

# Other Professionals: Why, When, and Who

BY GARY ALLEN GARDNER

**B**elieve it or not, every divorce case is unique. Every one. Each family is different and made up of different individuals, so no two divorce cases are the same. Your case has similarities with others handled by your lawyer before, but no prior case *is* yours. Your marriage relationship is ending, and there is a reason (probably more than one). Almost certainly one of those reasons is that the two individuals in the marriage relationship, you and your soon-to-be ex-spouse, have different needs, different perceptions, and quite likely, different goals.

## A More Efficient and Less Costly Divorce: How a Team Can Help

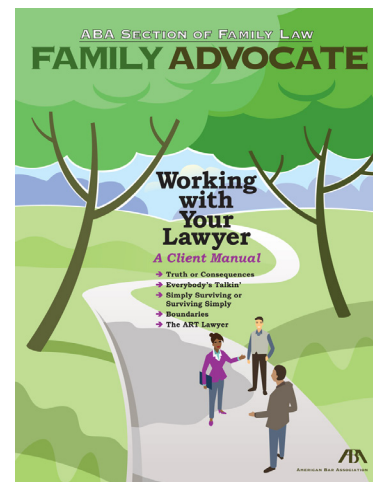
The task before you is nothing short of restructuring your life. Your finances change; your plans for the future change. Your relationships with your children change. Your social life changes. But only one part of your divorce is strictly legal; other very real, very important components are emotional, financial, and psychological in nature. Using the services of other professionals, coordinated by your divorce lawyer, can help you accomplish that restructuring more efficiently than your lawyer can alone.

So, how do you “do” divorce? Stake out a position and stick to it, right? Certainly you could choose to just charge ahead, heedless of what “the other side” says or does, utterly convinced of the justice and strength of your position. You and your lawyer could lay out a position and agree to take (or give) not one penny more (or less) and not one percentage point less parenting time. Given enough time and money, assuming that that position is not utterly inequitable, you might attain some of it. It is extremely unlikely that you will achieve it all; no one ever gets everything he or she wants in a divorce. But what if I told you that by using other professionals, on a team with your attorney, you might be able to reach a resolution more quickly and at less cost, both financial and emotional? Read on.

## Your Lawyer as Advocate and Team Manager

Let your lawyer do legal work. Ask her to help you select and coordinate the other professionals assisting you. Start with her, and turn to her when you don’t know where to turn. Employ those professionals, the specialists, that she connects you with, for the best care and the best outcome for your case.

Using additional professionals will make my divorce much more expensive, right? Not necessarily. Think about it this way: should you pay your divorce attorney \$300/hour to counsel you through the emotional issues associated with the affair and betrayal, or \$125/hour to your therapist for that? That’s an easy answer based on hourly rates alone, right? Also, doing so would assume that your attorney has the counseling and social work skills to get you through it. He or she is not as skilled as your therapist, in all likelihood. Other professionals have qualifications that your lawyer does not, while some will produce a product that your lawyer requires in order to resolve your case.



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## The Appraiser

To determine the value of a piece of real estate (including a house), you need an *appraiser*. Your lawyer cannot do that for you. (And neither can a realtor, by the way. A realtor can only give you a market opinion, but in most jurisdictions, that opinion would not be a determination of market value admissible in court.) The appraiser's product, a valuation report, will be important data for your lawyer to have and for your financial advisor to use. It is also very valuable to settlement negotiation. And if it becomes necessary, that appraiser can testify at a trial or evidentiary hearing to the value of that asset. A few hundred dollars spent on that appraiser is a good investment toward the ultimate resolution of your divorce.

## The Divorce Coach versus the Therapist

Mental health professionals, in all their roles, can help in a number of ways to get your case to resolution. So much of the "stuff" of a divorce is not legal; it is emotional and psychological. "How can I get beyond the affair?" "I fear that I won't have enough money for retirement." A *divorce coach* (such as a counselor or therapist with a master's degree in social work) is better equipped to help you work through those emotional and psychological issues than your attorney.

Sometimes one spouse just gets "stuck." He cannot move beyond a problem or feeling (betrayal, guilt, anger) to rationally discuss temporary parenting-time arrangements. This is where a divorce coach can be so very valuable. That coach can help identify the obstacle and help find a path around it.

Your personal *therapist* or *counselor* may also be very helpful to you. His or her role is different from that of your divorce coach. The job of your coach is to help you reach a resolution of the divorce case. Your therapist can help you with that process, but your therapist generally has a much larger perspective, with more long-term waypoints on the horizon. Your therapist may be helping you work through the effects of childhood trauma or problems with trust, for example. Those things will certainly affect your participation in the process of divorce, but your engagement in and completion of the divorce is a much more defined, focused task. In short, the role of your divorce coach is to help you through the process of getting unmarried.

## The Financial Advisor

A very real, very important part of your divorce is financial.

- "Do we have to sell the house?"
- "Who gets the retirement account?"
- "Who gets the income tax exemptions for the kids?"
- "How are we going to pay for college?"

Questions such as these can present very real obstacles to reaching resolution and could hold pitfalls for the unwary.

Go see a *financial advisor* early—very early—in the process. Talk with your lawyer and then with a financial professional you trust. If your divorce is collaborative, that professional will help and advise you (both you *and* your soon-to-be-ex-spouse) as a financial neutral, giving you options and alternatives for dividing assets and debts and going forward separately. He or she may start by helping to compile a marital estate table. Even in a traditionally litigated case, your financial professional can give you options that you may not have considered. A financial professional can guide you through a temporary plan while the divorce is pending to answer such questions as:

- Who pays the mortgage?
- Who pays the utility bills?
- What happens to our joint accounts?

- Who pays the credit card bills?
- Who pays for travel hockey expenses?

A financial professional can also walk you (and your attorney) through a number of options for final settlement and division of property and assets that will address other questions:

- Should you refinance the mortgage on the marital home?
- Should you take a higher percentage of assets or more spousal support?
- Should the retirement accounts be equalized or divided and how?
- Will my part of the retirement accounts be enough for me to live on?

Most lawyers are not tax professionals. Your lawyer may have some idea of the tax consequences of spousal support, for instance. But a financial professional is better equipped to determine whether you should wait until after December 31 to finalize your divorce and the relative values (relative to each parent) of the dependent tax exemptions going forward.

Frequently, a financial advisor can offer options and ideas that neither spouse had considered. Although there is, in fact, only a single “pie” (the marital estate) to be divided, a financial specialist can help you see that all of the slices are not identical. The tax rates that you and your ex-spouse will pay after your divorce may be quite different. You and your financial advisor should consider these tax rates in deciding how to “slice” that pie.

## The Child Specialists

If your divorce involves children, it will almost certainly benefit from the involvement of child-centric professionals. If you do not have a firm, written parenting-time agreement in hand as you begin your divorce, see a *parenting coordinator* or *child specialist* as soon as you can. That specialist can review proposals or thoughts that either of you may have and make recommendations for the division of parenting time that are appropriate for the ages of your children. In general, younger children need frequent contact with both parents; long blocks of time (such as “week on, week off”) do not work as well, developmentally, for them. Give serious consideration to using the expertise of a child specialist for concerns like these.

What is the role of a *custody evaluator*? A custody evaluator, who is usually a psychologist, can amass and analyze a great deal of information about your family and its members. In most cases, a custody evaluator will make a recommendation to the parents and/or the court regarding custody and parenting time.

In preparing a recommendation, an evaluator will meet with each parent, observe young children, and even interview older children. The evaluator will learn about the co-parenting relationship, how the co-parents communicate (or fail to), and what parent-child relationships have looked like up until now. He or she can gather school records, talk with teachers and coaches, and try to put together a “snapshot” of the child’s daily life. He or she can compile this information into a report to the court, which the court may use in determining custody and parenting-time arrangements.

A *guardian ad litem* (translated literally from the Latin: “guardian for the suit”), or GAL, is an attorney with the sole charge of protecting, during the legal process, the interests of the minor child. The GAL is the voice of, and the advocate for, your child. Her sole task is to protect the best interests of the child; it is not to address the interests of either parent. In some cases, a child’s GAL can be helpful in conveying the child’s needs or interests to the court precisely because the court sees the GAL as independent expert, one who does not promote the agenda of either parent.

## Your Lawyer as “Primary Care Physician” with a Team of Specialists

Your divorce lawyer is your advocate and your coordinator. She is your “primary care” professional who is coordinating the work of a team of specialists for you. You have a very serious condition with complex, interrelated symptoms and multiple courses of treatment spread across multiple disciplines. How you treat this condition will have lifelong effects for everyone involved. Your lawyer is at the center of it all—the “pivot point” for everything that happens in your case. She should coordinate the timing of your case, your consultation with other professionals, and meetings with the other side. She is your advocate and planner.

## The Paralegal

When should you work with a *paralegal*? Your attorney’s paralegal works under the umbrella of attorney-client privilege and can be seen as an extension of your lawyer. Working with a paralegal for matters such as collecting documents for discovery requests and compiling documents and information can save you time and money. A paralegal can help schedule meetings with the other side and can keep you up to date on pending tasks and deadlines, upcoming hearings, and progress in your case.

## A Private Investigator

Should I hire a *private investigator*? First check with your attorney. If your lawyer thinks that a private investigator (a “PI”) could be a wise investment, it may make sense to hire that investigator through your attorney. For most purposes, that puts the PI *and the PI’s report* “under the umbrella” of attorney-client privilege.

## A Receiver

How about a *receiver*? A receiver is a professional appointed by a court to take control of the finances and/or operations of a business or asset of the marital estate. Occasionally, a receiver can be helpful during a divorce case if there is a “going concern” (a business or income-producing property) that cannot continue to operate by agreement of the spouses. Or a receiver might be necessary if the spouses cannot come to an agreement regarding the allocation of the income from the business or asset. Talk with your lawyer if you think your divorce could benefit from the involvement of a receiver.

## A Mediator or Other “Neutral”

What can a *mediator* do that two attorneys and their clients cannot do? The role of a mediator is to facilitate a discussion with the goal of reaching a resolution. That resolution may be a partial one or it might be a complete settlement.

A mediator is a neutral party who may not take sides or render a decision. It is not your task to “convince” the mediator of the correctness of your position; your task is to convince your spouse that your interests and needs are reasonable and can be met through your proposal. It is the job of the mediator to create a space for you to be heard by the other side. Similarly, the mediator must create a forum for you to listen, one that will enable you to hear the needs and interests of the other side.

Often, the very presence of that neutral third party changes the dynamics and tenor of a divorce. When both sides are forced to formulate their needs and interests and present them in front of the mediator, they sound different. When one spouse and his attorney are forced to look at the needs and interests presented by the other, new options or alternatives may present themselves. A mediator may even describe some options and alternatives that he or she has seen in other divorces. Use that experience; it may help you get your case resolved.

An *arbitrator* is different from a mediator. An arbitrator can decide the issues that

you specify using the rules to which you agree. In effect, an arbitrator is a private judge.

An arbitrator can almost always hear your case or issues sooner than a judge. An arbitrator may be able to help you move your case forward with respect to one or more issues that have become impasses for you and your spouse.

Ultimately, a court order is required to sever the bonds of matrimony and finalize the divorce. But an agreement to use binding arbitration may enable you and your spouse to get some issues (perhaps even all issues) resolved more quickly and to make the entry of the final divorce decree a mere formality based on resolved terms.

## Teachers, Coaches, Doctors, and Other Professionals in Your Children's Lives

Consider also the existing professionals in the lives of your children: teachers, coaches, doctors, etc. Their existing relationship with you and with your children may be able to provide some much-needed stability in a rapidly changing family structure. Don't shut them out or keep them in the dark; let them know what is going on and how your children are dealing with it. Also, keep in mind that some of those professionals might be called—by you or by your spouse—as witnesses. If you are unable to resolve your divorce without formal court proceedings, they could become involved in that process through testimony, affidavits, or otherwise.

## A Note about "Collaborative Divorce"

"Collaborative divorce" is a specific process, agreed upon and accepted by the parties, in which both spouses agree to give their best efforts to resolve all parts of the divorce before either of them starts a case in court. The parties also agree to full and complete disclosure in good faith, and they pledge that, if they are unable to complete their divorce without court intervention, both spouses must hire different attorneys. Some states now specifically recognize the collaborative divorce process in their laws. In Michigan, for instance, parties who have completed a collaborative divorce may be able to shorten the waiting period for entry of the divorce order from 180 days to only sixty days.

In collaborative divorce, your team will always include attorneys and other professionals. The team may work together synergistically, efficiently calling upon the specific skills of each professional. Whether your divorce is collaborative, traditionally litigated, or somewhere in between, a team of professionals can be very valuable to you and get you through it with less emotional and financial damage.

## Conclusion: Your Team Can Shed Light on Ways to Move Forward

Every case, every couple and family, is different. Each family and couple being divided and restructured by divorce is unique. Divorce—that restructuring—is a serious condition that you are facing at a time of your life when you are likely not at your best. For the best outcome, you should rely on the skills and expertise of a team of professionals. This is a very difficult time in your life, with undeniable consequences for your future. Do not try to go it alone, in the dark—you don't have to. Use your attorney as your "primary care" professional to coordinate that team, your care, and your case. You, your case, and your life going forward will be better for it. **FA**