

7 Ways to Get a Good Divorce in a Bad Economy

by Iris McKay, San Diego County Divorce Attorney

1. **Understand the role of the 'bad' economy on your divorce.** The economy of the U.S., as well as California has had a huge impact on divorcing families in San Diego. While the number of divorces has increased, the number of people who can afford to hire attorneys has significantly decreased. In 2009, over 18,000 divorces were filed in San Diego County. Currently, the number of **people representing themselves is approximately 75%**. Of that remaining 25%, only about 15% of divorcing spouses each have their own lawyers. Additionally, the State of California has cut billions of dollars from our court budget; courts are open fewer hours and have fewer resources to help divorcing families.

Divorce cases currently in the legal system present **unique dilemmas** for judges to resolve. Many families are concerned they will lose their homes, while other divorcing couples have lost one or both of their incomes. Yet, the **need to end a failing marriage will not go away** simply because the husband and wife cannot afford the legal cost to be divorced.

Despite any national feelings of gloom and doom, there remain those divorcing couples who were savers, obtained job promotions, or for whatever reasons experienced **very little economic change** to their lives. Irrespective of your particular financial situation, if you are contemplating divorce, you will be entering into the family court system. The **good news is** the bad economy has forced divorce professionals to be **more efficient** in order to serve the needs of those people requiring our services. Stated differently, there are **'divorce bargains'** out there for you to take advantage of, despite your situation. Or in other words, **'don't buy retail, if you don't have to.'**

The biggest challenge in going through the divorce bargain bin is that unless you're an insider, you don't have the benefit of being able to recognize a good bargain from a bad deal. If you were shopping for clothing, you'd be able to immediately know if you got a good deal because you'd know how much that item usually costs.

2. **Be a smart shopper by first understanding the different divorce 'brands.'** The concept of branding has dominated our buying lives and is a valuable resource for shoppers. We all have our favorite brands and using them gives us a sense of comfort and happiness. Understanding the branding of divorce professionals isn't that difficult. The **good news here is that most of this you already know.**

The important divorce brands you need to be looking for are **experience, expertise, integrity and quality of services provided.** Unlike a product you consume, the brand of the professionals you hire requires that those individuals possess necessary skillsets to **effectively help you** through the divorce process. In the 'old days' (before the economy tanked), looking for a divorce lawyer wasn't that difficult because the attitude was that to 'get the best, you must pay for it.' A person who had just been wronged by a spouse simply hired the fiercest lawyer they could find. Nowadays, **most people don't have an unlimited divorce budget.** Another lesson we've learned from the good old days is that behaving in a **hostile and aggressive** manner in a divorce is **harmful to the family in the long run**, costing them financially and emotionally.

It is also important to realize that your divorce involves far **more than the legal side.** You also have a **financial and emotional side**, whether you like it or not. The good divorce is one where you are happy (or at least accepting of it) when it is over, believing you have a solid divorce settlement that provides for you financially and allows you to move on with the rest of your life. The professionals you may need could include a **lawyer, therapist, accountant, financial planner** or other professional.

3. **Don't make the mistake of shopping for the lowest hourly rate.** You can still get the 'best' in services from divorce professionals, even if you do not have the money to plop down a fat retainer. This isn't difficult, but, again it does require an insider's knowledge of San Diego divorce world.

Hourly rates for divorce attorneys in San Diego County range from about **\$175 to \$500** an hour. Not surprisingly, a lawyer who has just passed the bar is likely to be on the low end of the scale, whereas, the lawyer on the higher end is skilled in litigating multi-million dollar divorces. If your divorce falls somewhere in the middle, then screen the lawyer for the **skills needed** to approach your divorce issues. Before devising your divorce strategy, you should be aware that all lawyers and divorce professionals **are not alike**. Shopping for a divorce lawyer requires a systematic process of checking out the individual recommended. Finding a **good attorney** is probably the **most crucial** to your divorce professionals search, as a bad lawyer can hurt your legal case in ways you can't even imagine.

Trust is a key part of the attorney-client relationship. Finding an attorney you can trust will give you **greater peace of mind** and it will also allow you to **save money** on your divorce. Not only should you trust that your attorney is competent and experienced enough to carry out the legal end of the divorce, you should know your lawyer is ethical. **Unethical behavior in divorce lawyers takes many forms**, from 'churning' a case (generating unnecessary fees,) to not being properly prepared to go forward on the case, generating unnecessary continuances, delays and the exposure to client paid sanctions. Alcohol and substance abuse is very high in lawyers. In San Diego County, there are a number of **practicing divorce lawyers who have been disciplined** by the State Bar for a variety of ethical violations.

A smart person seeking a divorce lawyer will ask for at least three names of divorce attorneys from a **trusted therapist, accountant, friend, neighbor or work colleague**. If someone refers you to a divorce lawyer, ask them how long they have known the attorney and in what capacity. Do not be shy about trying to find out as much about the prospective lawyer, as you can. If you hire an attorney, you want to feel confident you have found someone who is trustworthy, reliable and can work hard for you. Check the California Bar Site to find out any **disciplinary problems** or gaps in employment. Go to www.calbar.org and click into the far right tab, "Attorney Search."

The **Internet is not a credible source** to determine a lawyer's trustworthiness. The lawyer will usually have a website (or should, unless they are stuck in the Dark Ages.) The **lawyer's own website will usually be fairly self serving**, with the usual claims of all the wonderful things they can do for you. Some sites offer helpful information on child support, property division and the like, which is a plus. Look at the **attorney's bio** to see what kind of hobbies, awards, public service or other activities the lawyer is involved with. If you are a user of **LinkedIn or Facebook**, these sites can also give you an additional perspective on the lawyer. The Internet has a number of self proclaimed '**consumer**' websites. These sites, as they are **not regulated, are extremely unreliable** and have become a favorite tool for unhappy people to retaliate against lawyers and other professionals, irrespective of whether they have used their services or not.

4. **The lawyer you choose should have the skills to properly assist you.** This is very important, because you want to ensure that your lawyer's **skill level fits the type of case** you have. If you have a fairly simple or straightforward case, you could consider a lawyer who has been practicing family law for only a few years. However, as you interview a prospective lawyer, be careful. A **lawyer with less than five years experience should be carefully screened**. Even in a simple divorce, an inexperienced lawyer could harm you. If you do hire a lawyer with less than five years of experience, **find one that is working in a family law firm or has an experienced mentor** they can access easily.

In most cases, you will want your lawyer to have **at least five to ten years experience**, even if the case is not overly complicated. **California's family laws are far more complex than any other state's divorce laws.**

If you have a marital estate worth over a million dollars or you are a professional, executive, or own your own business, you will need an attorney who is experienced and skilled in a number of ways, with a superior knowledge of the procedural issues that challenge HNW (high net worth) and complex cases. You need an attorney with **minimum 10 years experience**. You want to ensure the attorney you hire has already handled cases like yours successfully and is **not 'cutting his or her teeth' on your case**. Hiring an experienced attorney will also allow your case to move quicker through the court system. You will benefit from the relationship or **respect the judges**, special masters and other professionals have for your lawyer.

5. **A strategy should be developed to allow you the 'best bang for your buck.'** First, determine the **extent** of the legal services you need. Divorcing spouses now have more options than before. You can hire a lawyer on a consultation or **Limited Representation** basis. In Limited Representation cases, you can hire a divorce lawyer to represent you for certain issues, such as custody and visitation, property division, support, or to help you conduct discovery or achieve settlement with your spouse. This arrangement **allows you to manage the aspects of your case that you believe you can handle**, such as going to court for a Case Management Conference--a routine hearing before the judge to report the status of your case (for which a lawyer would charge hundreds of dollars to appear.) Limited Representation may be applicable in cases involving **simple property division, routine support and child custody or visitation disputes** and would be an option for people who would be **comfortable representing themselves** before a judge. Warning: Although this route could save you thousands of dollars, it is frequently not a smart choice, depending on the circumstances. You should carefully *review all the issues* of your case with an experienced family law attorney before you make the determination to enter into Limited Representation.

In many cases, such as **high conflict** or **complex divorce**, you will need to retain full representation, also known as having an "Attorney of Record." You should only choose a lawyer who is **experienced and knowledgeable about family law** in San Diego County. Otherwise, you could compromise your rights to your children, property or payment of support. Your lawyer sets a divorce strategy, advises you, counsels you, files all court paperwork and is responsible for arguing your case to the judge, including taking it to trial, if necessary. This is the **ideal situation if you can afford a lawyer**, as the lawyer is directly involved in all planning, negotiation and procedural aspects of your case. Even if your case is not necessarily complex or high conflict, you may be better served by having full representation if you **are in an emotionally vulnerable place** or if you believe your anger or dislike for your spouse could impact your decision making.

You and your spouse should **also consider mediation**. Attorney mediated divorces are often the best way to resolve a divorce. You can save a tremendous amount in legal fees if you are hiring one attorney, as opposed to each of you having your own counsel. Mediation **works best in cases where the spouses have come to terms** with the emotional aspects of the case and have the **ability to speak civilly** to each other about the day-to-day issues of their lives, such as the sharing of their children, financial concerns and the like. You and your spouse do not need to be in complete agreement, but you do need to have an attitude of willingness to work toward an efficient resolution of your divorce issues.

The term '**mediation**' is used in many different ways in the Family Court system. Parents with custody disputes are court ordered to attend 'mediation' with Family Court Services, which is very different from attorney mediation. Additionally, if you are using a psychologist or mental health professional to help with divorce counseling, this is different from the lawyer that helps you arrive at a mutually agreeable divorce settlement, then draws up that agreement and files it with the court. Be careful that you **do not hire a mediator unless that person is an attorney licensed to practice** in California.

Irrespective of whether you choose mediation or each spouse has their own lawyer, remember **the more issues you and your spouse resolve on your own, the less expensive the**

cost. Just remember to know your legal rights before you attempt negotiation with your spouse.

6. **Your legal strategic plan should incorporate your financial and emotional needs.** This is a key point, **because many lawyers don't actually plan a strategy** with a client. They simply give empty assurances such as: "Yes, I'll get you the best deal." "We'll show him/her they can't do that to you." "Well, we can do all this, but it will cost you. It will be worth it." These responses without a strategy are the traits of a lazy lawyer. If you interview a divorce lawyer who **doesn't discuss a strategic plan** for you, then you need to **move on** and keep interviewing lawyers until you find one who can help you develop a good strategy.

A good attorney will be organized, respecting both your time and theirs. You will be asked to provide information as to your assets, debts, income, expenses, child custody issues, any requests you have or questions you want the lawyer to answer. After a brief telephone interview of **15 to 20 minute consultation at no charge, you should** have a general idea of the amount of any child or spousal support payments, and a direction for achieving your divorce objectives or goals. Then, after having an office consultation (usually at the attorney's hourly rate) you should know your **'best case scenario'** and your **'worst case scenario.'** The divorce strategy or game plan is crucial in getting your goals accomplished and within the time frame you desire. It is important that you understand the **court procedures and how they may work for or against you.**

Once you and your lawyer set up a good legal strategy, then it will be necessary to determine what other professionals **are needed to optimize** your intended results. If you're having **difficulty coping with the stress** of the divorce--you're losing sleep, gaining or losing weight or are depressed, then you need a good **transitional therapist** or counselor. Sometimes divorcing people find that a **divorce workshop**, divorce class or other 'quick fix' approach help. Get a referral for a good mental health provider who can provide you with what **you need.** Don't fall into the trap of getting into long term therapy, unless that is truly what you believe would benefit you the most. **Getting a handle on your emotional health** is crucial to having a good divorce experience.

Your **financial well being** is also crucial to getting a good divorce. Many divorcing people are so busy worrying about 'surviving' the divorce, they spend little time **planning their post divorce life.** This is especially true for people who have creative, 'live in the moment' personalities. The hard cold reality of divorce is that it forces everyone to consider their financial future. In San Diego County, we are fortunate to have many **talented (and reasonably priced) accounting and financial professionals.** During the case, it may be necessary to hire an accountant to prepare an analysis of any separate property claims or a divorce financial planner with tax expertise can assist in dividing assets, to maximize the benefits to both spouses. We are also seeing the benefit provided by **savvy real estate and banking professionals** when divorcing couples are trying to **keep their home** for one of the spouses and the children.

7. **Understand the important role YOU play in being the 'master' of your own divorce.** The **inconvenient truth** of divorce is that most of the damage caused to divorcing people and their children is a result of their **failure to take control** of their divorce. If you're facing divorce, this may sound harsh and insensitive, but **it is a reality and it is better to know this now to avoid future problems.** Even if you're at your lowest point emotionally, you have to pick yourself up and find someone who cares about you and can help you implement these strategies.

For many people, divorce will be the **most significant emotional event** of their lives and will dramatically **alter the course** of their lives. For those who don't take action because they're fearful, **overwhelmed, anxious or terrified** of the process, they will simply be 'eaten up' by the system, **losing important rights** to their children, property and support. However, even if you are feeling all those emotions, if you **can still succeed** at your divorce by gathering the information and resources you need and moving forward. You'll find your divorce could end up being a very **positive experience** for you. And **don't panic.** Rome wasn't build in a day.

Even though your divorce is a very **personal event** in your life and you will be dealing with the 'professionals' that dominant your divorce world, you should keep in mind that these professionals, **no matter how caring, are also business people**. Your divorce experience will be far easier if you have a **businesslike attitude** toward the professionals helping you. Learn how to effectively **manage your time** when you're speaking to your advisors. Find the ways **effectively and efficiently communicate** with them, whether it be by email, telephone or in person. Usually conveying **facts and not feelings is good with lawyers** and accountants. Be careful not to waste time by calling every time something about your divorce pops into your head. **Stay in touch** with your advisors and **timely respond to their emails or phone calls**. Be proactive in seeking out what is **needed from you** so you can assist those helping you, as you are not their only client. A big part of divorce is supplying the other spouse and the court system with paperwork showing your assets and debt, income and expenses. Dealing with financial issues also **triggers emotional issues** you may not be aware of. The best thing you can do is follow the Nike slogan and **just do it**. You'll feel a **tremendous sense of relief** after a nasty task has been completed.

Your ability to obtain a **good divorce** will take into account your ability to be **realistic and objective** about the results you can obtain through the court system or through mediation. Our American culture has wired us to want to experience only those things in life that are beautiful, successful and abundant. However, when you're **going through a major life change** such as divorce, in an **economy that is down right frightening**, there are simply 'stages' that you must experience and they're not going to be enjoyable. Divorcing people with **unrealistic expectations** that a good lawyer or a good therapist will magically get them through the divorce are headed for disappointment. The professionals you hire should be used as **tools for your success**. If you choose your advisors carefully, work with them professionally and do the work you need to do to, **you will have a good divorce experience**.

This article was written by Iris McKay, veteran divorce lawyer and owner of The McKay Law Group, APC. Our firm practices family law exclusively; we have over 30 years experience in the family law court system. Our lawyers are skilled at providing consultation (limited representation), mediation and litigation services to qualified clients. We have also represented clients in fee dispute proceedings against their former divorce counsel. We are committed to the fair practice of law by obtaining excellent results in the most cost effective manner.

Each of our lawyers possesses the highest degree of ethics and integrity. We have also demonstrated a commitment to San Diego County by the hundreds of hours of pro bono legal services rendered to individual clients and to the Superior Court of San Diego.

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