

Study your divorce options carefully

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Living in the United States, we have options for just about everything. Visit the grocery store, shop for cars or look in the Yellow Pages for alternative health practitioners to see the choices that abound.

Unlike almost every other aspect of life in America, until relatively recently, there were not a lot of options for people seeking a divorce. Even after the advent of no-fault divorce, a couple seeking a divorce in Massachusetts did not have many alternatives other than the traditional litigation model. Thus, even though fault was generally no longer an issue, litigation, often contested, was the norm.

Within the last 25 years mediation developed and has grown in popularity as an alternative to litigated divorces. More recently, "collaborative practice" has emerged as yet another approach and option for divorcing couples. It is essential that couples do the research and fully understand the differences and the benefits and limitations of litigation, mediation and collaborative practice before choosing a process. When a couple is divorcing, they are dealing with every major aspect of their lives - the children, the house, retirement, health insurance, life insurance and so on. Doing the research about how to approach and resolve these issues will allow the couple to choose the process that works best for them.

In mediation, a couple meets with a neutral third party (the mediator) to discuss and resolve the terms of the divorce. The mediator does not represent either party and does not give legal advice. The mediator's role is to help facilitate communication between the parties, assist the parties in considering and resolving issues that must be addressed, help break impasses and facilitate communication.

In mediation, parties generally mediate without their attorneys although they are encouraged to seek the advice of their own independent attorneys. At the end of the process, if agreement is reached, the mediator will prepare a written agreement which the couple can ultimately file with the court as part of their divorce.

In collaborative law, each client retains an attorney trained in collaborative practice. Both parties and both lawyers sign a contract which includes, among other things, a provision that if either party decides he or she needs to go to court, both lawyers will withdraw from the process and the parties need to hire two new lawyers.

Clients considering mediation or collaborative practice should start by obtaining as much information about the processes as possible. There are many books about mediation and a growing number of books about collaborative law.

A Web search under "collaborative law" and "divorce mediation" is also a good place to start. A consultation with a lawyer who specializes in family law is often helpful.

Having done the research, a couple must then decide which approach makes the most sense for them. Some of the questions to consider might be:

Cost:

Mediation is generally the cheapest approach to resolving a divorce. Collaborative divorce is more expensive than mediation but usually less expensive than litigation. Sometimes cost is the sole deciding factor. For a couple that has very little money to spend on resolving their divorce, there may be no choice but to do it on their own (pro se) or through mediation. On the other hand, if the couple has money but simply wants to do it the cheapest way possible, they should at least consider the other factors below before making their decision.

Time:

If the couple is motivated, able to do the work necessary and follow through, mediation may be the fastest approach. This is because, among other things, you are dealing with three schedules instead of four. The more schedules come into play, the more delay there will be. On the other hand, with collaborative practice, lawyers can play a key role in assisting clients to obtain information, fill out financial statements and move the process forward.

Advocacy:

One of the primary areas where collaborative practice is most appropriate is when one of the parties feels like they have a difficult time advocating for themselves and needs the assistance of a lawyer to advocate and to consult with in real time. This might occur if one of the parties is particularly shy or not particularly articulate. It may be that one of the parties is much more sophisticated about a particular topic. For instance, if one of the parties is an attorney, the spouse may feel unable to "compete" with the lawyer-spouse's advocacy skills. Similarly, if one party is an accountant, the spouse may feel the need for ongoing assistance when dealing with financial matters. In mediation,

the mediator may encourage the less sophisticated spouse to consult with an accountant or lawyer to "get up to speed."

Control:

In different ways, both collaborative practice and mediation offer clients a greater sense of control over their divorce and their destiny. One of the complaints about litigation is that clients lose control of the process and cede control of major decisions to lawyers and judges. In mediation, the mediator establishes the structure and controls the process, but the clients are in complete control of the decisions they make, the pace they set and their ultimate agreement.

In a collaborative case, the lawyers create the structure and the process, but again the clients are in control of the decisions made and the pace of the process. They are not controlled by the court schedule, as is the case with litigation.

Mediation and collaborative practice arose out of a need for alternatives to the divorce litigation process that is often expensive, anxiety provoking, lengthy and inefficient. Nevertheless, there are times when there is no alternative but to litigate. This is particularly so when one party refuses to engage in mediation or collaborative divorce or is not acting in good faith.

One of the hallmarks of both approaches is that they are both voluntary, and neither party can be compelled to participate. On the other hand, a couple may not be in agreement about how to resolve their various issues but at least may be in agreement about the process they wish to use. For those couples, collaborative practice and mediation provide long needed and welcome alternatives.

For more information visit the Web site of the Massachusetts Collaborative Law Council at [www.massclc.org](http://www.massclc.org) or the Web site of the Massachusetts Council on Family Mediation at [www.mcfm.org](http://www.mcfm.org)

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