

A Smarter Divorce

Your California Divorce Guide

South Bay Mediation
—
Cal Divorce Online

Eric Piety, MA

Section 1

Your Options for Handling Divorce

No two marriages are the same, and so it only follows that no two divorces will be the same, either.

In fact, if you are contemplating divorce, you have several options about *how* to proceed. In general terms, you need to consider four broad categories of divorce alternatives: Do-It-Yourself (DIY), Mediation, Collaborative and Litigation. Let's take a look at the pros and cons of each one.

Do-It-Yourself Divorce

The best advice I can give you about Do-It-Yourself Divorce, is **DON'T** Do-It-Yourself!

Divorce is complicated, both legally and financially. You can easily make mistakes, and often those mistakes are irreversible. The only scenario I can envision when a Do-It-Yourself divorce may make any sense, might be in a case where the marriage lasted only two or three years and there are no children, little or no assets/debts to be divided, comparable incomes and no alimony. In a case like that, a Do-It-Yourself divorce could be accomplished quite quickly and inexpensively. Nevertheless, I would still highly recommend that couples in this situation have a professional review everything before it is finalized.

Collaborative Divorce

During a collaborative divorce both you and your spouse will each hire an attorney who has been trained in the collaborative divorce process. The role of the attorneys in a collaborative divorce is quite different than in a traditional divorce. Each attorney advises and assists their client in negotiating a settlement agreement. You will meet with your attorney separately and you and your attorney will also meet with your spouse and their attorney. The collaborative process may also involve other neutral professionals such as a divorce financial planner who will help both of you work through your financial issues and a coach or therapist who can help guide both of you through child custody and other emotionally charged issues.

As you can see, the collaborative process can save you time over a litigated divorce, but it still can be quite expensive as both parties are represented (\$400-\$500 each in CA) and they also will pay for a mediator and other experts.

In the collaborative process, you, your spouse, and your respective attorneys all must sign an agreement that requires that both attorneys withdraw from the case if a settlement is not reached and/or if litigation is threatened. If this happens, both you and your spouse must start all over again and find new attorneys. Neither party can use the same attorneys again!

Litigated Divorce

Due to a lack of understanding and awareness of the options, the majority of divorcing couples still wind up in the “traditional” model of litigated divorce.

Keep in mind, though, “litigated” does not mean the divorce ends up in court. In fact, the vast majority of all divorce cases (more than 95 percent) reach an out-of-court settlement agreement. “*Litigation*” is a legal term *meaning* ‘carrying out a lawsuit.’ Unfortunately, most attorneys are trained only to litigate, and therefore settlements are only reached at the last moment after years of pain and at huge financial damage.

The most important and most difficult parts of any divorce are coming to an agreement on child custody, division of assets and liabilities and alimony payments (how much and for how long). Although you want your attorney to be a highly skilled negotiator, you do not want someone who is overly combative, ready to fight over anything and everything. An overly contentious approach will not only prolong the pain and increase your legal fees, but it will also be emotionally detrimental to everyone involved, especially the children.

And don’t forget, once you’re in court, it’s a judge who knows truly little about you and your family that will make the final decisions about your children, your property, your money and how you live your life. That’s a big risk for both parties to take –and that is also why the threat of going to court is usually such a good deterrent.

Mediation

In divorce mediation, a divorcing couple works with a neutral mediator who helps both parties come to an agreement on all aspects of their divorce. The mediator may or may not be a lawyer, but he/she must be extremely well-versed in divorce and family law. In addition, it is critical for the mediator to be neutral and not advocate for either party. Both parties may choose whether to consult with their own individual attorneys during the mediation and prior to signing the final divorce settlement agreement.

Here are a few pros and cons to consider before deciding if mediation will work for you.

On the “pro” side, divorce mediation:

- Results in a better long-term relationship with your ex-spouse since you will not “fight” in court.
- Is easier on children since the divorce proceedings may be more peaceful.
- Expedites an agreement.
- Reduces expenses.
- Allows you to stay in control of your divorce because you are making the decisions – not the court.
- Allows for more discretion. Mediation is private; litigated divorce is public.

Cons:

- Possible lost time. If negotiations fail, you’ll need to move to litigation. Fortunately, the low cost of mediation limits your financial risk.



Top 5 Myths About Divorce Mediation

Because divorce mediation is not as widespread as divorce through litigation, there are a number of common misconceptions about it. Many people don't know what divorce mediation is at all or don't understand the methods associated with it. That being said, divorce mediation is a good option if you know what to expect. To help you better understand the goals and methods of divorce mediation, here are the top 5 myths, debunked:

1. "I need the mediator on my side."

When many people think of getting a divorce, they want to work with someone who will represent their best interests, and those alone. During the divorce mediation process, however, you represent yourself and your spouse does the same.

Your divorce mediator works to help you find a solution you can both live with. Of course, laws regarding property and support still apply. A good mediator will educate you regarding the law and help you rigorously evaluate any settlement that you and your spouse may consider.

2. "I'll have to settle for less with divorce mediation."

Because no one technically wins with divorce mediation - that also means no one loses. You and your spouse will both be working toward a mutually agreeable solution, so you may actually have a better chance of getting the settlement you want. Plus, divorce mediation can be exponentially cheaper than a divorce through litigation, which means you'll save money during the entire process. The money you save adds to your final outcome.

3. "The courtroom is the best way to resolve child custody disputes."

This makes little sense. Do you really want to leave your children's futures in the hands of a judge? How would your children feel having to suffer through a long, drawn-out trial? Through divorce mediation, you and your spouse can put your differences aside to resolve your child custody matters. By working together with your children's best interests in mind, your children will be much better off.

4. "High conflict situations are not appropriate for mediation."

Mediation is an alternative conflict resolution process. Mediation was created to resolve conflicts between parties who disagree. That makes it appropriate for any degree of conflict. The higher the level of conflict, the more you have to gain (i.e., "save") by using mediation.

5. "We'll have to resolve all of our issues in divorce mediation."

Divorce mediation is entirely what you make of it. If you want to resolve everything, you have the means to do so. However, if you cannot resolve everything, you can pick up where mediation left off and continue your dispute in court.



Section 2

Legal Process Options

California offers a few processes for completing a Divorce or Legal Separation, depending on your situation.

Summary Divorce

In California, an expedited divorce procedure is available to couples who haven't been married for very long (five years or less), don't own much property, don't have children, and don't want spousal support. Both spouses need to agree to the divorce, and you must file court papers jointly. A summary (sometimes called simplified) divorce involves a lot less paperwork than other types of divorce—a few forms are often all it takes. You can get the forms you need from the local family court. For this reason, summary divorces are easy to do yourself, without the help of a lawyer.

Uncontested Divorce

The best choice, if you can make it happen, is an uncontested divorce. That's one in which you and your spouse work together to agree on the terms of your divorce, and file court papers cooperatively to make the divorce happen. There will be no formal trial, and you won't ever have to appear in court.

Default Divorce

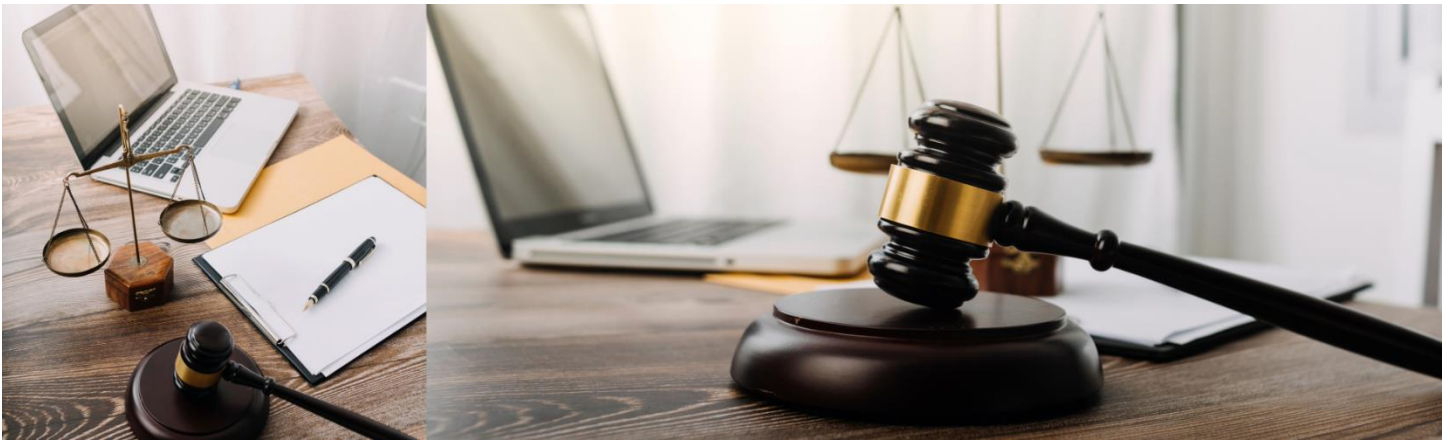
The court will grant a divorce by "default" if you file for divorce and your spouse doesn't respond. The divorce is granted even though your spouse doesn't participate in the court proceedings at all. A default divorce might happen, for example, if your spouse has left for parts unknown and can't be found.

Fault and No-Fault Divorce

In the old days, someone who wanted a divorce had to show that the other spouse was at fault for causing the marriage to break down. Now, every state offers the option of "no-fault" divorce. In a no-fault divorce, instead of proving that one spouse is to blame, you merely tell the court that you and your spouse have "irreconcilable differences" or have suffered an "irremediable breakdown" of your relationship.

Contested Divorce

If you and your spouse argue so much over property or child custody that you can't come to an agreement, and instead take these issues to the judge to decide, you have what's called a contested divorce. You'll go through a process of exchanging information, settlement negotiations, hearings, and, if you can't resolve the case after all that, a court trial. If this sounds like your situation, you'll want to talk to a lawyer.



Section 3

Considerations

Let's be honest, if you are in a conflict, legal or otherwise, you and those you are in conflict with probably have a different view of a "fair" outcome. While anger, resentment, and a desire for retribution are natural, they are not the best guides when otherwise reasonable adults are seeking to resolve a dispute. Mediation recognizes the need to find solutions that all parties can live with.

When you let the legal process take over, you are relinquishing the decision of "what is fair" to a third party, be it a judge, arbitrator, or jury. Though you may be convinced "the law" is on your side, any attorney knows that there is no such thing as a "sure case." Attorneys are committed to seeking the best "legal" outcome for their client regardless of the cost to all involved. The emotional impact on children and other relationships, as well as the financial damage of litigation to those involved is lost in the "battle" for the "best legal result." But "the law" is based on legislation, contractual agreements, and legal precedents rather than what is best for you and your particular situation. Mediation is different.

In mediation, the parties directly involved in the conflict decide what is fair based on all of the factors involved. Individual concerns regarding family relationships, emotional strain, religious belief, personal values, and the impact on children are all areas open for discussion in mediation. "Fairness" by nature is a vague and subjective concept that must be decided by each individual. The ability of those involved to structure a "fair" solution is lost when decision making is turned over to someone else. Only YOU can decide what's right for YOU.

AVOID EXPENSIVE COURT ROOM BATTLES

The cost of a typical divorce litigated all the way to Judgment is \$20,000.00 to \$50,000.00. Cases which involve complex property, support or custody issues can be much higher. There is also an enormous emotional toll. It is in your best interest to avoid litigation if possible.

MEDIATION SAVES MONEY

Cost for a comprehensive divorce mediation, including preparing and filing all of the legal paperwork necessary to obtain a final judgment from the court, averages between \$3,500.00 and \$8,000.00. (Complex cases can be significantly higher).

MEDIATION IS BETTER FOR CHILDREN

A long and drawn-out custody battle can negatively impact kids. Children can benefit when parents resolve their differences in a cooperative manner in mediation. Children feel their parents' pain. They want to protect the parent they feel is being attacked. Taking an aggressive posture in litigation while sometimes necessary is emotionally difficult for your children. If parents can maintain a relationship which allows them to co-parent and help foster a relationship with the other parent, they will also foster a better relationship for themselves.

TIME EFFICIENT

Mediating a family law matter is much faster than taking a case through pre-trial and trial. The number of sessions required for successful mediation depends on the number and complexity of the issues.

YOU RETAIN CONTROL

In mediation, the parties retain control over the final result. In litigation, by contrast, the parties relinquish control to the lawyers and the judge.

CONFIDENTIAL

The mediation process is confidential. Successful mediation reduces the need for the parties to file adversarial pleadings in the public file or make allegations against each other in open court.

DIGNIFIED

Many people find mediation a much more dignified approach to resolving conflict because both parties have made a commitment to try to resolve their dispute.

ANIMOSITY? ...OK

Mediation is designed to reduce conflict. Do not assume that you are not a candidate for mediation because you are not currently communicating positively with the other party.

SEPARATE ROOMS? ...OK

It is not uncommon for parties to conduct an entire mediation from separate rooms. Today, we handle mediation sessions on zoom and our clients find this to be a much more comfortable venue.

YOUR SCHEDULE

Mediation sessions are set on the parties' schedules, not the court's busy calendar. Zoom meetings increase our flexibility with scheduling.

SAFE

[South Bay Mediation](#) and [Cal Divorce Online](#) provide safe and respectful forums for the parties to reduce conflict and resolve disputes.

NEUTRAL

We value impartiality above all. We take no side due to gender, race, culture, education, or any other factor that differentiates us as people. The law is blind to these particularities and so we seek to honor this. Mediators are human, but we seek to keep our personal biases out of the process. This is YOUR Divorce, not ours.

ATTORNEYS ALLOWED

You can mediate with or without independent counsel. Counsel can come to the session or advise you elsewhere.

ONE STOP SHOP

[South Bay Mediation](#) & [Cal Divorce Online](#) can prepare and file all necessary paperwork to initiate and conclude your divorce or legal separation.

YOUR FUTURE

Parties who resolve their matter in mediation often return to mediation for a safe and familiar environment in which to resolve any issues that arise in the future. We have many clients who routinely return year after year to modify parenting plans and support due to changes in circumstances.

THE SUCCESS RATE FOR PARTIES THAT SELF-SELECT MEDIATION IS APPROXIMATELY NINETY (90%) PERCENT.



Section 4

MEDIATION WORKS

Mediation is a form of "Alternative Dispute Resolution." It is one way in which disputing parties can resolve their disputes without going to court. It is an alternative to adversarial courtroom litigation. Mediation is a completely voluntary and confidential process that can begin at any time during a conflict. Mediation can still be entered into even after a lawsuit or divorce petition has been filed. Mediation is quickly becoming popular and widespread because of the benefits to the courts and to parties in having disputes resolved using far less time and money and without overburdening court resources. However, time and cost-savings are only part of the benefits of mediation.

Many people continue to be unfamiliar with the mediation process and what to expect. [South Bay Mediation](#) offers a free consultation to help the parties understand how mediation works and how the process might move forward in their particular case.

PARTIES ARE DECISION MAKERS

A key benefit of mediation is that the parties are their own decision makers. There is no judge to impose an undesirable settlement or award on any party. In mediation, an independent third party is brought in to act as a "neutral" to help parties resolve their conflict. This neutral third party, or "mediator," is trained to facilitate communication between disputing parties and to skillfully guide the parties toward resolution of disputes in a manner which is mutually beneficial to all parties and to find solutions which satisfy everyone and do not result in one party "losing" to the other party. The mediator's job is to work with the parties to allow communication between the parties in a productive and cooperative environment where the parties' goals are the same: to find a resolution to the dispute that works for the particular parties in the dispute, and which saves everyone

time, money, and further litigation.

PRIVACY & CONFIDENTIALITY

Another key benefit of mediation is that it is a confidential and private process. All parties are required to sign a confidentiality agreement prior to beginning the mediation. This means that nothing that is said, done or prepared for the purpose of mediation can ever be used against any party in court or anywhere else. At no time can the mediator be asked to appear in court on any party's behalf. The exception to this confidentiality rule is that any Settlement Agreement which is prepared as a result of the mediation is not confidential in part because it may need to be filed to be enforced.

WHAT CASES CAN BE MEDIATED?

Any case can be mediated. [South Bay Mediation](#) & [Cal Divorce Online](#) lean heavily on Eric Piety's skills and expertise in human behavior to mediate disputes that may be highly emotional and challenging to lessor skilled mediators.

UNBIASED & NEUTRAL

It is important to recognize that the mediator is hired by all of the parties to the dispute and therefore does not represent any individual party. The mediator will not give legal advice or make judgments about who is right and who is wrong. Our job is to remain unbiased as we assist the parties in creating solutions considered they can all live with.

WHAT ABOUT ATTORNEYS?

Depending on the type of case, attorneys may or may not be present in the mediation. There is no requirement that attorneys be present at mediation, regardless of whether attorneys have been retained or not. Attorneys may be present, may be available by telephone or may be available for later consultation with individual clients, if desired.

THE RIGHT CHOICE

Most disputes are emotionally draining in addition to being a drain on time and finances. A mediated dispute puts the clients in control of their own solutions and provides considerable time and financial savings so that the parties can start to put the dispute behind them and move on with their lives.

Family Law disputes and Divorce cases are particularly well-suited to mediation not only because of the very private nature of these disputes, but also because of the extreme emotional strain caused by prolonged litigation in these cases.

In addition to the parents' stress, children also suffer enormously when their parents are divorcing or arguing over custody and financial issues; the children's needs should be paramount in any domestic dispute.

Private mediation provides an option to divorcing families or families embroiled in a custody dispute to have these issues mediated and resolved as quickly and as privately as possible with the least amount of disruption and ongoing uncertainty.

Sensitive and often complex financial issues can be openly discussed and resolved within the privacy of confidential mediation without media or other unwanted attention, particularly in high profile dissolutions.



Section 5

Legal Process Overview

An outline of the court process for a divorce, or legal separation of a marriage, or domestic partnership:

1. The person starting the court case (the petitioner) figures out:

How do I want to end my marriage or domestic partnership? Divorce or legal separation?

2. The petitioner can talk to his or her spouse or domestic partner (the respondent) to see if they can work out an agreement about the terms of the divorce or legal separation.

If they can work out an agreement, they may be able to save on filing fees (only the petitioner needs to file papers in court) and save a lot of time by avoiding having to go to court.

They can get help working out their disagreements from a mediator.

These conversations and attempts to work out the terms of the divorce can happen throughout the case. Even if a couple cannot reach an agreement early on, it is possible they will be able to as the case moves along. So do not give up trying to work out an agreement, either on the whole case or at least some parts of it.

DO NOT try this if you are a victim of domestic violence and are concerned about your safety. Talk to a lawyer or domestic violence counselor first if this is your situation.

3. The petitioner gets and completes all the required forms (including any local forms he or she may need).

The forms can be found on this website, at most courthouses, and in public or county law libraries. If you work with a Full-Service Divorce Mediator, they will handle this for you.

4. The petitioner files his or her court forms.

“Filing the forms” means E-Filing or taking the forms to the courthouse and giving them to a court clerk. The clerk will put the original forms in a file that starts the court case, then stamp the photocopies “Filed,” and return them to the person doing the filing.

There is a filing fee to file court forms. Find out how much the court fee is for filing a divorce petition. If you cannot afford the fees, you can apply for a fee waiver.

5. A person at least 18 who is not involved in the case gives the other spouse or partner (the respondent) copies of the court forms.

This can be handled by a Full-Service Mediator with E-Filing options.

When a lawsuit is filed, the person being sued (the respondent) has a right to be told about it. This needs to be done in time for the respondent to go to court and tell the judge his or her side of the story before the judge decides. This is called “service of process” and is especially important.

The person who serves copies of the court forms on the respondent fills out a form called a “proof of service” to show that he or she has given the correct forms to the respondent in the right way.

The petitioner files the proof of service form with the court clerk.

The petitioner is NOT done. There are more steps after the respondent’s time to file a response runs out. Without these additional steps, the divorce will NOT be final.

6. The respondent decides how he or she wants to handle the case.

The respondent will decide if he or she wants to file a response with the court. If he or she does not, the judge can make decisions ending the marriage or dissolving the registered domestic partnership without hearing the respondent’s side of the story.

He or she can try to work out an agreement with the petitioner about the terms of the divorce.

7. If the respondent chooses to file a response, he or she gets the forms he or she needs, fills them out, and files them with the court clerk.

The respondent files his or her court forms within 30 days of being served with the petitioner’s paperwork.

The respondent files the papers at court and will have to pay a filing fee. Find out how much the court fee is for responding to the divorce petition. If you cannot afford the fees, you can apply for a fee waiver.

8. A person over 18 who is not involved in the case gives (serves) the petitioner a copy of the respondent’s court forms.

The person who serves copies of the court forms on the petitioner fills out a form called a “proof of service” to show that he or she has given the correct forms to the petitioner in the right way.

The respondent files the proof of service form with the court clerk.

9. The parties will exchange financial documents that show what they own and owe. This process is called “preliminary declaration of disclosure.”

Both parties have a right to see any and all financial documentation they require and must be fully satisfied with the disclosures before moving on to an agreement.

10. For a couple to become divorced or legally separated, the court must review and “enter” a judgment.

The process of obtaining a judgment will depend on whether the respondent files a response and whether the spouses or domestic partners can reach an agreement about the terms of the divorce or legal separation. The terms of the divorce become a part of the judgment.

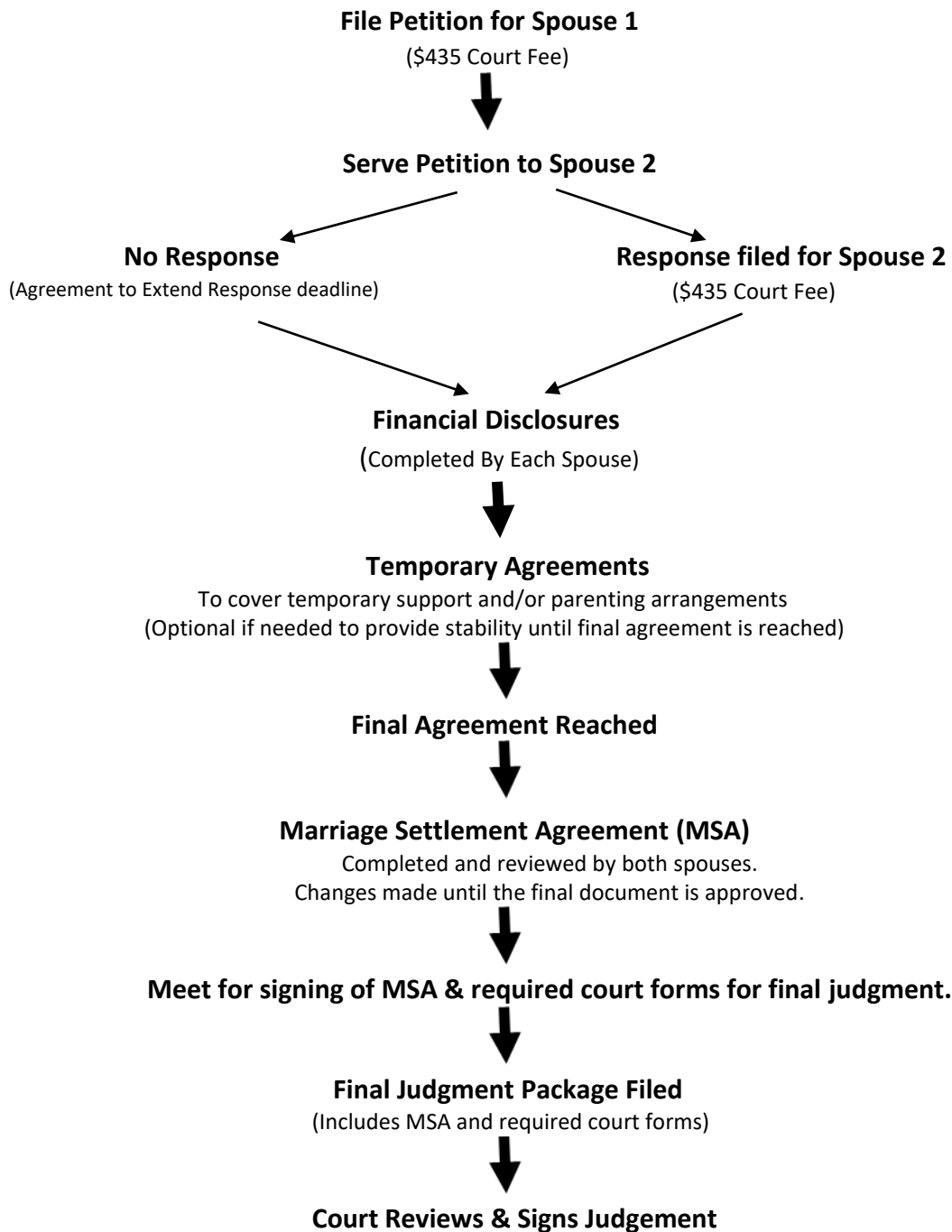
You cannot legally end your marital status until at least 6 months after the case is filed and the respondent has been served with a copy of the petitioner’s paperwork. AND the divorce will not become final on its own. One or both sides will have to file more papers before that happens. Make sure you follow all the necessary steps to complete your divorce.

if the couple can reach an agreement about all their issues, they will not need to go to in front of a judge.

If they cannot reach an agreement, they will have to go to court to handle the issues that they cannot work out themselves.



Divorce Process in Mediated Divorce



About Us

[South Bay Mediation](#) & [Cal Divorce Online](#) has a team of legal and financial professionals on hand to provide all of the expertise required for your case. Legal document assistance is available for filings and document preparation, while attorney and accounting support is used on a consultation basis only as needed.



Eric Piety, MA

Founder / CEO / Lead Mediator

Eric received his mediation training at the Loyola Law School - Center for Conflict Resolution in Los Angeles. Eric is Owner / CEO and Primary Mediator at [South Bay Mediation](#) and [Cal Divorce Online](#).

Background

After graduating from Pepperdine University, Eric attended graduate school at Cal State Northridge and was trained as a behavior therapist while earning his Master's Degree in Developmental Psychology.

As a divorce mediator for more than 15 years, Eric has guided over 600 clients to resolution and settlement.

Message from Eric

Founder / Mediator

Helping people through mediation has become a passion for me. I have been through the painful process of litigation and divorce. I know how emotionally and financially damaging legal battles can be. I also have seen the power of mediation to discover solutions that maintain everyone's dignity while working through a painful conflict thus allowing all parties to get on with their lives.

A workable agreement is possible, even in the midst of anger and resentment.

Call me...let's talk.

SouthBayMediation.com

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