Is Your Divorce Attorney Really On Your Side?

Have you had the opportunity to watch the 2015 documentary [“Divorce Corp.”,](http://www.divorcecorp.com/) available on Netflix? It’s a really frightening look at the corruption, collusion, and abuse that happens in the Family Court system. After you see it you’ll wonder, how does a person protect themselves? How do you know if your attorney is one of the “good ones”?

Here is a quick guide of the Top 10 Questions When Interviewing Divorce Attorneys to help you determine if yours is the right sort.

1. **“What percentage of your cases typically go to trial?”**

If the answer to this is more than 20%, beware!! That would indicate an overly litigious attorney who doesn’t really want you and your spouse to settle but is more interested in racking up the billable hours!

1. **“Will you or someone in your office be helping me prepare an accurate Financial Affidavit?”**

They better answer yes! The financial affidavit will form the basis of all your settlement discussions, child support, and any claim for maintenance. Are you sure your budget is accurate? Have you forgotten expenses that you aren’t used to having to pay? Is your budget supposed to reflect current expenses or post-divorce expenses?

1. **“Will you be reviewing my spouse’s Financial Affidavit for accuracy?”**

I find that very few attorneys will examine your spouse’s affidavit for errors. At the very least, tax withholding is almost always still being calculated as “Married” when it should be “Single”. Often I see mistakes in calculating Social Security and I also often see many expenses being double-counted. If no one is looking for these things, it could seriously hurt your case!

1. **If you have been a homemaker - “How soon will I be expected to be back at work and what will the earning expectations be?”**

This is a major, major deal! If you’ve been a stay-at-home parent for 5 years or more, your skills are outdated no matter what your background is. Be aware that in AZ, you will be expected to be self-supporting very quickly. You’ll need a plan. If an attorney tries to tell you that you may get maintenance for more than 5 years, he/she is likely telling you what you want to hear and looking forward to their nice fat case file when you let them fight for an unrealistic settlement.

1. **“Will my spouse and I have an opportunity to try to negotiate a settlement?”**

I find that most attorneys just shuttle written offers back and forth between you and your spouse’s attorney without offering you a settlement negotiation meeting. Why? Because they get to bill more for doing all the document write-ups and responses! Imagine how productive it would be if you both could meet in a room with your attorneys and actually speak to each other on each point. Ask if your attorney is willing to do this.

1. **“Is it ok if I add a Divorce Financial Planner to the team to help me be better prepared for what kind of settlement I should try to get?”**

Again, if the answer to this is anything but “yes”, beware! Why would an attorney not want you to have all the information you need? Don’t be surprised if your attorney doesn’t know anything about CDFAs (Certified Divorce Financial Analysts) and their work. Attorneys are very protective of their billable hours and aren’t really interested in delving into the intricacies of the financials of your case. They also are not financial specialists and won’t really want to do anything other than opt for a 50/50 split on everything which is rrely the best thing for any couple. A CDFA can save the two of you thousands of dollars in both taxes and attorney fees.

1. **“I think my spouse may be hiding assets. How will you be sure we know about everything?”**

They should respond to this with assurances that they will be going over several years of tax returns and bank statements to look for any anomalies. However, in order to really know for sure if assets are being hidden or diverted, a forensic accountant or CDFA is necessary to do the detailed work.

1. **“My spouse owns a business and says it’s not worth anything but we live on over $100,000 per year. How will we know the true value of the business and how will the judge know his true income?”**

They should answer that a formal business valuation should be ordered to establish a fair market value of the business. To determine an accurate assessment of annual income, a Lifestyle Analysis should be done. I’ve never know an attorney to do these in house. They should be bringing in a CDFA™ to establish the basis for an annual income claim.

1. **“I want to keep the house but don’t have enough equity to refinance. What are my options?”**

In my experience, most attorneys will say you have 2 options, either refinance the home or sell. Now some will say you can keep the house as long as your spouse will allow you to keep their name on the mortgage. I’ve never heard them suggest other options. Here are a few that a CDFA™ can help you explore.

1. Continue to own the house jointly for a period of years, usually 3-5, at which point you would either sell or refinance and split the proceeds.
2. Continue to own the house jointly for a period of years, usually 3-5, but the spouse not living there would receive other assets in lieu of his/her share of the equity. To protect their credit, a clause can be written in that you must provide proof of mortgage payment each month and if at any point the mortgage is more than 30 days past due, the house must be sold.
3. Continue to own the house jointly and rent it out. A CDFA™ can help with the terms of such an arrangement.
4. **“The only assets we have are 401(k) accounts but I need money for a down payment on a house. How can I get cash?”**

Pursuant to divorce, if 401(k) assets are transferred to the non-participating spouse via QDRO, Qualified Domestic Relations Order, they have ONE opportunity to remove cash with no penalties. The amount would be taxed as ordinary income but there would be no early withdrawal penalty. This can be a great way to get cash to both parties.