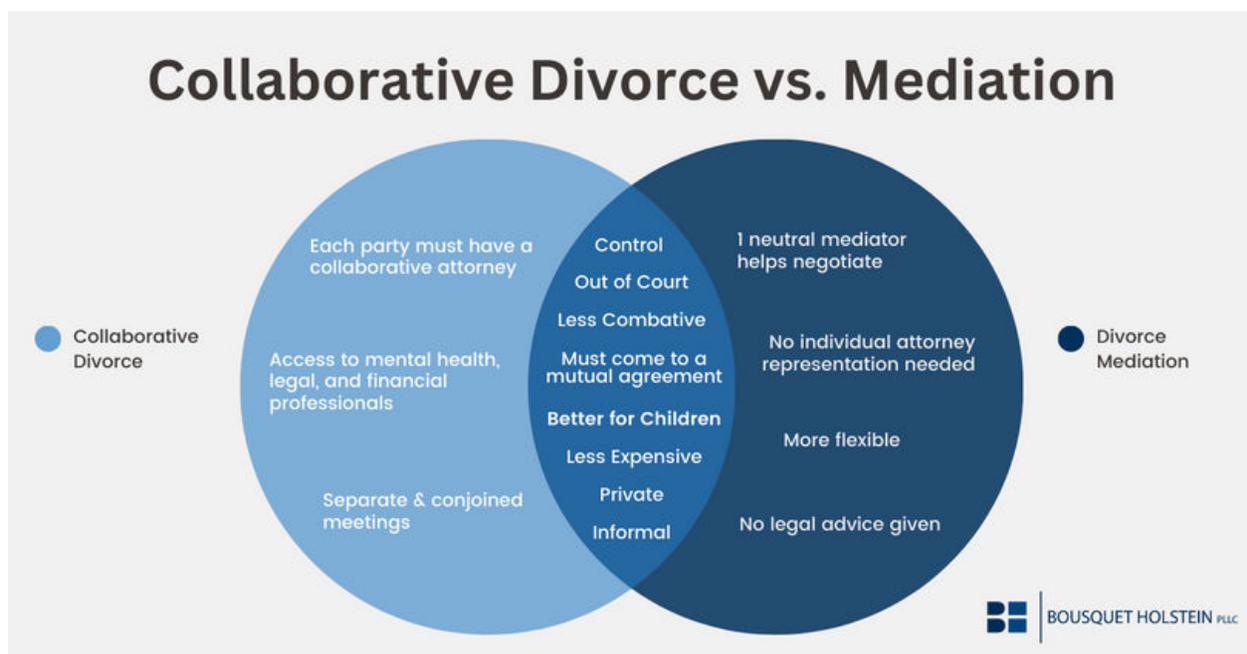




DIVORCE AND FAMILY LAW

Collaborative Divorce vs. Mediation: What is the Difference?

By: Rosemary Lepiane and Steve Paquette



One of the first decisions a couple must make when facing a divorce, is what kind of process to use – mediation, collaboration, or litigation.

Litigated divorces are known to be lengthy, costly, and stressful. While that may be the only route for some, others may prefer a less combative approach, especially when there are children involved.

Luckily, collaborative divorce and mediation are alternative dispute methods meant to decrease the stress and hostility of the divorce process.

A common misconception about mediation and collaborative divorce is that these methods are only right for couples where there is little conflict. That is not necessarily true. Collaborative attorneys and mediators understand that conflict will always be present during a divorce and therefore, have the experience and skill to assist couples navigate conflict as it arises – seeking solutions that move the process productively forward.



Both collaborative divorce and mediated settlement offer benefits not typically found through traditional litigation, but it is important to know the differences between the two so you can accurately choose which is best for you and your family.

Since couples with children are never truly disconnected from one another, taking the divorce outside of a courtroom creates a way to maintain an amicable dynamic between parents, making for agreeable future interactions and preventing further harm to your children.

What is Collaborative Divorce?

The collaborative divorce method features a team, comprised of two specially trained collaborative attorneys and a neutral coach who is typically trained in psychology. The attorneys provide legal advice to their respective clients and are guided by a trained neutral who assists the parties as they seek mutually satisfactory solutions.

The goal is for the couple to come to a complete agreement resolving everything necessary for them to divorce, including a custody and parenting plan, the division of marital assets and debt, and provisions for the financial support of children and lesser earning spouse. When needed, mental health professionals, financial advisors, and other experts can join the process to provide neutral advice.

Pros:

- Better for children
- Gives couple more control over divorce terms
- More informal, less combative, leading to less anxiety
- Real time access to attorneys providing legal advice
- Access to mental health & financial professionals
- Private, out-of-court experience
- Tends to be less expensive than litigation

Cons:

- Both parties must retain an attorney
- Couple must come to a decision or will have to retain new attorneys for the litigation process

What is Divorce Mediation?

Divorce mediation is different from collaborative divorce because the couple does not need to retain individual attorneys to assist in negotiation. Instead, a mediator will act as a neutral, meeting with the couple and guiding them through the entire process. Thereafter, attorneys will be hired to provide further guidance and prepare the proper legal documents and agreement.

While the mediator could possibly be an attorney, they will not give legal advice during the mediation sessions but instead will offer general information and assist in creative problem solving. This arrangement allows the couple to make decisions based on what is best for their family in the simplest way, but requires work by the parties, often otherwise done by counsel.

Pros:

- Better for children
- Allows couple to create family-customized agreements
- More informal, less combative, and less anxiety
- Completely neutral environment
- Private, out-of-court experience
- Can be less costly, as neither party needs attorney representation

Cons:

- Mediator will not give legal advice
- No attorney advocacy



The Benefits of Alternative Dispute Resolution

Both processes come with many benefits including:

- Better for children
- Less anxiety
- Less hostility / confrontation
- Privacy
- Control
- A new family configuration to move forward
- Typically less expensive

Additional Notes

If you decide to pursue the collaborative divorce process, you should take extra care to find an attorney who has special training and experience in this area to ensure you will get the most out of the process. You should also know that while both negotiation processes occur outside of the courtroom, they both require the filing of documents to obtain divorce inside the court system. However, your issues will already be resolved and neither party will need to make a personal appearance in court.

Additionally, it is important to remember we do not expect collaborative divorce and mediation to be the best route for everyone. For example, these alternatives may not be appropriate for those who have suffered from domestic abuse.

We understand this is an important decision and we are here to answer any additional questions you may have. The Divorce and Family Law Group at Bousquet Holstein PLLC offers a free consultation for considering either method. If you are interested in alternative dispute resolution, we can help you to decide which option is right for you.

To schedule your free consultation, please email bmchale@bhlawpllc.com or call us at 315-701-6310.



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