

A General View of Divorce Options

by Brady Mikusko, Mediator and Divorce Coach

“Kitchen Table” or Spouse-to-Spouse Agreements

Couple works out a settlement between themselves.

May use attorney to file or may file themselves.

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Facilitative Mediation*

Couple hires trained, neutral mediator to help them problem-solve and reach agreements.

Mediator acts as a guide.

Mediator facilitates communication between couple and helps them resolve issues.

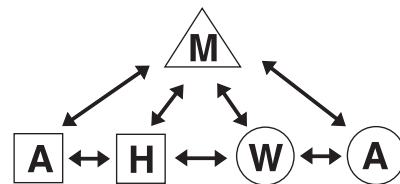
Mediator writes up Agreements.

Mediator urges couple to each have an attorney. Attorney's role is to be a consultant: providing legal information and advice to client. Attorney reads drafts of all Agreements and gives feedback *prior* to anyone signing.

Mediator/attorneys: help clients make good decisions.

Couple may decide they need to hire expert (i.e., accountant) to help them.

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Collaborative Law

This model is a team approach to divorce.

Each spouse hires a trained, certified collaborative lawyer.

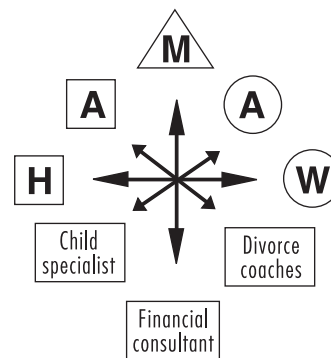
Before beginning negotiations, each party and his/her attorney sign an Agreement whereby all: (1) agree to collaborate and settle case without going to Court; (2) withdraw from case if any one on the team moves to the Court for intervention.

Couple and attorneys meet in a 4-way conference and decide what other professionals are needed. A mediator may be asked to mediate the process.

All of the professionals together constitute an interdisciplinary (i-d) team that works together to assist the clients.

If a mediator is part of the i-d team, the mediator will write up the Agreement, with input from the couple and team. If there is no mediator, the attorneys will write up the agreement, again with input from the couple and the other team members.

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Attorney Negotiated Settlement

Each spouse hires an attorney to represent him/her; attorneys negotiate with each other.

Clients are consulted by attorneys as necessary/appropriate.

Clients negotiate what they can.

Friend of Court (FOC) caseworker interviews each spouse (and often children).

Friend of Court (FOC) Referee Hearing may be held.

One or both attorneys may request custody evaluation of parents.

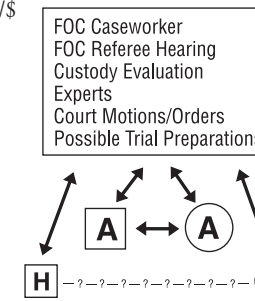
Other experts may be hired by each or both attorneys.

Attorneys file motions through Court/Possible Court Orders.

Negotiations are completed in attorneys' offices or in halls of Courthouse. Attorneys may have to prepare for trial, but settle before.

Case may proceed to Evaluative Mediation** / Late-Stage Mediation** / Arbitration** if no progress.

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Trial

Attorneys for each spouse argue in front of a Judge, hoping to win for their client.

Judge decides.

Friend of Court (FOC) caseworker interviews each spouse (and often children).

Friend of Court (FOC) Referee Hearings are common.

Custody evaluations are common.

Motions filed/Court orders.

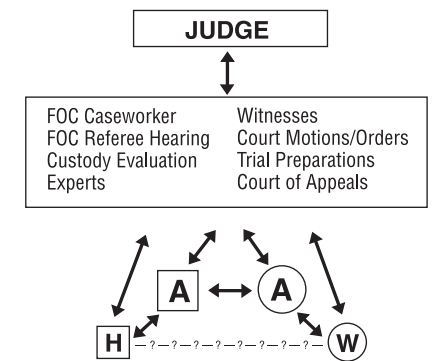
Experts hired by each side and called as witnesses.

Other witnesses used.

Decisions on case may be postponed.

Appeals possible.

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W	wife	↔	communication
H	husband	-?-?-?-?-?-?-?-?	little or no communication
M	mediator		
A	wife's attorney		
A	husband's attorney		
\$	potential cost		

*Note: The family court in your county may provide mediation services.

**Note: "Evaluative mediation" is another option, wherein the mediator plays a more active and less neutral role in trying to get parties to settle. It is often used near the end of attorney-negotiated settlements if attorneys cannot reach settlement, or "late-stage mediation," which may be attempted after trial. "Arbitration" is another, less common choice. Parties hire an arbitrator, who acts like a judge, to settle the issues, after their attorneys present their case to the arbitrator.