

Comparison of Litigation Process and Collaborative Process

Litigation Process Descriptors:

Parties in disputes often feel intimidated, fearful, anxious, powerless, out-gunned, and not in control. Litigation does nothing to calm this uneasiness and, in fact, a common successful litigation tactic is to make the other side so uncomfortable they are coerced into settling.

Process often focused on determining blame or fault for problems.

Unpredictable results.

May get results that you do not want or agree with.

Unsafe atmosphere—subject to cross examination, subpoenas and depositions.

Public.

Inconvenient scheduling—court and other side may determine the parties' schedules.

Filtered process—information often exchanged subject to discovery rules and lawyer/party discretion. Often negotiate indirectly through lawyers.

Much time, money and energy spent getting ready for a trial that most likely will never occur. 90% of cases settle but 90% of legal fees are not spent on settlement efforts.

Legal expenses are not all within your control. Other side can force you to spend money on depositions, discovery and hearings that you do not want.

Cannot just "try" litigation.

Collaborative Process Descriptors:

Collaborative process affirmatively seeks to make both parties feel safe, respected, in control of their lives and as comfortable as possible while working towards resolutions—coercion is not part of the process. The goal of the process is to allow the safe expression and resolution of conflict.

Process focused on reaching solutions to problems.

Predictable results.

There will be no result without your express agreement.

Safe atmosphere—civil, dignified, respectful.

Private and confidential.

Schedules for meetings are by agreement.

Transparent process—same information available all parties/attorneys at same time. Parties develop options and negotiate for resolution in joint meetings.

100% of all time, money and creative energy is spent on settlement efforts—fewer wasted financial, emotional and mental resources.

All legal expenses are discussed and agreed upon. Legal resources and expenses are more efficiently used.

Can "try" collaboration—if it does not work, you can always litigate.