



Ending well means starting right: The family law intake process

The most critical step in any family law case is when clients meet with prospective counsel. That meeting establishes the nature of the relationship, a preliminary game-plan, and each party's expectations of the other.

Most clients approach that inaugural meeting with considerable anxiety. Most have never dealt with a lawyer, and certainly not with respect to a family law case. Most are apprehensive about sharing their story and

anxious to hear the lawyer's assessment of the case. Depending upon the client's knowledge, sophistication and expectations, he or she may be looking to the lawyer as a potential saviour, gladiator, therapist, best friend, or

adversary. At the same time, the lawyer is assessing the client for appropriateness of the case, potential conflicts of interest, financial resources and ability to develop an effective working relationship.

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The lawyer's objectives for the initial meeting should include:

- Determining the names of all parties and related or interested third parties that will be required for a conflict search;
- Determining how the client was referred to you and whether the client is prepared to retain counsel or is "just shopping";
- If the client is changing counsel, assessing the reasons for the change;
- Understanding the circumstances of the separation, including whether the client was the "leavor" or the "leavee";
- Understanding what formal and informal procedures (negotiations, litigation, interim agreement, etc.) have taken place to date, with what success, and why;
- Obtaining a preliminary history that allows you to identify in a general sense what the factual and legal issues are likely to be;
- Determining what the issues or problems are that require immediate attention;
- Determining if the client's level of understanding, emotionality, expectations and financial resources make the client suitable for representation;
- Asking about the client's objectives and motivations and how they might compare to those of the spouse;
- Determining who is opposing counsel and what, if any, communications with counsel have taken place; and
- Developing a rapport that allows the client to feel understood, confident, and in good hands.

Wise counsel will exercise caution in promising a favourable result in the case. While it is tempting to tell the client what the client wants to hear, the initial meeting usually does not provide the lawyer with enough information to allow a useful assessment. It may be appropriate to explain general legal principles and how they may apply in this case, depending on what facts are ultimately determined. Sometimes the most that can be done is to identify factual or legal issues that will require further investigation. The lawyer should assure the client that a thorough

analysis and recommendation will be provided once the initial investigation stage is completed.

The initial meeting is an appropriate time to discuss the methods of dispute resolution that may be appropriate for this case. The lawyer should explain the steps in a typical family law case and when and how such cases are usually resolved. Clients should understand that there is a range of options (negotiation, mediation, litigation, and so on) that can be utilized, depending on the requirements of the case, and be given a summary of the advantages and disadvantages of each.

Clients need to understand that there are at least four key players in a family law case (the two parties and their counsel) and that no one player controls the pace and direction in which that particular case moves.

The two questions that are on the mind of any client are: "How long will it take?" and "What will it cost?" If the client doesn't raise these issues, the lawyer should. The answer, of course, is that no one knows, although the lawyer can often identify certain factors or developments that may add to or reduce the time and cost it will take to get a resolution. The lawyer should explain how legal fees are determined, hourly rates for the lawyer and the members of his staff, and the lawyer's retainer requirements. A written retainer

agreement should be reviewed and either signed at the meeting or sent home with the client for review, execution, and return.

The lawyer should identify and explain the role of each member of staff and who the client will deal with for different aspects of the case.

The client should be given a blank financial statement to complete and return, together with a list of the documentation that will be required. Where appropriate, the client should be directed to prepare a history of the marriage as well as a written response to the opposing party's financial statement, pleadings, or other documentation. A preliminary discussion may take place regarding expert reports (valuations, income analyses, medical reports, etc.) that will likely be required. By the end of the initial meeting (which typically will last 60 to 90 minutes), both the lawyer and the client should be in a position to indicate to the other whether or not he or she is comfortable formalizing their relationship and planning for the important next steps. ■

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