
Psychology and Family Law

By Mark Baer, Esq.



My last article described the unfortunate results that occurred when an otherwise well-qualified family law attorney handled a case for a close family member of mine, with disastrous results owing to the attorney's concealed bias *against* her client. That article raised the following questions among readers: (1) What can consumers do to help avoid such a fiasco in their own choice of an attorney, and (2) How might psychologists help their patients to do so? In this article, I will attempt to address these questions with some specific recommendations.

Although nothing in life is certain, we can all exercise due diligence in an effort to make reliable intelligent choices when it comes to selecting a lawyer. Here are my suggestions.

- *Interview intelligently before hiring.*

Very often, people focus on a prospective attorney's hourly rate and requested retainer as the most important factors. However, a low rate may not be a good criterion, since it may signal a lawyer whose experience and/or credentials don't justify a higher rate. A high hourly rate which is consistent with the lawyer's experience and credentials should not necessarily be a deciding factor either, since a more able attorney may resolve the case with fewer hours billed, and a more successful outcome. Furthermore, it can be cost prohibitive to correct an unsuccessful outcome, if it is even possible.

Similarly, as long as the retainer is refundable, it should not be a significant factor in the decision. The size of the retainer does not impact the total attorney fees that will ultimately be incurred because those fees are merely a factor of the number of billable hours charged and the attorney's hourly rate. Experienced attorneys know that a client who cannot afford to pay the requested retainer before the fees have been incurred will almost certainly not be able to pay the fees after the work has been performed. If the total attorney's fees and costs incurred turns out to be less than the amount of the refundable retainer paid, the attorney must return those excess funds to the client at the conclusion of the representation. However, if the retainer paid to the attorney is non-refundable, the client will not be refunded those excess fees.

- *Ask how long the attorney has been in practice.*

Consumers rarely ask how long the attorney has been practicing law. I would like to point out the difference between the length of time since the attorney was admitted to practice law and the length of time that the attorney has been practicing law could be significant. An attorney becomes admitted to practice law after graduating from law school, passing the bar examination and being sworn in as an attorney at law. It is possible that the attorney was admitted to practice law, but has not done so consistently since their admission date because the attorney took time off, went into a different line of work for a period of time, or was suspended or disbarred from the practice of law for a period of time. This is not uncommon. In fact, there was a situation several years ago in which a woman who had been admitted to practice law ten years earlier but who never actually practiced law ran for an elected position as a judge. She had absolutely no experience practicing law, but qualified as a judge because she had been a member of the bar for at least ten years. Furthermore, consumers often make certain assumptions based upon the attorney's appearance. However, an attorney's age or perceived age could be misleading because it is not necessarily their first career.

- *Research on-line.*

By accessing the website for the State Bar of California at calbar.ca.gov and researching a particular attorney under the attorney resources field of that site, a consumer can find the following information: (1) where and when the attorney received their undergraduate degree; (2) where and when the attorney received their law degree; and (3) whether there have been any actions taken against the attorney which affect their eligibility to practice law. It is important to note that if the attorney has consistently paid their bar dues, the website will not show whether an attorney voluntarily stopped practicing law for certain periods of time. The website will also not show how long an attorney has been practicing in

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a particular field of law. Unfortunately for the consumer, such information is only available from the actual attorney and there are no records available anywhere to verify the attorney's answer.

- *Find out the attorney's specific experience in handling similar cases.*

The fact that someone may be a seasoned attorney does not make them well qualified to handle any type of case. Furthermore, each case has its own unique set of facts and issues. It is important to know that the attorney is familiar with handling cases similar to yours. Even if the attorney says that they have handled such a case in the past does not mean that they are being truthful or that they handled such a matter skillful manner. Unless the consumer was referred to the attorney by someone who was represented by that same attorney in a very similar situation, the consumer would be wise to request such references and/or testimonial letters from such clients.

- *Be skeptical of those who are too eager to promise you'll get everything you want.*

Another common mistake made by a consumer when selecting an attorney is hiring the attorney who tells them what they want to hear. It can be no surprise that consumers often have unrealistic expectations. However, consumers frequently retain the attorney who feeds into those expectations rather than the one who encourages the consumer to be more realistic. Such attorneys are short-sighted because they know that the client will not obtain their desired result, but they tell the client something different in order to be retained. Such a relationship will not end well.

- *Find out how many of the attorney's cases actually go to trial.*

Consumers should certainly hire an attorney who is comfortable and skillful in a courtroom. However, only approximately 3% of all cases go to trial. This means that 97% of all cases are settled before trial. If a consumer retains an attorney who statistically tries more than 3% of their cases, it should cause the consumer to wonder whether that is because the attorney lacks the skills needed to effectively settle a case or is otherwise completely unreasonable in the positions that they take. Either way, the client will spend far more money with such an attorney and will most likely be less satisfied with the ultimate result. Again, these statistics are not maintained anywhere and therefore the client must rely on the answers given by the attorney and by information provided by that attorney's current and former clients and reputation among other attorneys in his/her field of practice.

- *Trust your instincts.*

Your initial interview with any attorney you are considering hiring should ideally take place face to face. This will give you the most reliable sense of him or her, through body language and other non-verbal cues, as well as by observing the setting in which he or she practices. If you have thoroughly interviewed the attorney and are otherwise satisfied with their credentials, you should follow your instincts. For example, the family member I had written about in my last column had told me that he felt as though the attorney did not believe his side of the story from the time of their initial meeting. I was referring to just that issue when I expressed my belief that the psychological aspect of the attorney-client relationship may significantly impact the ultimate outcome of a case.

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Dan Cunningham, MA
Angel Duncan

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