

## Family Law Dispute Resolution Options

If you are presented with a divorce or other family law matter which requires a resolution, there are a number of procedural models which may be used. The most commonly identified procedural options are:

- *Pro se*
- Mediation
- Hybrid
- Collaborative Family Law
- Traditional Litigation.

Each option is described with possible advantages and disadvantages listed to help you evaluate the option that would best fit your need.

Keep in mind that these models vary in a number of ways, including the degree of professional assistance involved, the extent of court intervention, and the amount of associated financial cost.

### **What is “Pro se”?**

“Pro se” is a Latin phrase which literally means, “for myself.” As the name suggests, in a *pro se* divorce or family law dispute, the parties do not hire attorneys, they do it themselves. They proceed on their own to draft and file the necessary court documents. If an issue is not agreed upon, the parties have to be prepared to act as their own counsel, which means they must call witnesses, ask questions of the opposing party and tell the court why their request for specific orders should be granted.

### **Potential advantages of the Pro Se model might include:**

- ↑ Very low cost.
- ↑ The assurance that non-parties will not create or worsen conflict.
- ↑ No court appearance except when the divorce is granted. The exception would be if you have children and then you would attend the Parenting Plan Conference.

### **Possible disadvantages of the Pro Se model might include:**

- ↓ In the absence of an attorney to provide legal advice, neither party may understand the law or their legal rights.
- ↓ The parties may take actions or make agreements which have unforeseen and/or unintended consequences.
- ↓ One of the parties may be exploited and taken advantage of based on unequal knowledge, sophistication, resources, bargaining power, emotional strength, or other factors.
- ↓ The parties may be unable to accomplish what is required to commence or conclude their case.

### **What is Mediation?**

In mediation, the parties hire a neutral third party to assist them in reaching agreements. The mediator can provide information about the legal process and guide a discussion to help resolve issues. The mediator may or may not be a lawyer. The mediator does not represent either party and cannot provide legal advice. Mediation may occur with parties who have hired attorneys or parties who are not represented by attorneys. The parties communicate with one another directly in the presence of the

mediator. The goal of mediation is to allow parties to reach agreements that meet the needs of both parties and their children without the financial and emotional cost of a court battle.

**Potential advantages of Mediation might include:**

- ↑ Lower cost than litigation.
- ↑ A non-adversarial focus.
- ↑ The ability to keep the process private.
- ↑ No court appearance except when the divorce is granted. The exception would be if you have children and then you would attend the Parenting Plan Conference.

**Possible disadvantages of Mediation might include:**

- ↓ If the parties do not also retain an attorney to represent them in addition to retaining the mediator, they will have to proceed without the benefit of legal advice and assistance, since the mediator cannot provide legal advice to either.
- ↓ If the parties do retain attorneys in addition to the mediator, the expense of three professionals will be incurred, reducing the potential cost savings associated with the model.
- ↓ If mediation proceeds without one or both of the parties having the advice and assistance of an attorney, and the parties seek that advice after an agreement has been reached in mediation and one of the parties finds it necessary to withdraw the agreement after learning their legal rights, the resulting reaction will likely make further productive dialogue much more difficult.
- ↓ The parties may be unable to accomplish what is required to commence or conclude or carry out the terms of the agreement reached in their case, since they lack the skills knowledge and resources needed and the mediator cannot provide the legal advice necessary.
- ↓ The court requires that one party appear before the judge to have the divorce granted. As a mediation client, you would do this on your own as a “*pro se*” party.

**What is the Hybrid method?**

Hybrid is when one party is represented and the other party has decided to be unrepresented by counsel, at least initially. Both parties commit to full disclosure. They agree to deal in good faith with one another; in other words, to be fair, without tricking or applying undo pressure during settlement negotiations.

We begin by inviting your party into a meeting where I will use my collaborative skills to work towards resolution of your issues. We handle it by:

- Setting common goals and interests; by
- Letting you both be heard; by
- Giving respect to both points of view; by
- Gathering all the information you both need to make an informed decision; by

- Brainstorming the options together; and
- Letting the two of you come up with an agreement

Neither of you are ever 'locked' into any agreement until the final paper work is done. There is always time between meetings and while the paperwork is getting drafted to contemplate your agreement. Your party, at all times, has the right to consult or be represented by counsel. An attorney could be hired at any time they are feeling uncomfortable. We could then switch the process over to a collaborative divorce.

I would urge your party to choose a collaboratively trained attorney to advise him/her. Litigation attorneys are geared towards a process where the result is determined by a fight. Both parties try to win as much as possible in the litigation process. This is counter to the work we do in the [hybrid](#) and collaborative setting.

Collaboratively trained attorneys are members of the Oklahoma Academy of Collaborative Professionals. I have a link at the bottom of each of my web pages. Or they can be found at the Professionals link at [YourDivorceChoice.com](http://YourDivorceChoice.com)

**Potential advantages of Hybrid might include:**

- ↑ More cost effective than Collaborative or litigation when only one attorney is utilized. Though it is not required, most couples who choose this method share in the cost of my representation.
- ↑ When your spouse agrees to commit to this process without representation, it can bring a greater sense of trust to the table.
- ↑ You can get answers to your legal questions without having to pay an outside source, unlike Mediation.
- ↑ The timeline for the Hybrid process is usually shorter than Collaborative or Litigation.
- ↑ No court appearance except when the divorce is granted. The exception would be if you have children and then you would attend the Parenting Plan Conference.
- ↑ The court requires that one party appear before the judge to have the divorce granted. As a Hybrid client, you and I would go to court together to have the divorce granted.

**Possible disadvantages of Hybrid might include:**

- ↓ The process could be slowed down if the unrepresented spouse does not want to, or is not ready to move forward. Unlike the Collaborative process which utilizes Coaches to help clients work through the road blocks and allows the process to move forward.
- ↓ Agreements are not binding until the final documents are signed.
- ↓ If the unrepresented party decides to hire a Collaborative Attorney the process will take longer.
- ↓ In most cases, if the unrepresented spouse hires an attorney who is not collaboratively trained, the divorce process cannot continue with me as your attorney.

**What is Collaborative Practice?**

In collaborative family law, each party hires a specially trained and certified collaborative attorney, and divorce coach. Everyone works together in a cooperative, non-adversarial process with a mutual goal of reaching a fair settlement of all issues. The parties and attorneys communicate and negotiate directly with one another in structured four-way settlement meetings.

Binding commitments are made by both parties and their respective attorneys to voluntarily disclose all financial and other relevant information, to proceed respectfully and in good faith in settlement negotiations, and to refrain from the threat or use of litigation. The parties agree that they will not go to court and if anyone wants to do so, both collaborative attorneys would be disqualified and must withdraw, and both parties would need to retain new attorneys to represent them if they wish to be represented in court.

Collaborative divorce involves a team approach consisting of the clients, their attorneys, and their divorce coach; other possible team members include financial neutrals and child specialists. In the event that these other professionals are brought into the process, they would contribute the assistance which their training and experience make them uniquely qualified to provide.

In the collaborative process, the parties hire attorneys as legal advisors and settlement specialists. This process encourages creative problem solving, win-win negotiations, and resolutions that meet the needs of all members of the family. In collaborative family law, the parties are directly involved in the process and retain control over the outcome. Collaborative family law is a newer dispute resolution method than other options, but experience indicates that collaborative divorce often leads to greater satisfaction for the parties to the dispute, and a reduced likelihood to return to litigate future issues in court.

Parties in Collaborative Practice must agree in writing to certain core elements which distinguish collaboration from traditional litigation. Those elements include:

1. Negotiation of a mutually acceptable settlement without using court to decide any issues for the clients;
2. Disqualifying all collaborative professionals if either client goes to court;
3. Engaging in open communication and information sharing, and;
4. Creating shared solutions that take into account the highest priorities of both clients.

**Potential advantages of Collaborative Family Law might include:**

- ↑ Collaborative family law is designed to minimize hostility and negative conflict, and to instead refocus the parties on constructive, mutually satisfactory methods of arriving at outcomes. This is a significant benefit to the parties' children, since research has shown that conflict and hostility between parents, an almost inevitable consequence of adversarial litigation, is significantly damaging to children.
- ↑ Collaborative family law as a process significantly increases the likelihood that parties to a family law dispute can resolve the dispute while preserving a positive relationship. This can be quite valuable when there will be a need to maintain a co-parenting relationship with the other party and/or when preserving as positive a relationship as possible is important based on a party's values.
- ↑ Assurance that the attorneys involved have specialized training in family law dispute resolution and will not create or worsen conflict.
- ↑ The unique ability to incorporate other professionals into the process, such as mental health professionals and financial specialists, who can contribute insight and assistance which their training and experience make them uniquely suited to provide.

- ↑ The ability to maintain control and direct involvement in the process, and the related assurance that neither party has to face the risk or fear of an unknown, imposed decision.
- ↑ The ability to keep the matters involved in the case comparatively much more private than litigation.
- ↑ Collaborative family law is extremely flexible. It allows the parties, working together with their attorneys, to explore creative solutions to meet their circumstances.
- ↑ The potential for cost savings. While not necessarily a “low cost” alternative, parties using collaborative family law have the assurance that they have direct control over the resources used in conjunction with the process, and that by definition, all such resources are being expended directly toward resolving issues.

**Possible disadvantages of Collaborative Family Law might include:**

- ↓ The possibility that one of the parties will attempt to use the process to delay resolution of the dispute, avoid disclosing relevant information, seek to disqualify the other party’s first choice regarding legal representation, or otherwise act in bad faith.
- ↓ In the event that, despite the best efforts of both parties, the process is unsuccessful, there might be increased cost to both parties since they would need to retain new attorneys for litigation.

**What is the traditional litigation model?**

In the traditional divorce, both parties hire attorneys. The attorneys provide legal advice and represent the positions of their client in negotiations and court hearings. This model is an adversarial process in which each attorney advocates positions based on the personal needs and viewpoints of their client. The parties communicate through their attorneys, rather than directly with one another, regarding their positions, proposals and counterproposals on the issues in their divorce. The process may involve the use of formal legal procedures, known as "discovery" to secure financial and other relevant information. This may include the use of depositions (a formal taking of testimony before a court reporter) and the subpoenaing of documents or other material believed to be relevant to the issues. Each party may hire experts to support their positions. Experts may include psychologists, real estate and personal property appraisers, business valuation specialists, accountants, and other investigators. If the parties dispute the legal custody or physical placement schedule for their children, the court will appoint a third attorney, called a guardian ad litem, to participate in the case as an advocate for the "best interests" of the children. Issues can still be resolved in the litigation model by means of an agreement of the parties which is submitted to the court for approval, and this often occurs in litigation model cases. Unfortunately, however, it is not uncommon for the parties to be unable to reach agreement until after substantial time, money and emotion has been spent in conflict. Ultimately, if agreements are not reached on any one or more issues, the parties and possibly other witnesses would need to testify before a judge, who would then make a decision on each disputed issue.

**Potential advantages of Traditional Litigation / Negotiation might include:**

- ↑ Very well defined and structured process.

- ↑ The ability to compel the cooperation of the opposing party and third parties in providing information.
- ↑ Availability of formal legal tools to enforce compliance with the law and court orders.
- ↑ The possibility for only one attorney to be retained if one party wishes to be represented and the other does not.

**Possible disadvantages of Traditional Litigation / Negotiation might include:**

- ↓ The adversarial nature of litigation might cause either or both parties unnecessary stress or anxiety and/or might contribute to a polarization of their positions.
- ↓ Often the lack of any way for the parties to directly participate in an effective fashion. The process is ultimately centered on “the law,” as applied by judges and court commissioners and as presented and argued by lawyers.
- ↓ Litigation is a public process. Most documents and court hearings are open to the public as a matter of law.
- ↓ The pace and timing of the steps needed to reach resolution are often largely subject to court dockets and other factors beyond the parties’ control.
- ↓ The parties have little control over the outcome if a contested decision is sought. Family court commissioners and judges are often quite limited in what the law allows them to do. Outcomes are often “win-lose” at best, and once a decision is rendered, the outcome is imposed even if it is far from what either party would have preferred.
- ↓ Potentially very significant and rapidly incurred cost.

If you have questions about any of the foregoing information, or would benefit by further discussing the dispute resolution options available and which one is right for you, contact the attorney who provided you with this brochure.