

By Hadrian N. Hatfield

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## Process, process, process

“I just want to know - What are my rights?” is a question lawyers often get. It is a perfectly normal and logical question to ask an attorney. In many contexts, though, and especially in separation and divorce situations, the more relevant question is “What are my options?”

In response to the first question, many lawyers can spend a good bit of time explaining what the law provides on topics such as alimony, child support, division of property, custody, and other issues related to a marital breakup. Entire books are filled with detailed legal analysis of these issues. This is of little immediate value (or comfort), however, to most clients. Instead, clients really want to understand their available choices, the likely consequences from these choices, and how these choices and consequences fit their personal goals and priorities. Viewed this way, options are much more important than rights. One of the most important tasks of any lawyer is helping clients understand their available choices and the likely consequences from those choices.

Among the first big choices that face anyone starting a separation or divorce is what process to use for reaching decisions. Many process options exist. While someone facing divorce might like to choose “unilateral” decision-making, that process rarely is an available option, at least for very long and without significant negative consequences. Process options that work by agreement of both parties are numerous, by contrast. These include direct discussions, mediation, collaborative divorce, and traditional attorney-to-attorney negotiations – or some combination of these. And finally, options that rely on third-party decision-making include arbitration and litigation.

Each process carries different consequences and addresses different goals and priorities. Each process has different advantages and disadvantages. And each process is more or less appropriate to different situations. The choice of which process option to use often will determine much of what follows. It is directly related to the ultimate divorce outcome, i.e. to what extent the parties each achieve their priority goals. In many ways, the choice of which process to use is the single most important decision in any divorce.

Knowing one’s rights clearly is important. In most cases, though, choosing the right process from all the options available to resolve family-law disputes is more important. In the next few months I will discuss in greater detail each of the different process options available to couples contemplating separation and/or divorce. In the meantime, it may be useful to think of “process” in the family law context the same way real estate professionals think of “location.”

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Modern Family Law Views is meant as an information tool to help people going through the separation or divorce process and those working with them.

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