

Divorce Process Options

There are four main divorce process options. Keep in mind that each of these can include components from the other options. For example a DIY divorce or Collaborative divorce can also include some mediated agreements or co-parent coaching. A mediated divorce can include some DIY components.

A collaboratively trained family attorney, attorney mediator or family transition specialist (such as a family mediator, family transition specialist or co-parent coach) can help you decide what process is best for you. Either professional can help you decide what process is best for you and connect you to the professionals you need to help you move forward.

1. DIY Divorce is sometimes called “kitchen table” divorce. It is the process of working directly with your spouse to resolve your divorce on your own. It requires trust, patience, effective communication, flexibility, management of emotions, knowledge about your financial circumstances, best practices for children, and knowledge of the legal issues that must be addressed in your divorce paperwork.

DIY divorce can sometimes be the cheapest option; however, it is not necessarily the most cost-effective. Mistakes and omissions can be costly and/or hard to correct after the fact. Parties can inadvertently agree to a resolution that is unfair, unbalanced, or not in the best interest of the children.

You can supplement a partially DIY divorce to make sure you are covering your bases. Most attorneys nowadays offer “unbundled” services, offering consultation, education, evaluation of settlement options and review and/or preparation of your final legal paperwork. Family transition specialists (such as family mediators, co-parent coaches or child specialists) can do the same regarding issues that involve your children’s needs, your co-parent relationship, and parenting plan agreements that will be filed with the court.

All DIY cases can benefit from consulting with an attorney and a co-parenting coach/ family mediator. Starting off any co-parent relationship with support and intention is a gift to your children. For some families DIY is a great solution but if your family has any of the following issues, it is best to engage additional services to ensure significant issues are not being overlooked.

- Long distance or complex parenting time schedules
- Children with special needs such as anxiety, autism and ADHD
- Differences in parenting values, practices and opinions
- High emotions (due to an affair, parents at different emotional stages of separation etc) or high conflict.

- Cases involving emotional or physical abuse, control/coercion, or safety concerns for a parent or a child
- Cases that involve past or current substance use disorders
- Spousal support, bankruptcy or complex financial or property division issues

2. Private Mediation is the process of resolving your case using a neutral mediator to guide parties through the decision-making and filing process. The entire process takes place outside of court, meaning nothing is filed with the court until a full agreement is reached. Mediators do not represent either party and do not provide legal advice. While not everyone chooses to work with an attorney, parties are encouraged to consult with a collaboratively trained attorney as needed throughout the mediation process. The mediator's role is to:

- Work with the parties to identify, prioritize, and share their goals
- Help the parties identify the issues to address in their divorce settlement
- Assist the parties in exchanging documents and information
- Work with the parties to brainstorm and evaluate options
- Facilitate conversations to reach an equitable compromise
- Legal Mediators can prepare the final paperwork and file it with the court

Private mediation sessions are typically about an hour and a half in length and can be done either in person or by video conference. The mediator and the parties meet together to share information and discuss options. While there is no set number of sessions in which any given case may resolve, many mediation cases are resolved somewhere between three and six sessions. Once a full agreement has been reached, a legal mediator can prepare all the necessary paperwork to finalize the divorce with the court, without the need for a court appearance.

There are many benefits to mediation. For example, the parties are in control of the timing of the case and, if they both agree, can speed things up or slow things down as needed. Everything discussed in mediation is confidential and cannot be brought up in court later. Specialists can be brought in to help in certain areas, for example the parties may need an actuary to value a pension benefit, a vocational evaluator to help a party come up with a plan to transition back into the workforce, or a family/co-parenting specialist (often trained in mental health, family mediation and/or co-parent coaching) to help them work out the details of a parenting plan and address co-parent issues and the needs of the children. In private mediation, these specialists are jointly retained by both parties, helping to keep costs low. Overall, mediation cases tend to resolve more quickly and for less money than other methods.

Private mediation relies on the parties' voluntary commitment to participate in good faith and to communicate openly, honestly, and respectfully during the process. It may not be a good fit for cases in which the parties cannot be in the same room together or do not have some level of basic trust in one another. The mediator will help facilitate communication between the parties, but the parties need to be able to speak on their

own behalf. The mediator will help the parties identify issues and potential solutions, but the parties must be able to decide what to do on their own.

You can consult trusted professionals such as a consulting attorney before starting mediation, or before making final decisions, but in order to be successful in mediation, it is strongly recommended that you choose attorneys who are collaboratively trained and supportive of mediation and respect the autonomy of parties to make decisions in mediation.

3. Collaborative Divorce is the process of resolving your dispute outside of court using a team of Collaboratively trained professionals. Each party is represented by an attorney who provides their own client with legal advice and advocacy throughout the process. Collaborative cases often begin with a "family transition specialist" (a family mediator/co-parent coach/mental health professional) to assess the needs of your case, create parenting plan agreements and address co-parenting goals, and/or work on communication to create a smoother process.

Depending on the needs of the family, additional collaborative team members may also include individual divorce coaches, a child specialist to help with child specific needs, a financial neutral to help with the division of assets and financial support issues, or a vocational evaluator to help a party come up with a plan to transition back into the workforce. Each professional works within their area of expertise, communicating as a team when necessary to provide a streamlined process.

Collaborative Divorce is similar to private mediation in that it takes place over a series of meetings, the clients control the timeline, and nothing is filed with the court until a full agreement has been reached. However, rather than meeting with consulting attorneys in between mediation sessions, each party has their own attorney present at most meetings (sessions with additional professionals are sometimes separate and attorneys do not need to attend unless clients request it).

Collaborative Divorce is a good choice for those who prefer to resolve their case outside of court, but who need more support than mediation alone. For example, some parties have difficulty making decisions without having their attorney present to advise them, others find it easier to participate in meetings with their attorney by their side. Cases with complex financial or other issues can benefit from the assistance of a team of collaboratively trained professionals. And many families do not want the financial burden of a litigated divorce.

At the beginning of a Collaborative Divorce case, the parties sign a Collaborative Participation Agreement which lays out the ground rules of the process. Specifically, the parties agree to participate in good faith, to communicate openly and honestly, and to offer corrections if they notice a mistake has been made. Most importantly, the parties agree that if they are unable to reach resolution through the Collaborative Process, they will transition over to new litigation attorneys. In other words, the Collaborative attorneys will never represent either party in a litigated proceeding. The

purpose of this agreement is to create a safe space where both parties can speak openly and honestly about their goals without worrying that their spouse's attorney will one day be able to use their statements against them or cross examine them in court.

Collaborative Divorce is designed to empower clients to make lasting, balanced, and respectful agreements. Education, support, and guidance from the Collaborative team helps the parties learn new ways to communicate during periods of conflict, setting them up to become effective co-parents and problem solvers on the other side of the divorce.

As with private mediation, Collaborative Divorce may not be the best fit for cases in which one or both parties are unwilling to compromise or the parties do not trust one another, and cases involving intimate partner violence, including emotional abuse.

4. Divorce litigation is the process of resolving your case using the rules and timelines dictated by the court and applicable law. The process was designed to be adversarial, and it can be costly and stressful. However, it is the only way to achieve a final resolution if the parties are unwilling to compromise or unable to reach an agreement without a third party deciding the outcome.

Typically, each party is represented by an attorney whose job is to work with their client to understand the facts of the case and their client's goals, to provide legal advice and help craft offers of settlement, to communicate that information to the attorney for the opposing party, and to advocate on behalf of their client in court if a settlement is not reached. In litigated cases, all communication from the parties, the court, and opposing counsel are routed through your attorney, typically in the form of letters, emails, and phone calls.

Litigation is designed to be adversarial, and the process can be costly, time consuming, and stressful. However, in a litigated process, a client can ask the court to use its powers to compel, restrain, and/or sanction an opposing party who does not follow the rules. For this reason, divorce litigation can be a good fit in cases in which the parties do not trust one another, where there is intimate partner violence, emotional abuse, or the children are in danger, or where one or both parties are unwilling to compromise.

Mediation within the Divorce Litigation Process. If the attorneys are not able to resolve the case through direct negotiations, the case will usually be referred to mediation before it can proceed to trial. Mediating a litigated case as a last-ditch effort to reach a resolution before trial is quite different than the out-of-court, private mediation process described above. The attorneys will prepare the case for mediation by briefing the privately retained mediator (often a retired judge) on the facts and legal arguments involved in the case in advance of the mediation date. Mediation typically takes place over the course of one full day, with the mediator shuttling back and forth

between the two sides, relaying offers and encouraging compromise. Often the parties are exhausted and ready to settle by the end of the day.

Trial. If the parties are unable to resolve their issues through settlement negotiations or in mediation, the case will be set for trial. Divorce trials can take place over multiple days, stretched over a period of months. During the trial, each side will have a chance to tell their story to the judge. This is done through testimony of the parties, lay witnesses, and expert witnesses, the presentation of evidence such as financial records, and legal arguments made by attorneys. Once the evidence and arguments have been made, the judge delivers a ruling on all issues presented that is binding on the parties. Divorce trials are costly and open to the public, and there is no way to guarantee a particular outcome. The adversarial nature of litigation often pits a divorcing couple against one another, which makes it difficult to amicably co-parent once the dust has settled.

Factors to Consider in Selecting a Process Option

- How complex is your case? Do you have many and/or potentially complicated assets to divide (real estate, a business, retirement or investment accounts)?
- Do you anticipate needing advice from an attorney before you will be able to agree to a settlement?
- Do you and your spouse agree on any of the issues in your divorce? Are you willing to compromise on some issues in order to reach a settlement?
- Are you comfortable making agreements directly with your spouse, or would you prefer to have support from an attorney advocating on your behalf or a mediator facilitating the process?
- Do you trust your spouse to voluntarily comply with the rules of an out-of-court divorce process?
- How much time and money are you comfortable spending to achieve the results you want?
- What is your commitment to a peaceful process? What level of conflict do you anticipate to reach your desired outcome?
- Are there power imbalances between you and your spouse that could impact the divorce process? If so, are there safeguards that could be put in place to make you are both comfortable coming to agreements outside of court?
- Do you prefer a very basic agreement, a highly detailed settlement aimed at addressing every possible situation that might arise down the road, or somewhere in between these two options?
- Would you and your spouse benefit from jointly consulting with a co-parent coach or family mediator for help with your parenting plan and/or co-parent communication, a financial neutral for help with budgets, asset division, tax and child support questions, or a divorce coach for help addressing issues related to communication and mental health during the divorce process?

Your answers to these questions will help professionals recommend and/or customize a process option best suited to meet your needs.