



Wright, Constable & Skeen, LLP
Attorneys At Law

Family Law Counts™

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Using Mediation and Collaborative Law to Resolve Family Law Disputes

In the prior issue of *Family Law Counts* we began a discussion of the different ways a married couple can address and resolve the issues relating to a divorce. There, we addressed the options of negotiation and litigation. Two alternative dispute resolution (“ADR”) mechanisms, mediation and the collaborative process, are the subject of this issue. Although every divorce will ultimately conclude before a court for the purpose of obtaining a signed divorce decree formally terminating the marriage, many divorce matters are resolved by way of a settlement that is reached through an ADR mechanism.

Mediation

In mediation, the parties come together to try to resolve issues in the divorce with the help of a neutral third person, the mediator. Any mediator worth using will be trained in conflict resolution. Unlike a judge, a mediator does not take sides or make decisions. The mediator's job is to help the parties evaluate their goals and options and find a mutually satisfactory solution. Some mediators will offer suggestions as to an appropriate outcome on an issue, but a mediator does not normally expressly advise a party to accept a particular outcome.

There are several benefits of mediation over litigation. First and foremost, a successful mediation will avoid the delays and costs (monetary and emotional) often associated with trying a case. Mediation also allows parties to have some degree of control over the outcome of their divorce, as compared to litigation, where a judge decides all issues. Further, the mediation process is confidential, thereby avoiding a public airing of grievances—for example, where adultery is present—or the disclosure of sensitive financial information—such as where one party owns a business.

The issues in a case may be simple enough to be wrapped up in one mediation session, or they may require multiple mediation sessions to reach a settlement. Depending on the issues involved or the style of the mediator, sometimes the parties meet with the mediator by themselves; other times each party will have his/her lawyer present during the mediation session. Even if the parties attend mediation without lawyers, a lawyer can be helpful in assisting a party through the mediation process by: (a) recommending a suitable mediator; (b) explaining the mediation process and assisting with the paperwork associated with mediation; (c) framing the issues and the possible outcomes to mediation; (d) evaluating the settlement options that come out of mediation; and (e) reviewing a settlement agreement prepared by the mediator. The WCS family law group is often called upon by clients and mediators to act in this capacity.

Collaboration

The practice of Collaborative Law (“CL”) began in the 1990’s. It grew out of the experience of lawyers involved with mediating family law cases in which there were impediments to the mediation model, such as an imbalance of power, differing levels of sophistication, and the existence of residual emotions.

The CL model is premised on a commitment to settlement, but includes creative elements in order to facilitate negotiations, such as conflict management and professional guidance from both lawyers and non-lawyer professionals. Compared to other forms of dispute resolution, particularly litigation, where parties engage in a zero sum game (one person’s gain is necessarily the other person’s loss), the goal in a CL case is to achieve a resolution that maximizes the interests of both parties.

The hallmarks of the CL process are: (a) full, voluntary, and early disclosure; (b) transparency; (c) commitment to meeting the legitimate goals of both parties; (d) joint use of neutral experts; (e) disqualification of all lawyers and experts from participation in any legal proceedings between the parties outside the collaborative law process; and (f) some compromise of the attorney-client privilege.

Mollie and Fred have been specially trained in the methods of Collaborative Law and are able to use the Collaborative process to guide their clients through even the most challenging divorce case.

This is Part II in our two part series on Resolving Family Law Disputes. See *Family Law Counts*, Winter 2017 for Part I - [“Alternative Means for Resolving a Divorce”](#) (Negotiation and Litigation).