

Ways to Resolve Legal Disputes Involving Custody, Support, or Divorce

You are likely reading this item because you are in the middle of questioning, redefining or ending the relationship with your partner. You may also be dealing with tough questions like: who will raise the children? When do we get to see our mutual children? How do we split up our household goods?

You and your partner can use any one or more of four ways to resolve your dispute: negotiation, mediation, collaboration or going to Court (also called “litigation”). The summary introduces each option to you to help you select an option that best meets your situation and your interest.

Do-It-Yourself Negotiation Do-It-Yourself negotiation is where you and your partner talk directly together to try to find a solution that works for both of you. You can also negotiate through lawyers. Once you find your solution, you can write it out yourself, or you can take it to lawyers who will help you write your agreement. You can also submit your agreement to the Court and ask for an “Order” so if either one of you break your agreement the Court will help enforce it.

Mediation Mediation is where you and your partner pay a neutral third person to help you discuss your situation. Specially trained mediators, like the people at Community Dispute Resolution Center (“CDRC”), guide parties to discuss their situation so each party understands the other party better. Mediators are generally not lawyers and cannot give legal advice. CDRC mediators also will not mediate matters involving child support. You do not have to have a lawyer to use mediation, but you can choose to have a lawyer help you with the mediation process or the mediation sessions themselves. You can also hire a mediator who is also a lawyer, who will not represent either party, but rather will help only in the mediation process, handle support issues, provide basic legal information and help you make any agreement into an order the Court will enforce.

Collaboration In Collaboration, the parties each have their own specially-trained lawyer and discuss their needs and interests in a series of four-way meetings between the two parties and each of their lawyers. Everything said in these meetings is confidential and cannot be used in Court if the parties end up in litigation. Collaborative lawyers: 1) help the parties accumulate the information needed to resolve their situation so everyone makes decisions using the same information; 2) help the parties set the rules for their discussion and plan the topics to be discussed and then 3) help guide the parties’ discussion of their interests all in an effort to find a mutually agreeable resolution. Settlement is the only focus of the lawyers in a collaborative process - if the parties cannot reach a settlement, they must hire new lawyers to represent them in any other process. If the parties reach agreement, the lawyers can draft the papers necessary to turn the agreement into a court order.

“Going to Court” or Litigation There are some times when you and your partner will not be able to agree. Maybe your partner does not want to negotiate, mediate or collaborate. Maybe it is even unsafe for you to work with your partner on these issues because of domestic violence, drug use, alcoholism or child abuse. When that happens, you need to go to Court. When you go to Court, you are asking to have a third person hear both parties’ versions of the facts and how each party thinks the law applies to those facts: you go to a judge. The judge then ensures the lawsuit moves to trial according to the rules set by the Court. It may still be possible to negotiate or mediate an agreement through your lawyers without having to go through the trial and your lawyer is required to help you do so if you want. If you cannot negotiate a resolution, however, you go to a trial. At the trial, both sides tell their side of the story using witnesses and the judge then uses the law to impose a solution on you and your partner. Court orders issued by a judge are rarely as flexible or creative as an agreement that you might be able to reach with your partner through negotiation, mediation, or collaborative law.