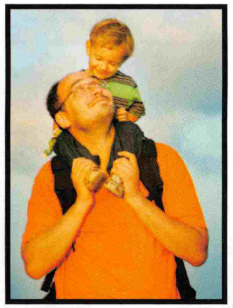

Mediation: the key to finding an agreement

The parties confer with a trained, neutral mediator, who can help them identify where they agree and where they disagree. Mediators help clients discuss their needs and interests in order to reach a mutually satisfactory agreement. The parties have the option of attempting to work out a settlement with or without an attorney present. If the parties have an attorney, they should consult their attorney concerning whether the attorney will attend the mediation. Even when the attorney is not present, he or she can be available to coach each client on the issues and their options.

Parties can develop creative, lasting settlements that reflect their family's needs, priorities and values. Often these agreements are far more creative than what they can attain at court. Most importantly, the parties can retain control of their family decision-making, with the assistance of trained professionals. Mediation is conducted in the privacy of a conference room. Full disclosure is required and the information that is exchanged is kept confidential. Parties can reach lasting settlements more quickly and economically than in court.

Alternative Dispute Resolution (ADR)

offers alternative processes to litigating so that you, rather than a judge or referee, can make decisions for your family.

ADR works for divorcing couples, never-married parents or members of the GLBT community. You can review the following options and confer with an attorney to determine which process would work best for your family to resolve issues such as child custody, parenting time, child support, spousal support and property.

IS ADR RIGHT FOR YOU? ADR is most effective when the parties can feel safe to express their needs and negotiate freely, but it may be ineffective and inappropriate where there is a history of one party intimidating, threatening, or harming the other. If you are an abused party and wish to try mediation, you should talk to an attorney or domestic violence advocate about protective measures that may help keep you safe and equalize the power imbalance during mediation.

Arbitration

A neutral attorney (chosen by the parties and their attorneys) hears all sides of a dispute, reviews the facts and the law, and issues a decision which is binding. Parties agree to arbitration in advance, through a court order. Attorneys must be present for the hearing. Custody, parenting time, child/spousal support and property can be decided by an arbitrator.

Which issues the arbitrator has authority to decide are stated in the court order. Once the arbitrator issues a decision, it is submitted to a judge. That judge must approve it, except in the rare cases where the arbitrator broke important rules. Typically, however, the arbitrator's decision cannot be appealed.

Arbitration works well for couples who have difficulty reaching their own decisions or have extremely difficult issues, but want their hearing held in private and want an end to conflict.

"Collaborative Practice often uses a team approach to reach a settlement amicably, in a fair, family-friendly way."

Collaborative Practice

Each party retains an attorney trained in the practice of collaborative divorce and agrees to negotiate constructively to reach a settlement without litigation. The couple also agrees to honestly and fully disclose information and remain respectful of each other throughout the process. Discussions are private and confidential. Because the collaborative process involves the direct participation of attorneys in settlement negotiations, it is well-suited for cases involving complex financial or parenting issues or for cases where the spouse/partners have significantly unequal finances or negotiating skills.

The parties and their attorneys sign a written agreement not to go to court. A series of meetings is then scheduled with both parties and their attorneys. During these meetings, the couple works to resolve:

- Property
- Custody
- Parenting time
- Support and other issues

As needed, other professionals may assist in resolving issues, including financial advisors, child specialists, and mediators. Both parties may also choose to have a personal advisor (called a coach) to help them manage the emotional ups and downs of the divorce. Neutral financial professionals are available to help with tax and financial issues as well.

If negotiations break down, or if either party decides to abandon the process or act in an adversial way that precludes an amicable settlement, all members of the collaborative team, including both attorneys, must withdraw from the case. That often creates a powerful incentive to continue good faith negotiations.

Parenting Coordination

Parents work with a neutral mental health professional or attorney to help them make decisions for their children. Using a parenting coordinator can be:

- Quicker
- Less expensive
- More private than appearing in court

Over time, parents may learn more effective techniques for communicating with each other about their children's issues. The parenting coordinator will attempt to mediate a dispute. If that does not resolve the issue, the parenting coordinator has authority to issue recommendations that bind the parents, unless a judge makes a contrary decision.

A court order must specify the powers of the parenting coordinator. The parents use the services of the parenting coordinator as-needed and typically share the cost. They can often get a prompt response to an immediate problem rather than having to file a petition, wait for a hearing date, and argue their case in open court.

Parenting coordination works well for parents who have difficulty communicating with each other and need help reaching agreements on important decisions affecting their children.

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