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# Psychology and Family Law

## Selecting a Positive Solution-Oriented Attorney

By Mark Baer, Esq.



In my last column I explained that the practice of law has shifted from resolving conflict between parties to creating it, because law schools teach lawyers only to identify

problems, but not to solve them. Since positive problem-solving seems to have become a nearly lost art --even though it has traditionally been the hallmark of a good lawyer-- it is incumbent upon the client to carefully interview an attorney before making a hiring decision.

Obviously, the client might ask the attorney to give an example of a case which they resolved through creative problem solving. This is probably not the wisest way, because the lawyer might realize that a potential client is trying to find a solutions-oriented attorney, and formulate an answer they think would satisfy the client.

However, a direct question may still yield helpful information. If the attorney obtained a degree in a problem-solving, or quantitative field (e.g., mathematics, physics, economics, engineering, business administration, biology, chemistry, computer science) the client can be reasonably sure that the attorney's skills in that regard are well-developed. If the attorney's undergraduate degree was not of that variety, the client should inquire about the lawyer's extra-curricular, or life experiences. For example, people may learn problem-solving through artistic activities because one must think creatively to successfully perform music, or act in a play. Some sports can also teach problem-solving skills. Therefore, a client might ask the attorney whether they ever played in a band or orchestra, performed in a play, or played quarterback on any football team. I want to make clear that not everyone who plays a musical instrument or acts has developed quantitative reasoning skills. However, a musician who regularly performs live with a band or orchestra must have developed those skills because problems or mistakes will occur during or in preparation of the performance and the musicians must be able to problem solve in order to resolve and/or mask those problems/mistakes. The same is true for actors who perform in the theater.

Many attorneys obtain problem-solving training

through formal mediation programs, or through other means. Basic mediation training is a 40-hour course. However, it is questionable whether a person who graduated from law school without a well-developed set of problem solving skills will acquire them sufficiently through basic mediation training.

Unfortunately, I have found that clients focus on the wrong things when interviewing an attorney. They often want to know about the law on a particular issue for which they need representation. Bear in mind that any attorney who practices law in a particular field should be able to give a reasoned legal answer to such a question. An answer to a legal question in no way guarantees that an attorney will properly handle the case, nor that he or she will be a solution-oriented representative. Therefore, specific legal questions should be asked after one is reasonably sure that the attorney is one who will strive to find positive solutions to a legal problem. Clients also tend to get into the specifics of their case because they want their attorney to tell them the most likely outcome. What the clients need to realize is that cases either resolve through the consensual agreement of the parties involved, or because a judicial officer decided the matter. Attorneys cannot possibly know whether or not the parties will ultimately reach an agreement or the terms of any such agreement. By the same token, attorneys lose control over the outcome when they allow the matter to be decided by a judicial officer. Judges or juries are responsible for deciding factual issues, and then judges are expected to properly apply the law. Only at great expense can a person successfully appeal a judicial ruling, and only if he or she is able to establish that the judicial officer failed to apply the law properly. However, judges are given a great deal of discretion and factual findings are not reversible by the appellate court. Unless the facts are undisputed and the law is very clear on the issue, how likely is it that an attorney can accurately assess the outcome of a case? Research shows that lawyers are overconfident in their predictions.

Thus, a focus on the background, reputation, integrity, and problem-solving orientation of any given attorney is the best insurance in selecting an attorney to represent you in a legal case.

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