

# Ep #12: Do You Need a Divorce Attorney? Understanding Your Options



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**With Your Host**

**Lauren Fair**

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## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

You're listening to *The Sensible Split* podcast, Episode 12. Today, I'm talking about the different ways you can utilize the services of a lawyer in your divorce process based on your personal desires, goals, and budget.

*The Sensible Split* is a podcast for smart but overwhelmed women in search of a roadmap to a successful separation and divorce. If you are looking for guidance in navigating the practical, legal, and emotional aspects of divorce with confidence, this is the show for you. Here's your host, Master Certified Life and Divorce Coach, Divorce Attorney, and Mediator, Lauren Fair.

Hello, ladies, how are you this week? My oldest stepdaughter turned 20 this week, and I'm feeling the cliché of 'they grow up so fast' pretty hard this week. But it just feels really true right now. I have been a part of her life since she was in the single digits of her life, in terms of years. And for her to now be through the teenage years and into her 20's feels like something that was so far away. And here we are.

We had a nice family dinner this past weekend to celebrate her birthday, which was really nice. And yeah, I'm just excited to see what is coming next for her. She's got a lot on the horizon, and it's really fun for me to see, as I imagine you could understand or have experienced yourself, what's on the horizon for these little humans who aren't so little anymore.

Today, I want to talk to you about the different ways that you can use a lawyer in your divorce process. Yes, there is not just one way. There is a common belief, though, that you can either use a lawyer or you don't use a lawyer. And that if you do hire one, though, there's only one way to work with them.

And so, I want to talk to you today about what the truth of it is. Because the reality is, you have options beyond just 'do I work with a lawyer or don't I? And if I do, then that's like a one-size fits all type of engagement.' When you don't understand those options for working with a lawyer during your divorce, there can be consequences of that.

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

You might not hire one at all, when you could have benefited from having legal advice, because you thought hiring them for full scope representation was more than you could afford. And when I say, “full scope representation,” what I am referring to is the traditional thought of, “If I hire a lawyer, this is what they do for me.” They become the face of the case. They run everything. They become “attorney of record,” as we often call it. Basically, they handle all aspects of the case for you.

That is one option. But you do have others. Another potential consequence of not understanding what the options are, is that you may have hired one for full scope representation and you really did not have the budget for that. You can potentially sink yourself into debt, or dissipate your estate to an unnecessary degree, because you could have actually done with a narrower scope of work from the attorney than what you contracted with them for.

Also, you may not agree to mediation with your spouse thinking that that means you can't have a lawyer as well. And if you may otherwise want to do mediation, if you realize that you could have a lawyer work with you still in some form for that process, then you've missed out on the opportunity to resolve your divorce through that particular method of alternative dispute resolution.

The last consequence that may result from not understanding your options, is that you may end up having a lawyer do work for you that you actually realize wasn't really a necessary part of what you needed from a lawyer in that process. You think that perhaps you could have handled certain aspects of the case and really just needed them to focus on other aspects where you really needed the help.

For example, maybe you're fine with going to court and speaking to the judge on your own behalf, but you really needed help with the paperwork only. Instead, you have the attorney doing all of that for you. When, for you, based on your budget, you would have preferred just having them do the part that was the hardest for you. Okay?

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

So, understanding the ways in which you can utilize a lawyer's services in the divorce process is part of approaching the process in an empowered way. I want you to understand your options and then choose the one that is best for you. Not choose an option because you thought that was your only option, or because someone else thinks that's what you should do. I want you to understand what your options are and help you make the best decision based on your own personal desires, goals, and budget.

I don't have an agenda, as a divorce coach, for whether you hire a lawyer for your divorce or not. You have to decide if hiring a lawyer is best for you. It is a personal decision for you to make. It is a legal process, and it does have legal ramifications to go through a divorce. So, is it generally advisable to get professional advice on what effect that legal process has on your legal rights and obligations? I think so.

I do have that background as a lawyer, and I do think that in most cases a client would benefit in some way from having some legal advice. But I don't put pressure on my clients to hire one, and I support whatever decision they make with trust that they know what is best for them.

What I do have an agenda for, for my clients, is for them to understand what those options are with respect to hiring an attorney, so that they can make an informed decision on whether to hire counsel, and if so, for what scope of work.

So, let's talk about the different options in terms of scope of work that the attorney could do for you in your divorce process. The first is full scope representation. Full scope representation, also just kind of known as "full representation" or "comprehensive legal representation", means that an attorney handles all aspects of a legal matter on behalf of a client.

That includes tasks like providing legal advice, drafting documents, representing the client in court proceedings, and negotiating settlements. It's a comprehensive approach where the attorney is fully involved in every aspect of the case from start to finish. So, this is really kind of that traditional way of using

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

an attorney. “I’m just going to turn this matter over to the attorney, and they are going to take the lead on it.”

That option, as a traditional option, is very much available to you in your divorce. And it may be something that you want. It can be useful in many situations, and also it is the most expensive option.

This cost concern, as well as also being aware of what role you would like the attorney to play in your case for other reasons, other than cost ones too, are aspects of why it is important to consider whether full scope representation is for you. Or whether another option, that might be considered somewhat of a more modern option, would be a better fit for you. Again, there's no right or wrong here.

The other broad category of ways in which an attorney can help you in the divorce process is called “limited scope representation”. Limited scope attorney representation is also referred to sometimes as “unbundled legal services”. What this means, is that an attorney handles only specific tasks, or aspects of a legal matter, rather than taking on the entire case.

So, these specific tasks or aspects of a legal matter could involve things like providing legal advice, drafting documents, or representing the client in court for a particular hearing or a particular aspect of the case. Limited scope representation allows clients to retain more control over their legal matters and can be more cost effective than full scope representation.

Looking at a couple of sub-examples of what would fall underneath limited scope representation, here are a few examples: Legal consultation. When we're talking about legal consultation, I refer to that commonly as “consulting”, like taking on a consulting role. And when an attorney takes on a consulting role, oftentimes what they're doing is providing advice on divorce laws, rights, and options available to the client, and helping them understand how that applies to their particular situation.

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

Oftentimes, they might be doing that in the background, so not in a visible way. Not in a way that is visible to their spouse, for example. A common example of what you might think of when you think of a consultation this way is, an initial consultation with an attorney. But usually, the initial consultation is like a precursor to traditionally full scope representation.

But it doesn't have to be. If you like that initial consultation of 'I'd like to be able to meet with the attorney, or email the attorney, and get information and advice,' that is available to you as a service sort of on an à la carte basis. That is something that, for example, can be really useful to clients who want to engage in mediation with their spouse without attorneys in the room.

But still have the benefit of having that legal advice, and having that support in the background, so that they feel like they know what to propose at the mediation or what to settle on. Because they have some understanding of what locally would be the likely result, or what the range of options might be in terms of what they might get as a result if they didn't settle in mediation.

Another example of a limited scope representation type engagement would be document preparation. In document preparation, the attorney assists the client in drafting specific documents required for the divorce process, such as a petition for dissolution of marriage, a response to the petition, or financial disclosure forms.

Another example could even be a settlement agreement. For example, there are mediators who don't draft the documents for clients, they help the clients resolve what the issues in dispute are, but they don't want to get involved in the document preparation. There are some that do, but there are others that don't. And so, an attorney could be utilized, in that context, just to draft the documents that the parties need for the court process.

It doesn't have to be in a mediation context, it could be in other contexts. Like, even if you are engaged in litigation and you need a motion filed for child related issues, for example, and you don't know what needs to go in the documents, which documents to select, where they get filed, things like that. If you just want

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

help with the paperwork, that is something that an attorney can do for you. That would be considered document preparation.

Another example of limited scope representation would be representation in mediation. So, we discussed a moment ago how you can have a consulting attorney in the background while you're in mediation. There are some times when a client wants an attorney in the room, in mediation, but that attorney would only be engaged for attending mediation.

So, they wouldn't be on for the whole case, for all purposes if the case didn't settle in mediation, but they would just be retained for the purposes of going to the mediation and helping the client reach an agreement with their spouse and their spouse's attorney to resolve the issues in dispute.

Another example of limited scope representation is just making a court appearance on behalf of a client. In that situation, the attorney represents the client in court for specific hearings, such as temporary orders. Oftentimes, when you're in litigation process, you may want temporary orders for things like support or the parenting schedule. Those are orders that last while the case is pending.

And so, it might be a hearing that's particularly important to the client. Maybe the client doesn't have the budget for full scope representation, but this particular hearing is really important to them, and so they have the option of hiring an attorney specifically for that court appearance, without providing full representation for the entire divorce process.

Another example of limited scope services is reviewing settlement agreements. In that case, the attorney reviews proposed settlement agreements prepared by... It may be the opposing party, or their attorney, or even a mediator... to ensure that the client's rights and interests are protected before the client signs the agreement.

So, if you have a consulting attorney for mediation, that's something that's usually bundled together with the legal consultation service, so that you can

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

have support through the mediation process, in terms of being able to have legal questions answered. And then, also have a settlement agreement or proposed settlement agreement reviewed by the attorney prior to signing it.

Another example of a type of service that I have seen be provided as part of limited scope representation is assistance with discovery. The attorney assists the client with specific aspects of the discovery process, such as preparing and responding to interrogatories, or requests for production of documents, or issuing subpoenas.

So, if you're not familiar with the discovery process, that's just the name for how you get information from each other in the divorce process in a formal way. Oftentimes, when you're going through either a litigation process or an attorney led process, getting information from each other through formal means is referred to as "discovery".

It can be complicated; how to prepare responses to or issue discovery. And so, that is one way to be able to get some support with that process, to have an attorney help you with just that part of the case.

You also can use an attorney as a mediator. You don't have to; you can get a mediator who is not an attorney. But you also have the option to use an attorney as your divorce mediator. You just need to understand when the attorney is acting as a mediator, they are not your attorney. Because in that situation, when they're acting as a mediator, they are a neutral third party, which is a big difference from being your attorney.

If you have an attorney as a mediator, and you want legal advice, that's where you would want to consider getting your own consulting attorney.

So, these examples demonstrate how limited scope representation can be tailored to address specific needs and aspects of a divorce case, allowing clients to obtain legal assistance for the parts of the process where they need it most. One important thing to remember is that you and your spouse cannot use the same attorney, because that would be a conflict of interest to do so.



## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

There are lots of ways to use an attorney. We want to get clear first on the divorce process option that you would prefer, and then select an attorney who offers that service. If you are not sure what I'm referring to when I say, "you want to get clear first on the divorce process option that you want to elect", go back and listen to Episode 5. Okay? That's going to explain the different divorce process options that exist in many jurisdictions.

So, you want to get clear on which of those options you would like to pursue first, and then select an attorney who offers that service, if you are wanting to hire counsel.

I want to give you an example that I had with a client recently. She was in the market for her second attorney in the process, and she wanted to try and negotiate with her husband directly before paying the \$7,500 retainer that the new lawyer wanted. But at the same time, my client also wanted to have this lawyer available to her; she wanted the legal advice and the input while she tried to negotiate with her husband directly.

She also wanted to make sure that she could have this attorney on retainer, and secure her availability, in case the negotiations with the husband did not work out. She was afraid that maybe that attorney might not be available in the future if she did not retain them now. But at the same time, she really just was not ready to pull the trigger on paying another \$7,500 retainer for the second attorney in the process.

Certainly, it's a confidential matter, but it was not my client's fault that she was having to look for a second attorney in the process. So, she really wanted to see 'is there some way we can really reasonably be done with this, with me still having some legal advice but also not shelling out all of that money right now, if I might be able to make some progress talking to my husband directly?'

She felt like she had to make an either/or decision about either negotiating with him directly without legal advice, or just hiring the attorney for \$7,500 for full scope representation. And based on my client's goals, I suggested she go back

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

and ask the lawyer if the lawyer would offer her a consulting service for a reduced retainer.

The lawyer had not offered her this option out of the gate, and you'll find they often don't. If you're interested in a limited scope representation type of arrangement with an attorney, this is something you're going to want to know and understand in advance and be able to ask for it.

Oftentimes, it's not offered initially because full scope representation is just a wider scope of services, right? It's a better engagement for the attorney, and it may just be one that they are used to offering the most, and what they prefer doing. Also, not necessarily every attorney will be willing to do limited scope services. But there are lots out there who are.

Anyway, my client contacted the lawyer, and the lawyer offered her a consulting role for a reduced retainer that my client felt comfortable paying now, while also trying to make progress with her husband directly. So, that worked out perfectly, in terms of meeting the client's cost goals and also her goals for maintaining some control over the next steps in the process, in the way that she wanted to approach trying to resolve the issues at this particular point in the proceeding.

That was available to her because she understood that the option may be out there, even with this particular attorney that she wanted, and she asked. And because she asked, she got what she wanted there.

So, I hope you learned in today's episode that you have choice around how you work with a lawyer during your divorce process. And that decision should be made in the context of your desires, goals, and budget.

And, if you have a specific way that you would like to work with an attorney that does not fit into the traditional full scope representation type of arrangement, I would encourage you to look into what options may be available to you, from the ones that we talked about today, in your jurisdiction, and also from the specific attorney that you would like to work with.

## Ep #12: Do You Need a Divorce Attorney? Understanding Your Options

That's all I have for you this week, my friends. Take care, and I'll see you next time.

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