

Mistakes To Avoid During Your Divorce

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Even normally coolheaded lawyers can make costly mistakes when they are going through their own divorces. Contributor Stacy D. Phillips, who has represented the ex-spouses of Tori Spelling, Axl Rose and the soon-to-be ex of Los Angeles Mayor Antonio Villaraigosa, describes these mistakes and how to avoid them.

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By STACY D. PHILLIPS

While it might seem obvious to most people that attorneys who find themselves in the throes of divorce have an advantage over non-attorneys, that is not always true. Divorce is a tumultuous time for anyone and everyone. Lawyers are no exception. Even with all their legal expertise, a keen sensitivity of legal "strategies," and the knowledge of the dos and don'ts of handling a case, lawyers, too, sometimes find themselves making mistakes. In my 22 years of experience, I have found that many in the legal profession going through a divorce can become their own worst enemy. Add to that issues and items that they, too, occasionally overlook and you have a recipe for divorce disaster.

When someone from the legal profession comes to me to handle a divorce, I often ask the questions below. I find that there is at least one of these questions — if not several on my checklist — that some attorneys have overlooked.

1. **WHAT RESULT DO YOU WANT?** At that first attorney/client meeting, be prepared and ready to discuss what result you want (or expect) from the divorce proceedings. Do you want to make an attempt to save your marriage? Do you want to get out of your marriage with the least amount of emotional and psychological damage? Is it imperative that you stay out of court? If you have children, what type of custody arrangements do you want and why? What custody arrangement can you sustain? (There is nothing worse for a child than to believe that he or she will be spending time with a parent who chronically cancels, is a no show or is constantly late.) Believe it or not, many attorneys do not stop to ponder most of these questions before meeting with the attorney for the first time. Some clients wind up paying for a lot of billable hours just sorting out these issues. And, until thought is given to what you expect and want (not always the same thing), much time can be wasted — and billed — to you.



2. **WHAT ARE YOU HIDING?** This may also be hard to grapple with, but some attorneys have assets they do not disclose to their family law attorney. In California, this can be disastrous, for if the spouse and the family law court learn of any hidden assets, the judge might award those assets, in total, to the opposing party, as well as punitive damages. My law partner once had a case involving a woman who had won the lottery. She kept the windfall from her husband, cashing in as she and her estranged husband were going through their divorce. When the judge learned of her lack of forthrightness, he awarded the entire lottery payout to the husband (my law firm partner's client), and the appellate court concurred. Make sure you disclose everything of a financial nature — such as assets, liabilities, income, expenses and opportunities for investments — that could impact your case. I have fired clients who have not been completely upfront in this regard.

3. **IS THE ATTORNEY YOU HAVE RETAINED THE APPROPRIATE CHOICE?** It is not uncommon for an attorney to hire another lawyer who is a friend, but this can be a huge mistake. The better option is to find an attorney with whom you can enjoy a cordial and professional relationship — an attorney who has an excellent reputation but with whom you do not fraternize — at least until after the matter is concluded. Attorneys should find someone they respect, not someone they regard as a chum.

4. **ARE YOU TRYING TO RUN THE SHOW?** Another problem some attorneys have is finding it difficult to turn the reins over to the attorney retained to take on the case. Instead, because they are used to advocating, leading and "lawyering" for others, they find it hard to let go. They can bring a whole new meaning to the term "meddling." It is imperative that you become the client. Let your counsel run the show, but with significant input from you.

5. **ARE YOU WILLING TO GIVE TO GET?** Many lawyers are focused on winning at all costs (it tends to be their nature!). So, when attorneys begin to think about their divorce cases, they often make the error of thinking about how they can topple their opponent and prevail in their specific case. Poor thinking. Better to step back and make a fair assessment of who should get what — in other words, what would be fair to both parties. When there is a divorce, both parties usually have to give to get. Think negotiation. Think parity. In California, as I am sure it is in most other states, no one gets the whole pie.

6. **ARE YOUR EMOTIONS RUNNING ROUGHSHOD OVER RATIONAL THINKING?** Lawyers are not different than other people going through a divorce. They, too, encounter a great deal of emotional distress. Do you spend time obsessing about your divorce? Are you making decisions based upon how you feel rather than how you think? Step back. Keep a cap on your emotions. Get to a qualified therapist on those days when your emotions seem to be running the show. Yes, you are an attorney so you should know better, but lawyers are human, too!



7. ARE YOUR AFFAIRS IN ORDER? The day you separated, did you take the time for due diligence to separate your finances? Have you left yourself vulnerable in any regard along these lines with your soon-to-be-ex? For instance, have you forgotten to close that line of credit, or do you intentionally want to leave it open? Do you still have bank accounts and stock accounts that should require two signatures to use the funds, now that you are separating? And what about your joint credit cards? Do you have the deed to your property, a copy of that prenuptial agreement in hand, a complete accounting of your liabilities as well as your assets? Have you changed your will, your trusts, if you are not under restraining order? If the answer is no to any of these questions, hunker down and take care of business. It could save you a lot of grief and added stress you just don't need.

8. ARE YOU USING THE SAME BUSINESS PROFESSIONALS AS YOUR SOON-TO-BE EX? Many people think nothing of sharing the same accountant, estate planning attorney, housekeeper, banker, stockbroker and other business professionals as their soon-to-be ex, but this is, generally, not a good idea. Indeed, in some instances, sharing the same professional is forbidden without a confidentiality waiver. If you are going your separate ways, it may be best to break all business ties with those who may potentially have conflicts in servicing you. Believe it or not, this might even include your dentist, therapist and doctors, too. The only individuals you should share are your children.

9. ARE YOU PRUDENT IN YOUR WRITTEN COMMUNICATIONS? Much of today's communication is conducted by email and text messages. These lines of communication can be, and often are, used in a court of law. Today, computers can be seized and emails can be retrieved during discovery and compiled as evidence. Before you put fingers to the keyboard, think about what you are about to say in your emails. Caustic remarks, threats and bursts of anger can all cost you dearly. The written word can last forever, so before impulsively reacting to the nasty message your ex just sent to you in an email, or shooting off a mean one of your own, think again. One bad email can jeopardize the outcome of your divorce.

10. ARE YOU TALKING TOO MUCH? When any person is going through a divorce, it is not uncommon to blab about it to friends and colleagues. However, for those who are attorneys, this can pose a problem. Attorneys are human, too, and they chat about the latest goings on just like everyone else. Word can travel fast within the legal community. So, if you rely on referrals (and most of us do) to build and maintain your practice, it is a good idea to keep any details — sordid or otherwise — out of earshot of your colleagues, and yes, even close friends in the legal community. News can leak around the water cooler, on the golf course, or at the gym, just like it does among any other business professionals. Save the venting for the therapist or the attorney you hired to take on your case. Divorce is often accompanied with regret of some kind. Do not let this foolish mistake come back to haunt you.

Stacy D. Phillips is the managing partner at Phillips, Lerner, Lauzon & Jamra in Los Angeles. She represents many high-net worth and celebrity clients such as the ex-spouses of Tori Spelling, Axl Rose, Bernie Taupin, Whitney Houston and the soon-to-be ex of L.A.'s Mayor Antonio Villaraigosa. She also is the author of "Divorce: It's All About Control: How to Win the Emotional, Psychological and Legal Wars."

