Chapter 1

The First Step: Find the Right Lawyer

Divorce. It is a striking and dramatic word that conjures up endless questions. How does it really happen? Will I have to stand opposite my spouse detailing the awful breakdown of our sex life and personal issues in front of strangers? How can I determine what property I will end up with when this is all over? What will my life look like after the divorce? How often will I be able to see my children?

The emotional, mental, and psychological confusion of divorce creates many more questions. This book will help answer them, including how and where to get started.

1. Should I talk to a lawyer?

Yes. If you can afford a lawyer, then schedule an initial consultation. You need to discuss your circumstances as soon as possible. Don’t just call a family friend who happens to be a lawyer or find someone online; contact an attorney who specializes in divorce and/or family law. The Constitution of the United States grants the states the power to regulate issues relating to the family. Therefore, each state’s divorce laws are different and only a trained family law attorney in
your state knows your state’s laws. Remember, your lawyer is there to protect your interests throughout what may be a long and complicated ordeal, and that can occur only if he or she understands the intricacies of divorce law in your state.

Even if you are parting with your spouse as friends and think you can handle the division of your property and other matters on your own, don’t be naïve. Although you were once a union of two people, you are becoming two individuals again. Sadly, even the closest friends can disagree on the division of money, property, and goods, as well as issues relating to their children. Your spouse will get a lawyer, so you should as well, even if you think it is an amicable divorce. And no, one lawyer cannot represent both of you, as that is an ethical conflict for the lawyer. You need a lawyer who is 100 percent on your side with no divided loyalties.

Be aware, getting a divorce in America today is not like appearing in a courtroom on reality television. It will not be neatly wrapped up in a 30-minute time slot. The process can last months or even years, with lengthy negotiations over the division of property and money, custody, and any other issues that come up. Finding a lawyer you can trust and depend on will help you navigate the most expeditious course through these swirling waters.

2. Is what I tell my lawyer private?

When you get a divorce, your lawyer becomes your newest confidante—however, not in the way your siblings or best friend from college are confidantes. What you tell your lawyer is legally privileged. Your attorney owes you the duty of confidentiality. Except in limited circumstances (if a crime is about to be committed or a child has been abused), your attorney cannot—and will not—disclose the information you give him or her to a third
party. This duty of confidentiality even extends into pretrial and trial disclosure of information obtained from you in confidence. If the court or an opposing party requests this information, your attorney will decline the request, citing the attorney-client privilege, an evidentiary privilege that makes information obtained by the attorney in the course of legal representation inadmissible in court. Attorneys take this duty of confidentiality very seriously and are obligated to maintain the information in confidence. Ask your lawyer about this.

You need to be completely honest with your lawyer and understand that the information you give him or her will not be made public, with the exceptions mentioned previously. It is usually better to admit you once committed a crime (or exercise the right against self-incrimination) than to lie about it under oath. Think about the Martha Stewart case. If she had not lied about and tried to cover up what she did, she might not have been jailed. You and your lawyer may need to discuss how to present certain problematic evidence, but your lawyer will tell you not to lie under oath. If you tell your lawyer a fact and later deny it under oath, your attorney will maintain his or her duty of confidentiality but will likely have to withdraw from representing you in your case.

3. Should I talk to a lawyer to find out if I want to get a divorce?

Your desire to end your marriage cannot—and should not—be determined by an attorney. It can be determined only by you or your spouse. The fact that you are looking for a divorce lawyer may mean you or your spouse has already determined your marriage is over. Many people who walk into divorce attorneys’ offices do not have one specific reason they want to get a divorce. For many, it is
a culmination of months or years of frustration, anger, and sadness. For others, it may be a sudden realization that the marriage is over, often due to infidelity. What all these people have in common is they know divorce is the step they need to take.

Your attorney is focused on trying to help you through this tough process—the divorce. He or she will help you examine the facts of your case and give you an informed and honest opinion about what you can expect to receive in a divorce: a share of your marital assets, custody of your children, support payments (child support or alimony), and many other aspects. A lawyer may tell you that in your state, judges are unlikely to grant ownership of a house to a spouse who has already vacated the premises to move into an apartment with his or her new girlfriend or boyfriend. However, a lawyer will not look into your eyes and say, “You do not really want to get a divorce. You are still in love with your spouse. Give it one more chance.” If you want to hear marital advice, consult a marriage counselor or your best friend. If you want to know if you can expect a judge to divide your spouse’s stock assets and give you an equitable portion, talk to an attorney.

It is your marriage. It is your divorce. And it is your life. Only you (or your spouse) can decide to get a divorce. While you should be able to confide in your attorney about your feelings and the unpleasant experiences you have endured, do not turn your attorney into your best friend or marriage counselor. Let the attorney handle the custody and financial issues. Turn to your friends, family, and perhaps a therapist to work on emotional issues.

4. What kind of person should my divorce lawyer be?

Here is a list, by no means exhaustive, of important qualities your lawyer should possess. He or she should be someone who:
• gives you the confidence to talk candidly,
• listens when you have something to say,
• makes you feel comfortable about the divorce process,
• is willing to answer any questions, and
• discusses (on your first visit) the costs associated with your case, including fees for legal services and the costs of each procedure.

The characteristics highlighted above focus on one basic principle: At the heart of every attorney-client relationship there must be complete disclosure of confidential and often embarrassing information. Complete disclosure will occur only if you feel comfortable with the person you choose to be your attorney. Nothing good can come from having a misinformed lawyer or you misunderstanding the consequences of an action. Divorce costs can be significant, even for a case that is only somewhat contested. An attorney who will not tell you his or her fees up front is not someone you want to have representing you in this process.

The decision about whom to hire is yours. Hire a lawyer you feel comfortable with and who you believe will provide the best representation. You may identify more with an attorney of your own gender; you may prefer someone of the opposite gender who you think may better predict your spouse’s emotional responses; you may want the most expensive, experienced attorney in your state because you have many contested issues or, alternatively, you may want a more low-key attorney, with a modest office you do not find intimidating. The choice is yours for whatever reason you decide.

Regardless of whom you ultimately choose, it is understandable that you will feel some apprehension when you first walk into the lawyer’s office. This is a new process and you are likely experiencing significant stress, which is only magnified by the fact that you do not know the attorney or the staff. However, the right lawyer will quickly put those apprehensions to rest.
5. How do I find a divorce lawyer (or family law attorney)?

If you live in a relatively populous area, you should be able to locate a published list of family law attorneys in your vicinity. You can look in the printed telephone or online directories and start cold-calling attorneys who advertise their divorce services. However, this probably is not the best method and it is not recommended.

Instead, try calling your state’s bar association office. *Bar* is a word that refers to the practice of law. Practicing law is a licensed profession, so an attorney must have a valid license to practice. Most state (and city) bar associations will have referral services of divorce lawyers in your area. There are also national guidebooks provided by companies such as Martindale-Hubbell and FindLaw. These comprehensive listings of attorneys in your area who specialize in family law can be found at your local public library or on the Internet at www.martindale.com, www.lawyers.com, or www.findlaw.com. There are also websites such as www.avvo.com, www.superlawyers.com, or other similar services that list and may also rate attorneys as well.

However, the best kind of referral comes from someone you trust. Talk to someone who has dealt with a divorce attorney and ask him or her about the experience. When you ask your friends, family, and co-workers for advice, speak to them in confidence. Although it may be hard and even embarrassing to ask for their help, remember that this is probably one of the most important business and personal transactions you will ever make and the outcome could determine your children’s well-being, your financial security, and your happiness. Another option is to ask an attorney you or your friends know and respect (who may not be a divorce attorney) whom they would suggest. Even lawyers who do not practice family law know who the well-respected family law attorneys are.
After you have received a list of potential attorneys, if possible, call and schedule an initial interview, also known as a consultation. Interview more than one attorney during this initial stage. Also, remember that any information you share during these initial interviews will not be disclosed by the attorney to any third party—including your spouse, friends, or family. Expect to pay for these consultations. Ask each attorney about the fee when you call for the appointment. Although multiple consultations may be cost-prohibitive for some, if you can afford this expense, it is well worth it. And no, if you have a consultation with an attorney, your spouse may not consult with or hire that attorney, even if you don’t ultimately hire him or her.

6. What if I use a family friend or a general practitioner for an uncontested divorce?

If you are truly in a situation where there is little or no money to be divided, everyone gets along, and you just want a piece of paper that says you are divorced, a close friend or family attorney may be fine. He or she can file the appropriate papers and the whole matter may take only a few months. Even then there may be issues a seasoned family attorney would understand that a nonfamily law attorney would not, but again, the cost may be prohibitive.

Most people are not in an easy, agreeable situation. They disagree over how much money and property each person will receive, who will take ownership of the house, and who will get the kids and the family pets. Remember, if you have something to fight about—or if there is enough money in the estate that there could be a potential conflict—the first thing to do is call a divorce lawyer.

Even if you are confident that you and your spouse can come to an amicable settlement, divorce law is very complicated and even an uncontested divorce can take a turn for the worse. Also, be mindful
there are many personal details your lawyer must know. You may not be comfortable discussing your extramarital affairs with a lawyer who is also your father’s best army buddy. Even though the lawyer is sworn to secrecy, your comfort level is key. The best recommendation is to find an attorney who is outside of your immediate circle of friends and family and who handles only or mostly divorce cases.

If you live in a small town or rural area where there may be only a few attorneys practicing, it might be impossible to consult a full-time family lawyer. In such situations, your best bet would be to consult your local general practice lawyer, as this person will be familiar with the local court system. However, if you need a more specialized attorney with experience in divorce or custody cases, travel to the nearest large city or find a divorce specialist willing to travel to your location to work with you.

7. What is an initial consultation?

An initial consultation is exactly what it sounds like—it is the first discussion with your lawyer (or potential lawyer, as you may not hire the first lawyer you interview) about your case. The initial consultation may take an hour or more. At the outset, be prepared to give a detailed version of the facts that led you to consider divorce, and be completely honest. Do not lie to your lawyer or neglect to inform him or her about important details because you are embarrassed or fear you will be judged. Tell your lawyer all the details of your situation, including adulterous relationships, violent behavior, lying, financial misdeeds, and substance abuse. Your lawyer will appreciate your candor and recognize you are putting your life in his or her hands. Remember, while this process may be new to you, your lawyer has heard just about every possible reason for divorce imaginable.
The initial consultation is your first opportunity to discuss your case with your lawyer: what you want, what you don’t want, and your expectations. It is also your lawyer’s opportunity to explain to you his or her recommended course of action, applicable defenses, and what you can expect through the divorce process. Tell your lawyer all of the facts and listen to what he or she says about your case, as that is the only way you can decide if this is the right lawyer to represent you. Also remember that anything you divulge to your attorney during your initial consultation will remain private.

8. What questions should I ask myself during the initial consultation?

The initial consultation is your first—and sometimes only—opportunity to size up your prospective attorney. During and after your initial consult you should ask yourself the following questions to determine whether the lawyer you are about to select is right for you.

**Does this lawyer listen to me, or does he or she just talk and lecture?**

One key to a successful attorney-client relationship is that each party is informed. Your attorney will likely be well versed in the law in your particular jurisdiction. However, he or she will not be familiar with your particular circumstances and how the law applies to them. Conversely, you will likely be unfamiliar with the law, but your personal knowledge of your own life is invaluable. Therefore, both you and the attorney must be willing and able to communicate this information to each other for you to receive effective representation. Your stress level is likely to increase, not lessen, during the divorce process, so finding a lawyer who will listen to your concerns is important.
Is this a lawyer who primarily handles divorce cases?
There are many nuances in a divorce proceeding, and therefore it is important for your lawyer to be familiar with every option. Just like physicians, lawyers specialize. You would not want to see an ophthalmologist for a sprained ankle, so why would you want to hire a tax attorney to handle your divorce?

Is this attorney someone with whom I feel comfortable?
This cannot be stressed enough. You may have to discuss intimate details of your life because your lawyer must be informed to be fully prepared for every situation. This will occur only if you feel your attorney is trustworthy and sincere about helping you through this trying time.

Can I afford this attorney’s services?
Again, a lawyer should be up front about fee structures when you call for an initial appointment. If the cost of retaining this person’s services is unclear, ask for clarification. Don’t be afraid to ask about various fee options at the beginning of the process. There will probably be a charge for the initial consultation; however, fees will vary depending on the attorney’s expertise and status in the legal community, and some attorneys offer free initial consultations.

9. What documents should I bring to the initial consultation?

In most states, you will be required to fill out a domestic relations financial affidavit (DRFA) or something similar. The DRFA is a sworn statement attesting to your income, assets, debts, liabilities, monthly expenses, and any other relevant financial information. If you go to court later on, the judge will not want to whip out a calculator to
add up your monthly water, gas, and grocery bills. Instead, he or she will want to know how much money you need to live and how much you earn each month. Provide that information accurately. If you are not comfortable preparing this statement, enlist the help of a certified public accountant or ask your attorney for a recommendation on how to proceed.

Your DRFA may become the most important document in your case. Take your time and make it accurate. Be honest. Go over all of your expenses and work with your attorney to make sure you are not leaving anything important out of your list of needs. Do not feel guilty or greedy; this is not the time to be conservative and show the judge how thrifty you can be. No one will be impressed—including the judge. Do not lie or exaggerate either. If you spend a lot of money on jewelry or other luxuries, put that expense in the affidavit, but do not include expenses that are on your wish list.

This DRFA may be the first document you complete in your divorce process and, to repeat, it may also be the most important. Your attorney may be required to send this to the court early in the process so the court and opposing counsel know of your immediate expense needs. A judge may use your DRFA later on to determine how much money you will receive to live on.

Remember that despite the adversarial nature of divorce, your attorney and the court require full disclosure. Two households now must live on the same finances that previously supported only one household. This means you may not receive all the relief you seek; however, if you do not ask for it, you will definitely not get it. Finding a balance is the key, which is one of the most important things to realize and come to terms with in your divorce.
10. Should I create a chronology of my marriage for the initial consultation?

A written chronology of your marriage and the events that led up to you seeking a divorce can be invaluable to your attorney and the court. A chronology sums up the important dates and events of your marriage for your lawyer to use as a guideline. Your attorney may have literally dozens of clients; therefore, he or she probably cannot remember and state the facts of your case completely from memory. By writing out a timeline of your marriage, you can provide your lawyer with something concrete to refer to before a deposition, mediation, or trial. Your attorney can also look at his or her notes and the letters and documents you provided, but the most important reference is your own chronology. It costs nothing to prepare—except a little of your time—and often the process can be therapeutic for you.

11. When should I ask about what it all may cost?

Right away! You are hiring a highly skilled professional to steer you through a major financial and personal undertaking. Would you schedule a remodeling of your home without asking how much it will cost? Of course not—you would receive documentation about every step in the procedure. A divorce is no different. There is no real way to predict what will happen, how long it may take, how the other party will react, or how much money will be at stake, but your attorney can discuss all the options and variables and give you a ballpark estimate of the costs.

Attorneys’ fees vary from state to state, from city to city, and in different-sized communities, and are usually charged by the hour. Some attorneys charge a set fee for an initial consultation, which may last for an hour or more, or they may charge by the hour. The range of
consultation and hourly fees can be from $50 up to $1,000 or more. Some attorneys may offer unbundled services or limited representation terms that are based on handling a portion of a case, whether drafting a document, preparing you for a deposition or testimony at trial, or explaining the terms of a child custody plan. Ask what the minimum time charge is (0.1, 0.2, or 0.25), how and if they use their staff (what paralegal or assistant time charges may apply), and what expenses you will be responsible for (copies, postage, fax charges, etc.).

Lawyers should be open to such questions.

When you hire a divorce attorney, he or she will usually request that you pay an initial retainer fee. This fee is paid to the lawyer to secure the firm’s services for your divorce proceeding and to guarantee payment of fees, and it may or may not be refundable. Retainer fees vary depending on the complexity of your case. The more complicated your case, the higher the retainer. Expect to replenish your initial retainer if it is depleted during your case. If an attorney charges $200 per hour, your initial $5,000 retainer will be depleted after 25 hours of work by the attorney and his or her staff—including research, trial prep, day-long depositions, and trial. Hearing the prices up front may be a shock. It is a good sign if an attorney is honest about the costs. You would not want to have that shock as your divorce is finalized and you get the bill!

By now you should have a better understanding of how and why to hire a lawyer to guide you through this complicated process. When you have found a lawyer with whom you feel comfortable, what do you do to get started? As has been mentioned, the first step should be an initial consultation. In the next chapter, we will look at the nuances of this very important first phase so you are better positioned to begin your divorce.
12. How do I know how much is reasonable for my attorney to charge?

A lawyer who charges high fees or has a fancy office may not be the best lawyer for you and your case. As with hiring any professional, the key is learning about the lawyer’s experience and credentials. A lawyer’s track record and reputation are critical. You will also need to look at your budget and figure out how much you can afford to spend in legal fees. The American Bar Association’s Model Rules of Professional Responsibility—which many states’ bar associations base their own rules of professional conduct upon—states in Rule 1.5(a) that a lawyer shall not charge an unreasonable fee for his or her services. Rule 1.5(a) lists eight factors that should be considered in determining whether a fee is reasonable:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent.

It is also important to note that Rule 1.5(a), Section D of the Model Rules of Professional Responsibility prohibits an attorney from
entering into an agreement in any domestic relations matter if payment is contingent upon securing a divorce or upon the alimony, support, or property settlement. See Model Rules of Professional Responsibility, Rule 1.5(a)(d) (accessible at www.abanet.org/cpr/mrpc/rule_1_5.html). Divorce lawyers are prohibited from getting a percentage of the settlement as their fee in a divorce.

The factors mentioned above illustrate that a high-priced lawyer is not necessarily better, but generally, the best divorce lawyers charge more because their experience and results allow them to do so. However, if your case is simple and does not involve a large sum of money to fight over, a high-priced attorney may not be best for your needs. Many law firms will have associates and paralegals who can also work with you on certain aspects of your case or answer questions. Your lawyer should have a support staff of paralegals, administrative assistants, and fellow attorneys that can aid him or her in managing the workload. These professionals will charge a lower fee for their services, reducing your total cost.

The most important thing is that you feel confident in your lawyer’s ability to handle your case competently. Talk to your lawyer. Get a sense that he or she is listening to you and addressing the specific needs of your case, not just telling you what he or she tells everyone who walks in the door. It is important to have an experienced attorney who will look at your case with an open mind and who will to listen to your concerns. You are hiring a professional. As the client, you have rights and privileges. You have the right to ask questions. You have the right to say no if you do not approve of a tactic. Make sure you are comfortable with your choice of lawyer.