i.e* the husband).

How Do I Find a Good Lawyer?

Tip No. 1: Skip the phone book.

Remember, anyone can place a slick advertisement in the Yellow Pages. They are designed by sales representatives and approved by salivating lawyer who envision drawing you in and collecting big bucks, yours!

Tip No. 2: Personal contacts are the best.

The best lawyer you are likely to find is through a good recommendation by someone you know.

If you have a friend, or co-worker, who has been divorced, ask them about their experiences. Word of mouth is still the best way to get quality legal help. Most people are more than willing to share "war" stories and after a contest is over there is no particular motivation to make a lawyer sound good if he or she wasn't. Ask who they used and whether they would use that person again. Also, ask who the other spouse used. Find out what they thought of the process. Would they use the same attorney again?

The first thing you should be interested in is the lawyer's reputation? Were they honest? What about courtroom prowess? Did they seem to know the system? How did they interact with the judge?

If you hear negative things about a lawyer, take those comments seriously. Tread carefully. As the old adage says, "Where there's smoke there is fire."

On the other hand, if you hear positive feedback about a professional, it is worth taking note of. Take a closer look.

Tip No. 3: Free resources are available

Many free resources exist for checking up on legal talent.

- (1) Go to the filing window of the court clerk. They are forbidden from giving legal advice, but they may be willing to tell you which lawyer do a lot of family law filings. Watch their expressions as you talk to them. If they frown, or roll their eyes, take note.
- (2) Check with your county bar association. They may have a program for lawyer referral, allowing you a free half hour or so to talk with a lawyer on their panel.
- (3) If you have time, go to the courthouse and sit in on some hearings. Ask the clerks or bailiffs where family law cases are heard. You may also get to see who will be your judge and watch him, or her. Is the judge attentive, kind, harsh? You may not know what is going on, but you will get a sense of what the lawyers and jurists are like.

Tip No. 4: Google Everyone

We live in a computer age where knowledge literally bubbles up around us. After you have developed a list of prospective lawyers, start checking them out on the Internet. Google them, which is a euphemism for putting their names into the search function at <http://google.com/> . Amazing things may come up. Do the lawyers have websites? Do they look professional? Have they been in the press? What are their accomplishments?

Try your State Bar website and perform the *attorney search function*. In California you can find this at <http://www.calbar.ca.gov/search/member.aspx>.

This will allow you to find out how long the lawyer has practiced, whether he or she has ever been the subject of discipline, where they work, went to school. Most important are (1) years in practice and (2) discipline record. Note, a record of discipline may not necessarily be a bad thing. For example, any lawyer who is sanctioned over one thousand dollars in a discovery fight must report it. Such a sanction doesn't mean he or she is a bad lawyer. I know of one great lawyer who accepted a fine of over seven thousand dollars for refusing to allow testimony at a deposition that would have revealed a client's attorney-client communications. He accepted the sanction personally, and the bar reporting that went with it, when the court was going to assess it against the client.

Even so, if the lawyer you are considering has a discipline record, you will want to know the basics. When, why and what for?

Other Considerations

It is better to have a lawyer near the courthouse where the lawsuit is going to be heard. All things being equal, you might not want a lawyer who is out in the country if the proceeding is going to be in the big city. Look for someone close enough to the courthouse to be familiar with the place and the players, and to have developed connections.

Your First Meeting With a Lawyer

By now you should have at least one or two names to try. Make appointments. Ask the lawyer or the receptionist if there are particular items the lawyer wants to review at the meeting. Bring everything you are requested to bring. If you are not asked to produce anything, consider bringing the material I am going to mention below:

Appearances Count

First impressions are always important.. When you meet a professional, do not show up in blue jeans and a t-shirt or a tennis outfit. Dress well and look your best. It will show the lawyer that you are a serious person and that you mean business.

Be Prepared

When you show up at your first meeting have a Redweld binder (a large binder with an attached elastic string to seal it. Redwelds will hold several manila file folders.

In the binder, ***bring every legal paper you have been served with.*** This will let the lawyer know when you were served, which judge is involved, the opposing attorney and how much time you have to respond.

Bring your family bank statements, KEOGH and IRA statements, W-2 forms, 1099 forms, tax returns, everything that shows your family's assets. Be organized. Nothing looks so sloppy as having to dump a pile of papers on your lap while you try to find a particular piece of paper.

Most important, before you meet the lawyer, go to the county courthouse or the law library and obtain the following form: an *Income and Expense Declaration*. These forms are used by courts to determine support and attorney fee applications. It also is a good economic snapshot. The financial information on the form will save the lawyer a lot of time.

Watch and Listen

Observe. This is such a crucial life lesson and not just for finding a good lawyer. If you stay observant in every situation you find yourself in you will learn much about life. Ninety-eight percent of what people reveal about themselves is done in gestures and expressions. Only about two percent comes out in what they say. Everything about a person is there for you to discover, if you are only willing to observe.

What does the lawyer's office look like? This is where the professional works. If it is too clean, I would wonder if any work is getting done. If it is dirty, with old torn furniture, threadbare carpet, I would be concerned there isn't enough money coming in to make ends meet.

On the other hand, a messy office does not necessarily mean the lawyer is incompetent or disorganized, just busy.

As yourself, "Do I feel comfortable visiting this office?" Or do you want to find a bathroom, wash your hands and get out? Go with your gut. Instincts are rarely wrong.

Let the Lawyer Lead

When you first meet the lawyer, look him or her in the eye and smile. If he or she has been recommended, let them know. If you have learned of some great victory he or she has made searching the Web, mention it. Everyone likes to hear compliments. You will have to sell your case to your lawyer, and there is certainly no harm starting out with a professional compliment. On the other hand, lawyers are not dummies. Almost everyone can sense cheap flattery, but honest and sincere praise will help you to sell yourself to a professional.

Then let the lawyer take the lead. He may want to question you. He may want you to tell your story. Answer all questions truthfully. Avoid rabbit trails (narrations that go nowhere) and shaggy dog stories (recitations that seem to go on forever). Remember Joe Friday, "Just the facts, ma'am."

Also try to use your time efficiently without hurrying. Keep in mind that lawyers charge by the hour. Time is money, your money.

Some things you will want to ascertain:

(1) Is family law the firm's sole or primary specialty?

(2) Has the lawyer ever tried cases before the judge in to your case?

(3) What does he or she think about your husband's lawyer?

(4) Does the lawyer's practice focus on husbands, wives, or a blend? A good lawyer can represent both, or either side, and you will want one who knows both sides of the fence. However, you may also want to consider a lawyer who is more empathetic to your particular position.

Closing the Deal: Obtaining Representation

Show the Assets

Show the lawyer the completed Income & Expense Declaration you have filled out. Also show your income tax returns for the last two years. This will help the lawyer decide who successful a motion for fees may be.

If you are a homeowner, you have one other ace in the whole, although I urge you to use it carefully. You may want to agree to give your lawyer a lien on your home. It is true that your husband will not be consenting to this, but many a lawyer has agreed to take a case after being given a security interest in real property by only one spouse. Exposing this asset is a gut wrenching decision. Legal representation may be necessary to

save your economic life, but it can also swiftly erode any equity you have. Bargain first for a fee application which orders your husband to pay.

Understand the Lawyer's Motivation

Why is it important to show the lawyer all of your assets? In the Merry Olde England lawyers walked around with robes that had little pouches in the back. That was to allow grateful clients to approach from the back and slip in their retainers without ever having to raise the tawdry subject of money.

Whether or not that was ever really the case, I promise you it isn't now. Law, like everything else, is a business and lawyers need, indeed, expect to be paid. Before you judge them too harshly, keep in mind that they have rent, secretaries to pay, equipment leases to honor and families to support. They may actually have ambitions to get ahead in life. In this regard they are the same as any carpenter or plumber.

It all boils down to this: Unless a lawyer has a reasonable expectation that he or she will be paid, he or she will not want to take your case. Remember that divorce actions are adversarial proceedings where legal contests are resolved by the parties fighting it out. The lawyer you are interviewing is deciding whether to sign up for a fight, your fight. Expect his or her interests to be directly proportional to the likelihood that payment will be forthcoming for services rendered. In other words, the lawyer wants to be paid.

To summarize Legal Representation 101

Up to this point you have learned the following:

(1) Your spouse has retained a lawyer and initiated a legal proceeding to take everything he can get from you in a legal action called a dissolution proceeding.

(2) You cannot fight him or his lawyer on your own. You need a lawyer to help you fight back.

(3) All lawyers expect to be paid for their time.

(4) You will have to show the lawyer that there is enough money somewhere, either through your husband's salary or family assets to pay legal fees. The trick is to negotiate with the lawyer to seek *first dollars from your spouse in a support motion*. That is why it is so important to bring enough information to the meeting to persuade the lawyer to agree.

Keep in Mind: Quality of Representation and Not the Amount of Hourly Fees is Most Important

The lawyer who charges a lot of money per hour *may not be* the most expensive lawyer. I have seen top lawyers who charge \$500 to \$700 per hour complete complex cases for far less than lawyers who charge \$220 to \$280 per hour. Why is that?

(1) Lawyers at the upper end of the spectrum tend to know what they are doing.

(2) These lawyers know their way around the courthouse. They are familiar with the judges, clerks and law enforcement officers, who normally take them at their word.

(3) They tend to be sure of themselves, reliable and know how to use time effectively. These barristers tend to be good at developing master plans for undertaking and finishing your case in the most economic manner.

While quality lawyers *do* exist inside the \$250 per hour spectrum, certain attorneys in this *spectrum* may have some or all of the following problems:

(1) They can be anyone and this *is* where the bottom feeders hang out.

(2) They may charge that low hourly amounts to lure clients in, or because they are unsure of themselves. Then many of them bill much more time than is necessary to get necessary tasks done *or* they bill a lot because they are unsure what to do and are swinging blindly.

(3) All spectrums can have personality problems. However, many at this level seem to be unable to compromise or negotiate.

(4) They become embroiled in unnecessary legal fights, file unnecessary motions and do not know how to get from point A to point Z in a lawsuit.

(5) Out of ignorance they may miss deadlines, such as the time periods for filing for support applications,, or other matters that involve your rights.

(6) They may have bad reputations with judges and other court officials

Remember, these are not hard, fast rules, only things one lawyer things you may want to consider. By way of analogy, you can sometimes buy a top of the line TV that gives you nothing but grief. However, the really inexpensive ones at K-Mart are almost always going to have problems.

Discover the Lawyer's Game Plan and Timetable

You will want to discuss the following with the lawyer:

(1) Does he or she have a game plan for identifying and resolving the issues? What experts need to be retained? What needs to be proved?

(2) Does the lawyer have a timetable for accomplishing what needs to be done? Is this a run of the mill dissolution, or one with complicated legal/factual issues?

(3) Does the lawyer believe the case may be settled or is it likely to be tried. If the latter, what is the likelihood of victory?

(4) What are the lawyer's plans for applying to the court for his or her fees and temporary support for you?

Ask for and get a monthly budget and a likely total cost through trial.

Discuss Getting Your Needs:

I expect that getting enough money to live on will be on the top of your list of concerns. In most states the poorer spouse has certain important rights of which you need to be aware:

(1) Spouses must fully disclose all financial information. That doesn't require much for a destitute wife. However, the law holds that the husband is a fiduciary, which means he has a duty akin to a trustee to disclose everything about his and the family's finances. The law requires him to do so *sua sponte*, on their own, without you or the court having to ask them. That rarely happens, however.

(2) As noted above, the poorer spouse is entitled to an award of legal fees and support *pendente lite*, which means "during the pendency of the litigation."

temporary support should be based on the lifestyle you lived with your spouse, and not your present, likely more modest, circumstances. However, this is the area where the rules in the case books clash most

often with the reality of the courtroom. If the trial court does not believe that the parties provided enough information as to the parties' lifestyle, the court will determine what is fair based on *experience*. Trial courts rarely issue support orders that make everyone happy. Why? Because life isn't fair.

Note, your spouse cannot claim his assets are illiquid as a defense to paying support. If he has stocks, CDs, IRAs a court may order him to sell them to pay for your living expenses.

Signing Up

(1) **The Fee Agreement:** If the lawyer is willing to take your case, by law he or she must give you a written fee agreement. Review this carefully. Never sign something that you do not understand. I suggest that you ask for a day or two to look it over. Make a list of any questions or concerns you may have. This contract will be legally binding to both of you. Some things to think about:

(2) **Is a Retainer Required and What For?** A retainer is an up-front fee you pay the lawyer. He or she may use it for court costs, to be applied to hourly fees, or both. If a retainer is required, normally the lawyer will have no duty to act until payment is received. Also, some retainers must be **replenished** when exhausted, or the client will be in breach of the agreement and the lawyer may have grounds to withdraw.

(3) **Negotiating Around A Retainer**

(A) Consider Sources to Meet the Retainer: If you are convinced this is a good lawyer who will get you a good result and protect your interests, I strongly suggest you do what you can to obtain the retainer. Consider any sources you can try. One possibility is your parents. Another, noted above, is to give a lien on valuable property you have. If you cannot meet this undertaking, tell the lawyer.

(B) No Replenishment: Also, try to negotiate a provision that you need not replenish the retainer once it is exhausted.

(C) Retainer for Court Costs Only: Try to negotiate with the lawyer for the retainer to be **only** for the payment of **court costs**, such as the fees for filing your response, the filing fees for motions, *etc.* Try to negotiate having the lawyer seek **fees** from your husband first.

(4) **Who Will the Lawyer Look to as the Primary Party**: Who is the primary person responsible for payment of the lawyer's fees? I recommend that you try to negotiate having the lawyer seek fees from your spouse first. This approach may just work if your husband has significant assets and you are destitute.

(5) **Recitations About the Lawyer's Duties**: What does the contract say that the lawyer's legal duties are? Please check this carefully. You want a lawyer willing to step into the fray and represent you. You do not want a "collaborative" lawyer, one who be in the wings advising you, or who may just offer to come in and negotiate a settlement for you. This representation is almost useless.

(6) **Recitations About the Your Duties:** What does the contract say about your legal duties? Know what responsibilities you are undertaking. Most contracts impose only two real duties, to pay on time and to "cooperate" with all reasonable requests by your lawyer. Most lawyer cite to courts failure to pay fee on time or in the full amount as their justifications for seeking permission to withdraw.

(7) **Is There an Attorney Fee Clause for Collection Actions?** What does the agreement say about paying attorneys fees if the lawyer sues you to collect unpaid fees? If the contract does not provide for payment of attorneys fees, we have something called "The American Rule" which prevents parties from recovering their attorneys fees incurred suing under an agreement. If an attorney's fee provision is in the retainer agreement, try to get rid of it. It is rarely something that can work to your benefit.

(7) **Court Permission Required for Lawyer to Withdraw:** Remember, once a lawyer has signed an agreement to represent you and has *appeared* in the lawsuit by filing a legal paper, he or she may not stop representing you without your agreement, or permission by the court (usually given after filing a motion). While such motions are almost always eventually granted, never sign a paper that consents to your lawyer withdrawing. If he or she is going to do so, make sure they stay on board until you have new counsel.

Final Thoughts

Before you sign up with anyone, ask yourself this question: "*Am I comfortable having this individual represent me in the divorce?*" If the answer is "yes," proceed and finalize the agreement. If it is "no," then politely excuse yourself and continue your search.

Jenny looked uncertain as she folded her papers and prepared to leave.
"Quite a handful of information, Mr. Chase."

"You're taking a big step, but keep this in mind. Mike has a lawyer. You need one. Going without one isn't an option. When you come in tomorrow I'll have some glazed donuts for you."

Her face screwed up in a queasy expression and fixed me with a severe, but tolerant stare. "I'm back on the wagon when it comes to junk food."

APPLICATION

Checklist on Finding the Right Lawyer.

(1). If I have been served with a summons and petition for dissolution:

(A) . I have calendared the last day to file a legal response.

☐ Yes ☐ No

(B). I have calendared any other events where the paper says I must appear in court.

☐ Yes ☐ No

(C). I have immediately begun to search for a lawyer to represent me (See Sect. 3, below)

(2). If I must appear in court before I have found a lawyer:

(A) I have dressed professionally, but have not over dressed.

(B) I have spoken to the court respectfully, waiting my turn to speak and answering any questions the judge has asked me.

(C) I have asked the judge for a brief continuance so I can find a lawyer to represent me.

(3). I have made a list of two or three friends and/or co-workers who have been divorced, who work in law offices, who might otherwise know of a good lawyer.

(A) I have asked each of them for any recommendations.

(B) I have spoken with them about any judges and about my spouse's attorneys.

(4). I have gone to the clerk's office and have asked who does a lot of family law filings? I have paid attention to the body language (expressions, etc.) of the clerks when they gave me names.

(5). I have contacted the county bar association and asked for names of good family law lawyers. I have received the following recommendations:

(i) Candidate 1:

(ii) Candidate 2

(iii) Candidate 3

(6). I have checked out each lawyer candidate on the internet. I have learned the following about them from google.com:

(i) Candidate 1:

(ii) Candidate 2

(iii) Candidate 3

(7). I have checked out each lawyer candidate on the State Bar web site: I have learned the following about each of them.

(A) How long have they have been in practice:

(i) Candidate 1: _____, Years in Practice

(ii) Candidate 2: _____, Years in Practice

(iii) Candidate 3: _____, Years in Practice

(B) Whether they have had any discipline record:

(i) Candidate 1: _____ Discipline Problem

(ii) Candidate 2: _____ Discipline Problem

(iii) Candidate 3: _____ Discipline Problem

(8). Checklist for Lawyer Visit:

(A) I have dressed professionally.

(B) I have brought everything I was asked to bring.

(C) I have brought all legal papers served on me

(D) I have brought a filled in Income & Expense Declaration; a copy of our last 2 years of tax returns and all financial information I could find.

(E) I have organized all papers so that they may be easily retrieved.

(9). My visit with the lawyer:

(A) Generalities

(i) I let the lawyer take the lead and looked him or her in the eye as we spoke.

(ii) I discussed his or her past victories, the philosophy of his or her practice.

(iii) I discussed the lawyer's litigation philosophy.

(iv) I asked the lawyer whether he or she knew and had been before this particular judge before.

(v) I asked the lawyer whether he or she know and had previous cases with my husband's lawyers.

(vi) I asked the lawyer how long he or she had been in practice in this county and before this court.

(vii) I asked the lawyer whether he or she was comfortable doing trials.

(B) About My Case in Particular:

(i) I told the lawyer all of the facts of my case as I knew them

(ii) I discussed my financial needs and whether the lawyer would be willing to go after my husband first for fees and costs.

(iii) We discussed the likely length and cost of litigation.

(iv) I showed the lawyer all financial documents including:

-- My filled out Income & Expense Declaration

-- Our tax returns.

-- All other financial records.

(v) I feel I fully learned the lawyers' view of my case, my strengths and weaknesses, how long the case will take, the likelihood of settlement.

(vi) The lawyer is willing to take my case without a retainer.

(vii) The lawyer is willing to look first to my husband for payment.

(10) Representation:

The lawyer has agreed to represent me.

☐ Yes ☐ No

The lawyer has declined to represent me.

☐ Yes ☐ No

If the lawyer will not represent me, these are the reasons why:

(You want to be told and understand the reasons why any lawyer has declined to represent you)

(11). The lawyer gave me a retainer agreement.

☐ Yes ☐ No.

(12). I have asked for a day or so to review it before signing. (See things to consider in the previous section).

(13). If the lawyer has not given me a retainer agreement, has he or she agreed to represent me in the dissolution action?

☐ Yes ☐ No.

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