

A question that clients frequently ask in an initial consultation is why they should use the collaborative process instead of mediation. Given the lack of general public knowledge regarding collaborative divorce, this is not a surprising question. Clients often come upon collaborative divorce via interest in resolving their divorce without lawyers. They view mediation as a way to resolve the dispute without having the expense and perceived animosity that comes from using attorneys.

While I am supportive of the benefits that mediation can provide, there are a few real differences between mediation and collaborative divorce that a client should know about:

1. Power imbalance. In a mediation without attorneys it is easy for the spouse with greater power in the relationship to control the result. For instance, a spouse who is guilty about having an affair may give up much more than he/she should from a sense of guilty; or a stay at home parent who has never been in charge of the finances may not ask for what he/she deserves due to a lack of knowledge or about the finances. The mediator, as a neutral party, cannot step in and advocate for the spouse with less power. In the collaborative process, each party has an attorney to make sure that the power imbalance is taken out of the process. The lawyers, in fact, will work together to smooth out any imbalance in order to reach a fair agreement.
2. Interest based negotiation. Even though a lawyerless mediation is based around the idea of amicably reaching agreement, it still uses positional negotiation. Each party takes a stance and the mediator helps them meet in the middle. Collaborative divorce, on the other hand, used interest based negotiation. The parties try to reach an agreement based upon their interests rather than hard positions that they will not back off of. A mediator is often happy with an agreement that both spouses do not really like but that they will agree to. In a collaborative divorce, the lawyers work with the parties to reach an agreement that they both like.
3. Advocacy. Divorce is a stressful process. People manage the stress and emotions differently. Without an objective advocate, it is extremely

difficult for a spouse to think through the complex personal and financial issues that need to be resolved in a divorce. The collaborative process provides not only attorneys to assist with this, but also divorce coaches who can help the parties manage their emotions and keep them from getting in the way of the optimal result.

The lawyers at Stephens Margolin P.C. welcome these discussions. Contact the office to schedule a consultation to find out more about how the collaborative divorce process can assist you. Visit www.stephensmargolin.com or www.collaborativedivorcenorthwest.com for further information.