

Early Neutral Assessment (ENA) Offers New Approach to Divorce.

The divorce process, from a legal standpoint, is often intensely challenging – and costly – for all parties. But there is a new approach that may help couples reduce the contentiousness of traditional divorce proceedings while preventing prospective, costly litigation. A blend of collaborative law and traditional mediation, Early Neutral Evaluations or Early Neutral Assessment (ENA or ENE for short) is providing couples with a new path through the emotionally-charged divorce process.

ENA is part of the Colorado Dispute Resolution Act and is a voluntary alternative dispute resolution process. Designed to help parties reach an early settlement of their divorce or separation without the contentious nature and expense of ongoing litigation.

Here's how ENA works:

Divorcing parties meet with a team of two evaluators, typically an attorney and a therapist or mental health specialist who have had no prior involvement with the particular case. Evaluation teams are comprised of one man and one woman to blunt any gender bias. This initial meeting takes place within the first 60 days that a case is at issue. Early is essential. A joint session is scheduled with the team, the parties, and their attorneys where each party is able to express their concerns, frustrations, feelings, and needs. Both parties are also given an opportunity to address the concerns of the other.

The evaluators then provide their expert assessment of the case's likely outcome if it were to proceed to a hearing. The team then provides settlement suggestions and assists in mediating a settlement, if needed.

Every component of the process is designed to move the parties towards resolution, increasing the likelihood of early settlements and giving the parties the chance to freely discuss – in a safe environment – some of the emotions that can send divorce proceedings off the rails in a traditional approach.

The biggest difference between mediation and ENA is the insight, specific recommendations and settlement suggestions that are provided to the parties in order to help them reach resolution.

Proponents of ENA say it benefits both parties while protecting them – and, importantly, their children – from the uglier side of divorce. Those same advocates say resolving matters early can lay the foundation for stronger relationships post-divorce, which again is seen as a value to all parties, but particularly children impacted by the transition. With its basis in collaborative law and mediation, ENA is seen as having the potential to generate quicker resolution while preventing future litigation as conflicts invariably arise down the road.

Because cost is always a concern in divorce, the question often asked is “how much does all this advice cost?” Rates vary from evaluator to evaluator – some charge hourly, some charge a set fee, some even offer reduced rates depending on a client’s income. Each county should be able to offer a list of professionals who provide ENA services to better define costs. It should not be overlooked that if an ENA evaluator’s recommendations are followed, the result is less time in court, lower attorney fees, and a reduced chance of protracted litigation – which is, of course, a significant money saver. The family court facilitators in each county can be an invaluable resource in assessing costs for ENA services.

For all its apparent benefits, ENA is not appropriate for every case. The personal circumstances of each case must be carefully weighed. It may not be beneficial in a case that involves mental, physical, or emotional abuse of either party or the children. There have also been concerns raised by the Colorado Psychological Association about the ability of a therapist in an ENA to gather sufficient data in such a limited time frame to deliver a valid opinion that meets the best interests of the children. But for couples hoping to reduce the emotional toll of divorce or short-circuit potential litigation, ENA is an alternative – and a viable one, at that – to traditional approaches.

Today, families in transition may no longer be able to spend substantial sums on traditional legal services. As a profession, it is imperative that we reflect the financial and family realities that divorcing clients bring to the table. We need to foster more rational, less contentious paths to resolution of divorce – particularly when children are involved – and provide our clients with practical solutions which preserve precious resources and meet long-term needs. ENA fits that bill.

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