
Psychology and Family Law

How to Help Insure the Best Outcome in Your Family Court Case



By Mark Baer, Esq.

In general, clients would be more satisfied with the outcomes of their legal cases if they learned basic principles to follow in interviewing and selecting their attorneys beforehand. Potential clients frequently inquire about what the law says on matters pertinent to their case. Yet the truth is that any reputable attorney should be able to intelligently discuss legal issues in their field of practice. So simply asking a prospective attorney what the law says is in and of itself not the best way to go about selecting a lawyer.

Clients also want to discuss the particulars of their situation with the attorney during the consultation. If the lawyer is an expert in a particular field of law, then the particulars of a given case don't really change the fact of his or her expertise. Why then does a client want to get into the particulars of their situation with the attorney? The client wants to get the attorney's advice and/or opinion. Yet lawyers' opinions are not usually determinative of the ultimate decisions in legal cases.

Thus, even though clients frequently ask a prospective attorney whether they have a good case, or if they can expect to get what they want from the legal process, the truth is that even quite experienced attorneys' opinions on these questions are decidedly unreliable. According to a recent study of lawyers' predictions of case outcomes, published in *Psychology, Public Policy, and Law*, "Lawyers frequently made substantial judgmental errors, showing a proclivity to overoptimism. The most biased estimates [occurred when] lawyers were [initially] extremely overconfident." Moreover, "the data provided no support for the hypothesis that lawyers with more practical experience are better calibrated than lawyers with less experience."

Unfortunately, the researchers agreed with the following conclusion set forth in an article published in *Cognitive Psychology* in 1992 titled, *The weighing of evidence and the determinants of confidence* by D. Griffin, & A. Tversky: "It can be argued that people's willingness to engage in military, legal, and other costly battles would be reduced if they had a more realistic assessment of their chances of success. We doubt that the benefits of overconfidence outweigh its costs." In short, in hiring an attorney based upon their

advice or opinion regarding a particular case, clients are hiring attorneys who tell them what they want to hear. Since probability dictates that is most likely an incorrect assessment, is that a good way of selecting an attorney? I don't think so.

Far more relevant than asking specific questions or predictions of a lawyer is for clients to ascertain if an attorney is well-regarded within his or her field, and how he or she is rated by peers. The following sites can be very helpful in this research: SuperLawyers.com, BestLawyers.com, Martindale-Hubbell.com, and AVVO.com.

Another pertinent approach is for clients to ascertain whether the attorney in question has been selected for any honors and awards which recognize them for their legal work in their given field of practice. Has the attorney published scholarly articles--especially on the area of law the client's case falls into? What did they publish, and in what publications? Has the attorney done any scholarly lectures and/or writings? It might be of interest to note the audience for such lectures and/or writings because that might give an indication of industry recognition.

It's also a very good idea for the client to select an attorney based upon their credentials, philosophy, and explanation of the different processes available for resolving the particular type of dispute. In the family court cases I handle, I always remind my clients, "Like it or not, if there are children of the relationship (regardless of their age), the family still exists after the relationship ends. The manner in which you end a relationship determines whether your family will be functional or dysfunctional from that day forward."

If a client's philosophy differs from that of the attorney they retained, isn't it possible that the client will be dissatisfied with the ultimate outcome? Most certainly!

Family law matters can be handled, variously, though traditional litigation, mediation, or collaborative divorce. If the attorney does not explain the different processes available, it isn't possible for a client to make an informed decision as to which approach might work the best for them. In litigation, the parties are adversaries and turn decision making over to a judge. In mediation, a mediator assists the parties in resolving their differences. Collaborative divorce is an interdisciplinary team approach, involving attorneys, mental health, and financial professionals.

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