

Civilized Divorce

(provided by [Pauline H. Tesler, Esq.](#))

I. There is More than One Way to Divorce

Few divorcing couples realize that there is a wide range of options to choose among for getting the necessary professional help in a divorce. At one end of the spectrum are those couples who can do it all themselves ("in propria persona," in legal terms), whether because there is little to disagree about, or because the couple is able to resolve differences without help. At the other end is the full-blown court battle--the dispute resolution process clients fear most, and rightly so. It costs more, emotionally and financially, than most people can afford to pay, and the results are rarely satisfying (regardless of who "wins") because of the lasting scars.

The spectrum in between these extremes includes many choices, among them:

... **Mediation.** The mediator is a trained neutral (usually a lawyer, mental health professional, or accountant) who helps the spouses negotiate an agreement directly between themselves, usually without built-in attorney participation. Independent attorneys advise each spouse, outside the mediation process.

... **"Unbundling"**. The spouses, together or separately, act in effect as "general contractors," handling some parts of the divorce "in propria persona," bringing in lawyers, mediators, accountants, and other professional advisors only as an when needed.

... **Collaborative Law.** A new, highly-effective process in which each spouse hires a family lawyer committed to, and specially trained in, devising creative "win-win" agreements. Binding commitments good-faith negotiating, full disclosure, acknowledgment of the needs of the other party, protection of the children, and avoidance of court proceedings are made by all participants. Other professionals (accountants, child development specialists, appraisers, etc.) are retained jointly and work as neutrals.

... **Conventional settlement.** The traditional process whereby each spouse selects an attorney who advises, investigates, prepares for trial, and at some point--whether early in the case, or the courthouse steps--brings the case to resolution by settlement. The process can range from amicable to highly adversarial, and can be costly or inexpensive, speedy or slow, depending on both the attorneys and the spouses.

II. Choosing the Right Dispute Resolution Model Matters

Experience suggests that each divorcing spouse begins the divorce process with a given degree of openness to compromise and settlement. Selecting the dispute resolution process that best suits the couple's unique needs maximizes the likelihood of out-of-court settlement. Choosing a process which is a bad fit can result in failed negotiations, anger, and a more adversarial divorce than might have been necessary. Also, selecting a lawyer experienced in the chosen dispute resolution model and committed to the kind of

representation of the client prefers can make the difference between amicable settlement and litigation.

Mediation works best when both spouses share a basic trust in one another's honesty, and are reasonably at peace with the fact of the divorce. If one spouse or the other is extremely angry, frightened, or otherwise distressed, mediation can be difficult. Similarly, a great disparity in bargaining power or financial sophistication can unbalance the mediation process beyond the ability of a neutral mediator to right it.

"Unbundling" can work well where the issues are not complicated, the atmosphere is reasonably friendly, and limited resources dictate handling as much as possible oneself. It is possible with this approach to get essential advice without turning over full responsibility to professionals whose services are too costly. Many, but no all, lawyers will consider providing "unbundled" advice if you ask. A clear agreement about what responsibilities are and are not being taken on by the professional is important.

Collaborative Law is the best choice for couples who share a commitment to settlement, have the ability to compromise and see the other's point of view, and want the advantages of specialist legal advice and problem-solving built into the settlement process. It can help spouses arrive at creative settlements even when the problems are complex. It is especially useful when spouses hesitate to negotiate face to face with only a neutral mediator in the room; collaborative negotiations are always conducted with a skilled advocate's active assistance. The settlement results can often be more creative than in other models, because neither lawyer succeeds in the job she or he was hired for unless both spouses' legitimate needs are met in the settlement.

III. How You Can Find the Help You Want

This Website provides access to many family lawyers, including lawyer-mediators. Local Bar Associations offer referral lists of family lawyers. The Association of Family and Conciliation Courts, in Madison, Wisconsin, provides information about mediators in all states. The California State Bar Association maintains a current list of attorneys who are certified specialists in family law.

Since Collaborative Law is a recent innovation, it is not yet available in all parts of the country. The author of this article can provide further information about collaborative law in Northern California and in Minnesota.

Once you know what kind of professional services you are interested in, interview several prospective lawyers and/or mediators. Ask for detailed information about training, experience, and philosophy. You may want to review a resume or curriculum vitae. And trust your instincts. Trust, comfort, and rapport are absolutely essential components of a successful attorney-client relationship.

Information provided by:

Pauline H. Tesler, Attorney at Law located at
<http://www.divorcesource.com/CA/DS/tesler.html>