

Answering your legal questions about choosing a process for divorce

Mediation, collaborative practice, lawyer negotiation/litigation or pro se

What is divorce?

Divorce is the legal process to end a marriage, and it affects all aspects of a couple's life and family. Although most divorces end with agreements instead of court trials, months of emotional upset and conflict can still occur. Divorce conflict can be expensive – financially and emotionally. But there are several ways to approach divorce issues and reach reasonable resolutions.

A final judgment of divorce decides the issues of property division, maintenance (financial support for a spouse), custody and placement of children, child support, and other important issues. Wisconsin's divorce law is set out in chapter 767 of the Wisconsin Statutes, available at www.legis.state.wi.us/rsb/stats.html.

How do divorce issues get decided?

You and your spouse can use different processes to resolve your divorce issues. Options include:

- **Mediation**
- **Collaborative Practice**
- **Lawyer Negotiation/Litigation**
- **Pro Se (self-representation)**

Each process is described in more detail in the sections that follow. You'll notice the processes differ in the amount of lawyer and court involvement, time, cost, and conflict.

In deciding which option to choose, consider which process is best for you and your whole family. Consider any safety concerns, level of conflict, complexity of the issues, and the ability of you and your spouse to make difficult decisions together when choosing the process best suited to your situation. It is better for your family if the two of you can reach an informed legal agreement rather than having a court decide for you. All divorce issues are decided one of two ways: 1) stipulation, in which the parties reach an agreement; or 2) litigation, in which a judge makes a decision.

No matter which process you choose, the court requires that parties follow specific procedures and file certain legal documents, such as the Petition, Confidential Petition Addendum, Financial Disclosure Statement, Marital Settlement Agreement, and Findings of Fact, Conclusions of Law, and Judgment of Divorce. Some counties have local rules requiring additional forms.

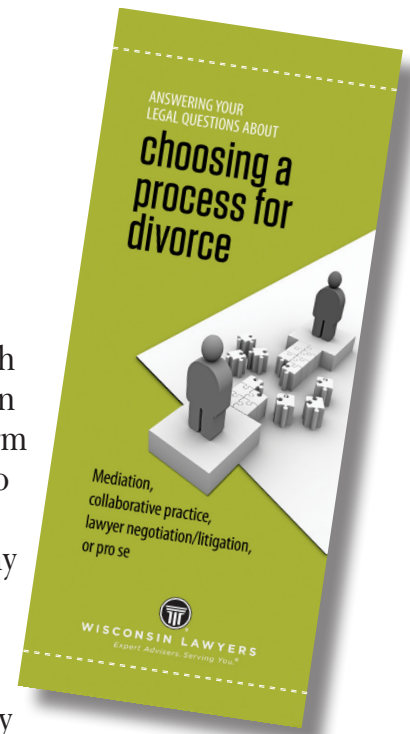
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What is mediation?

Mediation is a voluntary, cooperative process in which you and your spouse meet with a neutral third party, called a mediator, to try to reach agreements. The mediator can be, but does not have to be, a lawyer. This settlement process can save some of the financial and emotional cost of contested or lengthy divorce proceedings. The mediator helps the two of you define and resolve your issues to reach agreements. You exchange information, identify issues, negotiate with one another, and prepare your documents directly with the help of the mediator.

The mediator provides information about the law and the legal process and guides a discussion to help you consider options and reach agreements. You may choose to involve financial or emotional experts in the process to assist in making informed decisions. The mediator does not represent either spouse, provide legal advice, or make decisions for you.

You and your spouse may choose to work with a mediator with or without lawyers. State law requires mediation for any parents who have a custody or placement dispute regarding their children. Courts also may order parties to participate in additional mediation for other child-related or financial issues.



What is collaborative practice (also called collaborative divorce)?

Collaborative divorce, is a process for you and your spouse to settle your issues out-of-court with the guidance and advice of your own lawyers. The shared goal is to create an agreement that meets the needs of all family members and avoids the financial and emotional costs of traditional litigation.

You first sign a court contract that requires cooperation in disclosing financial and other relevant information. Both of you and your lawyers promise to proceed respectfully and in good faith and not to threaten or use the court to decide issues. Negotiations occur in settlement meetings using a structured process for gathering information and communication. If either of you chooses to have a judge decide your issues, the collaborative process ends, both collaborative lawyers are disqualified, and each of you must hire a different lawyer or proceed without legal representation to complete your divorce.

In collaborative divorce, each lawyer's role is to represent their client in settlement negotiations, not in court disputes. Each lawyer provides legal education and advice to help you and your spouse create your own settlement.

In collaborative divorce, a team of experts with specialized skills and information is available to help address the emotional and financial aspects of divorce. Your collaborative team may include financial advisors and mental health professionals serving as divorce coaches and child specialists. The goal of all professionals is to educate and support each of you in exploring settlement options and reaching agreements that meet the needs of all family members.

Mediation and collaborative practice have similarities and differences. Both processes help you identify options that meet each of your goals as well as the interests of your children. Both emphasize education, listening, creative problem-solving, and improving communication to help each of you participate effectively. Both allow you to retain privacy and control throughout the divorce proceedings. The key difference between mediation and collaborative practice is that in the collaborative process you each have your own lawyer to provide legal advice, guidance, and advocacy throughout the negotiations.

Learn more about the collaborative process at www.collabdivorce.com and www.collaborativepractice.com.

What is lawyer negotiation/litigation?

Litigation is the traditional legal process. You hire a lawyer to provide legal advice and advocate positions in negotiations and court hearings. You and your spouse generally communicate through your lawyers regarding your positions, proposals, and counter-proposals.

In the traditional court system, you and your spouse are seen as adversaries and rules of evidence and formal procedures must be followed. You may turn to the court to make decisions if resolution is not reached on all issues. The lawyer negotiation/litigation process may use formal legal procedures, called "discovery," to obtain financial and other relevant information. Discovery may include the use of depositions (formal testimony before a court reporter), interrogatories (answering lists of questions in writing under oath), and subpoenaing information. Each of you may hire experts to support your positions.

In cases with child custody or placement issues, both parents must attend at least one session of mediation and if no agreement is reached, the court will appoint a guardian ad litem for your children – a lawyer who advocates for the children's interests in your legal disputes.

If agreements are not reached, you and your spouse and other witnesses testify before a judge, who then decides each issue. If you or your spouse disagree with the final court decision, you can appeal the judgment to a higher court. If either of you is unhappy with the court outcome, you are likely to return to court in the future to argue for changes of placement or support orders.

Agreements are reached in more than 95% of all cases, but settlement often occurs after a lot of time, money, and emotion have been spent in legal conflict. Lawyers take different approaches, and many attempt to go through the negotiation or litigation process in a cooperative manner.

What is pro se divorce?

Pro se means "for oneself." This is sometimes called the "kitchen table" approach, since you represent yourself throughout the divorce legal process. A pro se party must communicate and negotiate directly with the other party, or his or her lawyer, and draft and file all necessary court documents. If complete agreement is reached, you must prepare all of the legal documents and appear in court for your final hearing. If you and your spouse cannot resolve issues, the litigation process above applies. This means you must present evidence and make legal arguments to the court, and the judge decides each issue.

The advantage to proceeding pro se is reduced cost since no professionals are involved. But proceeding pro se is a disadvantage when legal advice is needed to ensure good decisions for you and your family. If your issues involve children, pensions, real estate, businesses, significant differences in income, imbalance of power or knowledge, or mental health concerns, you should seek legal advice.

Safety concerns and additional legal and family issues arise in cases involving domestic violence. **Victims of domestic violence should always seek legal advice to discuss safety concerns and to understand their legal options.**

Pro se forms, procedural information, and other self-help services are available online at www.wicourts.gov and in some county courthouses. Though there are books, Internet resources, and services that provide information for a fee, the divorce process can be difficult and the issues complicated. None of the pro se resources can provide legal advice.

Limited scope representation is an option for pro se parties who want legal advice but may want to hire a lawyer for only part of a case, not for the whole case. You can consult with a lawyer to learn about the law and legal procedure. You can also contract for limited legal services such as drafting certain legal documents, or reviewing possible agreements. You and the lawyer should clearly discuss and agree on the specific tasks and limited scope of representation.

How can lawyers help?

Divorce is a decision that affects you and your family for a lifetime. A lawyer can help you in many ways, including the following:

- **Discuss options, the law, and legal consequences of decisions and process choices.** The lawyer's legal and financial knowledge can help you understand your divorce options and the long-term effects of possible agreements.

- **Explain the legal effects of custody and placement** alternatives and provide referrals for experts to help you address your children's needs during separation and divorce.

- **Ensure informed financial decision-making** about maintenance (monthly spousal support), child support (monthly payments and allocation of child expenses), and property division (debts and assets) so you understand the legal and tax effects of your decisions now and in the future.

- **Draft and file all necessary documents and agreements.** A lawyer's experience with the court system can help you avoid delays, missed deadlines, and incorrect or improperly filed paperwork.

Once a court approves an agreement, it is difficult to change. So it is important to at least talk to a lawyer before you choose a divorce process. That conversation can help you to avoid costly mistakes or a return to court with future disputes.

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