

### **A Peaceful Resolution**

#### **An orientation to the dispute-resolution options in the divorce process, including the pros and cons of Collaborative Law.**

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#### **What are my choices for professional help in my divorce?**

All divorces involve decisions and choices. Which professionals will assist you, and how you will utilize their help, are decisions that can powerfully affect whether your divorce moves forward smoothly or not.

Some couples resolve all their divorce issues without any professional assistance at all, and process their own divorce papers themselves through the courts. On the other end of the spectrum, some couples engage in drawn-out courtroom battles that cost dearly in emotional and financial resources and can take considerable time to complete. Most people find their needs fall between these extremes.

Below are the choices for obtaining professional legal services in divorce that are available in most localities today. The list moves from choices involving the least degree of professional intervention, and the most privacy and client control, to choices involving greater professional intervention and the least privacy and control.

**Unbundled Legal Assistance:** The client in this model acts as a "general contractor" and takes primary responsibility for the divorce, making use of legal counsel on an "as needed" basis for help in resolving specific issues, drafting papers, and so forth. The lawyer doesn't take over responsibility for managing the case.

**Mediation:** A single neutral person, who may be a lawyer, a mental health professional, or simply someone with an interest in mediation, acts as the mediator for the couple. The mediator helps the couple reach agreement, but does not give individual legal advice, and may or may not prepare the divorce agreement. Few mediators will process the divorce through the court. Retaining your own lawyer for independent legal advice during mediation is generally wise. In some locales the lawyers sit in on the mediation process, and in other locales they remain outside the mediation process. Mediators do not have to have to be licensed professionals in most jurisdictions.

**Collaborative Law:** Each person retains his or her own trained collaborative lawyer to advise and assist in negotiating an agreement on all issues. All negotiations take place in "four-way" settlement meetings that both clients and both lawyers attend. The lawyers cannot go to court or threaten to go to court. Settlement is the only agenda. If either client goes to court, both collaborative lawyers are disqualified from further participation. Each client has built-in legal advice and advocacy during negotiations, and each lawyer's job includes guiding the client toward reasonable resolutions. The legal advice is an integral part of the process, but all the decisions are made by the clients. The lawyers generally prepare and process all papers required for the divorce.

**Conventional Representation:** Each person hires a lawyer. The lawyers may be good at settling cases, in which case they work toward that goal at the same time that they prepare the case for the possibility of trial. If the lawyers are not particularly good at, or interested in, settling the case, all lawyer efforts are aimed solely at preparing for trial, though a settlement may still result at or near the time of trial. Either way, the pacing and objectives of the legal representation tend to be dictated by what happens in court. Cases handled this way generally involve higher legal fees, and take longer to complete, than Collaborative Law cases or mediated cases. The risk of a high conflict divorce is higher than with mediation or Collaborative Law.

**"War":** One or both parties is motivated primarily by strong emotion (fear, anger, guilt, etc.) and as a consequence the parties take extreme, black and white positions and look to the courts for revenge or validation. Reasonable accommodations are not made. The lawyers often function as "alter egos" for their clients instead of counseling the clients toward sensible solutions. This is the costliest form of dispute resolution, emotionally and financially. It is always destructive for the children involved. Such cases can drag

on for many years. Few clients report satisfaction with the outcome of cases handled this way, regardless of who won.