



**CHOOSING A  
FAMILY  
LAW ATTORNEY**

**R. LINLEY RICHTER, JR.**

# TABLE of Contents

<b><i>Introduction</i></b>	Page 4-5
<b><i>Chapter One</i></b> Determining if You Need a Lawyer	Page 6
<b><i>Chapter Two</i></b> What Should You Look for in a Lawyer	Page 7-9
<b><i>Chapter Three</i></b> How much will it Cost	Page 10-13
<b><i>Chapter Four</i></b> Initial Consultation	Page 14-16
<b><i>Chapter Five</i></b> Hiring Your Lawyer	Page 17-18
<b><i>Conclusion</i></b>	Page 19
<b><i>About the Author</i></b>	Page 20

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# INTRODUCTION

*Choosing the right attorney to represent you is essential. Your choice of attorney can have a tremendous impact on your case. However, not every divorce case needs an attorney. If you have no property with your spouse and no children born of the marriage, then you may not need an attorney. In 2012, the Tennessee Supreme Court developed a set of standard forms to be used in divorce cases where no attorney is involved. So, the first question you should ask is, "do I really need a lawyer?"*

I have been practicing law in Tennessee since 1992, and during that time I have witnessed the difficulty many people have in choosing an attorney. Many variables go into the decision. Some of the variables are tangible or quantifiable things such as the years the attorney has been practicing, the number of family law cases the attorney has handled, the online rating of the attorney, etc. However, some variables are intangible, such as how professional the attorney appears, whether the attorney looks and acts like he or she is up to the task and whether you and the attorney “click.”

*“. . . when I began practicing law, there were around 800,000 lawyers actively practicing law in the United States. Today, there are over 1.3 million. That should be good news . . .”*

There are about 18,000 active lawyers in the state of Tennessee. That’s about 27 lawyers for every 10,000 people. In 1992 when I began practicing law, there were around 800,000 lawyers actively practicing law in the United States. Today, there are over 1.3 million. That should be good news for the

consumers of legal services. More lawyers means more competition which in turn means lower costs. But costs should be just one factor in the overall decision of which attorney to choose to handle your family law case.

In the pages that follow, I lay out some general principles you should use in choosing the right attorney for your family law case.

**LET'S GET STARTED . . .**

# CHAPTER ONE

## *Determining if You Need a Lawyer*

If you and your spouse own land or a house, or if you have children that were born during the marriage, you will need an attorney. Additionally, if you or your spouse have a retirement account, then you will likely need an attorney. In fact, there are very few situations where it would be a good idea not to have an attorney in a divorce case. Imagine handling your own divorce case and getting something wrong but not finding out until years



later. There are mistakes you could make that would invalidate your divorce. If you remarried believing you had gotten a divorce from your spouse only to find out that your divorce had never been finalized, your new marriage could be invalid.

Often hiring an attorney is inexpensive and well worth the cost. If you own property, then a deed will likely need to be prepared. Although you could attempt to prepare your own deed, why take the risk? All lawyers who practice domestic law are accustomed to preparing deeds transferring property such that no transfer taxes are required to be paid. However, if you are not an attorney, you will likely not know how to properly draft a deed originating from a divorce case. Just like treating a medical condition yourself is possible but not wise, handling a legal issue such as divorce is possible but not wise either. The money you spend now on an attorney could well save you thousands of dollars down the road.

# CHAPTER TWO

## *What Should You Look for in a Lawyer*

When looking to hire an attorney, there are several things to consider. The most important consideration is experience. Experience in this situation does not necessarily refer to the number of years an attorney has practiced, but instead refers to the number of cases the attorney has handled that deal with your particular situation. I remember a few years ago when the bottom fell out of the real estate market, a number of attorneys that had practiced real estate law suddenly found themselves without much work. Many of those attorneys--some with 25 years of experience--began to take divorce cases in an attempt to make a living. Unfortunately, although these attorneys had years of experience practicing real estate law, they knew little or nothing about practicing divorce law. Make sure the attorney you are considering is seasoned in the area of domestic law, not real estate law, criminal law, or some other area of the law that has nothing to do with your situation.

Once you show up for the initial appointment, make sure you feel confident about hiring the attorney.

Another consideration is compatibility. Remember, this attorney is going to be guiding you through the most stressful and emotionally difficult experience you have ever gone through. Make sure you are comfortable with the attorney before signing the retainer contract. Make sure the attorney can explain things in a way you can understand. An attorney might sound intelligent and might use big words and legal terms when speaking to

you; however, if you don't understand the information the attorney is trying to convey, then you might as well have hired an attorney who speaks a foreign language. Remember, communication is essential.

When you first speak to a prospective attorney, feel him or her out to see if you are comfortable with them. Ask the questions on your list and see if you

. . . once you sign on the bottom line and pay the retainer fee, you have yourself an attorney and the attorney has a client.

get good answers to those questions. Can you understand what the attorney is telling you? Is he or she able to explain things in a way you can understand? Does anything about this particular attorney rub you the wrong way? When you first called the attorney's office, was the person answering the telephone polite and understanding? If you do not feel comfortable at this stage, chances are you are not going to feel comfortable later. Use your intuition at this stage of the hiring process. If you are not comfortable then move on to the next attorney on your list.

Once you show up for the initial appointment, make sure you feel confident about hiring the attorney. Is the attorney's office clean? Are files strewn about the office? Is the attorney dressed appropriately? Do you hear staff members talking about client matters within earshot of you? If so, and you would be surprised at how often this happens, chances are they will be talking about your case within earshot of other clients. Does the attorney have enough staff members and do those staff members seem up to the task? If anything makes you feel uncomfortable, then thank the attorney for his or her time and move on to the next prospect. As we will discuss later, once you sign on the bottom line and pay the retainer fee, you have yourself an



attorney and the attorney has a client. It's a done deal, so make sure you are comfortable and confident.

# CHAPTER THREE

## *How much will it Cost*

You get what you pay for. This is true in most situations in life including hiring legal counsel. Generally, the best and most experienced attorneys cost the most. If you hire a firm with partners and associates, each of those lawyers will likely bill at different rates. Often, a senior attorney will be



named as the lead attorney and one or more associates will be assigned to your case. The senior attorney will often bill at a much higher rate than the associate attorney. Such an arrangement works well for the client. The associate will often perform tasks such as legal research and drafting pleadings and other documents. He or she will bill at

a lower rate, do as good a job on the research and drafting as the senior partner would do, and the work is usually reviewed and approved by the senior partner. The result is that you pay less than you would if only the senior partner worked on your case.

Additionally, paralegals, legal secretaries and law clerks will often be employed to work on your case. These employees will bill at an even lower rate than the associate attorneys. Paralegals will perform tasks such as coordinating trials, depositions and meetings. They will also prepare court documents and calendar motions and other hearings with the court. Legal secretaries will prepare letters, transcribe dictation, answer the telephone and schedule appointments. Law clerks will usually perform legal research and draft pleadings and other documents. In law firms successful enough to have associates, paralegals, legal secretaries and law clerks, you can rest assured that your case is receiving the necessary attention, that is, as long as you are paying your bill.

So how much does it cost to get a divorce? I have seen the price as low as \$250.00 plus the filing fee for an uncontested divorce with no property and no children. But, generally the initial retainer for a divorce where property and/or children are involved is between \$2,500.00 and \$7,500.00. However, the amount of the initial retainer does not necessarily indicate how much your case will ultimately cost. Most attorneys charge their clients by the hour. That means your attorney will charge you for the time spent on your case. Usually, the attorney will bill "against" the pre-paid retainer. If the retainer is \$2,500.00 and the attorney bills at the rate of \$250.00 per hour, you have essentially pre-purchased ten hours of the attorney's time upon paying the retainer. If the attorney works more than ten hours on your case, then you will be billed at the rate of \$250.00 per hour.

Most attorneys bill in either 6 minute increments or fifteen minute increments. In other words, if the attorney is billing in 6 minute increments

(i.e., 1/10 or .1 of an hour), then you will be billed a minimum of 1/10 of an hour for any work done on the case. A 3 minute phone call will be billed at 1/10 of an hour. A fifteen minute conference will be billed at .3 (eighteen minutes), and so on. The reason for the 6 minute (or fifteen minute) minimum billing increment is twofold. First, it is much easier to bill for 1/10 or 1/4 of an hour than to try and keep up with every second of time spent on a client's matter, although some attorneys attempt to be that precise. Second, when an attorney performs a task on a client's file, for example, taking a phone call, the attorney must stop working on something else, take the phone call, make notes about the subject matter discussed, possibly assign a task to a staff member such as a paralegal, create a billing entry, and then get back to what the attorney was doing prior to the call. In other words, it usually takes the extra time charged when you consider all the steps involved for just a simple phone call.

In certain situations, an attorney might handle your case for a flat fee. This sometimes occurs when both spouses agree on all aspects of the case, such as property division, alimony, child support and parenting time. When this happens, the attorney will simply draft the papers based on the agreement of the couple and then present the agreement to the court for approval. If there is no property and there are no minor children involved, the cost could be as low as \$250.00.

If your case is complicated by issues such as property division, alimony, child support and/or parenting time for which an agreement cannot be reached, then you will most likely retain an attorney who charges by the hour. Such an arrangement can have certain advantages. For instance, when

you receive an itemized bill from your attorney, you will be able to see what work is being performed on your case. You can easily determine if the attorney is actually spending time on your case and what he or she is doing with that time. When you receive the statement, look it over. If you find discrepancies, question the attorney. If you feel you are being over-billed, let the attorney know and request that the attorney seek your permission before embarking on a costly course of action. Remember, you are the boss. You have hired the attorney to work for you and you can, to an extent, control what the attorney does or does not do on your case. Be proactive.

# CHAPTER FOUR

## *Initial Consultation*

Your first contact with an attorney will likely be by telephone. During the initial phone call to an attorney's office, assuming you actually talk to an



attorney, you will likely ask the attorney certain questions you have about the divorce process including the fees for handling your case. Likewise, the attorney should ask you questions about your particular situation. The

first things I want to know when I have an initial telephone consultation with a prospective client is how long have they been married? Do they have kids born during the marriage? If so, how many? Do they have any other children that either live with them or that they support? Do they work and if so, where? Does their spouse work and if so, where? What is their income and what is their spouse's income? Do they or their spouse have any retirement accounts? Do they own real property? What brings them to this point in their marriage relationship?

The answers given to those questions will give the attorney a good idea about the particular situation the prospective client is facing. For example, if the marriage is less than ten years, then alimony will probably not be an issue, at least not long term alimony. Children other than children born

during the marriage, could have an effect on child support. If there are retirement accounts involved, then those may need to be divided by something called a Qualified Domestic Relations Order, and such a situation could result in additional costs. Any real property will need to be divided, and any mortgages will need to be dealt with in some way. As you can probably tell, the initial consultation is a two way street. You will obtain information about the attorney to see if he or she is right for you, and the attorney will obtain information about you and your situation to see if he or she can help you and if so, at what cost.

Most divorce attorneys will charge for an office consultation. You can expect to pay upwards of \$300.00 for an initial one hour consultation. Some attorneys will give you a free initial office consultation. You can expect to get between fifteen and thirty minutes of time in such a situation. Remember, a lawyer's time is his or her stock in trade. In other words, all a lawyer has to sell is time. You really can't expect to take up too much of a lawyer's time without paying. In my office, I usually spend a good deal of time speaking to prospective clients on the telephone. If you call me I will generally give you the equivalent of about thirty minutes of time answering your questions and giving you advice. If I can't sell you on my knowledge and ability in that length of time, then you probably need to move on to the next attorney. Occasionally, I will give a free initial office consultation. This usually occurs when documents are involved that need to be reviewed before any advice can be given.

Most lawyers can obtain enough information during the initial telephone consultation to determine an initial retainer fee. Likewise, most prospective

clients can gain enough information in that initial telephone consultation to make an informed decision about whether to hire the attorney. Assuming both the lawyer and the client are comfortable with each other and the initial retainer is agreed upon, then an appointment is usually made. However, that is not always the case. Many times the client lives in another city, or occasionally another country. Such a situation makes it difficult, if not impossible, for the client to meet face-to-face with the attorney. The internet has simplified the hiring process in such situations. Currently in my office about 30% of our clients hire us sight unseen. We will forward the necessary documents to the client over the internet and the client will authorize a credit or debit card charge to cover the retainer. Any documents requiring a signature can be forwarded by U.S. mail, email or by overnight carrier and returned to our office in the same manner after execution by the client.





# CHAPTER FIVE

## *Hiring the Lawyer*

The hiring process ends with the signing of the retainer contract (or engagement letter) and payment of the initial retainer fee. The attorney will



review any documents you have brought to the office and you will likely be asked to gather additional documents. Either the paralegal or the attorney will obtain what is referred to as statistical information about you

and your spouse. The statistical information is required by the state of Tennessee to be included in your divorce papers filed with the court. Information such as when and where you and your spouse were born, when and where you got married, you and your spouse's race, your educational background, and when and where you separated is all information required to be included in the divorce paperwork. If you have children, information about them will be needed as well.

Most attorneys will require the initial retainer to be paid prior to starting work on your case. Usually, upon arrival at the attorney's office, you will meet with the paralegal who will obtain the necessary information needed to draft the court documents. At that point you will be given a copy of the

retainer contract to review and sign. You will then be expected to pay the initial retainer. Once the retainer is paid, you will meet with your attorney to discuss your case in greater detail. Your new attorney will determine what grounds you have for a divorce, and you will then choose which of those grounds to allege in the divorce papers.

# CONCLUSION

No matter whether you are seeking an attorney for a contested divorce, an adoption, a child custody case, or any other family law matter, finding and hiring a qualified family law attorney is essential. Choosing the wrong attorney, either because the attorney is unqualified, or because you do not mesh with the attorney, can be disastrous. It is my hope that by using the principles in this book, you can avoid the costly mistake of hiring the wrong attorney.

# ABOUT THE AUTHOR

*R. Linley Richter, Jr. is a Tennessee attorney with offices in Memphis, Tennessee and Brentwood, Tennessee. He has practiced family law since being licensed in 1992. He currently lives with his wife and son in Cordova, Tennessee.*

Linley is also the host of the Tennessee Family Law Questions and Answers Podcast as well as the author of a legal blog covering topics of interest in the area of family law in Tennessee. He is a frequent presenter at seminars for lawyers on family law topics, including issues involving military divorces in Tennessee.



**WEBSITE:** [rivercitylaw.com](http://rivercitylaw.com)

**EMAIL:** [rlinley@rivercitylaw.com](mailto:rlinley@rivercitylaw.com)

**FACEBOOK:** [memphisfamilylawgroup](https://www.facebook.com/memphisfamilylawgroup)