

DIVORCE PROCESS OPTIONS

	<i>Collaborative</i>	<i>Private Mediation</i>	<i>Litigation</i>
<i>Who controls the Process?</i>	Professionals shape process; spouses make final decisions affecting family/finances	Mediator serves as facilitator; spouses control decisions affecting family/finances	Judge controls process and makes final decisions
<i>Degree of Adversity</i>	Spouses pledge mutual respect and openness; professionals and spouses commit to non-adversarial process	Mediator assists spouses to achieve their level of cooperation; ranges from adversarial to non-adversarial	Court process is based on an adversarial system
<i>Cost</i>	Costs are manageable, usually less than litigation; team model is financially efficient in use of experts	Costs are manageable, often times the most cost effective process (depending on how spouses use the process)	Costs are unpredictable and can escalate rapidly including frequency of post-judgment litigation
<i>Timetable</i>	Spouses create timetable with professional assistance; average timeframe 12-18 months	Spouses create timetable with professional assistance; average timeframe 6-8 months	Judge sets timetable; frequent delays given crowded court calendars; average timeframe 2-5 years
<i>Use of Outside Experts</i>	Jointly retained specialists provide info/guidance; spouses develop informed, mutually beneficial solutions	Spouses retain specialists to provide info/guidance to help develop informed, mutually beneficial solutions	Separate experts are hired to support the litigants' positions, often at great expense to each
<i>Involvement of Lawyers</i>	Spouses, with advice and guidance of professionals, work toward a mutually beneficial settlement	Mediator serves as process facilitator; spouses may hire outside lawyers for legal consultation or advocacy	Lawyers fight to win, but someone always loses
<i>Privacy</i>	The process and discussion or negotiation details are kept private	The process and discussion or negotiation details are privileged under California Law	Dispute becomes public record available for review by others for many years
<i>Facilitation of Communication</i>	Team of collaborative practice specialists educate and assist spouses on how to effectively communicate with each other	Mediator educates and assists with communication; other experts may be retained for specific purposes as well	No process designed to facilitate communication; lawyers control all communications
<i>Voluntary vs. Mandatory</i>	Voluntary, non court-based	Voluntary, non court-based	Mandatory, court-based, if no agreement
<i>Lines of Communication</i>	Spouses communicate directly with the assistance of team members	Spouses communicate directly with the assistance of a mediator	Spouses negotiate through lawyers

Portions taken from International Academy of Collaborative Professionals

FAMILY LAW DEFINITIONS

Litigation

The traditional court option where both spouses retain lawyers who present their case to a judge. The judge is the final decision maker.

Litigation is an adversarial process.

Private Mediation

A neutral professional assists both spouses in settling their disputes in an effort to create a “win-win” situation. The spouses control the presentation and decision making in the case. Spouses commit to an open information gathering process.

Collaboration Law

Combines the positive qualities of litigation and mediation in a non-court, non-adversarial process. Each spouse has the advice and counsel of their own lawyer. As in mediation, the clients and attorneys commit to an open information gathering process and a commitment to settle without going to court.

Alternative Dispute Resolution (ADR)

Ways of making decision and resolving disputes, other than litigation (contested hearings), including Collaborative practice, mediation, parenting coordination, arbitration and neutral evaluation.

THINGS TO THINK ABOUT...

*Ten
Tips
to help you
Decide
if
Collaboration
or
Mediation
is
Right
for
Your Family*

1. I want my children to be the center rather than in the middle.
2. I want to speak and act from my best self.
3. I want my lawyer to be a wise counselor and an engaged moral agency rather than a hired gun and an alter ego.
4. I am willing to be in the same room with my spouse and to speak for myself and my own legitimate self-interest with the assistance of one or more collaborative professionals.
5. I am open to solutions that will respect both my and my spouse's needs and interests.
6. I want to make decisions affecting the future of myself and my family from a place of calm, considered wisdom, rather than from a place of anger, humiliation and fear – even though I may experience those hard feelings now and during the process of divorce.
7. If it were possible, I would prefer a deeper resolution rather than a shallow peace.
8. I know that at times things may feel hard and uncomfortable, but I am willing to accept that discomfort and to persevere through the process.
9. I want to act ethically for myself, for my spouse and for the sake of my children.
10. After the divorce is completed, I want to be able to look back and feel good about the outcome and how I handled myself during the process.

Portions taken from *Listening for Suitability* with Nancy J. Foster, JD & Jay Stone Rice, PhD, MFT

NINE POSSIBILITIES

Between what I think,
What I want to say,
What I believe I am saying,
What I say,
What you want to hear,
What you hear,
What you believe you understand,
What you want to understand,
There are at least nine possibilities
for misunderstanding.

-Francois Garagnon