



Communicating with Your Lawyer: What to Expect and How to Avoid the Pitfalls

By KRISTINA L. HOHNE

Let's set the scene. You are thinking about filing for divorce or legal separation or your spouse already has done so. You find a lawyer and set up a consultation. Now what do you do? What do you tell your lawyer? What questions do you ask?

The Beatles said it best with their 1965 hit, "Help!"

Help! I need somebody.

Help! Not just anybody.

Help!

You know I need someone.

Help!

That's exactly what this article is intended to do—help. Whether you are a seasoned veteran of legal procedures or have never communicated with an attorney, each family law case is unique and presents concerns different from those of a typical civil matter. Here are a few tips on what to share with your lawyer, what to keep to yourself, and how to avoid pitfalls along the way.

To Bring or Not to Bring Someone: That Is the Question

A commonly asked question (and it's better to ask the question) is whether you can or should bring

someone with you to meetings with your attorney. Now, it might never have occurred to you to ask this question because you assume you should show up to the meeting alone. Or perhaps you do not want more people than necessary knowing your personal business. Alternatively, you may be nervous, anxious, or scared and would take comfort in having a trusted companion support you during what will inevitably be a long and emotionally draining process. The choice is entirely yours, and you must do what is right for you. But before you take the plunge and bring someone with you, there are a few things to consider.

● **Am I Waiving the Attorney-Client Privilege?**

Perhaps the most important consequence of having a third party attend a meeting with you and your lawyer is that you could be waiving the attorney-client privilege. Generally, communications between clients (or potential clients) and lawyers are presumed to be confidential and cannot be disclosed by the lawyer or anyone in the lawyer's office as long as those communications were intended to be confidential when made. However, that presumption is lost when a third party is present for the communications.

If you bring someone with you to your meeting with a lawyer, the burden will be on you to establish that he or she was necessary to further the attorney-client communication. This might involve actually having to disclose specific facts discussed or the relationship between you and the person you brought so that a judge could determine whether or not the privilege was waived. And the last thing you want to be doing is trying to defend intimate conversations you thought were protected.

Although the likely result of having someone else present is that the attorney-client privilege will be waived, the waiver really only matters if your opposing lawyer is savvy enough to ask about it. Plus, it only pertains to matters that you truly intend to remain confidential. The background facts of your case—how much money you make, what properties you own, or whether you have any children, just to name a few—are known to or easily discoverable by the other side.

Whether your lawyer meets with you or you and someone you bring with you, your lawyer is going to keep those discussions confidential. However, your lawyer may be *compelled* to disclose those communications (just like you could be) if the opposing lawyer or judge

specifically asks about conversations between you and your lawyer where third parties were present. Is that a risk worth taking?

The bottom line is that if you decide to bring someone with you when you meet with your lawyer, assume that anything you tell your lawyer is not confidential and could be disclosed. The safest option, then, is to not bring anyone. But if you

If you have a third party attend a meeting with you and your lawyer, you could be waiving the attorney-client privilege.

need that support person, make sure that you ask him or her to step out of the room anytime you discuss a topic that you want to ensure remains confidential and privileged from disclosure.

If you are unsure whether you want to bring someone, it never hurts to ask your lawyer before your meeting.

● **Am I Comfortable Speaking Openly?**

Discussions with your attorney—particularly that initial consultation—are intended to be very personal. You will be discussing intimate details about your marriage, your children, your finances, and the rest of your assets. Examples of questions your attorney may ask: Have you been intimate with your spouse since separating? Are there any domestic violence or substance abuse issues? How much money do you make a year? How much does your spouse make? What is your relationship like with your children? What is your current custody arrangement?

These questions are going to be difficult enough for you to answer. Ask yourself whether it would be easier or harder for you to answer

them in front of someone else. The most important thing is that you be as honest and candid with your lawyer as you can during your meeting. Can you do that in the presence of the person you intend to bring?

● **Who Should I Bring?**

Let's assume you've weighed the pluses and minuses and decide you would like to bring someone with you to your attorney meeting. Who should it be? Some people bring a parent or a relative; some bring their new significant other; some bring a friend. The identity of the person matters little. What matters is that you bring someone who makes you feel safe and supported and who you can be honest and open with. Also make sure the person is not the type to take over the conversation, interrupt you, or speak over you. That can be very distracting and may deter you from speaking. Your lawyer wants to hear from you, not someone else.

Whatever you do, do not bring your children. First, they should not be hearing about your dirty laundry. But more importantly, you have to assume that anything you say in front of them (including the fact that the children met your lawyer) will get back to your spouse. There may be an exception to this rule if your children are adults, depending upon your relationship with them.



Do I Know You?

We live in an era where we can connect with people, including an attorney, at the speed of a click on a “send” button. However, it's really important to look before you leap and consider what you are sending.

The first question you should ask

is, what email address are you using to send this communication. Is it one that your spouse has access to? For example, does your spouse know the password or is your password for this account saved on a computer, phone, or tablet that someone else has access to? If you have to stop and think whether the answer to any of those could be yes, then it probably is yes. The safest thing to do is create a new email account exclusively for the purpose of communicating with your attorney for your divorce. There are many free services enabling you to set up an email address in less than one minute.

Do not think that your work email is a safe alternative. While your spouse may not know that password, the email address (and all those emails you send) are saved on your employer's server and are technically your employer's property. If you have an opposing counsel who is smart enough to ask, all those emails, including ones you intended to remain privileged, are subject to disclosure. That is not a risk worth taking.

When you receive an email from your lawyer, pay attention to who else is on the email. Are the other recipients people at your lawyer's firm or part of your legal team? Or could they be your spouse's lawyer or part of your spouse's legal team? If you do not recognize an email address, always ask before you reply to the email. Many lawyers cc their own clients on all email communications, including those to the opposing lawyer. If you are not careful enough to surveil the other recipients, you may end up sending a communication you intend to be confidential directly to the other side. Thus, unless you know *each* recipient on an email, never reply all. Your email could go to the wrong person, including the other side.

Lastly, although this might seem obvious, never email your spouse's lawyer. Ever. You could inadvertently disclose something or ambiguously

convey something, making even the most well-intentioned communication problematic. Further, the opposing attorney may misunderstand and think you no longer have an attorney or that you are consenting to speak to that lawyer directly. Most of the time, it leads to awkward exchanges between the two lawyers about making sure the clients know they should not contact the other side's lawyers directly.



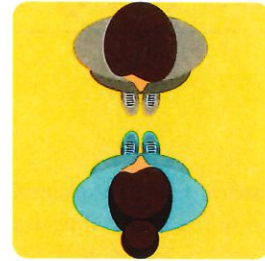
The Good, the Bad, and the Ugly

While your lawyer is there to support you during your divorce, do not expect your lawyer to be your therapist. Your lawyer will give it to you straight, which may include telling you things you do not want to hear. If you find yourself longing for an emotional confidant, you may want to hire a therapist—they are much cheaper. That said, do not feel that you cannot disclose intimate details to your lawyer. The trick is finding the balance.

In fact, your attorney's best advice is only as good as the information it is based on. The only way it can truly be the best is if you tell your attorney everything: the good, the bad, and the ugly. Believe me, your lawyers have seen or heard it all. While your instincts might tell you to shield facts that cast you in a negative light, your attorney needs to hear about them because the legal advice might change based on those bad facts. Plus, if your spouse knows your flaws, those facts are coming out anyway. The worst thing you could do is shield it from your lawyer and get caught with your proverbial pants down.

Most importantly, make sure

you are communicating with your attorney on a regular basis. If you are not receiving updates, check in. Odds are that there is nothing new to report on your lawyer's end, but you might have issues worth addressing.



Speaking to the Enemy

A common misconception is that when you are getting divorced, you have little to no communication with your spouse. This is especially false when you have children you are co-parenting. The number one rule is to treat your divorce like a business. This means keeping your emotions out of your decision-making and making sure all communications with your spouse are civil, especially if those communications are written. Assume everything you say or write will be disclosed to your spouse's lawyer. And do not reject practical advice out of emotion or spite.

A common question is, how much of the inter-spousal communications should you disclose to your lawyer? While you can leave out the typical ordinary interactions, you want to inform your lawyer about anything abusive or out of the ordinary. For example, if your spouse is telling you about buying or selling assets, tell your lawyer. If your spouse is making threats, tell your lawyer. If your spouse is violating some understanding between the two of you or a court order, tell your lawyer. It is always better to keep your lawyer informed. Also make sure you disclose events as they occur. That way, if your lawyer has to do something (like file a motion), it can be done in a timely fashion.

continued on page 32

On Being an Active Participant in Your Divorce

Tips from Thirty Years' Experience as a Divorce Attorney

By STACY D. PHILLIPS

Whether you are contemplating separation or in the midst of separating, in the early stages or in the thick of divorce proceedings, you are navigating a major life transition.

After more than thirty years working with clients in the family law trenches, I can say with certainty that divorce is all about control. And a key component to getting and keeping control during this stressful time is being an active participant with your attorney.

The first step is being prepared: putting your financial house in order, understanding your monthly expenses, safekeeping copies of important files and documents, keeping abreast of important dates and deadlines as your case progresses, and, if custody is an aspect of your divorce, keeping a diary of the time that you and your soon-to-be-ex-spouse each spend with your children. Your attorney will appreciate your preparedness.

TIP 1 *Put Your Financial House in Order*

You would be surprised at the number of clients who have come into my office from all walks of life—captains of industry included—with inadequate knowledge of their true financial situation. To really be in control during your divorce, be knowledgeable about both your and your spouse's finances. Summarize income from all sources. Identify assets and liabilities (in your name, your spouse's name, and jointly held), including when and how these assets were acquired. Make a list your family's insurance coverage (medical, dental, property, auto, and life). And if you and your spouse signed a prenuptial agreement, post-nuptial agreement, or a transmutation agreement, make sure your attorney has a copy. Similarly, give your counsel copies of all your estate planning documents. Once armed with this vital information, your counsel will begin the process of being able to give you a real assessment of your case.

TIP 2 *Understand Your Monthly Expenses*

Be able to articulate how much you realistically spend on a monthly basis on both basic needs and discretionary items. List all your expenses, including those of your children. If you wish to maintain your standard of living, do not sell

yourself short by underestimating your expenses. If you pay your bills with online banking or bill-pay software, your life just got a lot easier—the information you need is right there. This fluency with regard to your expenses will enable you to better understand your needs on both a temporary and permanent basis and determine what is open for compromise, should that be necessary.

TIP 3 *Obtain All Financial Records*

At the earliest date possible, locate deeds to real property, title to vehicles, bank statements, canceled checks, tax returns (personal, corporate/partnership) for the past five years, life insurance policies, credit card statements, closing records/binders, loan documents, etc. Make copies of those records, and keep them in a safe place, which might be outside of your primary residence—perhaps in a bank safety deposit box, or with a trusted friend or family member. The same goes for safeguarding your important personal belongings, which could go missing or be destroyed.

TIP 4 *Open Your Own Bank Account*

It is important to have funds in your own name in case of an emergency *and* in the event that your spouse attempts to reduce your access to money and credit cards. This will also enable you to hire an attorney when you are ready.

TIP 5 *Pay Attention to Your Credit*

If you do not have credit cards in your name, apply for them so that you can build up good credit. Use the cards and pay the entire balance each month. This not only establishes your own credit, but it enables you to document your expenses.

TIP 6 *Keep a Dedicated Diary*

If you have been co-parenting your children without much incident, this may not seem necessary. In my experience, however, it almost always is. Keep a separate diary that reflects the time and dates that you and your spouse each spend with your children, including details about their activities while they were with each of you. If any questions ever arise, you will have an historical log that will back up your recollection.

Do We Go to Court?

Depending on the state where your child will be born, your lawyer may petition the court for a pre-birth order that declares that you are the legal parents of the child and that confirms that the gestational surrogate has no rights or responsibilities to the child. In some states, the court will issue the order after the child's birth. Your lawyer will need to provide documentary evidence to the court to convince the judge to issue the order, and your lawyer's knowledge of the state's laws and the customs and rules of the local court are critical.



LILA NEWBERRY BRADLEY (lila@gababylaw.com) is a partner with Claiborne | Fox | Bradley LLC in Atlanta. She represents clients who are creating and growing families through adoption or assisted reproduction. She is the former director of the Atlanta Volunteer Lawyers Foundation's Children's Law Programs and the author of *Family Preservation in Georgia: A Legal Guide to Preventing Unnecessary Removal to State Custody*. She was also a visiting scholar with the Barton Child Law and Policy Clinic of Emory University School of Law, providing training to attorneys on the legal aspects of family preservation.

What Else Do I Need to Think About?

It is important to think about estate planning for your family, and your lawyer will need to know if you have already written a will. It is important that you have guardians identified for your child, in case something were to happen to one or both of you while your surrogate is pregnant. You should create these with an attorney in your home state or country and also speak to an attorney in the surrogate's state to see if other guardianship documents should be prepared to comply with local laws. **FA**



DEAN HUTCHISON (dhutchison@weltmanlaw.com) is a Boston attorney with Weltman Law and Director of Legal Services at Circle Surrogacy, where he helps manage the legal portion of intended parents' journeys through the surrogacy process. His practice focuses on domestic and international family law issues concerning surrogacy. He is a frequent presenter on family law, parentage, and international surrogacy issues, and he is the Vice Chair of the ABA's ART Committee.

Communicating with Your Lawyer

continued from page 17



Interacting with Office Staff

Although your lawyer is the only person trained to give you legal advice, your lawyer's staff will soon become your best allies. They are trained in family law cases and can assist you when your attorney is unavailable, and they accomplish tasks at a cheaper rate. They will also be up to speed on your pending deadlines and outstanding projects.

Also, because their rates are a fraction of your lawyer's, they can give you more attention for a fraction

of the price. For example, you can probably expect a paralegal to help you prepare your financial disclosures, which will include helping you identify and gather all supporting documents.

Rest assured that whatever you discuss with office staff will be relayed to your attorney. Plus, the staff should know your lawyer's schedule and can set up a time for a return call or an in-person meeting.

Have More Questions? See the 2017 Client Manual, *Working with Your Lawyer*

Although this article can only address a few topics pertaining to interacting with your lawyer and the lawyer's staff, the ABA Family Law Section's 2017 Client Manual, *Working with Your Lawyer*, addresses a variety of additional, important matters. These include: What should you expect your lawyer to be doing? How should you work with your lawyer to maximize

results and minimize costs? What documents should you bring with you when you meet with your lawyer? What happens during the initial client interview? How can you more effectively communicate with your lawyer? Who is part of the legal team?

A divorce can be an intimidating process. This Client Manual and others are designed to help you through the process and answer the questions you didn't even know you should be asking. **FA**



KRISTINA L. HOHNE (klh@walzermelcher.com) is an attorney with Walzer Melcher LLP in Woodland Hills, California. Her practice focuses on complex

divorce litigation. She is a member of the family law sections of the ABA and other bar associations, including those of Los Angeles, Beverly Hills, and the San Fernando Valley