

How to Get a Divorce: Let me Count the Ways

By Laurie Israel, Esq.

When asked about the methods of getting a divorce, I find that most prospective clients think that there are only two ways: mediation and litigation. This surprises me, because there are many ways to get a divorce that lie on a continuum between mediation and litigation. In fact, most divorces proceed through one of those other ways. Here is a short summary of the methods used to proceed to divorce:

1. Divorcing Parties *Pro Se*. Not actually on the continuum, this method involves no attorneys or mediators. *Pro se* means “for oneself” in Latin. Spouses proceed, by themselves, without counsel, using court forms or internet forms to file the necessary paperwork with the court. Usually (and understandably) motivated by lack of funds to engage professionals, it can work adequately for very simple cases -- short marriages where there are no (or few) assets and no children. But in other cases, it may be quite dangerous for the parties. Things can be missed – and drastically so. Power imbalances and unfairness can run rampant. It is somewhat analogous to taking out one’s own appendix. For anyone that can afford counsel, going it alone may be unwise.

2. Mediation. A neutral mediator (lawyer or non-lawyer) helps the spouses come to an agreement about the divorce. The mediator should be well-versed in divorce law. Mediators cannot advocate for either party. Both of the parties should consult with their own, individual counsel during the course of the mediation and, at least, prior to signing the divorce agreement. The cost of mediation (with the cost of reviewing attorneys) may not be less than the cost of a negotiated divorce with counsel. Not recommended if there are difficult issues (such as spousal support) or an imbalance of power.

3. Collaborative Divorce. An excellent process to get a divorce, Collaborative Law is especially good for complex cases in medium- to long-term marriages. The parties meet face-to-face in a series of meetings with their own collaboratively-trained counsel. Counsel advocate for their own clients, but remain open to the views and interests of the other side. Sometimes a neutral process facilitator attends the meetings to make sure that emotions don’t disrupt the process. The parties and their counsel sign a commitment agreement that says they will not litigate (with these lawyers). This keeps the threat of litigation out of the process. The parties usually are able to resolve their case amicably.

4. Divorce Negotiation – No Divorce Filing Until the End. I call this “garden variety negotiation.” Most of my cases fall into this category. There are usually no face-to-face meetings. The lawyers negotiate on behalf of their clients. The lawyers check in with their clients often, so that they are led by their clients’ wishes and aims (and give the client their advice) when negotiating. Since there is no “current” litigation, the parties do not feel threatened by the thought of “going to court” during the negotiations. It works best when both lawyers are experienced in divorce law: the parties can reach an agreement that is consistent

with what the law would indicate or what a judge would rule if the case were to go to trial. This method is not recommended if a balky spouse wants to delay the process, or if a divorce filing is needed at the outset (see below).

5. Divorce Negotiation – Divorce Filing at the Beginning. Sometimes it is necessary to file a case and serve the other party by a constable at the outset, but aim to proceed to a settlement agreement by negotiation. Reasons for filing include the need for temporary orders of support, putting into effect the automatic restraining order against transferring assets, putting a spouse's feet to the fire, especially one who wants to delay the divorce. In addition, it can be used for a high conflict case where negotiation may be unsuccessful. Be aware that filing with the court at the beginning changes the tone of the divorce process, potentially making it much more adversarial and producing a supply of horrible memories for a lifetime.

6. Litigation Ending with Settlement. Litigation occurs when there is a filing, many subsequent court hearings, and decisions are made by the court. There is formal discovery (depositions, production of documents, interrogatories). It is quite expensive. There is generally some negotiation by the parties through their attorneys. Sometimes the case is resolved at the "pretrial conference" date if a separation agreement is signed at that time. If the case proceeds to trial, much additional legal expense results, but a high proportion of those cases end by settlement on the first day of trial. This is a very expensive way to get a divorce. Ask an attorney to give you a ballpark figure. Unless you have lots of money to spend on this, try to use one of the methods previously described. It ruins the relationship between you and your spouse forever (because you have gone "to war") and may affect your children detrimentally in their lives and in their marriages. Think carefully before deciding to litigate.

7. Litigation Ending with Trial. This is the worst of all possible worlds. It is like #6 above, but with no settlement at the end. There is a trial and the judge decides all the issues of the divorce. Because a judge's order is only a page or two long, it does not cover all the things a good divorce agreement covers. An actual trial adds a huge expense on the divorce bill and creates a lifetime of bad memories. The parties are not in control over their own destiny, but have put the decision in the hands of a judge, whose decision may be unreasonable (not usually the case). The judge may also take the middle road leaving neither party satisfied (often the case). Or the result can be "all or nothing" in favor of one spouse, which will leave one party happy and the other party devastated.

So when you are embarking on a divorce, discuss the possible methods of proceeding with your attorney, and choose the one that best fits your situation and will go towards achieving other goals in the divorce, such as, perhaps, maintaining peace and cordiality with your future ex-spouse (if possible).

Laurie Israel is a lawyer who helps clients resolve their disputes with a high level of dignity, integrity and creativity. Laurie works in the areas of collaborative divorce, divorce mediation, divorce negotiation, and prenuptial agreements. She also helps people who wish to stay married through providing marital mediation (“mediation to stay married”) and negotiation of postnuptial agreements. She is on the Board of Directors of the Massachusetts Council for Family Mediation and the Massachusetts Collaborative Law Council. You can find out more about her work and read her articles on her websites: www.LaurieIsrael.com and www.MediationToStayMarried.com.