

Consciously Choosing a Process for Divorce: the important decision couples don't always make

The early stages of divorce are overwhelming for most couples. Before even addressing the difficult and pressing issue of how to redefine their relationship, they must choose the legal process through which they will manage their divorce. Unfortunately, many couples end up opting for a particular process simply by default. They don't know alternatives exist, or if they do, they aren't aware that the choice of process can meaningfully affect the rest of their lives. If you are going down the path of divorce, consider the following options and their effects when making this important choice.

Pro Se

In a pro se divorce, the parties do not hire attorneys or other third parties. They manage the process themselves, including drafting and filing all necessary legal documents. Forms can normally be obtained from local courthouses. The primary advantages to this process are in terms of time and money. The risks to this method of divorce are that unresolved conflicts can often hinder agreement, thereby further unraveling the relationship, and some important contingencies might not be addressed. Many couples, however, successfully navigate the legal system themselves.

Mediation

In mediation, a third-party neutral (a mediator) helps the couple resolve the issues involved in the divorce. The mediator is often an attorney or a family therapist, though any person skilled at conflict resolution can assist the couple. The mediator is no way a judge and has no decision-making authority. Rather, the mediator seeks to facilitate productive discussion. Once a settlement is reached, mediators often (though not always) help clients file the necessary legal documents. Techniques and objectives of mediators vary greatly. Some seek to help couples resolve only legal issues so that the technical process of divorce can conclude without great acrimony. Others seek also to help the couple better understand each other's perspectives so that they themselves can manage future conflict. Mediation can be faster and less costly than Collaborative Law because couples only have to hire one individual to resolve their issues.

Collaborative Law

In Collaborative Law, each party hires his/her own attorney. However, unlike in the traditional legal model, the two attorneys view their roles as facilitating peaceful resolution. To this end, the

attorneys agree that under no circumstances will they litigate the case (go to court). If the clients do ultimately choose to litigate, they must then hire new attorneys. The collaborative team sometimes includes other neutral experts who aid the couple in planning for the future, such as financial experts or parenting consultants. The team is assembled for the express goal of generating creative, viable solutions, and concluding an agreement. Like mediation, this approach attempts to limit animosity and to the extent possible break down the communication barriers between the spouses. Collaborative Law is normally considerable less expensive than Litigation.

Litigation

The traditional and still most common approach for dealing with divorce is litigation. Each individual hires his or her own attorney who files the case in court and ultimately obtains orders regarding custody, support and property division. The process is adversarial by nature because, in attempt to secure rights on behalf of their clients (in attempt to do their jobs well) attorneys very naturally paint the other party in a damaging light and often advise against direct communication between the spouses. Although nearly all litigation eventually ends in settlement, this relative peace is found only after incurring great expense and causing seemingly irreparable damage to the relationship. Accusations and hostilities are simply hard to reverse. Lawyers get to move on to the next case. The once-spouses and their children often end up suffering throughout their lives.

* * *

Each couple must choose the process which works best for them. However, the tragedy here is that so many couples find themselves in litigation without consciously making that choice. Since peaceful resolution models (Mediation and Collaborative Law) are relatively new to the scene of divorce, nearly all assisted marriage dissolutions in the past were handled by litigators. Even though couples were normally very unhappy with the results (in terms of anger, expense and damage to their children), they end up referring others to the same litigators. And so, an individual may end up in the office of a well-intentioned attorney who unwittingly leads the client down a very destructive path. The attorney tells the client that he/she is fully in the “right,” that the other spouse is in “wrong,” and that the attorney will fight aggressively if necessary. The other spouse’s attorney reciprocally assures the same. And so the emotional and financial unraveling begins. Unless couples seriously consider how the process itself will shape their lives and the lives of their children—unless they make a conscious choice—they may find themselves quickly and deeply in defense and hatred.

© 2003 by Larry Rosen.

Larry Rosen is a mediator and peaceful lawyer (collaborative attorney) with offices in San Francisco and Berkeley, Ca. He stresses understanding as the basis for resolving conflict. His approach to resolution can be explored by visiting www.throughUnderstanding.com.

The offices of Through Understanding (and Larry Rosen) can be reached at 415.356.9834.