

There is More Than One Way to Get Divorced

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One of the most important decisions that a couple makes after they have made the difficult decision to separate and divorce is choosing which process to use to make the significant decisions about the terms of their separation. Many separating parties do not even realize this is a choice that can be made; instead, by default, they fall into a process without making an educated decision concerning their process options.

There are five main process options that everyone going through a separation should be educated about:

1. **“Kitchen Table” Negotiation:**

1. “Kitchen Table” negotiation is characterized by two spouses having conversations and negotiating the terms of their separation directly with one another. One or both spouses may have an attorney in the background, with whom they may consult as needed and who may draft a written agreement. But the spouses primarily engage with one another in the negotiation process.
2. Some spouses are able to negotiate some topics via this method, but not others. For example, spouses may be able to resolve how they are dividing their furniture and furnishings using the “Kitchen Table” method but then need to use another process option to resolve the remaining issues.

2. **Mediation:**

1. In Mediation, the two spouses work with a neutral mediator whose job is to help the spouses discuss the issues and reach an agreement. The mediator does not represent either spouse and cannot offer advice to either spouse.
2. Either spouse may have their own attorney who they can consult with before and after mediation sessions. If the spouses agree, they may bring their attorneys to the mediation sessions.
3. There are mental health professionals who specialize in mediating parenting issues. Some couples choose to work with a mental health professional-mediator to mediate their parenting plan and then use an attorney-mediator (or another process entirely) to facilitate the negotiation of financial issues.
4. The Mediation process is often used in conjunction with other process options.

3. **The Collaborative Process:**

1. The Collaborative Process is an out-of-court dispute resolution process in which both spouses have their own Collaboratively trained attorney who represents them and advises them throughout the process.
2. The spouses and their attorneys meet together to discuss the various issues and work together to brainstorm

and agree on options that work for both spouses.

3. At the start of the Collaborative Process, the spouses and the attorneys sign an agreement committing that they will only work together in settlement negotiations and that these attorneys will not represent the parties in a contested court litigation. This helps to ensure that both spouses and both attorneys are focused on and properly incentivized to reach an agreement.
4. In the Collaborative Process, spouses commit to disclose all relevant information and documents that are necessary so that both spouses can make informed decisions.
5. In addition, the spouses commit to maintain the status quo until they reach an agreement otherwise. This means that neither spouse can make any significant unilateral changes while in the Collaborative Process.
6. The spouses can choose to retain mental health professionals and financial professionals to be part of the Collaborative team. In these cases, the mental health professionals typically take the lead on parenting issues and address emotional issues that are impeding a settlement. The financial professionals help the spouses gather their financial documents and then prepare cash flow projections and schedules of assets and liabilities to help inform the negotiations.

4. Attorney-Led Negotiations:

1. This is the most loosely defined “process” and can vary considerably, depending on the attorneys involved. In essence, each spouse retains an attorney to represent them in the negotiation. The attorneys communicate directly with one another, and any formal settlement negotiations are exchanged between the attorneys.
2. Often, the attorneys facilitate an informal exchange of documents that both sides have the information they need to engage in informed settlement discussions.
3. The spouses speak with their attorneys to create and respond to settlement proposals. Proposals are exchanged until an agreement is reached, and the attorneys draft a written agreement for the spouses to sign.
4. This process is often used in conjunction with mediation or litigation. The process timeline can vary considerably.

5. Litigation:

1. The Court Process involves filing appropriate paperwork with the Court and asking that a Judge make decisions for you.
2. In litigation, the parties are giving up control over the outcome. But, for parties whose settlement positions are so far apart that reaching an agreement will not be possible or practical, then it may be necessary to have a judge render a decision so that the parties can obtain a final resolution.
3. Litigation is also the only process where you can force an unwilling party to engage; or, if they still won't engage, then can obtain relief in the absence of their participation after fulfilling certain requirements.
4. The Court process can be very difficult to navigate without legal representation. The financial cost associated with litigation often makes it the most expensive process.

There is no one “right” process. In making a process choice, it's important to consider your individual circumstances to determine which process(es) are most likely to be successful for you. Factors to consider in making this process decision include, but are not limited to, the dynamic between you and your spouse; the needs of your children; the emotional support you and your spouse will need; the technical complexity of the issues; and your financial resources/constraints. In any initial consultation with an attorney, you should be ready to inquire about these process options and engage in an individual conversation about which process(es) may work for you.