

# The Divorce Agreement Newsletter

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## The Implications of Treating Attorney Negotiated Settlements as ADR

Despite decades of inroads by mediation and collaborative practice, the most important divorce settlement modality still has been agreements negotiated between adversarial attorneys in the traditional manner. Although these settlements are clearly an alternative to litigation, they have never been considered to be part of the establishment ADR movement.

The first edition of this Newsletter on May 20, 2015 was based on my continuing search for unity among the four different paths to divorce agreements. The same idea is behind [www.CreativeDivorce.net](http://www.CreativeDivorce.net). On one hand, it welcomes attorney negotiated agreements into the “big tent” of ADR. On the other, it urges negotiating attorneys to draw guidance more from ADR principles than from the logic of litigation.

Does this mean simply adopting the ground rules of collaborative practice without signing a formal contract to do so? Generally speaking, I would not advocate such a blanket approach since it can limit the flexibility of a well-understood traditional settlement model.

There are, however, certain specific principles that should be part of almost every negotiation between adversarial attorneys. The most basic of these are the following: (1) **Civility** in all interactions between counsel. (2) **Cooperation in disclosure exchanges** to be carried on in a mature and focused manner. (3) **Cooperative use of third parties**, including use of impartial experts and other third parties. (4) **Openness to future-directed considerations**, such as sound planning for future parenting and financial cooperation. (5) **21<sup>st</sup> century drafting** of all proposals and agreements.

None of the above principles are inconsistent with the current ethical standards for adversarial practice. Since this is the case, there is no need for any special agreement covering the negotiation process, as would be required for collaborative practice. In fact, if one looks at many of the settlements as presently negotiated between the most skilled and ethical divorce lawyers, none of the above principles should necessarily seem that revolutionary. The days when a majority of divorcing spouses search out the most posturing lawyers are over. What they want these days is ADR!