

How to Pick an Asset Protection Lawyer – Key Due Diligence Questions and Caveats

By Ike Devji, J.D.

The last four years has created an explosion in the Asset Protection planning field due to both the large number of people who have finally realized that their wealth is more finite and fragile than they ever imagined and the litigation boom that inevitably follows tough times. Unfortunately, this new found interest in Asset Protection and the large number of people seeking to profit from has created a more puzzling and fraud-ridden landscape for legal services consumers than ever before.

It seems every attorney that has attended even a single continuing legal education (CLE) class on Asset Protection now feels qualified to implement tools and strategies that have far reaching and potentially fatal effects if misused or not completely understood. While I myself take CLE classes in a variety of areas outside my very narrow practice field, I do so simply to be generally educated and to help me spot issues for clients so I know when to get them help from qualified and experienced counsel, not to try and keep work I don't know how to do inside my firm.

As one simple example, the thought of litigating a divorce case for a client despite the fact that I have a general understanding of the marital property laws in my state would be ridiculous. Not only would it jeopardize my client but create a substantial liability for me, especially since I have a roster of exceptionally qualified help in this area at specialty firms that will serve my client better in that area than I could ever hope to.

Even worse, attorneys that I have personally met with and discussed issues for planners or co-counsel opportunities who flat out told me that they don't practice in this area at all are going back to their offices and adding "Asset Protection" to their websites. A review of the websites of many small and mid-size law firms that have recently tacked this area onto their websites will reveal that that their "expert" is also listed in a number of other categories, like estate planning (at least this one is close), contracts, employment, real estate and etc. what this tells me as an attorney is that they don't have enough work in any single category to have a focused practice and will handle anything that comes across their desk. This is appropriate for some simple, general legal issues, but not Asset Protection planning.

The last eight years of my national legal practice have been devoted exclusively to Asset Protection law. In that capacity I have been fortunate to help protect a client base of thousands of clients representing billions of dollars in safely protected assets. This very concentrated practice has also provided a good understanding of the plans and planners at work in this specialized field and I have seen the very best and very worst of the plans being sold across the country.

In the worst cases we are asked to appraise the protective value of existing poorly implemented plans using bad tools, jurisdictions or both by either lay-people facing a threat or their experienced litigation counsel that know that my associates and I practice in this area and want a real appraisal of the system that they have in place and its protective value. Unfortunately, this 11th hour stress-testing is often limited to an informational exercise as many of the good, valid legal moves and tools are outside the reach and use of the client at that point because they are already in trouble and the kind

of changes needed to make their planning useful would constitute fraudulent conveyance.

20/20 HINDSIGHT BY LAWYERS

Another common issue I experience is being approached by a potential client who is concerned about their wealth and the level of exposure they have. After a thorough review and the delivery of a specific written plan to protect them by myself or other qualified counsel they often go back to their existing legal team (that allowed them to get where they are today without protection) to get their input. What is stunning is the number of attorneys who will review an expert's plan, make a couple of minor comments or changes and then say, "Yes you need some more planning, we can do that".

What puzzles me is that if the lawyer and client had a long relationship and the lawyer was privy to all the details of their business, liability, assets and etc., knew the client needed additional planning and was qualified to deliver it, why did they wait years and until their client took action on their own to try and jump in and do work outside their skill set and practice area? If your lawyer did not know enough to do it or at least suggest considering Asset Protection when you were first qualified based on your assets and liabilities, they probably don't know enough to put it in place for you now.

DUE DILLIGENCE QUESTIONS TO ASK AN "ASSET PROTECTION LAWYER"

#1: Are you a lawyer or part of a law firm that will keep our discussion privileged?

Remember that dealing with "promoters" or LLC Mills does not provide the skill set and training required. More importantly, if you are not dealing with a law firm that allows all your communications to be attorney privileged everything you do is discoverable with a simple subpoena, including all emails and other communications.

#2: How many clients have you done this specific type of planning for?

An East Coast law firm has nearly plagiarized the website of my associates. On it they claim to serve thousands of clients and be a top asset protection law firm. Closer examination of the site reveals that they have a dozen plus distinct practice areas and are simply representing that client base as if all of it is with Asset Protection clients.

#3: What's the average net worth of your clients?

It's important to deal with a lawyer and firm that has a depth of experience with businesses, assets and families like yours. Knowing what your liquidity needs are and not using outdated estate planning tools that are not income, business and age appropriate (like using a QPRT for a 33 year old) are common amateur mistakes we see other lawyers make. Also, be aware that a number of different specialties now classify themselves as "Asset Protection" planners when it was formerly used only for the kind of pro-active, defensive legal planning I am focusing on in this article. The field now includes elder care lawyers, annuity and insurance salesman and variety of other folks that may have good products and services, but are probably not what you are looking for. If your planner is an Elder Care planner, as one example, they are probably not equipped to handle and as familiar with the needs of a high net worth business owner, physician, or high visibility individual like a professional athlete or entertainer.

#4: Where do you work?

Having a law firm that works nationally is a good hedge. It's important that they understand the protection available by statute in your locality and give you a plan that will stand up to attacks in any jurisdiction. It's also important that it is portable so it can travel with you if you move and flexible enough to allow you to do business and own assets in more than one jurisdiction, i.e. something as simple as a vacation home in another state or a life insurance policy with a high cash value that could be lost in a lawsuit.

#5: How many types of law do you practice and how long has Asset Protection been part of your practice?

See my more detailed explanation of this concern at the opening of this article. Make sure you are comfortable with their experience level. Lawyers are increasingly specialized and while many of have a good general knowledge of a variety of concepts and issues we tend, like all professionals, to be good at only one or two on a good day.

#6: How many doctors do you protect?

This is obviously a doctor specific question, but an important one if you are a physician or the advisor of a physician doing due diligence on their behalf. In my experience with a client base that includes thousands of doctors we have learned that medical professionals of all types including MD, DDS and DC have unique needs and specific technical and legal exposures that only get more onerous as their success grows. Make sure the planner you are dealing with understands those unique issues and is trained well enough to be another set of eyes on your behalf for a holistic check-up of your wide array planning needs.

#7: Can you provide any professional recommendations?

This can be tricky for lawyers, especially those who practice in sensitive fields where people value their privacy like Asset Protection as opposed to say, a real estate lawyer. Nevertheless, they should be able to provide at least a couple of professional references that speak specifically to their experience in this field or from related professionals outside their own firm that refer clients to them for this specific service.

#8: Have you written anything on this topic that outlines your tools and strategies?

If your planner is even marginally qualified to work in this area with you they should have extensive educational materials that describe the tools they use and what each tool does. If they can't educate you about the tools they will likely do more harm than good, as part of our job as planners in this area is to educate our clients on what works best, why and how to use it going forward. No matter how much support a firm offers they can't be with you 24/7 so they better be able to train you.

#9: Can you provide a specific written plan that outlines costs, results and requirements?

Every firm prices its services differently, and that's OK, but they should be able to show you in writing what result they are going to attempt to achieve (*I say attempt because there is no such thing as certainty in the law, all we can do is follow proven best practices supported by law and experience with others. Anyone who tells you their system is undefeatable and "will" never be broken is lying, or worse, stupid*) for a specific price.

#10: What kind of on-going support and education do you provide to your clients and at what cost?

Hiring an Asset Protection lawyer is one step in a holistic multi-step process with many pieces, not a one-shot magic bullet. If you pay someone in my business to build you a "Legal Vault" that is capable of containing your life's work, they better be there to help you put the assets in it, use it the right way, teach you to lock the door and show you how to open it when you need your assets or use of them. Merely getting a box of legal papers on its own is not going to serve you and your family well. Be wary of the fees involved to use the plan, in addition to what it costs to set up. Ask specific questions about accounting, compliance and tax status and reporting burdens, many of the best Asset Protection tools and plans are explicitly tax neutral. Finally, be clear about how accessible your planner is going to be going forward and at what cost. Many hide huge fees on the back end to lure you in up front.

This list will doubtless be fluid and expanded as other issues prove outside the experience of clients and advisors. For now, consider it a starting point on your journey to financial security and to having your own "net worth insurance" policy in place.

ABOUT THE AUTHOR:



Attorney Ike Devji has over eight years of Asset Protection only legal experience and helps protect a national client base of thousands of clients comprising over \$5 billion in personal assets. This client base includes several thousand doctors and a wide variety of high net worth business owners, C-level executives and other affluent individuals. He is a frequent teacher, speaker and author on this subject and has dozens of bylines in publications ranging from WORTH magazine to Advisor Today and Physicians Practice. To learn more about him and how he can help you, your practice or your clients please visit www.ProAssetProtection.com today.