

OPTIONS

If you are faced with a divorce or other family law issue, you have options surrounding how you would like to proceed to resolve your conflict. In Texas, many dispute resolution processes exist and selecting the right one for you takes careful thought. Visualize a shelf with variety of containers available for your choosing. Which container makes the most sense for you and your family and the conflict in which you are involved? In other words, how much structure do you need and what structure will benefit you and your family the most.

Kitchen Table Process:

- Direct negotiation between the parties
- Parties may or may not have lawyers
- Parties may or may not exchange information relevant to the issues
- Parties may or may not employ other experts to assist with information and advice
- Works best when parties have equal knowledge of facts and are not emotional
- Works best when legal issues and facts are uncomplicated
- Does not work as well if there is a “power imbalance” (example: one party is more dominant or rigid in his/her views)
- Lawyers needed to draft settlement document and appropriate closing documents
- Generally, most economical way to resolve a dispute

Third-Party Process:

- Direct negotiation between the parties facilitated by a third-party (examples: therapist, minister, family friend, mediator)
- Parties may or may not have lawyers
- Parties may or may not exchange information relevant to the issues
- Parties may or may not employ other experts to assist with information and advice
- Works best when parties have equal knowledge of facts and have a limited amount of emotion
- Works best when legal issues and facts are uncomplicated
- Works best if third-party can truly facilitate and not take sides
- Does not work as well if the third-party becomes an advocate for one side
- Can be difficult to find a qualified third-party who is willing to facilitate discussion
- Lawyers needed to draft settlement document and appropriate closing documents
- Generally, an economical way to resolve a dispute

Collaborative Process:

- Direct negotiation between the parties, in joint meetings, with lawyers present and participating
- Both parties have lawyers
- Before the case begins, the parties and lawyers sign a document called a Participation Agreement committing not to go to court to resolve their differences and to keep the interests of their children first
- Parties exchange all relevant information voluntarily and confirm that they have all the information they need to make an informed choice
- Other experts often hired to assist with parenting plans, budgets, valuations and collection of financial information

- Experts are hired by joint agreement and are neutral—asked to provide expertise and not to advocate for a party or a party’s position
- Works best for parties who value privacy
- Works best when parties want to control the outcome of their dispute
- Works best when parties have a strong interest to minimize harm to their children
- Works well in both low conflict and high conflict cases
- Works well in uncomplicated and complicated cases
- Does not work as well if one person purposely will not move forward
- Can be more challenging when ongoing substance abuse or untreated mental health issues are present (but not impossible)
- Lawyers needed for advice, guidance, advocacy and to draft settlement document and appropriate closing documents
- Generally, less expensive than going to trial or arbitration to resolve disputes and more expensive than parties reaching an agreement on their own

Mediation Process (Texas Style):

- Indirect negotiation between the parties facilitated by a mediator but usually parties are in different rooms and mediator shuttles back-and-forth
- Parties usually have lawyers
- Parties usually have exchanged information relevant to the issues through a formal discovery process governed by the Texas Rules of Civil Procedure
- Parties usually have employed other experts to assist with information and advice
- Each party has hired his/her expert and the experts become advocates for the clients’ respective positions
- Parties usually have staked out trial positions and have sent settlement proposals back and forth
- Works best if lawyers are reasonable and parties have an open-mind regarding settlement options
- Works best when parties want to control the outcome of the dispute
- Does not work as well if one or both parties attend mediation only to meet the court’s rule that parties must attempt mediation prior to going to trial
- Mediators do not make decisions for the parties
- Lawyers and mediator draft settlement document at mediation
- Lawyers needed for advice, advocacy and to draft settlement document and appropriate closing documents
- Generally, less expensive than going to trial or arbitration and more expensive than parties reaching an agreement pursuant to another method.

Arbitration Process:

- Trial in front of a special master or private judge paid for by the parties
- Might choose this in lieu of litigation for privacy purposes or because it is taking too long to get a trial setting in the litigation process
- Parties usually have lawyers
- Parties usually exchange information relevant to the issue through a formal discovery process governed by the Texas Rules of Civil Procedure
- Parties usually employ other experts and the experts become advocates for the clients’ respective positions

- Parties have strong trial positions and for some reason all settlement attempts have failed
- Works best in those cases where decisions must be made and parties cannot or will not agree
- Arbitrator hears evidence and makes final decisions
- Lawyers needed for advice, advocacy and to draft arbitrator's ruling and appropriate closing documents
- Maybe a little less expensive than going to trial but not necessarily; more expensive than the parties reaching an agreement.

Traditional Process (a/k/a Litigation Process):

- Could involve a trial in front of a judge or jury; could involve preparing for trial but reaching an agreement prior to the actual trial date.
- Indirect negotiation between the parties through their lawyers only and possibly in mediation prior to their trial date
- Parties usually have lawyers
- Parties usually exchange information relevant to the issues through a formal discovery process governed by the Texas Rules of Civil Procedure
- Parties usually employ other experts to assist with information and advice
- Each party has hired his/her expert and the experts become advocates for the clients' respective positions
- Parties usually stake out trial positions and send settlement proposals back and forth
- Works best when privacy is not an issue
- Works best when parties want to their lawyers to control the lawsuit and to make decisions
- Works best when parties want to utilize the Texas Rules of Civil Procedure to send formal discovery
- Works best when parties want to retain their right to go to trial before a judge or jury (even if they settle ultimately)
- Works best if clients are incapable of taking responsibility for their choices
- Works best in those cases where decisions must be made and parties cannot or will not agree
- A judge and/or jury hears evidence and makes final decisions
- Lawyers needed for advice, advocacy and to draft judge/jury's ruling and appropriate closing documents
- If the case settles prior to trial, it may be more or less expensive than other dispute resolution methods; if case goes to trial before a judge or jury, it is most expensive way for families to resolve disputes