

Funding the Divorce Case: Options for Potential Clients

By Heather Williams Forshey

How much is this going to cost? It is the number one question we get asked by clients who are seeking representation for family law matters. What do you say to a spouse who is unemployed and does not have access to the marital assets? What do you say to clients who simply do not have the cash to pay a retainer? How do you balance the client's need for representation with the need to get paid for your services?

1. Turn to Family Members for Assistance

Divorce is a huge life event that will have long-lasting implications for the client and their family. Many clients have to rely on their friends and family for financial support, and have to ask them for assistance with payment. In these cases, make sure that you have something in writing clarifying who the client is, that your duty is to the client, and clarify who invoices should be sent to. It can be easy for the lines to get blurred and for the family member or other person footing the legal bill to feel like they are in charge of making decisions about the case. Make sure you are clear on the ethical rules governing this situation to avoid any misunderstandings.

2. Credit Cards

While the majority of clients we meet with do not have cash funds to retain an attorney, most people have credit cards. Divorce and custody litigation can be expensive, especially if the case is high conflict. Nobody likes to incur credit card debt. However, when life emergencies such as car repairs, unexpected medical bills, or yes, even a divorce or custody issue flare up, using a credit card to assist with these expenses is a modern-day reality. Even in a divorce case where one spouse did not work during the marriage, in many cases this spouse still has a credit card either in their name or jointly with the other spouse. As long as their name is on the card and

they are an authorized user, they can use the card to retain legal services and then who is ultimately responsible for the charge can be worked out in the divorce settlement.

How do you balance the client's need for representation with the need to get paid for your services?

3. Interim Distribution

Some potential clients feel that they have no right to joint assets simply because they were not the spouse working outside the home, and their access to joint property or money was strictly controlled. As the attorney, you may need to dispel some of these beliefs when the potential client is adamant that they do not have access to funds. In cases where parties have a joint financial account, it may be necessary for a spouse going through a divorce to withdraw some funds to assist with payment of a retainer fee. The attorney should ensure that whatever option presented to the client is legal and ethical. I advise people not to liquidate a joint account prior to a separation or divorce, but to try to only take half. In cases where a client truly has no access to marital assets because all accounts are titled in the other spouse's name, an attorney may be able to file an action requesting an interim distribution of funds to the client to enable the client to retain.

4. Alternatives to Full Representation & Payment Plans

So, what do you say when the potential client tells you there are no relatives willing to assist, no credit cards, no assets he or she has access to, and no assets from which you could request an interim distribution? An

attorney can offer a more limited scope of services, such as offering to continue to meet with the client on an hourly basis to help them prepare legal documents or prepare for court. In other cases, a client may have the ability to make smaller payments over time. This can be a riskier arrangement for the lawyer, especially if the case goes on for a long time and the total fees are very high.

In private practice, the reality is that we need to get paid for the legal services we provide. We have financial obligations to our families, our law partners, and our employees which preclude us from taking every case that walks in the door pro bono or for a discounted rate. Attorneys should strive to maintain their obligations to their practice while also dedicating time to pro bono work to help low-income families and families in crisis.

Heather Williams Forshey is the owner of Raleigh Divorce Law Firm. She practices exclusively in the area of family law and is a Board Certified Family Law Specialist, Certified Family Financial Mediator, and a certified Parenting Coordinator. She graduated cum laude from Elon University with a B.A. in psychology and earned her J.D. from Wake Forest University. She has been named a Rising Star by North Carolina Super Lawyers every year since 2014 and has an AV Preeminent Rating from Martindale Hubbell. You can contact her at 919-256-3970 or hwilliams@raleighdivorcelawfirm.com. Her firm's website is www.raleighdivorcelawfirm.com.

