

Mediation and Alternative Dispute Resolution

Most divorce cases settle out of court using a form of alternative dispute resolution such as mediation, arbitration, collaborative divorce or cooperative divorce. All forms of mediation require successful negotiation skills and strategy. We leverage our legal knowledge and experience, thoughtful preparation and problem-solving approach to negotiate from a position of strength, always aware of our client's next best alternative to a negotiated settlement.

While lawsuits and trials have long been used as tools to resolve family disputes, many of our clients have concerns about this method of solving family problems, including complications brought about by delays, rising litigation costs and the negative psychological and emotional effect of litigation on families, especially children.

Our lawyers address these concerns by providing alternative dispute resolution services. Below we outline some basic features of each method:

Negotiation

Parties or their attorneys communicate directly with one another and attempt to arrive at an agreement. The process is voluntary and no third party imposes a solution. Attorneys generally help the parties know their rights and options, develop a position and strategy and implement a plan of action. Attorneys can help suggest options and solutions, ensure that all issues are included and can formalize any understanding or agreement that results.

Mediation

A trained, neutral mediator facilitates the conversation in a voluntary and confidential process without imposing a solution or representing the parties. The goal of the mediator is to guide the parties to a mutually agreeable solution. The process is informal, flexible and comprehensive. It allows for creativity and lets the clients control the outcome. Attorneys can advise clients about the process, propose solutions and help the clients understand various proposals. Attorneys may participate in the mediation sessions and are often helpful in arriving at a solution. Typically, attorneys formalize any agreement that results from mediation and present it to the court at the time of the divorce.

Collaborative Practice

The clients and attorneys agree to use a specific consensus building and negotiation structure and agree that, if the parties are unable to resolve their issues through this process, the attorneys will not represent the parties in litigation. They further commit to a completely open exchange of relevant information. No one imposes a resolution upon the parties; however, the process is formalized and structured. Each party must have an attorney specially trained in the collaborative process and who works within specifically contracted terms. In this process, the parties share the express goal of reaching agreement without litigation and with the support of attorneys and mutually agreed upon experts, coaches or other neutral professionals, such as financial advisers or therapists.

Arbitration

A neutral third party chosen by the clients or their lawyers serves as a private decision-maker and imposes a resolution. Arbitration is often binding, except for issues involving children. An arbitrator's decision may be subject to judicial review, but such appeals typically face an exacting standard of review. The process is less formal than litigation, but many procedural rules and structures still apply.

If you would like to discuss any of these methods of Alternative Dispute Resolution, please **contact one of our Family Law team members**.

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