

Choices For Your 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 are able to resolve their divorce issues at the kitchen table, without any professional assistance at all, and process their own divorce papers through the courts. These couples are rare and should be commended.

On the other end of the spectrum, some people are drawn to courtroom battles that deplete emotional and financial resources and can drag on for years. Most people find their needs fall between these two extremes. A spectrum of services exists now that allows everyone to find the level of support and assistance they need.

What follows is a list of choices available in Boulder / Denver today for obtaining professional legal services in divorce. The list moves from choices involving the least degree of professional intervention (usually the least expensive and most private), to choices involving greater professional intervention, usually higher cost and the least privacy and control.

Unbundled Legal Services: The client acts as a “general contractor” and takes primary responsibility for their divorce case, making use of legal counsel on an as-needed basis for help in resolving specific legal issues, drafting papers, and so forth. The lawyer does not enter his/her ‘appearance’ with the court or take over responsibility for managing the case.

Mediation: A single neutral mediator, or co-mediators, work(s) with 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. Non-attorney mediators may file out court provided documents for the parties. Couples participating in mediation should always obtain independent legal advice during mediation. The agreements being made regarding parenting time and asset division deserve careful review by competent counsel. Parties often participate in mediation with their chosen attorney.

Arbitration: The services of a neutral third party or parties are used to make decisions regarding all or any number of issues in the case. This person can be the same person who conducted the mediation.

Collaborative Law: Since the principles of divorce law are no different than the principles involved in any type of case, the additional training that Collaborative lawyers receive focuses on getting the old notions of positional bargaining and “win at any cost” out of their heads. I believe that the best Collaborative lawyers are those who have already seen the light and have developed their own mediation practices.

In this framework each person retains his or her own collaboratively-trained lawyer to advise and assist in negotiating an agreement on all issues. The parties sign an agreement promising each other that they will not go to court with the collaborative counsel they have

selected. The parties choose when to file the case to start the mandatory 90-day waiting period. All negotiations take place in “four-way” meetings that both clients and both lawyers attend. The parties and counsel are focused on finding win-win solutions from the start. Settlement is the only agenda.

Additional resources can be brought to the table as needed. Therapists or communication specialists can coach either or both parties in effective ways to communicate so that they do not fall into the old communication traps that could limit progress. Child specialists can discuss with the parties, in an informal manner and without a written report, what parenting arrangements may be in the best interest of their children. Financial planners can participate in asset division and realtors and mortgage brokers can participate as needed.

Each client has legal advice at hand 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 prepare and process all papers required by the Court.

One additional advantage to this process is privacy. There are no Court hearings and only the minimum required documents are filed with the Court

Traditional Representation: I think we all recognize this model. Each person hires a lawyer and the case is filed or the case may have been filed and served on the spouse. Since most cases do settle, lawyers in a traditional case find themselves trying to negotiate and settle while simultaneously preparing for trial. If the lawyers are not particularly good at, or interested in, settling the case, then all efforts are aimed solely at preparing for trial, though settlement may occur at or near the time of trial. The risk of creating a high-conflict divorce is higher than with mediation or collaborative law. Litigation may be the most expensive way of resolving a dispute.