

**COLLABORATIVE; CONCILIATION;
MEDIATION; OR LITIGATION
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Conciliation, mediation, corroborative and litigation are current buzz words used within the legal world that are not well understood by the consuming public.

Conciliation is a form of alternative dispute resolution (ADR) that, unlike litigation, aims to produce a win/win outcome. The goal of conciliation is a fair settlement. An independent impartial third party facilitates an agreement between disputing parties in an effort to guide them to a settlement that is both fair and fits the mutual needs of the parties.

Mediation on the other hand, in the traditional sense, has settlement as it's primary goal, which is hopefully fair. Far too often mediation accommodates the bully; as mediation places a premium on settlement at any cost, as opposed to fairness. Mediation is risky for the weaker party.

Mediation without at least one attorney representing one party leaves the case without a case manager responsible for legal advice and moving the case thru the court system.

Conciliation and mediation are close cousins, which are in practice in the process of merging, yet they remain distinctly different when they merge and a fair resolution is at hand.

Litigation is the process by which any case moves through the court system towards ultimate judgment. This process must be utilized even in cases that are in settlement mode from the beginning. The litigation process is rooted in competition.

Litigation subscribes to the notion that honest Advocates will reveal the truth on which a judge will determine fairness. In 95% of all cases filed in the litigation process produce settlements as fast, or even faster than any ADR method, although the very thought of an adversarial process is, for some objectionable. In those few cases where the case fails to settle, mediation is usually the tool that finishes the job.

Litigation procedures are necessary to move the case forward. In better managed cases, after the dust has settled, the litigator should always test the waters for the ADR method that will best facilitate a settlement in each particular case.

Good Case Management is the true pathway to an economical settlement no matter which settlement approach is taken. When a Good

Case Manager is supervising one side of the case he or she will use the settlement approach that best fits their client.

It should be known that virtually all cases not involving children are settled prior to trial (95%).

Far more than half the time a first meeting with Family Court Services (F.C.S.), a free service provided by the courts, produces a parenting plan concerning the children.

After 35 years of practice, this writer has found a great number of issues will be resolved immediately upon producing a simple one page accounting of assets. This approach causes the parties to focus on the business at hand.

Accordingly, this writer refers to this approach as divorce by **accounting page**. After all it comes down to an equalized division of assets and reasonable, if any, support. This process seems to draw upon the best features of mediation, conciliations, and corroboration. This writer believes the accounting page approach re-directs the parties energy to the accounting page, which in turn promotes early settlement on an equal basis.

Conciliation empowers disputing parties to work towards their own resolution in the realm of fairness.

A hot topic of divorce practice is **collaborative lawyering**. In this process both lawyers work together to establish the inventory of assets in the Trust sense of this method the lawyers agree, with the parties, that if either party files for assistance of the court both lawyers will resign. This approach addresses both property and emotion issues.

This writer believes the time collaborative approach is fit for the rich and famous as it tends to be slow and expensive. Idealistically, this approach will achieve a perfect settlement without any conflict. However the approach is more idealistic than practical.

The best approach of all is adding up the assets on an accounting page and cooperatively dividing these assets in a business like manner that fits both parties' circumstances.