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## **Divorce: How To Get Started**

The most important question to consider before starting a legal action is: *What dispute resolution process am I going to use to resolve my case?*

Before starting a divorce, legal separation or other family law case, a careful consideration of the kind of process you want to use to resolve the legal issues is important, especially if you have children. For better or for worse, the dispute resolution process you choose will have a significant impact on your family relationships, your well being, and the success of the case.

There are at least four different ways to proceed with a divorce, legal separation or other family law case. Your attorney should explain in detail these four dispute resolution processes to help determine which one is best suited to your particular circumstances.

### **Mediation**

The use of one neutral mediator/attorney, who represents neither you nor your spouse. The mediator aids both of you in reaching an out-of-court settlement of the disputed legal issues.

In mediation, a neutral mediator/attorney agreed upon by you and your spouse is used to help resolve your legal issues. The mediator does not represent either of you, but serves as the facilitator and source of information for the settlement discussions between the two of you. The mediation is conducted within a structured framework where the mediator's role is to:

- Provide the necessary legal and other information that you and your spouse need to make appropriate settlement decisions.
- Help both of you think through the various options and consequences of your decisions.
- Ensure that the discussions and negotiations are held in an environment characterized by safety, respect and equality.
- Require that you and your spouse disclose all necessary information to each other (financial statements, wage information, relevant records and documents, etc.), so that each of you can make informed decisions.
- Ensure that you and your spouse have a complete understanding of every issue before final decisions are made.



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### **Collaborative Law**

In Collaborative Law (CL), you and your spouse are each represented by your own CL attorneys. At the beginning of the case, both spouses and their attorneys commit in a signed agreement to use cooperative rather than adversarial methods to reach a final settlement, including the binding commitment not to resort to court intervention. This is very different than the traditional adversary system where no such commitment exists. The CL approach focuses on reaching a cooperative settlement rather than going to trial.

The collaborative process includes voluntary, open and full disclosure of all information and documents related to finances, income and assets, child issues, and spousal maintenance. Settlement discussions often occur in four party conferences between the attorneys and spouses.

A mutually-agreed upon financial specialist may join the process to help you and your spouse understand and make decisions about complex financial or tax related issues. In addition, if you and your spouse find it useful, the collaborative team may also include a child specialist. CL procedures contrast in their openness with the procedures used in the traditional adversary system, where the climate can be distant and secretive.

To represent a client in the CL process, an attorney must not only be skilled in CL methods, but understand how to properly screen the case to ensure that you and your spouse are good candidates for CL.

To learn more about Collaborative Law visit the Collaborative Law website:  
[www.divorcewisely.com](http://www.divorcewisely.com)

### **Traditional Adversary Representation**

In the traditional adversary system, you and your spouse have your own attorneys. Going to trial is an option because circumstances can and sometimes do dictate the need to appear before a judge. However, even in the adversary system experienced attorneys attempt to resolve the legal issues out-of-court whenever possible.

Traditional adversary representation is the most common form of dispute resolution. You and your spouse each choose attorneys who will attempt to resolve the case using a combination of strategies. Experienced attorneys use both adversarial and cooperative methods depending on what is most useful



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under the circumstances. For example, if one spouse is uncooperative and fails to provide requested information or fails to negotiate in good faith, the following adversarial procedures are available:

- Subpoena - mandatory disclosure of any written information requested.
- Oral Depositions - mandatory questioning of the other party under oath and before a court reporter.
- Interrogatories - written questions the other party must answer under oath.
- Hiring an expert to provide needed information about a case. This might include using a business or real estate appraiser to place a value on a business or a residential property, or employing a psychologist to provide an assessment of a spouse's parenting skills and recommend the most suitable parenting arrangements for children.

A case may require an attorney to stand firm and be assertive and at other times to be cooperative and willing to compromise. You should be assured that your attorney has the skill, experience and willingness to use the most effective strategies called for in a particular situation, rather than employing a uniform, one-size-fits-all way of operating. You should ascertain at the outset whether an attorney has the ability to understand what approach is called for in a particular case and use the strategies that will most effectively resolve the matter with as little cost and stress to you as possible.



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### **Using One Attorney**

The use of one attorney by you and your spouse is a desirable option when you have already resolved the issues or are close to resolving them and only need minimal additional information to complete a final settlement.

In some situations, you and your spouse may use one attorney to help you complete a legal divorce or other legal action. This does not mean the attorney represents both of you, because to do so would be a conflict of interest. However, when you have worked out an agreement, or when you want to do so with minimal lawyer involvement, you can use one attorney. Under these circumstances, it is the role of the attorney to:

- Provide both of you with the necessary information to make informed decisions.
- Draft the necessary legal documents.
- Complete the case by taking it through the court system.

In the one attorney divorce case, the attorney *formally* represents you OR your spouse, since this is the ethical requirement. However, in this situation there is a clear understanding that the attorney's role is limited to the three tasks described above, rather than being a zealous advocate for the spouse who is represented.

When one attorney is used to do the primary work in a case, it is always recommended that the other spouse have a consultation with separate counsel to review the legal documents before signing them.