

Demystifying the Legal Aspects of Divorce: Understanding the 5 Divorce Processes and Learning LawyerSpeak





Demystifying the Legal Aspects of Divorce:

**Understanding the 5 Divorce
Processes and Learning
“LawyerSpeak”**



**Arguing with a Lawyer is like wrestling
with a pig in mud.**

... sooner or later you realize that they like it

Who Am I?



Legal Disclaimer

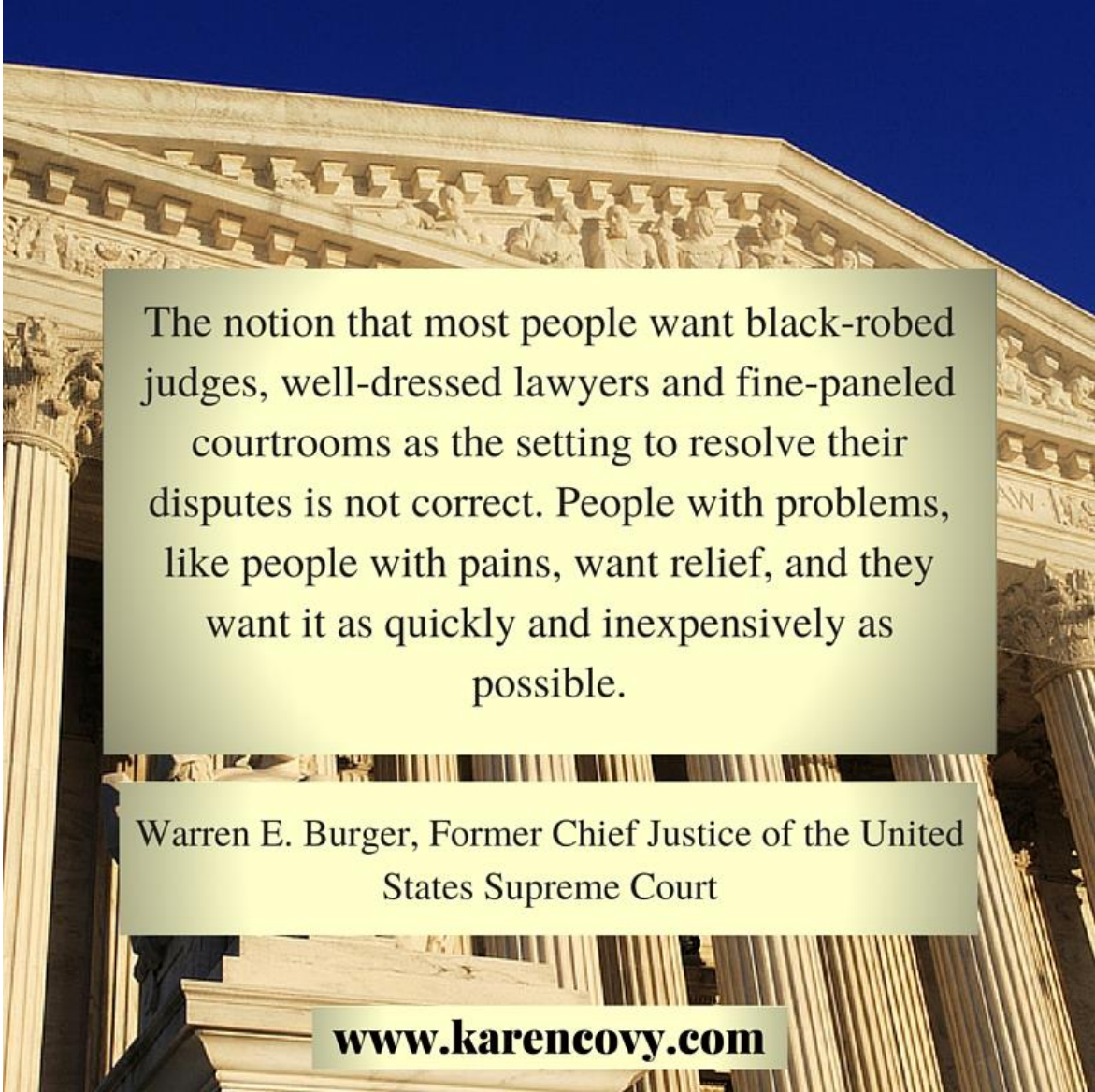
- The information contained in this webinar is designed to be general, practical, divorce information. It is NOT LEGAL ADVICE, nor is it a substitute for legal advice. Divorce law varies from state to state. If you have questions about the exact law in any state, or about how a law may apply in any particular case, you are encouraged to seek legal counsel and advice from a lawyer in your state.
- Participation in this webinar does not create an attorney/client relationship with Karen Covy, or The Law Offices of Karen A. Covy, PC. or Karen Covy Enterprises, LLC.
- While I sincerely wish I had a crystal ball and a magic wand, I don't. As such I can not predict or guarantee how any particular divorce case will turn out. What happens in any divorce case, how much it costs, and how long it takes, depends upon both parties, their lawyers, and their particular circumstances.

How This Webinar is Structured

- Divorce Processes
- Legal Terminology ... ie “LawyerSpeak”



The ~~5~~6 Types of Divorce Processes



The notion that most people want black-robed judges, well-dressed lawyers and fine-paneled courtrooms as the setting to resolve their disputes is not correct. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible.

Warren E. Burger, Former Chief Justice of the United States Supreme Court

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Types of Divorce Process

- Negotiation/Kitchen Table Divorce
- Mediation
- Collaborative Divorce
- Cooperative Divorce
- Arbitration
- Litigation
- Online Divorce



Legal Terms

ADR

Alternative Dispute Resolution

It means anything OTHER THAN going to court.

Direct Negotiation a/k/a “The Kitchen Table Divorce”



compromise party advantage
strategy condition
purpose tactics gain
benefit
Negotiation goal
dialogue accommodating
difference competing outcome
alternate
avoiding debate collaborating
understanding agreement
consideration gain principle

Direct Negotiation is



Dangers of Direct Negotiation



Direct Negotiation is NOT for You If:

- You can't talk to your spouse without getting into a fight.
- Your spouse won't talk to you.
- You are afraid of your spouse.
- You can't stand up for yourself.
- You don't know anything about the family finances and your spouse won't share information.

Mediation



Legal Terms

Mediator

A neutral facilitator who helps parties reach an agreement on disputed issues

Arbitrator

A neutral, independent decision-maker, who conducts arbitrations and decides the dispute.

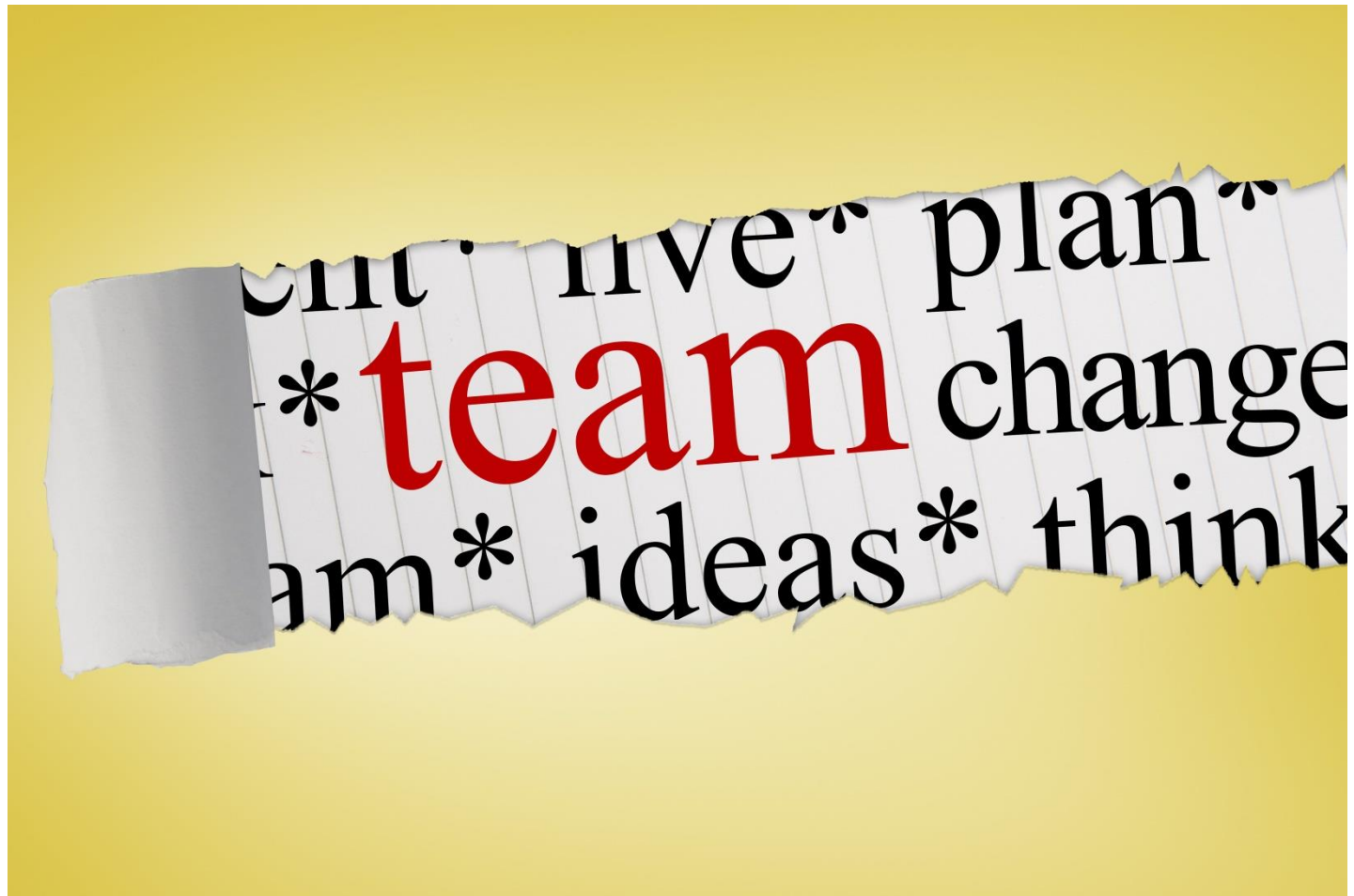
Benefits of Mediation



Mediation only works if:

- You and your spouse both agree to mediation.
- You and your spouse agree to full, voluntary financial disclosure.
- You are comfortable speaking up for yourself.
- You are financially savvy enough to make decisions about your financial future.
- There is no history of domestic violence (although some mediators may mediate cases in which domestic violence is an issue.)

Collaborative Divorce



Collaborative Divorce

- Uses specially trained professionals.
- Uses a team approach.
 - Lawyer
 - Divorce Coach(es)
 - Financial Neutral
 - Child Specialist



A hand is shown signing a document titled "AGREEMENT". The document is held by a blue binder with a silver clip at the top. The text on the document includes a preamble, a witness clause, and eight numbered items detailing employment terms. The signature line for the Employee is on the left, and the line for the Company is on the right, where the hand is currently writing. The document is otherwise blank.

AGREEMENT

This agreement is made and takes effect on 05/12/2012 between Example Company Ltd., a New York corporation, hereafter called "Company" and John Smith, hereafter called "Employee".

Witnesseth:

1. The Company hereby employs Employee for a term commencing on the date of this agreement and Employee hereby accepts such employment.
2. During the Employee's employment he/she will:
 - A. Devote such time and effort as may be reasonably required by the Company to perform his/her duties.
 - B. Not engage in any other employment or business activity without the Company's written consent.
3. Perform such duties as may reasonably be requires of him/her by the Company.
3. For services rendered by the Employee, the Company shall pay him/her as follows:
 - A. The annual sum of \$4000, calculated as follows (insert compensation formula)
 - B. A bonus of 10% of sales payable monthly
4. Non-payroll benefits to include health insurance, travel and business entertainment expenses, and other items specified in Attachment A.
4. Employee agrees that during his/her term of employment by the Company and for a period of one year after termination of such employment, he/she will not act as an employee, agent, broker, shareholder, or otherwise engage in any business selling products similar to those customarily sold by the Company.
5. Employee understands that he/she will acquire confidential information of business value to the Company during the course of his/her employment. Employee hereby agrees not to divulge such confidential information to any other party, or to use such information for his/her own profit except in performance of employment activities beneficial to the Company.
6. This agreement is an employment-at-will agreement. The Company may, at any time, with or without cause, discharge the Employee by giving him/her written notice of such discharge.
7. Employee's employment shall terminate upon his/her death; inability or failure to perform the duties required by his/her employment; or his/her written notice of resignation given to the Company.
8. Following termination of employment, all obligations under this agreement shall cease except the provisions of items 4 and 5, and any causes of action which may arise from the termination.

Employee signature

Company

This agreement is made and takes effect on 05/12/2012 between Example Company Ltd., a New York corporation, hereafter called "Company" and John Smith, hereafter called "Employee".

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 - B. Not engage in any other employment or business activity without the Company's written consent.
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5. Non-payroll benefits to include health insurance, travel and business entertainment expenses, and other items specified in Attachment A.
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9. Employee's employment shall terminate upon his/her death; inability or failure to perform duties required by his/her employment; or his/her written notice of resignation given to the Company.
10. Following termination of employment, all obligations under this agreement shall be the provisions of items 4 and 5, and any causes of action which may arise from the termination.

Employee signature

Comp

Divorce Lawyer



Divorce Coach



Differences Between A Divorce Coach and a Counselor or Therapist

Coach

Present focused

Looks for solutions

Faster process

Less likely to be covered by insurance

Counselor

Past focused

Looks for healing

Deeper process

More likely to be covered by insurance

Financial Neutral



Child Specialist



Legal Terms

Custody

Legal Custody – The right to make major decisions concerning a child

Religion

Education

Medical

Extra Curricular Activities

Two Kinds of Legal Custody:

Joint

Sole

Residential Custody – Where a child lives most of the time, or where a child lives for school purposes

Physical Custody – Who has possession of the child at the moment?

Legal Terms

Parenting Time

Parenting Time a/k/a Visitation – The right to spend time with your kids

- Regular Parenting Time
- Holiday Parenting Time
- Vacation Parenting Time

Legal Terms

Best Interests

What's best for the child.

It means that all discussions and decisions related to the children are made with the ultimate goal of fostering and encouraging the **child's** happiness, security, mental health, and emotional development.

Benefits of Collaborative Divorce



- Is less expensive than fighting in court (although it is not your cheapest alternative)
- Gives you a voice in the process, with the help of your lawyer. You are not negotiating alone
- Gives you the benefit of professional advice in the areas most important in divorce
- Each professional works within his/her area of expertise
- Gives you more control over the timing of your divorce
- Is much more private than litigation
- It preserves relationships and the ability to work together in the future
- Promotes durable agreements. Less post-divorce litigation

Litigation (aka Fighting in Court)



Litigation

- Requires lawyers to do it right.
- Takes a lot of time.
- Costs a lot of money.
- Is open to the public.
- Destroys relationships.
- Hurts children.



Benefits of Litigation

- Gets you divorced when your spouse won't agree to divorce.
- Provides court supervision of behavior.
- Provides a mechanism to secure financial documents from a reluctant spouse.
- Provides a mechanism to force your spouse to do what the judge says.
- Will eventually result in a decision in your case if you and your spouse are unable to reach an agreement yourselves.

Arbitration



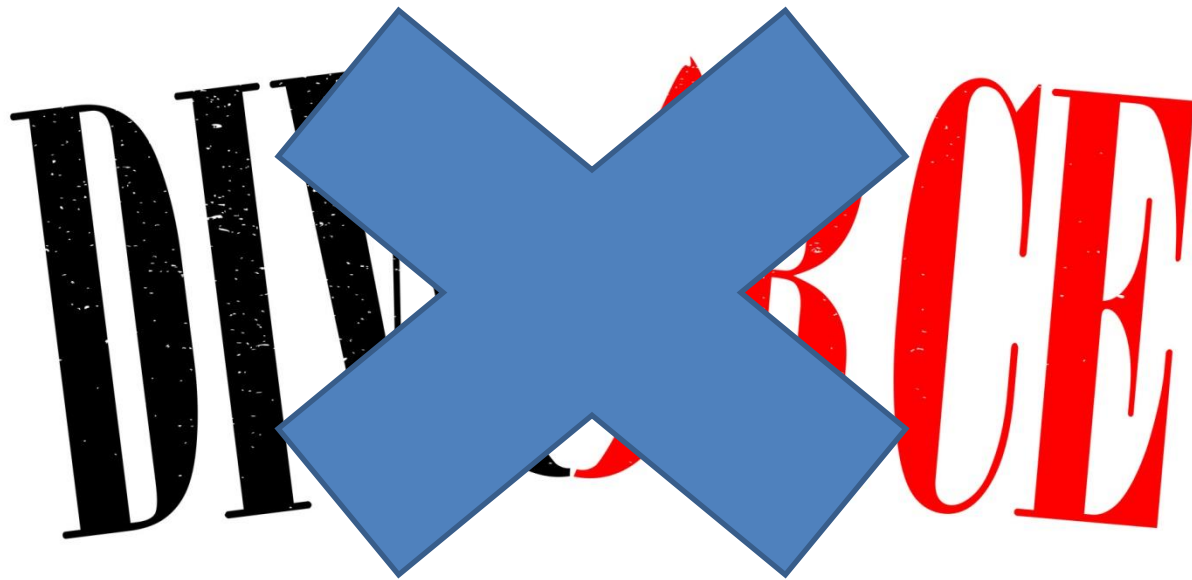
Benefits of Arbitration

- You choose the arbitrator.
- More private than going to court.
- Provides a mechanism to secure financial documents from a reluctant spouse.
- You can control the timing of the process.

The Problem With Arbitration



Online Divorce









































































Not Every Process is Right for Every Person



WHICH DIVORCE PROCESS WILL WORK FOR YOU?

		MEDIATION	CO-OPERATIVE DIVORCE	COLLABORATIVE DIVORCE	DIY	LITIGATION
	COST	 	 	 		 
	TIME	 	 	  	   	   
	PRIVACY					 
	OPPORTUNITY TO BE HEARD					
	DURABILITY OF AGREEMENT					
	CONTROL OF DECISION	★ ★ ★	★ ★	★ ★ ★ ★	★	★
	CONTROL OF PROCESS					 
	FLEXIBLE PLAN					
	GOOD FOR COMPLEX FINANCIAL SITUATIONS	 YES	MAYBE	 YES	 NO	MAYBE
	WORKS IF CASE INVOLVES DOMESTIC VIOLENCE	 NO	 YES	MAYBE	 NO	 YES

Overview of the Legal Process



Starting Your Case



Legal Terms

Jurisdiction

The state where your divorce takes place.

Most states require you to live in the state for a certain period of time (usually 3 – 6 months) before you can file for divorce in that state.

Legal Terms

Grounds for Divorce

Fault

No Fault

- Don't have to prove that the divorce was caused by anyone's "fault"
- EVERY state in the U.S. has some form of "No Fault" law.
- The rules of no fault vary from state to state.

Effect of Differences in State Law

- In most states, proving fault (e.g. adultery) has NO effect on how property is divided.
- Depending upon the law in your state, proving fault (e.g. adultery) may also have NO effect on whether, or for how long, you have to support your spouse (or can expect to be supported by your spouse)

Legal Terms

Fault Grounds

- Mental Cruelty
- Adultery
- Abandonment
- Constructive Abandonment
- Other bad conduct (check your state's laws if you are interested)

Divorce Starts with a Petition for Divorce



What About Your Spouse?

- Service of Process
- Voluntary Appearance*
- Service by Publication



Legal Terms

Default

If your spouse is served with divorce papers and does nothing, the court will eventually enter judgment by default. In other words, you “win” by default.

The process of litigation



Discovery



Legal Terms

Discovery

Interrogatories

Written questions designed to discover information.

Document Production Request

Requests to a party in a divorce to produce certain documents.

Depositions

Oral question and answer session.

Subpoenas

Demand to produce documents directed at a person or entity who is NOT a party to the case.

Motions and Petitions



Legal Terms

How a Divorce Ends

Settlement

The parties agree on how they are going to resolve their case themselves.

Trial

A formal court hearing on all issues in a particular case. At the end of the presentation of evidence and arguments, the judge renders a decision on all pending issues.

Legal Terms

Legal Documents to Finalize Divorce

Marital Settlement Agreement

Final agreement about who gets what in divorce. It deals with how property and debts are divided, support, attorney's fees, and any other significant divorce issue.

Separation Agreement

A signed legal contract between a husband or wife that is either the result of a legal separation OR it can be a contract signed in anticipation of divorce that determines who gets what in divorce.

Legal Terms

Legal Documents to Finalize Divorce

Parenting Agreement/Custody Judgment/Parenting Allocation Judgment

Agreement or Judgment about what happens to the kids after divorce and when each party sees the kids. Typically does NOT deal with money issues, not even child support.

Judgment for Dissolution of Marriage/Divorce Decree

Final court order signed by the judge saying you are divorced.

How a Divorce Ends



1. By Trial
2. By Agreement at a Final Hearing
(Also known as a “prove up”)

Legal Terms

Other Legal Terms

Annulment

Court determination that a marriage never existed.

Affidavit

Sworn signed statement of facts. It's like written testimony.

Common Law Marriage

Marriage without a marriage license or ceremony. A marriage that arose from living together for a prolonged period of time.

Legal Terms

Other Legal Terms

Contempt

Not doing what a court ordered you to do. Or, doing what a court ordered you not to do.

Pro Se/Pro Per

Representing yourself, without a lawyer.

Order of Protection

An order of the court not to harass, stalk, beat, intimidate or touch another person, and/or to stay away from where they live and work.

Questions?



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The End

The image features the words "The End" in a white, cursive script font. A thick, white, curved line underlines the text, starting from the bottom of the 'T' and ending at the bottom of the 'd'. The background is black with several concentric circles of varying shades of gray, creating a tunnel-like effect. The text and underline are positioned in the center of the composition.