

Advantages and Disadvantages of Each Divorce Option

- Traditional Adversarial Litigation
- Collaborative Divorce

Advantages of Traditional Adversarial Litigation:

- The attorney is active in each step of the negotiations, talking with the other attorney and only conferring with the client as necessary.
- It may be the only choice left after all else fails.
- Decisions can be appealed.
- Clients may feel that they have “had their day in court.”
- If one or both parties desires to do so, he or she is able to extend the conflict.

Disadvantages of Traditional Adversarial Litigation:

- The pre-trial information gathering stage of a litigated case is highly inefficient. Instead of one spouse talking to the other, he or she calls the attorney, who calls the other spouse's attorney, who calls his or her client, and the process is then repeated in reverse. The procedures for obtaining documents can get even more elaborate.
- Parties can often feel like they are left on the sidelines while the lawyers fight it out between themselves.
- Trials are open to the public, as are all pleadings and papers filed with the court.
- Trials can drag on. If the court has a busy docket, the case can be broken up and tried in bits and pieces on different days. Decisions may be postponed.
- Parties tend to involve their children and get them to take sides.
- Trials are very costly, financially and emotionally.
- Trials lock parties into their positions, believing one is the victim and the other a villain. Often they call friends and family in to back up their accusations.
- Parties never forget the bad things their spouse said about them at trial.
- It takes a long time for the family to heal after a trial. Co-parenting after a trial can be extremely difficult.
- Litigation is not a process of solving problems; it is a process of winning arguments.
- Parties who think the court will vindicate their beliefs are often disappointed that their “day in court” resulted in so little punishment for the other party. Judges are rarely as disturbed by perceived wrongs as is the “victim” and therefore the judge’s decision rarely feels satisfying.
- A trial frequently results in continuing conflict even after the divorce is final. Parties then can find themselves repeatedly back in court to enforce or modify trial decisions.

Advantages of Collaborative Divorce:

- You retain control. Though each party has a lawyer, you and your spouse take responsibility for shaping the settlement as the key members of the team.
- You gain assistance. You craft the settlement cooperatively with your spouse while benefiting from your attorney’s advocacy, problem-solving, and negotiating skills.
- You can focus on settlement. Removing the threat of “going to court” reduces anxiety and fear, thereby helping you focus on finding positive solutions.

- You get more for your resources. The Collaborative process may be less costly and time-consuming than litigation. When you reach an agreement, it can be finalized within a shorter time frame. You do not get bogged down for months while you wait for a court date.
- You negotiate a better settlement. Every family is unique and every family deserves a unique solution to the issues raised in a separation or divorce proceeding. The Collaborative process produces final agreements that are frequently more detailed and complete than any order a judge would issue following a contested court proceeding.
- You lay groundwork for a better future. There is no pain-free way to end a marriage, but by reducing stress, working in a climate of cooperation, and treating each other with respect, you and your spouse are creating an environment in which you and your children can thrive after the divorce.

Disadvantages of Collaborative Divorce:

- There are no court imposed time constraints. Since there is no case on the court docket, Collaborative cases continue until a settlement is reached.
- Collaborative practice is not appropriate for all cases. Cases involving issues such as domestic violence, drug and/or alcohol abuse, or mental disabilities/disorders may not be appropriate for the Collaborative process.