

**Atlantic Divorce Mediation & Collaborative Law Center**  
**Law Office of Joanne S. Nadell, Esquire**  
44 Sycamore Avenue Bldg. 3, Suite B  
Little Silver, New Jersey 07739

(732) 741-7776

Fax: (732) 741-7788

Nadell@AtlanticDivorceMediation.com

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***DIVORCE OPTION DISCLOSURE STATEMENT***

This document will serve as a follow up to our meeting and telephone conversations wherein we discussed the options that are available for you to address the resolution of the issues involved in your divorce action. This letter will not encompass all that we have discussed, but rather is intended to draw your attention to the significant differences that exist in the methods that are available to arrive at the terms of the divorce judgment. This list is not intended to cover all of the issues we discussed. It is simply to provide you with a summary and to underscore some of the major distinctions in the different processes.

The only method to obtain a divorce is through someone filing a Complaint with the Superior Court and for that Court to enter a divorce judgment that is binding upon the parties. For the overwhelming number of cases, that judgment involves an agreement that the parties have entered into that is incorporated into the divorce judgment, in lieu of a trial whereby these decisions are made by a judge. There are several methods that are available to me as your attorney to derive such an agreement, notably: (1) Collaborative Law; (2) Mediation and (3) Litigation. There are advantages and disadvantages to each course.

**The alternative methods described below allow you to set the timetable and minimize the unnecessary attorneys' fees that are generated through the litigation by virtue of the Court's requirements. My office favors both mediation and collaborative practice as models for resolving your family's differences.**

## **Collaborative Law**

Collaborative Law is a method of dispute resolution whereby each party retains an attorney to advocate their interests, and the parties also retain other experts, whether accountants or mental health practitioners, as the case may require, and the parties and all professionals sign an agreement committing to working together, outside of the litigation, to arrive at the terms of the agreement. The parties and attorneys commit that they will not commence litigation. If their process is unsuccessful, and one party or the other seeks litigation, the attorneys involved in the collaborative process must withdraw and new counsel is retained.

### **Advantages to Collaborative Law:**

A. It resolves the issues outside of the adversarial proceedings and many find the process allows the parties to maintain a more healthy relationship during and after the case.

B. The negotiations can occur prior to the filing of any pleadings with the Court, allowing the parties to focus on the issues while avoiding allegations about the other.

C. You and your spouse have complete control over the manner and timetable in which the agreement is reached.

D. Collaborative Law is also different from mediation in that you have an attorney involved in the process who serves as your advocate. In mediation, the Mediator simply serves as a facilitator who does not seek to advance or protect either party's interest.

E. The requirement that all lawyers be disqualified in the event of a breakdown guarantees that all participating counsel will be totally and exclusively motivated to make the process succeed. Thus, all participants are equally and fully invested in finding the solution.

F. Many people find that the costs involved in the collaborative process to be less than that in litigation.

### **Disadvantages to Collaborative Law:**

A. As with all the alternatives to litigation, the financial disclosures made by your spouse will not be subject to the same standard for falsity or omissions.

B. There is no ability to compel discovery from third parties.

C. You will lose the financial protections and right to seek Orders in litigation as described above.

D. The requirement that the lawyers withdraw from representation in the event of a breakdown will mean that if the process is unsuccessful, you must retain new counsel and pay another retainer fee.

E. There is no specific date for determining equitable distribution of assets which would be fixed on the date of filing a Complaint for Divorce.

## **Mediation**

Mediation is a method of dispute resolution whereby an independent person facilitates an agreement between the parties. The Mediator does not make any decisions, but rather serves only to facilitate the parties to arrive at their own agreement. The terms, and the fairness of the agreement, are decided by the parties themselves, with or without independent advice from their own attorney.

### **Advantages to Mediation:**

A. The costs can be reduced by the parties both paying one person – the Mediator – during the course of the negotiations, as well as avoiding litigation costs if commencing the litigation is unnecessary. You would be advised to have your own attorney during the mediation process, to meet with independently, to advise you of your rights during the course of the mediation.

B. You and your spouse have complete control over the manner and timetable in which the agreement is reached.

C. The negotiations can occur prior to the filing of any pleadings with the Court, allowing the parties to focus on the issues while avoiding allegations about the other.

D. It resolves the issues outside of the adversarial proceeding, and many find the process allows the parties to maintain a more healthy relationship during and after the case.

### **Disadvantages to Mediation:**

A. The financial disclosures made by your spouse will not be subject to the same standard for falsity or omissions.

B. There is no ability to compel discovery from third parties.

C. If you opt to attempt mediation prior to commencing litigation, you will lose the financial protections and right to seek Orders in the litigation as described above.

D. In a mediation attended by the parties only, the Mediator simply serves as a facilitator who does not seek to advance or protect either party's interest. While this is beneficial in that it may serve to reduce the adversarial nature of the proceeding, you lost having an advocate directly involved in the negotiating process.

E. If you and your spouse decide to have the attorneys involved in the mediation sessions, there are the additional costs of having the attorneys and the Mediator being involved in the negotiation.

## **Litigation**

During our meeting, I explained that I no longer handle strongly contested divorce or custody matters. If you feel your case will be litigated from the beginning, I will immediately refer you to a litigation attorney who will handle your case. With litigation, you have the option of commencing the case by immediately filing the Complaint. While it is pending, you can negotiate directly with your spouse. There can also be "four-way conferences" where the parties and their attorneys meet to negotiate. Various proposals and draft agreements can be exchanged. At some point during the case, an Early Settlement Panel hearing will be held at the Courthouse, which is a non-binding arbitration hearing before one or two independent attorneys who hear the disputed issues and make a non-binding and confidential decision on how it should be resolved. There may also be settlement conferences at the Courthouse, where the judge presiding over your case may meet with the lawyers to facilitate negotiations and, in some instances, make recommendations or provide his or her impressions about the parties' positions. If the case is not settled, a trial is held where the parties present evidence in an adversarial proceeding and the judge makes the decision. You would have the right to appeal any such decision to a higher Court.

**Advantages to Litigation:**

A. The filing date of the Complaint for Divorce is utilized for the date of the termination of the marital property for many purposes, whereby all assets and liabilities in existence on that date is subject to distribution, but perhaps not assets or liabilities acquired after that date. Thus, there is a financial protection given to you by simply filing the Complaint. This letter does not provide a sufficient opportunity to describe all of the different issues that are involved in determining the date for the distribution of property, and there are many issues regarding the subsequent change of value of passive or active assets, or subsequently acquired assets or liabilities that may give rise to distribution or a claim despite the filing of a Complaint. Suffice it to say that if you believe there may be an immediate need to protect your subsequently acquired assets or income from your spouse, or to shield yourself from your spouse's liabilities, then this course must be given further consideration.

B. By immediately commencing the litigation, you have the right to obtain immediate Orders from the Court. Some important immediate Orders include those involving custody of children, parenting rights and removal of the children from the State or Country. Also, you can seek an immediate temporary Order of support, or maintenance of life insurance to secure support obligations. Importantly, you can also obtain an Order preventing the dissipation, sale or destruction of assets, or restraints against utilizing credit. All Orders can be enforced by the Court.

C. The litigation required the parties to make certain financial disclosures under oath, and false statements are subject to penalties under law. You can also seek additional financial disclosures by seeking what is called "discovery". You can send written questions to be answered under oath subject to the same consequences. You may also request the production of documents, you may take depositions of your spouse or other persons under oath, and you may seek third parties (such as banks, accountants, credit card companies) to produce documents. While the parties do produce financial information in the alternative dispute methods described below, these proceedings do not have the same standard for

false financial disclosures. Additionally, in the alternate proceedings there is no ability to compel discovery from your spouse or third parties.

**Disadvantages to Litigation:**

A. It is an adversarial proceeding. The adversarial nature of the proceedings and negotiations sometimes has adverse consequences on the relationship between the parties during and following the case. This can be particularly difficult when children are involved and there is a need to continue to co-parent following the completion of the case. For these cases involving children, the adversarial nature of the dispute between their parents can have many different negative consequences.

B. Confidential financial and personal matters become public record and may be open to scrutiny.

C. Negotiations during the litigation frequently take place in crowded Courthouses under deadlines from the Court, which many feel create undue pressure and lack privacy.

D. If it is the Judge who makes the decision, you surrender the power to determine the terms of the decision, and you lose the option of creative and more thoughtful solutions that may be better for both parties.

E. The costs can be significant. A case to be tried to completion with the Judge making the decision can be extraordinarily expensive. Also, there are many different Court appearances required by the attorneys during the course of the case and many hours spent waiting at the Courthouse due to the limitation of the Court's resources that will be charged.

***Thank you again for the opportunity to be of service to you. We truly look forward to working with you on your matter. Our office strives to help our divorcing clients resolve their differences in a calm, non-adversarial and efficient manner.***

Submitted by:

Joanne S. Nadell, Esquire

February 27, 2008