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FAMILY LAW • MEDIATION

DIVORCE PROCESS OPTIONS





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WHAT DO YOU MEAN WHEN YOU SAY THAT I MAY HAVE A CHOICE IN THE WAY THAT I GET DIVORCED?

We find that many people assume that their divorce is going to go a certain way. This assumption might be based on media portrayals of divorce or on how their parents' divorce occurred. Their vision usually takes place in a court room and is most often antagonistic.

But in fact this is not necessary in the vast majority of divorce cases. It is entirely possible to not sacrifice any of the protections provided by the court process by using a non-court based divorce process that is more satisfying, less expensive, faster, more private and dignified, and nonadversarial.

The specific divorce process options that I'm talking about are Collaborative Divorce, Mediation, or Settlement Negotiations.



TRADITIONAL COURT-BASED DIVORCE

Before we discuss several of the most commonly non-court based methods of getting divorced, let's first get clear on what we are comparing it to: The conventional method of getting divorced is what I will refer to as a “court-based” divorce process. When I refer to a “court-based” divorce, I am referring to what is also known as the “Litigation Process.” In litigation, decisions are made by a judge through a formal process in which each party presents evidence supporting their position on all of the issues related to the divorce (i.e.: child support, alimony, property division, parenting issues). Divorces that occurred decades ago or earlier likely used this process. It is very formal with many rules to follow and it positions parties as adversaries. It is often costly, time consuming, and emotionally exhausting.

By the way, I do not mean to suggest that only “court-based” divorces are “official” or “legal.” All of the divorce options I will discuss are legal, official, and binding. The distinction that I am making in referring to “court-based divorce” versus “non court-based divorce” is simply in who is making the decisions — in a non-court based divorce, the couple is making the decisions on all the divorce related issues that impact the family; in a court-based divorce, the judge is. In both instances, the decisions are memorialized into legal documents that are submitted and approved by the court, making them binding court orders.

For example the only way that a couple can resolve their divorce using a non-court based divorce process is if they both agree on the process that they will use. In cases in which one party is not likely to be reasonable in working toward compromise, relying on a judge for all decision-making related to the divorce may be a party's best option for achieving an equitable result. This may be the case when one party has unmanaged mental health or substance abuse issues, if there was a history of domestic violence, or if one person has a persistent desire to hurt the other through the divorce process. But this population of cases is relatively small. A very high percentage of couples — even those who have a high level of emotions such as hurt and anger and betrayal — can be perfectly successful in a non-court based divorce process.



WHY THE TRADITIONAL COURT-BASED DIVORCE PROCESS SHOULD BE THE EXCEPTION, NOT THE RULE

Experts, judges, and family law lawyers agree that if you can reach a fair result through a noncourt based process with your spouse, there are many advantages to doing so, including the most compelling benefit, which is that outcomes for children of divorce are better, the less prolonged hostility there is between their parents.

Some of the advantages of reaching compromise outside of the court system in a non-court based process include the following:

COST – cases that take place in the court system are often much more costly than those where agreements are reached by compromise between the couple;

TIME – it is often much quicker to resolve the case through compromise (for example, three to six months) than through the court system (for example, six months to two years);

CHILDREN – spouses are more able to maintain goodwill in their co-parenting relationship when they work together to agree upon the terms of their divorce agreement.

While you and your spouse will end your marriage through the divorce process, you will continue to be co-parents of your children for the rest of your children's lives. Consider the many instances in the future when it will be important to your children that you and your ex-spouse/co-parent can be civil to one another. Graduations, weddings, births...all are occasions when you and your former spouse will be the most important people in your child's life that they want to share it with.

PRIVACY – divorce often involves many sensitive and personal topics. A court-based divorce process is a public process. Any member of the public can access the non-sealed portion of a court file. In a court-based divorce file, there may be countless allegations of bad behavior or descriptions of sensitive financial data. When people work outside of the court system to reach compromise, they're able to agree upon a level of privacy and dignity that will be applied to conversations of sensitive topics. This may be especially important for parties who have sensitive professional responsibilities or who own their own businesses.



WHAT ARE THE PRIMARY NON-COURT BASED DIVORCE OPTIONS?

COLLABORATIVE DIVORCE

The Collaborative Divorce process is the most comprehensive process in that it provides multi-disciplinary professional support for the family. The Collaborative Divorce process recognizes that divorce impacts a family on many levels – emotional, financial, and legal. For this reason, in the Collaborative Divorce process the couple is supported by a team of professionals with expertise in each of these areas:

- their individual lawyers, to provide individual support and legal advice while also being specially trained in settlement techniques;
- a financial planning professional, to provide neutral advice to the couple on financial matters such as building realistic post-divorce budgets, property division scenarios, tax implications, and spousal and child support;
- a mental health professional, also called a “Divorce Coach,” to provide neutral coaching to the couple on how to implement the best co-parenting practices and create a thoughtful Parenting Plan, how to navigate challenging communication dynamics, and how to emotionally process the life changes that are inherent in divorce.

In the Collaborative Divorce, decisions are made by the couple, with the support of the professional team, through a series of roundtable meetings. The typical timeframe to complete a Collaborative Divorce is six months. Because it is a more comprehensive process, a Collaborative Divorce is more likely to result in preservation of the couples’ post-divorce relationship and couple satisfaction with the final divorce agreements as compared to mediation.



MEDIATION

Mediation is a less structured, less supportive, alternative to Collaborative Divorce. In Mediation, the couple and their attorneys work with a neutral third-party to reach agreement on all the issues necessary for the divorce. It is similar to the Collaborative Divorce process in that it involves the couple working together to reach agreements during a series of roundtable meetings. But Mediation is different in that it does not provide the additional professional support of a Divorce Coach or a Financial Professional; in fact, oftentimes the parties opt to not even include attorneys. The timeframe for completion of Mediation is similar to a Collaborative Divorce but sometimes may be shorter. While the benefits to the family/couple of Mediation will likely be less than a Collaborative Divorce, Mediation can often be accomplished at a lower cost than Collaborative Divorce. For couples who have less financial flexibility, Mediation provides an excellent alternative to a Court-Based Divorce.

See more on Non-Court Based Divorce Options and the pros and cons of each on the next page. To discuss your options in more depth, please call us to make an appointment for a free “Divorce Process Consultation.”

WHAT KIND OF DIVORCE DO YOU WANT TO HAVE?

FACTORS BY WHICH THE DIFFERENT OPTIONS DIFFER	[LESS COURT INVOLVEMENT] < < CONTINUUM OF OPTIONS FOR DIVORCE > > [MORE COURT INVOLVEMENT]			
	"KITCHEN TABLE" NEGOTIATIONS	COLLABORATIVE DIVORCE	MEDIATION – (CAN EITHER BE BEFORE COURT FILING OR AS ONE OF THE STEPS IN COURT PROCESS)	LITIGATION or "GOING TO COURT"
	PARTIES TRY TO AGREE ON ALL THE ISSUES ON THEIR OWN			PARTIES CANNOT AGREE ON ALL ISSUES AND NEED COURT TO MAKE DECISIONS
BASIC ELEMENTS	<ul style="list-style-type: none"> • No Lawyers/no outside facilitation • Parties meet informally and decide all issues 	<ul style="list-style-type: none"> • Settlement is reached through series of team meetings with parties, lawyers, and other professionals • Each party has an attorney trained in special technique of divorce settlement • Parties commit to work toward agreement without threatening court • If agreement is not reached, lawyers withdraw and parties enter court process with new lawyers 	<ul style="list-style-type: none"> • Parties meet with third party neutral (mediator) • Mediator not allowed to give legal advice • Lawyers may not be directly involved in mediation sessions but they can be (for additional cost) 	<ul style="list-style-type: none"> • Parties have lawyers or represent themselves in court • Issues in dispute decided by a judge after a contested hearing
COST – FEES FOR PROFESSIONALS	NO COST	MODERATE COST (fees for two attorneys and, if needed, other professionals/less cost than full court process but more than mediation)	LOW TO MODERATE (fees for mediator and lawyers to at least review final agreement)	MODERATE TO HIGH (fees for lawyers and extra time spent on litigation)
CONTROL – HOW MUCH CONTROL DO PARTIES HAVE OVER OUTCOME?	HIGH LEVEL OF CONTROL	ALSO HIGH LEVEL OF CONTROL		LEAST CONTROL
TIMEFRAME – HOW LONG DOES IT TAKE?	LEAST TIME	MORE TIME BECAUSE LIMITED BY SCHEDULES OF PROFESSIONALS (3–9 MONTHS)		MOST TIME (IE: 12+ MOS)(COURT SCHEDULE IS BOOKED AND IT TAKES TIME TO LITIGATE ISSUES)
PRIVACY - HOW PUBLIC IS PROCESS?	PRIVATE	PRIVATE		PUBLIC
NEGATIVE IMPACT ON RELATIONSHIPS TO WHAT EXTENT DOES THE PROCESS HAVE LONG-TERM NEGATIVE IMPACT ON COPARENTS' RELATIONSHIP?	<ul style="list-style-type: none"> • Rarely, except that... • Some parties will have trouble managing hard discussions without the buffer of a third party/(ies) 	<ul style="list-style-type: none"> • Rarely • Parties' commitment to work toward agreement without court process often enhances trust and good will 	<ul style="list-style-type: none"> • Rarely, except that... • Parties' level of commitment to process is less than collaborative divorce so positive benefits may be less (less a sense of teamwork) 	<ul style="list-style-type: none"> • Often • Although litigation is necessary in some cases, it often has a negative impact on co-parents' relationship
COMPLIANCE WITH TERMS OF AGREEMENT TO WHAT EXTENT DO PARTIES "BUY INTO" THE TERMS OF THE FINAL AGREEMENT AND COMPLY WITH THEM OVER TIME?	<p>MORE</p> <ul style="list-style-type: none"> • The more involvement the parties have in reaching their own agreement, the more invested they will be in complying with the terms of the agreement • The parties' experience in working out the agreement will teach them that they have the skills to work out future disagreements on their own 			<p>LESS</p> <ul style="list-style-type: none"> • Parties who have issues decided for them will have less satisfaction and "buy in" and less compliance often results
LEGAL FAIRNESS TO WHAT EXTENT DOES THE OUTCOME MATCH WHAT IS "LEGALLY FAIR?"	LEAST LIKELY to be "legally fair" because no legal input	VERY LIKELY to be legally fair (parties have counsel during entire process)	MODERATELY (a risk in mediation is that limited lawyer involvement can result in the agreement differing from what would be considered legally fair)	MOST LIKELY to be legally fair



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