

Truth or Consequences: Why Honesty Is the Best Policy When Dealing with Your Lawyer

BY KATIE MCCLAFLIN

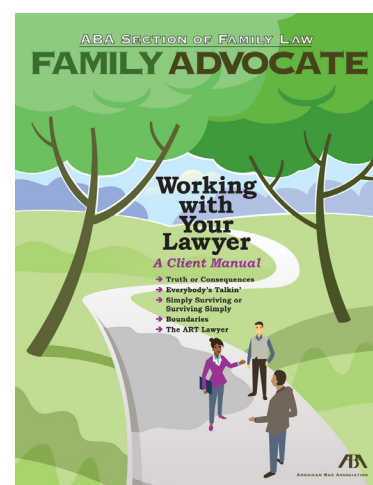
You, like most people, are likely to want to finalize your divorce with your integrity intact, your finances in order, and a positive sense of emotional well-being. There are many steps you can take before, during, and after the divorce to maximize your chances of doing so. Being honest with your lawyer will be the first step, as honesty builds the foundation for all the others.

First, however, know that the advice in this article is intended to provide guidance in those cases where both spouses seek a fair result. If your spouse has a pattern of trying to control you through intimidation, threats, violence, or restricting access to information, or if for any other reason you cannot engage in fair and open negotiations, you should approach the divorce differently from the way recommended here. For more information on how actual or threatened abuse can affect the divorce process, contact your local domestic violence shelter and request names of attorneys in your area who are experienced with helping clients through the dynamics of domestic violence. You can also visit the National Center on Domestic and Sexual Violence at <http://www.ncdsv.org>.

Choosing a Lawyer You Want (and Getting the Lawyer to Actually Agree to Represent You)

Nearly everyone facing a divorce has at least one friend or family member who has gone through the process. A 2009 study by a research team headed by Rose McDermott of Brown University found that study participants were seventy-five percent more likely to become divorced if they had a divorced friend. This ripple effect is attributed to a variety of factors. Seeing a friend go through a divorce can reduce the social stigma associated with ending a marriage. It can also help illustrate that, painful as divorce is, it is possible to emerge from a divorce a happier, healthier, and more satisfied person. If you are considering a divorce or you want to learn more about what it would look like for your family or you learn from your spouse that a divorce is imminent, you should meet with an attorney immediately. Whether you engage in mediation, collaborative divorce, litigation, or some combination of those processes, an attorney can educate you on your options, help you determine which approach will best protect your interests, and help you achieve your goals.

When you start to search for a divorce attorney, look to those divorced friends who most closely resemble the person you want to be *after* your divorce. Your attorney will be your advocate during what may be one of the most stressful experiences you will have. If you have a terribly unhappy, bitter friend who still spends all of his or her time ruminating on an ex-spouse and the divorce, that may not be the best place to look for advice. Rather, go to friends who have navigated the process with dignity and ask them who their attorney was, whether they would recommend the attorney,



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and why. Some attorneys spend a lot of money to market their practice. They may use terms to describe their practice that are intended to attract the greatest number of Internet hits. So if you search online for a divorce attorney in your town, you are not necessarily going to end up with a proper fit.

An effective advocate needs accurate, detailed information in order to protect your interests and help you navigate the divorce process from the very first meeting through finalizing post-trial details. Your honesty in supplying this information will be essential, so, as you research and evaluate potential attorneys, think about the kind of personality you are most likely to feel comfortable with. You will be delving into very personal, intimate areas of your life that include marital problems, income, and spending habits. It is crucial to choose an attorney who is not only qualified to represent your interests, but who you will feel comfortable with when discussing those most personal of matters.

The Initial Consultation: Be Organized and Honest

A consultation with a divorce attorney is truly a unique experience. You are likely to be meeting this person for the first time—and yet you are expected to disclose very personal details about your life. The purpose of the consultation is for you to gain

The Consultation: How to Prepare in Advance

Trying to convey several years' worth of information can feel overwhelming, but there are ways you can prepare in advance.

👉 **Prepare a brief overview of your case.**

👉 **List your primary goals.** Identify them by thinking about what you want your life to look like six months, one year, and five years after the divorce is final.

👉 **List your assets and debts.** Think about your financial situation by listing all your assets and all your debts. If you have access to tax returns, account statements, and other financial documents, make a note of that and tell the attorney. This can help the attorney evaluate many aspects of your case, such as how long it may take, how much formal discovery (the process of obtaining evidence from the opposing side) will be necessary, and how much you can expect to pay in attorney fees.

👉 **If you don't understand your finances, say so.** If you are unfamiliar with the finances of the marriage, communicate that to the attorney and ask him or her to explain what that means for you in the divorce.

👉 **Prepare to briefly describe your marriage.**

Divorce attorneys typically understand the sentiment behind the saying “the marriage is the parent of the divorce,” so be prepared to describe the marriage and the deterioration of the relationship.

👉 **Create a concise list of recurring themes of conflict in your marriage.** If you think fault may be relevant to your situation, ask whether it will play a role in the financial or child-related outcomes of your divorce. Even if fault is irrelevant, the attorney may ask you to describe the marital dynamics in order to assess how those same dynamics may continue to play out in the divorce process. Rather than preparing a list of every disagreement you or your spouse ever had, provide themes of the marital dynamic. Provide an example to illustrate each theme.

— K.M.

knowledge about divorce in general and how it may affect your family in particular. But it is also a time for you to evaluate the potential attorney. The attorney will be evaluating you as well and deciding whether he or she will be able to represent you. Your initial consultation is your first and best opportunity to establish credibility. Be open and honest. It will benefit you in the long run.

It can be difficult to know just how much detail you should provide at first. Whether you provide a general overview of your situation or delve into more detail, honesty, once again, will be crucial. In order for the attorney to accurately evaluate your case, he or she will need you to be candid. If you cannot bring yourself to discuss the details of your relationship, your finances, or your marital difficulties, that may be a sign the attorney is not a good fit for you. The attorney needs to know what the case entails, what the potential complications may be, and its level of complexity.

Nothing good can come from being dishonest or uncommunicative in your initial attorney meeting or at any phase of the divorce process. Dishonesty diminishes the mutual respect that should serve as the foundation of the attorney-client relationship. If you fail to provide honest, accurate information about your situation, you will not get an accurate assessment of your case. The attorney may refuse to represent you. He or she may withdraw from representation if it later becomes evident that you were less than honest in the beginning. Changing attorneys can be expensive and stressful. Changing attorneys repeatedly can harm your credibility by conveying a message that you are a difficult or unreasonable client.

The Hiring Agreement

Request a written engagement letter that describes the terms of your attorney's representation. Make sure you understand how you will be billed and what to do if you have a question about any aspect of your case. Ask questions at the beginning to make sure you and the attorney are on the same page. Starting off on the same page is key to *staying* on the same page with your attorney as you navigate the divorce process.

Discovery of Evidence

Assets and Debts

While divorce laws differ from state to state, the first step of the divorce process is the same no matter where you live. Marital assets and debts must be identified. Your paramount responsibility is to openly and honestly disclose all assets and debts. If you are the spouse with a more sophisticated understanding of the finances or better access to relevant documents, the onus is on you to disclose all information as early in the case as possible. An intentional failure to disclose assets will result in losing credibility with your attorney, as well as with the judge who will be making important decisions about the division of net worth and support payments. Failure to disclose assets can result in sanctions and attorney fee awards and may allow the judge to award the undisclosed asset to your spouse. You may have legitimate reasons for wanting to retain certain assets. Your attorney's job is to zealously advocate for you and protect your interests. As you disclose all assets and debts, also state your preferences for how they should be divided. Your attorney can evaluate which strategies to employ to pursue the most advantageous result for you.

If you are less knowledgeable about the marital finances or feel disadvantaged as compared to your spouse, tell your attorney. To negotiate a fair settlement, you must have all relevant information in order to evaluate your options. This may mean engaging in the formal discovery process, demanding a sworn financial affidavit

from your spouse, and reserving jurisdiction to the court to set aside for you any undisclosed (and later identified) assets. If you have access to tax returns, account statements, and debt information, gather the documents together immediately and provide copies to your attorney. You may also need to prepare to have certain assets appraised, so notify your attorney if you have any collections, art, jewelry, or other items of value.

Disclosing debts can feel intrusive and even more personal than discussing your intimate relationship. But identifying and dividing debt is an important part of a divorce. If you fail to disclose debt, you may be permanently stuck with it. If you fail to disclose debt you hold jointly with your spouse, this can cause serious and expensive problems for you after the divorce. Generate a credit report with each of the three major credit reporting agencies at the very beginning of the divorce process. Generate a follow up report before you finalize the divorce, particularly if more than ninety days have passed since your initial report.

Other People's Information

There may be people in your life who have valuable information relevant to issues in your divorce. Whether that information is valuable to you or valuable to your spouse, you should tell your attorney about any potential witnesses who may have information related to any issue in your divorce. This does not mean that if you tell your attorney about the conversation you had with your child's teacher, the teacher will be called to testify at trial. Your attorney can evaluate whether a potential witness should be interviewed or deposed as part of the divorce process.

Your Past Mistakes

You may not know whether conduct, particularly if it is potentially damaging, should be disclosed to your attorney. It may be irrelevant to any issue in your divorce. If you have children, your spouse may find it tempting to bring up past conduct in an effort to gain an advantageous child custody arrangement. Disclose potentially damaging conduct to your attorney as early as possible so your attorney is prepared to defend and/or address it if necessary. The same is true for social media activity. Tell your attorney about your social media accounts, how you use them, and whether you have any concerns about your social media activity or your spouse's.

During the discovery process, your attorney may remind you repeatedly that you must be honest and candid. You may grow tired of completing a constant stream of forms. Your spouse's attorney may use inaccuracies or inconsistencies to portray you as dishonest. If you do make a mistake or circumstances change as your divorce case is pending, inform your attorney right away so that the mistake can be corrected. If depositions are conducted, you will be asked questions under oath. Your answers can be used at trial, so it is important to understand the question and answer it honestly. If there are questions you think may be asked of you in a deposition, inform your attorney in advance.

Settlement Negotiations

By this stage of your case, you will have discussed deeply personal and potentially embarrassing details of your life with your attorney. As you navigate settlement negotiations, be aware of your priorities and goals for your life. If you are focused on one aspect of the case and your attorney suggests pursuing an alternate route, remind your attorney what your long-term goals are. Be open and honest as you prioritize the settlement terms that are most important to you.

Trial

If you are unable to resolve the divorce by agreement, you will have a trial to finalize the division of net worth, support, and any other remaining issues. Lying on the stand can result in contempt findings, sanctions, and a complete loss of credibility. It is absolutely crucial that you provide truthful testimony.

Conclusion

An honest and candid approach is crucial from the beginning to the end of the divorce process. You may lose half of your net worth in the divorce, but you can maintain your dignity. And that will be essential to the successful beginning of your new life. **FA**

Katie McClafin (kmclafin@mklawkc.com) of the Law Offices of Manson Karbank in Overland, Kansas, focuses her practice on complex divorce and child custody matters, as well as drafting and litigating premarital and postnuptial agreements. She is currently the president of the Johnson County Bar Association and chair of the Civics Outreach Committee.