

## Divorce Process Options

There are many different processes available for people going through divorce and the process you choose will likely make a major difference in helping you achieve your goals. It is critical that you understand your process choices before you take your first step.

Because there are so many new options to help you through your divorce, it is easy to become confused and overwhelmed when thinking about how to take the first step. In order to keep it simple, let's start by focusing on how decisions are made.

The main thing to consider at the outset is: how much professional help will you need and what type of professional help will work best for you?

### Two ends of the spectrum

In understanding your process choices, it is sometimes easiest to look at the two extremes and then look at the various choices in the middle of the spectrum.

- Trial: On one extreme end of the spectrum is a process in which a judge is asked to make all of your decisions after a full trial on all of the issues. This is extremely rare and happens in less than 3% of all cases. Very few people can afford to have a judge make all of their divorce decisions, (financially or emotionally). Therefore, it is unlikely that you and your spouse will be on this end of the continuum.
- Doing Everything on Your Own: On the other end of the spectrum would be for you and your spouse to make all of your decisions without any help from outside people. This is also quite rare. Divorce can be complicated and there is much at stake. While most couples can work out many of the issues on their own, the number of people who can finalize a divorce without any professional help is still fairly rare.

### The Middle Choices

Most people get through their divorce without having a judge decide everything but with some help from outside professionals, at least on some of the issues. While there are many ways in which this can be achieved, there are three main alternatives that are used by most couples in our community.

- Traditional Representation: One option is for you and your spouse to hire attorneys to assist you in the manner that lawyers have traditionally represented clients in a divorce. While this can mean a wide spectrum of things, it generally means that the attorneys take the lead in the negotiations and that the negotiation is done, to varying degrees, "in the shadow of the courthouse". In some instances, your case can settle quite quickly, possibly with the assistance of some court processes, such as an Early Neutral Evaluation. In other instances, the cases settle within weeks of trial. While in almost all instances, the case will settle before it goes to trial, most traditional cases involve some court action, including such things as Initial Case Management Conferences, Motions, Pretrial Conferences, etc.

- Mediation: Many couples resolve their issues with the help of mediators. A mediator is a neutral person who helps you and your spouse reach an agreement.

Some mediators work alone and some work in pairs. In either instance, you and your spouse would meet with the mediator(s) in sessions of approximately two hours in length in an effort to help you make the decisions necessary to finalize your divorce. The mediators generally work with you to reach an agreement using a form of interest based negotiation which is designed to help you and your spouse to focus on your most important interests or goals.

Although many mediators are also trained as attorneys, they cannot give you or your spouse legal advice, since that would interfere with their need to remain neutral. Therefore, you and your spouse are encouraged to hire your own attorneys to give you legal advice while the mediation is progressing. In most mediation cases, the attorneys are not present at the mediation sessions, but advise their clients in between the sessions. However, it is possible for you and your spouse to have attorneys present at some or all of the mediation sessions if you believe it would be helpful.

- Collaborative Divorce: Another alternative is Collaborative Divorce, a method in which you and your spouse choose professionals who commit to helping you reach a settlement out of court. The goal of a Collaborative Divorce is to give you and your spouse full control over the outcome of your case while, at the same time, making sure that you both have the same protections that you would have in a traditional negotiation.

The process generally starts when you and your spouse both agree to hire Collaborative attorneys who agree to represent each of you for settlement purposes only. A Collaborative Attorney is typically someone with significant experience and training in representing people within the Collaborative Process. The primary difference between the Collaborative Process and traditional negotiation is that, if your matter were to proceed to court, the Collaborative attorneys could not be involved in the adversarial proceedings. The purpose of that rule is to provide a safe and effective environment so that you and your spouse, and your attorneys, can speak more freely, and can use other settlement techniques, that may not be as effective if the threat of court was imminent.

One of the other key features of Collaborative Practice is that you and your spouse are encouraged to work with other team members to help you work on the non-legal aspects of your case. For example, you and your spouse could work with a child specialist to help you address the needs of your children; you can work with a financial specialist to help you obtain the best possible financial plan; and you could work with a coach (or coaches) to help you work on the communication and emotional issues of the divorce.