



NAVIGATING DIVORCE IN MICHIGAN: OPTIONS TO KNOW BEFORE YOU FILE

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Compliments of the Attorneys of:

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Brighton, MI

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NOTICE: This publication is intended as a guide and general overview pertaining to Michigan law only. The information contained in this publication is, by necessity, presented in generalized and abbreviated terms; it does not constitute legal advice. Laws are in a constant state of change and the requirements and procedures can vary widely by jurisdiction. *Seek the advice of your own attorney and professional tax and other advisors before making any legal decision.*

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**NAVIGATING DIVORCE IN MICHIGAN:
OPTIONS TO KNOW BEFORE YOU FILE**

**We believe that Family Law decisions
should be placed in the best possible hands:
*Your Own.***

**Mediation and other out-of-court processes help you stay *in charge* and *out of court*.
It is essential to know your options, and select the right process for your own situation,
*before you file.***

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I. FOREWORD

by Andrea Banfield

FOREWORD

I am Andrea M. Banfield – the “Banfield” in Banfield Couling, Law and Mediation, PLLC. Early on in my career as a Family Lawyer, I came to realize that divorce should not be a “one-fits all” process. That my clients, depending on their situation; had options on how they desired their case to be resolved: by mutual agreement, mediation and/or trial. That litigation did not necessarily have to be the first and only viable option for my clients.

As the years of my practice grew, I’ve found more and more that, despite the typical mental image of divorce to be an aggressive and combative process, many clients sought advice on how to end their marriage amicably and without high levels of stress and tension.

Fast forward twenty years later, I’ve been lucky enough to co-found a law partnership with Denise Couling, who co-authored *Navigating Divorce in Michigan, Options to Know Before you File* with Jamie O’Brien, which mirrors my philosophy that the best direction you can give to clients is knowledge of the divorce options and that the happiest clients are those who *choose* their path, rather than being mandated a process by a Court.

Andrea M. Banfield
Attorney at Law

II. INTRODUCTION

INTRODUCTION

Nothing about the subject of divorce is “ideal.” Everyone has heard horror stories of what a “bad divorce” looks like. Our goal is to present an overview of how to achieve a “good divorce.”

Divorce procedures are not one-size-fits-all, but your starting point can make a world of difference to the life you and your family live after the legal process has ended. In this booklet, we will guide you through the major considerations to help you identify the best options under Michigan law for your situation. (To address the *specific* issues in your case, seek the advice of counsel.)

Traditional Divorce Lawsuits. Until April 2019, *all* divorces in Michigan started with a lawsuit and the filing of a complaint for divorce. One spouse is the Plaintiff; the other spouse is the Defendant. Both parties are responsible for attending all required court dates, engaging in discovery and complying with the Michigan Court Rules. (A party who does not attend, may be “defaulted.”) If a settlement cannot be reached before the trial deadline, each party is responsible for presenting his or her side of the issues at trial, using the rules of evidence. The acrimony and stress levels can climb. Costs and attorney fees mount as the process drags on. Once the trial concludes, the outcome is in the hands of the court. A party can appeal that decision and then the litigation process can then go on for years.

If this sounds daunting, it is. Surprisingly, people sometimes tell us that they were not aware that “filing for divorce” means that they would be initiating a lawsuit. The costs, emotional damage and time to prepare a case for trial – especially a trial on the most important issues in your life – can be overwhelming. In our experience, too many divorcing parties were not aware they had other options.

There is a better way. It starts with the decision not to put yourself on the path that leads toward trial in the first place. If you and your spouse can agree on one thing – *that you do not want to head toward trial* – then you can begin to consider other alternatives to complete the divorce process without risking a trial. *The key is to know your options before any court action is filed.*

Traditional divorce litigation is still an option and, in some situations, cannot be avoided. However, it now is possible for divorcing couples to file a joint petition to end their marriage respectfully -- and bypass the traditional divorce litigation process altogether.

Recent Legal Changes in Michigan Law. Recent changes in Michigan law have created two new ways for parties to divorce on amicable (or at least respectful) terms. The new rules provide a method for entering divorce settlements in court without the filing of a traditional lawsuit.

The first is a **Pre-Filing Settlement Process** and allows the parties to simply file a Petition to enter a Consent Judgment of Divorce. This requires the parties to arrive at a settlement and sign a Judgment of Divorce before any action is filed in court. Typically, both parties will attend a single court date, the court will be asked to enter all the necessary final orders and grant the divorce.

The second is the **Collaborative Divorce Process**. The **Collaborative Divorce Process** has been around for years, but now there are new laws to accommodate this process through the Court system. Typically, parties agree to the **Collaborative Divorce Process** before filing and once a settlement has been reached, a Consent Judgment can be entered using a process very similar to the **Pre-Filing Settlement Process**. In the event a case has already been filed using the traditional method and the parties then decide to enter the **Collaborative Divorce Process**, the new rules allow their lawsuit to be “paused” while the parties complete the **Collaborative Divorce Process** (details regarding this

process are found within this book) and seek to work out a private settlement agreement. Spouses who resolve their matter in a **Collaborative Divorce Process** may never have to set foot in a courtroom at all (at the Court's discretion).

In our experience, couples will opt more frequently for the **Pre-Filing Settlement Process** rather than the **Collaborative Divorce Process**, but both options offer important advantages and almost always produce a far more satisfactory result for the client than the "traditional" lawsuit option.

The decision to divorce and the re-structuring of a couple's or family's financial and personal life is a powerfully personal and emotional undertaking. We believe that the most important decisions in a couple's or family's life should be made privately and respectfully to the greatest degree possible. We have developed processes to encourage positive problem-solving over the "tug of war" mentality. In the process, clients typically save time, money and a great deal of stress.

Streamline DivorceSM. **Streamline DivorceSM** process is a form-based system developed by our office, Couling Law & Mediation PLLC. The Streamline DivorceSM process allows parties with relatively simple divorce cases to write up the terms of their own settlement, guided by a comprehensive set of forms. (The attorneys handle the drafting of court orders, filing the court action and the process of entering the divorce in court). In other words, **Streamline DivorceSM** is a particularly efficient version of the **Pre-Filing Settlement Process**. The booklet also helps you identify if it might be right for your situation.

Setting the Stage for a Successful Pre-Filing Settlement. A **Pre-Filing Divorce Settlement**, a **Streamline DivorceSM** or **Collaborative Divorce Process** is likely to be a good option if both spouses agree with the following statements:

- (1) You do not want to engage in a traditional divorce litigation or prepare for trial;
- (2) You want to maintain control over the decisions affecting your life and finances;
- (3) You want to maintain your privacy; and
- (4) If you have children, you are committed to co-parenting on terms that you both agree serve their best interests and will help them to thrive.

Thank you for your interest in processes that help couples and families avoid adversarial litigation. At Couling Law & Mediation, PLLC, we are committed to handling family law matters with care and respect. We believe the more you know about the options, the better poised you will be for a respectful divorce process and the best possible future.

III. INFORMATION ABOUT AVAILABLE OPTIONS

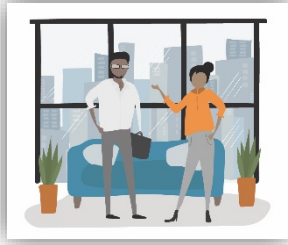
- A. Overview of all Options**
- B. Court Time Line, Traditional vs. Pre-Filing Settlement**
- C. Court Process for Divorce Options Chart**
- D. Issue-by-Issue Comparison Chart**
- E. Which Option May Be Best for You?**

A. OVERVIEW – OF ALL OPTIONS

The best process for you balances, not only cost, but who's in control of the decisions and how much help you'll need.

The final judgment must be entered by the Court no matter which option you choose.

SEE OUR DECISION-MAKING CHART FOR A TOPIC-BY-TOPIC COMPARISON OF THESE OPTIONS.



STREAMLINE DIVORCESM

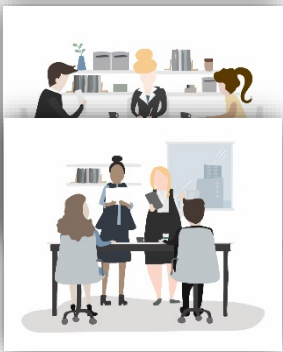
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- **Spouses write up their own agreement**
- Parties remain in **control** of decisions
- Parties should have an **amicable** settlement in mind or be able to agree on their divorce issues using easy to follow **forms**
- NOT suitable for complex issues

MEDIATION

\$\$-\$\$\$\$

- **Spouses reach agreement guided by mediator**
- Parties remain in **control** of decisions
 - Parties who want **step-by-step guidance** or disagree on some issues and need neutral help to explore options and reach resolution
 - More creative options are possible (and encouraged)



COLLABORATIVE PRACTICE

\$\$\$-\$\$\$\$\$

- **Attorneys and Parties work together collaboratively out of court to Reach a Resolution**
- Experts are brought in as needed (i.e. Mediators, financial experts, mental health professionals, etc.)
- Requires full disclosure and involves mutual and informed decision-making

TRADITIONAL CASE (COURT-BASED)

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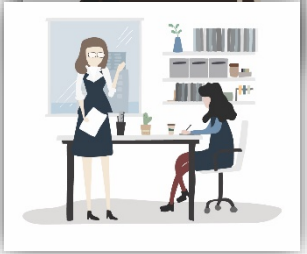
- **A Decision May Be Imposed on You**
- Uncertainty: Judges' perspectives and interpretations of law are not always predictable or uniform
- Lack of Control: The Court is now in control of your case and making decisions regarding you, your children, and your property
- Time Frame: Mandatory scheduled court dates and possibility of appeal
- May be the only option if other party is unreasonable, dangerous or won't voluntarily participate or disclose information or if your spouse has not been informed you are considering divorce



LIMITED SCOPE REPRESENTATION

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- **Hourly Services**
- **PLANNING:** Pre-Filing planning, documentation & understanding range of possible outcomes
- **ADVICE:** Consultation to answer legal questions regarding family law
- **DRAFTING:** Documents, court orders and/or required forms
- **COURT DATES:** Limited issue court appearances are possible



B. COURT PROCESS FOR DIVORCE OPTIONS IN MICHIGAN AND THE ROLE OF MEDIATION

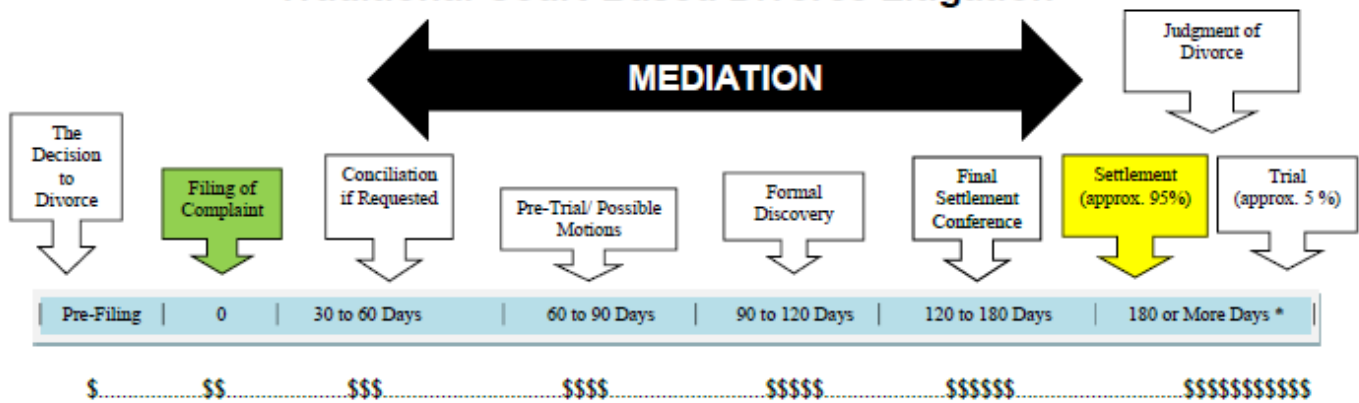
COURT ACTIONS	Traditional Divorce Lawsuit MCR 3.201(C)	Pre-Filing Settlement MCR 3.223	Collaborative Divorce MCR 3.222
TYPE OF INITIAL FILING:	Complaint for Divorce	Mutual Petition	Mutual Petition (Unless Traditional Lawsuit has been filed & “paused”)
WHO GOES TO COURT FOR ENTRY OF FINAL JUDGMENT?	Both Parties or Plaintiff only if Court permits	Both Parties <i>(required)</i>	Possibly Neither Party <i>(discretion of court)</i>
WHO DECIDES?	Court if parties cannot	Parties	Parties
METHODS FOR REACHING TERMS OF FINAL DIVORCE JUDGMENT	Trial <i>Mediation</i> Arbitration Parties agree Negotiation w/Attorneys Experts	Parties agree/”Streamline” <i>Mediation</i> Negotiation w/Attorneys Experts	Parties agree <i>Mediation</i> Negotiation w/Attorneys Experts

***NOTE:** One of the above three types of legal actions is required to change the parties’ legal status from “married” to “single.”

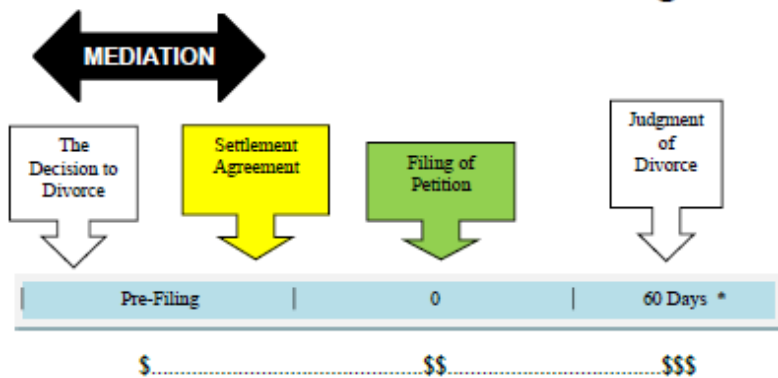
Mediation cannot, on its own, change your legal status. Mediation is not a type of divorce action (i.e. only the court, and not a mediator, has the authority to change your marital status.) When parties cannot agree but wish to avoid litigation and trial, mediation is an established method for helping parties reach a final divorce settlement. The mediator serves as a neutral and is a trained professional (who may or many not be a lawyer) who assists the parties in the negotiation process (leaving the final decisions in the hands of the parties themselves). The lawyer(s) who represent or advise either party in the divorce action cannot serve as the parties’ mediator.

C. Court Time Line, Traditional vs. Pre-Filing Settlement

Traditional Court-Based Divorce Litigation



Settlement Before Filing Divorce Process

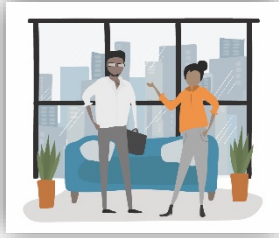


*Settlement Agreement can be reached by Agreement of the Parties on their own or with the help of a Mediator before filing.

* Broad averages, based on typical Livingston County Case

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D. ISSUE-BY-ISSUE COMPARISON CHART



Streamline Divorce SM

Cost:

\$-\$\$

Flat Fees Available?

Yes (if the case meets Streamline criteria)

When to Start?

Before Court Case is Filed

Who Writes Up the Settlement Terms?

You & Your Spouse (guided by forms)

Who Makes The Final Decisions?

The Client and his/her Spouse

Who Drafts the Court Paperwork?

Couling Law (as attorney for Client)

Who Handles Filing & Court Date(s)?

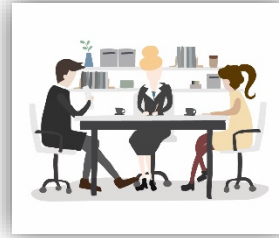
Couling Law (as attorney for Client)

Who Is a Good Candidate?

- Amicable/respectful parties
- Parties' share equal financial knowledge
- Simple assets
- Simple income (W-2s)
- Simple award of home (or sale)
- Parties are able to agree on all of the issues
- Parties attended mediation and have a full agreement (different mediator)
- Parties retain their own retirements (or pay extra for another agreement)

This Process Is Not Suited For:

- If Spouse has filed for divorce or is actively represented by counsel
- One spouse will not or cannot actively participate
- Parties who are unable to agree on all of the issues
- Division of business or complex assets
- Addressing Tax Impacts or Issues Balancing before-tax and after- tax assets
- People or property have been threatened
- A party does not have full mental capacity



Mediation

Cost:

\$\$-\$\$\$\$

Flat Fees Available?

No

When to Start?

Before or After Court Case is Filed

Who Writes Up the Settlement Terms?

The Mediator (usually)

Who Makes The Final Decisions?

The Parties

Who Drafts the Court Paperwork?

Plaintiff's attorney

Who Handles Filing & Court Date(s)?

Plaintiff's attorney

Who Is a Good Candidate?

- Parties able to be respectful
- Parties that are unable to agree to one or more issues
- Parties that want to avoid the Court process
- Parties' willing to fully disclose financial information
- Parties looking for creative solutions
- Parties can have simple or complex assets
- Parties can have simple or complex income sources

This Process Is Not Suited For:

- One spouse will not actively participate
- People or property have been threatened
- One spouse will not disclose all financial information
- A party does not have full mental capacity

ISSUE-BY-ISSUE COMPARISON CHART



Collaborative Practice

Cost:

\$\$-\$\$\$\$

Flat Fees Available?

No

When to Start?

Before or After Court Case is filed

Who Writes Up the Settlement Terms?

One of the Attorneys, both approve it

Who's Makes the Final Decisions?

The Parties

Who Drafts the Court Paperwork?

One of the Attorneys – will be decided during the process

Who Handles Filing & Court Date(s)?

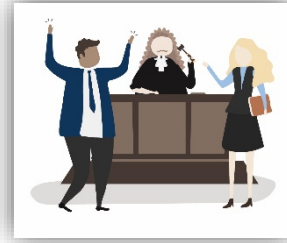
Same attorney that drafts the paperwork will file the case. Typically, there is only one hearing, to enter the Judgment.

Who Is a Good Candidate?

- Parties who wish to protect their privacy
- Parties who mutually wish to avoid the Court process
- Parties who wish/need to go at their own pace
- Parties with mental health issues
- Shielding children from possible court involvement
- Parties that are willing to work together to resolve immediate issues and reach a final resolution with out of court resources

This Process Is Not Suited For:

- One spouse will not actively participate
- People or property have been threatened
- One spouse will not disclose all financial information



Traditional Divorce Lawsuit

Cost:

\$\$\$\$-\$\$\$\$\$\$\$\$

Flat Fees Available?

No

When to Start?

Starts with the Filing of a Case

Who Writes Up the Settlement Terms?

Variable

Who's Makes the Final Decisions?

The Court (unless the parties resolve before Trial)

Who Drafts the Court Paperwork?

Usually the Plaintiff's attorney; either party may file motions or discovery requests

Who Handles Filing & Court Date(s)?

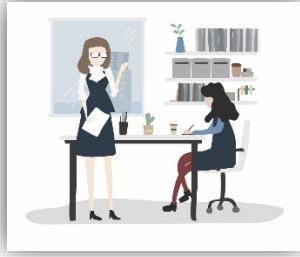
The Plaintiff's Attorney handles filing; Parties and Attorneys attend multiple court dates

Who Is a Good Candidate?

- Spouse has filed for divorce (or other case)
- One spouse will not or cannot actively participate in any one of the other options
- People or property have been threatened
- Spouse will not be fully cooperative
- Novel or unsettled legal issues
- Subpoenas and formal discovery are needed to obtain documents/facts
- Spouse will not agree to other processes

This Process Is Not Suited For:

- Parties who wish to protect their privacy
- Parties who mutually wish to avoid trial
- Parties who wish to go at their own pace
- Shielding children from possible court involvement



Limited Scope Representation

Cost:

\$-\$\$\$

Flat Fees Available?

Yes (for certain tasks, by negotiation),
But hourly billing is more typical

When to Start?

Before or After Court Case is Filed

Who Writes Up the Settlement Terms?

Variable

Who's Makes the Final Decisions?

Variable

Who Drafts the Court Paperwork?

Variable; Attorney and Client may negotiate this.

Who Handles Filing & Court Date(s)?

Variable; Attorney & Client negotiate this.

Who Is a Good Candidate?


- Client seeking Pre-Divorce planning or advice
- Party needs advice or assistance during Streamline Divorce™ settlement process
- Party wishing to have Attorney's advice during Mediation
- Party representing self in Court but seeks Attorney's advice or drafting

This Process Is Not Suited For:

- Not a substitute for traditional full-scope legal representation in a divorce lawsuit or complex matters

E. Which Option May be Best for You?

Expense
Level
\$

Cooperation &
Shared Information


(A) Pre-filing Settlement Options

If you and your spouse:	Then this option may be appropriate*:
<ul style="list-style-type: none"> • Agree you do NOT want to “go to Court” • Have a general agreement about how to handle your Assets/child-related issues • Do not plan to divide retirement funds • Do not have a complex situation 	<p>* Streamline DivorceSM</p>
<ul style="list-style-type: none"> • Agree you do NOT want to “go to Court” • Need attorney or other professional • Help with dividing retirement funds or real estate/other assets • Need help with a parenting schedule or running spousal support calculations 	<p>* Streamline DivorceSM <u>plus</u> Limited Scope (hourly) services to address your issues</p>
<ul style="list-style-type: none"> • Agree you do NOT want to “go to Court” AND • Disagree on spousal support OR • Have a business or complex asset or real estate/other assets OR • Need to work through disputed Child-related issue OR • You want a professional to guide • You step-by-step through the issues 	<p>* Limited Scope (hourly) services or Mediation to arrive at a signed Settlement Agreement before filing, <i>followed by a Streamline DivorceSM OR Collaborative Divorce</i></p>

(B) Traditional Divorce Lawsuit

<ul style="list-style-type: none"> • If your Spouse will not discuss divorce • If your Spouse is concealing/destroying assets • If your Spouse threatens/engages in violence or intimidation • If immediate child-related concerns exist • If your access to funds or information has been cut off or impaired 	<p>* File Traditional Divorce lawsuit <u>AND</u> seek <i>possible</i> restraining orders, temporary custody, support or other relief</p>
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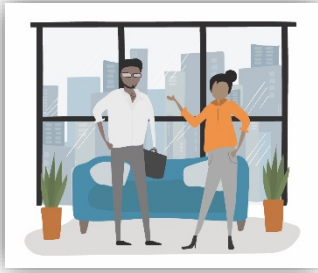


* This provides a general guide, based upon common divorce-related situations. Your situation and unique considerations are critical to selecting the best option for your particular circumstance. Consulting privately with a qualified family law attorney is always recommended.

IV. STREAMLINE DIVORCESM

Overview of Steps & Procedures

Streamline DivorceSM - Overview of Steps & Procedures



Streamline DivorceSM is a **form-based process** in which parties who desire to reach an amicable settlement can work through their issues and finalize a divorce settlement. Our proprietary forms will guide you through the steps of your divorce settlement. Before you finalize your proposed agreement, you have the opportunity to have it reviewed by the attorney (based on the information you supply). We will handle the filing of the Complaint, handle service and Friend of the Court Review (if applicable) and complete the process by accompanying you to court and obtaining the final court order(s).

You control of the terms of your divorce settlement. The Streamline process enables you and your spouse to reach a settlement on your own time line and on the terms to which you agree. If you wish to pause the process at any point before the Court Phase, you can.

The Attorney provides limited scope services and you avoid the costs of engaging in a “court battle.” **Flat fees** are available (i.e. where no special or non-standard issues are involved)*. If you wish to obtain advice on a specific issue or if you need full-scope representation, the option is always open. (Standard rates and retainer fees apply.) We serve Livingston, Genesee, Washtenaw, Oakland and occasionally other Michigan counties.

A. **“DEPOSIT PHASE”** (\$500)

STEP 1: SATISFY THE “STREAMLINE” CASE CRITERIA & OBTAIN FORMS

In **Step 1**, you will receive information about the Streamline DivorceSM Process. If Streamline DivorceSM process appears to be an option for your matter, you will sign a Deposit Agreement, pay \$500 as a deposit (to be held in our trust account) and you will receive a set of Streamline Divorce Settlement Agreement Forms. You and your spouse will fill out the forms.

STEP 2: OBTAIN SUPPORT CALCULATIONS

In **Step 2**, you will obtain child support and spousal support guidelines calculations, if applicable. [*If neither child or spousal support apply, skip this step.*]

STEP 3: COMPLETE SETTLEMENT AGREEMENT FORM

In **Step 3**, you and your spouse will use our forms to make the decisions that will become the terms of your divorce settlement. The forms themselves guide you through the process.

STEP 4: ATTORNEY REVIEW

Step 4 begins when you reach the page entitled “**STOP HERE**”. At this stage, you will furnish a completed, but unsigned, copy of the proposed Settlement Agreement to your Attorney for review. The Attorney’s review is limited to the information you supply in the form packet.

STEP 5: CONFIRM SETTLEMENT AND SIGN AGREEMENT

In **Step 5**, you and your spouse sign your Settlement Agreement.

B. "DRAFTING PHASE"

STEP 6: DRAFTING OF ORDERS AND COURT FORMS

In **Step 6**, you pay the balance of your Drafting Phase fees (if required), sign the drafting phase agreement, and the Attorney will draft the paperwork necessary to file the case and the final court orders and Friend of the Court forms (if needed) based on the terms of your signed Settlement Agreement. The parties then review and sign the orders and documents before moving on the Court Phase.

C. "COURT PHASE"

STEP 7: FILING OF CASE & ENTRY OF ORDER(S)

In **Step 7**, the required litigation steps are carried out in an efficient, expedited basis, following the local procedures in your specific county.

To initiate the Court Phase of the process, you must (a) have completed your signed Settlement Agreement (b) have returned the signed Court Documents (which we drafted for you) and (c) pay the Court Phase retainer fee, the court filing fee and any remaining costs and fees for your case.

The Limited Scope attorney services in the Court Phase include:

- The Complaint for Divorce/Petition to Enter is filed
- Arrangements are made for your Spouse to acknowledge service
- Friend of the Court approval (if required) is obtained
- A Court Date is scheduled
- Your Judgment of Divorce and other paperwork is entered.
- **The Client and Attorney will attend one court date***. Spouse's attendance also is mandatory in most cases. If spouse cannot attend, please consult with Attorney.

STEP 8: OPTIONAL SERVICES*

The basic Streamline DivorceSM process is appropriate for relatively "standard" divorce matters. However, the process is flexible enough to provide a format for resolving somewhat more involved cases. For these cases, additional charges for attorney fees or third-party expenses may be incurred. Additional issues which are not part of a standard "Streamline" case but which also may be addressed include:

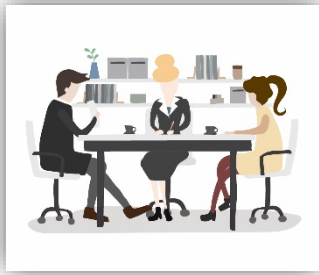
- Division of retirement accounts
- Division of other investments
- Unusual or more complex real property issues
- Businesses interests

*Depending on your court's policy (which can be subject to change), you and your spouse may also be required to attend one or more court dates, Friend of the Court meetings or hearings. If *more than one court date* is required and the Attorney is required to accompany you to Court, additional fees will be required. (We use our reasonable best efforts to avoid more than a single trip to court to complete your case, but in some cases it cannot be avoided. Check with your attorney after filing to learn your specific court's or judge's policy.

V. MEDIATION

Overview of Steps & Procedures

Mediation - Overview of Steps & Procedures



Mediation is a process by which a **trained, neutral professional** guides the parties through the decisions necessary for their divorce settlement. Mediation usually is conducted in a series of meetings, typically at the Mediator's office.

EARLY STAGE MEDIATION

Unlike the “court battle” approach, in “pre-filing” divorce mediation the parties can work at their own pace and, most importantly, **the final decisions rest in the parties' own hands**. Often conducted before a divorce case is filed, this more relaxed form of mediation is referred to as “**Facilitative Mediation.**”

Divorce mediation typically results in a divorce settlement agreement covering the issues necessary for the parties' judgment of divorce. However, mediation is a flexible process – if the parties only wish to mediate a single issue, they can. (Examples of “single issue mediation” include alimony, the marital home or a parenting time schedule). Also, in mediation, the parties can tackle sensitive or complex issues in **privacy** and with a high degree of **creativity**. Mediation can resolve many types of matters. Courts are bound to precedents, relatively rigid rules and often limited topics. In mediation, parties often are able to structure agreements that are far better for their needs than a court can achieve. The final outcome is **an agreement which both parties say “yes” to**.

Mediation is conducted on an **hourly basis**. It is our experience that early stage divorce mediation results in significantly **lower costs** than traditional divorce litigation. Studies have shown that parties report much higher personal **satisfaction** with mediated divorce settlements. In our view, the value of keeping your personal life and finances out of the public eye, sharing information in privacy and modeling good problem-solving skills sets a tone for the parties' future (and for children) which is priceless.

The mediator serves as a true “neutral” facilitator of the parties' own agreement. As a result, the mediator cannot represent either party in the “court phase” of entering their final judgment. However, once a divorce settlement is signed, the court phase is typically quite routine. Many attorneys will offer significantly reduced fees to “write up” and enter a mediated settlement through the court.

LATE STAGE MEDIATION

Even after a court case has been filed, *mediation almost always remains an option*. Mediation conducted as the trial date draws near is fairly common, but of course is conducted at a time when the pressures of time, stress and expense of a looming trial may be at their peak. Still, even on the eve of trial, many cases can be mediated to successful conclusion, sparing the parties the added stress and substantial expense of trial. Late-stage mediation is often referred to as “**Evaluative Mediation.**”

VI. COLLABORATIVE LAW

Overview of Steps & Procedures

Collaborative Practice Cases – Overview & Procedure



Collaborative practice is a developing area of family law practice in Michigan and is part of a national and international movement to remove family issues as much as possible from “traditional” court settings and procedures. This process empowers you to resolve your issues without Judges or Referees making decisions for you.

In collaborative practice cases, a settlement agreement is produced out-of-court through a process that includes the parties, their attorneys, and any experts or professionals that may be needed, such as a mediator, financial advisors, tax experts, and/or mental health professionals or coaches. Collaborative practice emphasizes **privacy, full disclosure** and exchange of information, and **mutual, informed decision-making**.

Once both parties decide to use the collaborative process, it begins with the parties and attorneys meeting to sign a Collaborative Practice Participation Agreement, which describes the goals and principles of Collaborative Practice. Both parties must commit to not using the Court system until a full resolution has been reached. The process is completely confidential, and, as such, in the event either party breaks their commitment and starts a litigation case, new attorneys must be retained (unless both parties sign a waiver).

New laws affecting collaborative divorce in Michigan became effective April 1, 2019, so its interplay with the court system is very new in our state. These laws make the process of entering the final documents with the Court much easier.

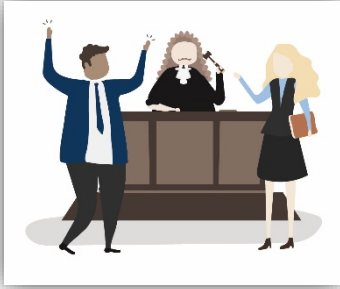
Collaborative practice it is an excellent choice in certain circumstances. The parties must retain attorneys who have been trained in Collaborative Practice. Both Denise and Jamie are trained in Collaborative Practice and welcome the opportunity to discuss this option with you further if you are interested. Another excellent source of information is the main organization’s website: <https://www.collaborativepractice.com/>

The Attorney’s time in Collaborative practice cases is billed by the hour and requires a retainer. The retainer amount and costs are highly variable, depending on the services needed and the complexity of the issues.

VII. TRADITIONAL DIVORCE CASE

Overview of Steps & Procedures

Traditional Divorce Case – Overview of Steps and Procedure



This document is a basic overview to a traditional divorce case filed through the Court. It does not include the details of every step. Many individuals are somewhat surprised to learn that a **divorce proceeding is a civil lawsuit.**

There is a lot of uncertainty due to the fact that Judges' perspectives and interpretations of law are not always predictable or uniform. Decisions can vary from County to County or even from Judge to Judge. The Court will be in control of your case and making decisions for you regarding you children and your property. You will have to attend mandatory scheduled court dates and pay your attorney to attend as well. Sometimes it's your only option, especially if other party is unreasonable, or dangerous or won't voluntarily participate or disclose information

A traditional divorce case begins with filing initial pleadings to start your lawsuit. Those pleadings vary depending on the type of case you have, but generally every case must have a Complaint and a Summons. After your case is filed, your spouse must be served. A process server or other methods to serve your spouse will be used if he or she will not accept service.

The only way to get in front of the Judge to request that the Court take action is during regularly-scheduled Court hearings or by filing a motion, with proper notice to the opposing side. Ex Parte communication (communication with the Court without the opposing side knowing about it) is not allowed, except in emergency situations, which still requires following a rigid process set forth by law.

Once your spouse is served, he or she has a certain time period to file an Answer to the Complaint for Divorce or he/she could be defaulted.

The Court will issue a scheduling order (when the scheduling order is issued depends on the Court and the County), which will provide notice of all Court hearings and deadlines that must be followed. The scheduling order typically also will provide the expectations and policies of the Judge regarding his/her requirements for trial.

Evidence is obtained through formal discovery, unless both parties cooperate and voluntarily provide requested information. Evidence can include financial information or documents, information regarding the parties or the children, testimony of witnesses, and much more.

In the event that the parties are unable to settle all issues of the divorce, a trial before a Judge will be necessary. Trials include producing witnesses and exhibits to support your case. Trials involve extensive preparation, can last many days and are **very expensive.** The Judge will issue an opinion (oral or written) regarding all of the issues after hearing and reviewing all of the evidence presented. A Judgment of Divorce will then be drafted based on the Judge's opinion. The **possibility of appeal** means that, even after trial, the litigation may go on for months or years before the case is truly final.

VIII. HOW DO I TELL MY SPOUSE ABOUT THE OPTIONS?

HOW DO I TELL MY SPOUSE ABOUT THE OPTIONS?

Your Spouse Does Not Know You're Considering Divorce

If you have not discussed divorce with your spouse, this delicate personal decision depends on the facts and circumstances of your marriage, relationship and communication style. If you are considering an out-of-court option, you will need to have a conversation with your spouse before proceeding because you both need to agree to the process. Although you probably know your spouse better than anyone else, you may be surprised at his or her reaction. Making them part of the decision on the next step tends to reduce the anxiety that the traditional court process causes. We are not qualified to address this issue from a counseling or mental health perspective. If you and your spouse have not discussed divorce, it is best to discuss this threshold consideration with an experienced professional counselor or other trusted advisor.

Your Spouse is Violent or Threatens Misconduct

Consulting with an experienced family law attorney is imperative if you are concerned about domestic violence, nondisclosure of assets or other wrongdoing which might put you, others or your financial future in jeopardy. Out-of-court settlement options are based on *the presumption that parties can be safe and generally open in the divorce process*.

If the other party cannot or will not conform their behavior to this standard, the protections a court can offer may be necessary.

Your Spouse is Aware of the Divorce but You Do Not Agree on How to Proceed

Once you and your spouse have communicated about the possibility of divorce then, *even if you are not on the same page* as to how to proceed, sharing this booklet or the information contained in it might be helpful. Often a spouse who does not want a divorce or was not prepared for it may seek the guidance of an attorney who assumes the role of a “gladiator” or who may advise your spouse based on the assumption that you intend to engage in traditional (old-fashioned) divorce litigation. Your spouse may be advised to “prepare for trial,” and may not have been advised on other options.

If one party insists on pursuing the old-fashioned path of adversarial litigation, it usually takes *education and persuasion* to alert them to the benefits of out of court settlement options. Often the potential cost savings of pre-filing mediation and other options is sufficient to persuade the other party to at least consider alternatives to “racing to file.”

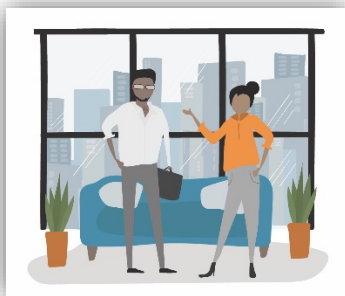
Helpful Resources to Share

The Overview of Options and the Comparison Chart contained in this booklet offer helpful resources. Many individuals have successfully used our handouts to help their spouse become aware of the alternatives which now exist and have then been able to make a mutual decision as to the best option for them.

Another excellent resource is the website for the group, “Mediate First Michigan.” Members of this group include lawyers, mediators, financial and mental health professionals. Members of Mediate First Michigan share the philosophy that mediation and out-of-court settlement options tend to be preferable for most parties. The website features a membership list, a video and information about its seminars and resources. It can be found at MediateFirstMI.com.

IX. WHEN AND HOW MUCH DO I PAY?

When and How Much Do I Pay?



Streamline DivorceSM Cases

Fees and costs will vary by county and by whether the Client requires any optional or additional services. The current list of fees and costs are based on the county of the expected case filing and are available upon request. Please note that court filing fees and third-party costs are based on current information and are subject to change.

(1) **DEPOSIT.**

You will pay a Deposit of \$500 at the time you sign the Step 1 Limited Scope Retainer Agreement and the Streamline DivorceTM Form packet is released to you.

(2) **DRAFTING PHASE FEE.**

(A) **If You Have a Deposit Credit.** If you do not use the Attorney's services while completing the StreamlineTM form packet, your entire Deposit will be applied to the Drafting Phase Fee. If less than 2 hours of Attorney time was used as before you reached a settlement, your unused Deposit amount will be credited to your Drafting Phase Fee.

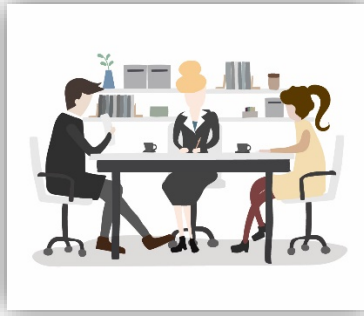
(B) **If Your Deposit is Exhausted.** You will be required to pay any costs or fees incurred before moving on to the Drafting Phase.

You will pay the balance of the Drafting Phase Fee before the Attorney begins drafting your final orders and documents. For example, if you paid a Deposit of \$500 and your Drafting Phase fee is \$850, you must pay \$350 before drafting begins.

(3) **COURT PHASE FEE & COSTS.**

After you and your spouse have signed all of the documents prepared in the Drafting Stage, then the next step is the filing of your case and handling through to conclusion in court. During this phase, the Attorney's office will be handling the details and keeping you informed; typically, you will not be required to do anything except attend your court date. The Filing Phase fee and all court and other costs are due, and must be paid in full, *before* your case will be filed.

When and How Much Do I Pay? (Continued)



Mediation Cases

The total fees will vary depending on how many sessions are needed and whether any optional services are required. The current list of fees and costs for mediation services is available upon request. Mediation fees are based on hourly charges and paid on a retainer basis, usually “per session.” Drafting fees are required to be paid before drafting services are undertaken.



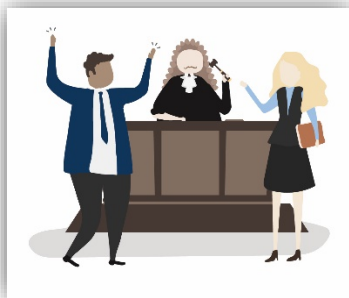
Collaborative Divorce Cases

Collaborative divorce is a developing area of family law practice in Michigan and is part of a national and international movement to remove family issues as much as possible from “traditional” court settings and procedures. In collaborative divorce cases, a settlement agreement is produced out-of-court by the parties and their attorneys working with (as needed) a mediator, financial and tax experts and mental health professionals or coaches. (New laws affecting collaborative divorce in Michigan became effective April 1, 2019, so its interplay with the court system is very new in our state.)

Collaborative divorce emphasizes privacy, full exchange of information and mutual, informed decision-making. Collaborative divorce is not discussed in detail in this publication, but it is an excellent choice in certain circumstances. Both Denise and Jamie are trained in Collaborative Practice and welcome the opportunity to discuss this option with you. Another excellent source of information is the main organization’s website: <https://www.collaborativepractice.com/>

The Attorney’s time in Collaborative divorce cases is billed by the hour and requires a retainer agreement. The retainer amount and costs are highly variable, depending on the services expected to be required and the complexity of the issues.

When and How Much Do I Pay? (Continued)

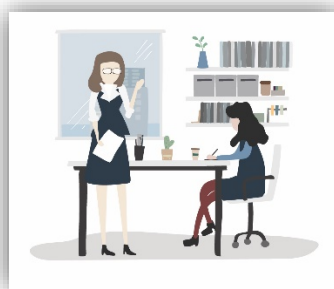


Traditional Cases (Lawsuits)

When parties use the courts to resolve their cases, the total costs can vary wildly and can be extremely difficult to control. Total costs can range from a few thousand dollars (a very optimistic estimate) to tens of thousands of dollars. (A legal bill of \$100,000 or more is not unheard of in certain jurisdictions or if appeals or post-judgment litigation may be involved).

Almost always, in traditional (litigated) cases a substantial Retainer Fee is required at the outset of the case. Once retained, the attorney becomes your “attorney of record” in your court case. In setting a Retainer amount, the anticipated time your case is expected to consume is a major factor. At our office (like most others), the Retainer Fee must be paid at the time the Retainer Agreement is signed and before our Appearance is filed in your court case.

Typically, your Retainer Fee is deposited into a trust account and Attorney time charges will be deducted from the Retainer deposit at the end of each month, along with any court costs or expenses. Your Retainer Fee may not cover all of the fees and costs to conclude your case. If your retainer runs too low to meet expected costs and fees, you will be expected to replenish it to an appropriate amount based on the circumstances of your case at that time. (It is the policy of our office, that, in the event there are any Retainer funds left in the trust account at the time your matter concludes, it will be refunded. This policy varies from firm to firm.)



Limited Scope Matters

Limited Scope cases are billed by the hour or by the task and usually require a retainer (see below). The retainer amount varies, depending on the service needed. These types of assignments can be very flexible, and the costs can vary significantly. The cost of the services you require will be discussed in our consultation and payment will be required at the time the retainer for Limited Scope Services is signed.

X. HOW DO I GET STARTED?

HOW TO GET STARTED

To begin the Streamline DivorceSM process:

1. Request the Streamline DivorceSM Screening/Deposit Retainer Agreement by email or phone (bottom of page) and then fill out the Agreement and return it to us by:
 - e-mail: Assistant@BanfieldCouling.com
 - fax: 810-494-7132 or
 - mail or drop off at our office: 720 W. Grand River, Brighton, MI 48116
2. Pay the deposit, with cash, check or credit card. You can pay with a credit card by:
 - Using the payment button to pay online, which will be included when we email you a copy of the Screening/Deposit Retainer Agreement;
 - Calling in a credit card payment to the office; or
 - Mailing us a check (please note that we will start your case as soon as we receive the check).

Once we receive your agreement and payment, we will promptly email an acknowledgement and receipt.

If you prefer to come to the office, please make an appointment so we can make sure that someone is available.

To schedule a consultation for a:

- Pre-Filing Planning Session,
- Mediation (both parties must attend),
- Limited Scope Service,
- Collaborative Divorce, or
- Traditional Divorce/Family Law Matter:

Please contact us at:

Phone: (810) 225-7440 or

email: Assistant@CoulingLaw.com

XIII. ABOUT OUR ATTORNEYS



BANFIELD COULING
LAW & MEDIATION, PLLC

About Our Attorneys



Denise D. Couling is a *cum laude* graduate of the University of Michigan Law School and a *magna cum laude* graduate of the University of Michigan, with a B.A. in Economics. She has practiced law for nearly 30 years, and she developed the cost-effective StreamlineDivorceSM process. Denise is a former Referee in Genesee County and former Chairperson of the Zoning Board of Appeals for Green Oak Township. She is a wife, mother and enthusiastic supporter of local entrepreneurship programs as well as serving as a member of several of Work Skills Foundation's board of directors.



Jamie L. O'Brien is a graduate of Thomas M. Cooley Law School and she received her bachelor's degree at Arizona University. She has practiced law for over 18 years. She began her legal career as a Research Attorney for a Family Law Judge in Livingston County. She served on the board of the Livingston Child Abuse Prevention Council for over 10 years. She has been through a Divorce and has successfully co-parented her two, now teenage, children. She has been active in the family law community of Livingston County throughout her career, as a founding member both of the Family Law Division of the Livingston County Bar and of Mediate First (formally known as LIPA).



Andrea M. Banfield is a graduate of the Detroit College of Law at Michigan State University and holds a Bachelor of Science from Eastern Michigan University. She has practiced law for over 20 years. Andrea, a People's Choice Award winner, is known for her legal acumen as well as a respected leader in Livingston County. She has served as both a board member of the Livingston County Child Abuse Prevention Council and Women's Resource Center (who merged with LACASA). She was appointed by the Livingston County Board of Commissioners to the Livingston County Friend of the Court Advisory Board serving for nearly a decade.

*All of our Attorneys are qualified Mediators and Collaborative Attorneys. Denise and Jamie are also qualified Parenting Coordinators. Banfield Couling serves Livingston, Genesee, Oakland, and Washtenaw Counties.

XIV. HELPFUL RESOURCES

HELPFUL RESOURCES

WEBSITES, SEMINARS & VIDEOS

BanfieldCoulingLaw.com – For more information on upcoming seminars in the Livingston County area, developments in the law and the Attorneys:

Website Link: BanfieldCouling.com/

YouTube Channel: <https://www.youtube.com/channel/UCCCoaRT6lqD2ozZqDJO-zrA/videos>

Collaborative Divorce – For a detailed explanation of the process, this is the website for the national organization.

Website Link: collaborativepractice.com/

MediateFirstMI - A professional group whose members include lawyers, mediators, financial, real estate and mental health professionals in Livingston and surrounding counties.

Website Link: mediatefirstmi.com/

Video Link: youtube.com/watch?v=qfV-la3wi2Q&t=4s