

Collaborative Law: An Attractive Alternative to Litigating Family Disputes

Through specially trained practitioners and a different process, collaborative law affords divorcing couples the privacy of not being in court and having their dispute spread across the public docket, the opportunity to maintain relationships with in-laws and extended family members and the ability to control every aspect of the outcome. The basic collaborative law training, available through the Collaborative Law Association of Southwestern Pennsylvania (CLASP), is a subject worthy of an article by itself.

This article will discuss the process by which collaborative family lawyers achieve forward-looking results for clients interested in taking greater control over their fates, as well as four of the primary ways in which the use of collaborative law impacts the divorce process in a positive way.

The collaborative process differs from ordinary family litigation in that the attorneys are engaged on a limited scope of representation: to advocate and support the clients' goal of resolving all the issues by agreement. The parties and the collaborative lawyers agree that the court will not be used to address, hear or resolve any issues of the matter. Generally, after all issues are resolved, the parties determine who will be the filing party, and a complaint is filed so that the divorce can be entered. Prior to the entry of the divorce, if one party goes to court, the collaborative lawyers must both be replaced with new counsel, because both the parties and the collaborative lawyers have agreed to limit the scope of the attorneys' representation to the collaborative process.

Generally, each collaborative settlement conference is limited in scope and follows an agenda that the parties have prepared in advance. Knowing the issues to be addressed ahead of the meeting allows each party the opportunity to gather pertinent information, meet with counsel and prepare for the discussion and negotiations on the agenda items.

The differences between collaborative practice and traditional family law practice impact the divorce process in four primary ways: pacing, the sequencing of issues, the level of professional support through engagement of neutrals, and the resolution by agreement of all important matters.

Pacing

The collaborative law process allows the parties to control the pace at which they will address each legal issue. Unlike litigation, where the rules of civil procedure, the court and judicial calendar set the pace, collaborative settlement conferences can be scheduled at times and dates convenient to the parties and counsel. The conferences can begin promptly as scheduled and conclude as the parties agree.

Generally, the conferences last from one and a half to two and a half hours in duration, but, as needs dictate, can be shorter or longer. Multiple conferences can be scheduled to allow each issue to be addressed at the pace selected by the couple.

In divorce litigation, a complaint for child and spousal support may start the proceeding and a hearing date and time will also be assigned. Although there is some flexibility to reschedule to a more convenient date, the parties cannot select the date and time most convenient to them. On the scheduled date, they must appear at the court and be prepared either to resolve the financial issues or have someone else resolve them. The time

allotted to the matter and the kind of information that can be presented are also limited. There is very little opportunity for the couple to discuss specific concerns and needs with each other.

Sequencing

On a global basis, all domestic cases involve one or more of the big four issues: custody, spousal and/or child support, division of marital property and divorce. Within each of these issues are many sub-issues of varying degrees of importance to each spouse. The collaborative law process invites the parties to determine the sequence in which they will address each issue.

What is important to one party is not always as important to the other party. For example, one party might desire to replace the 10-year-old car he or she is driving as part of the division of marital property. An important factor for one party in reaching a co-parenting plan could be keeping the children enrolled in the same after-school child care, to provide the children with continuity during the divorce process. For someone else, being able to file a joint income tax return for one more year and split the refund might be worth the trade off of postponing entry of the divorce decree until after the first of the following year.

In contrast, at the conclusion of each collaborative conference, the parties determine the agenda for the subsequent conferences. The issues most important or immediate for each party are identified, and a sequence develops with these issues being addressed earlier in the process. The collaborative party's ability to establish the sequence of the issues is in sharp contrast to the litigating party, who by filing pleadings and motions can place issues before the court, but must, again, stay within the timing requirements of the rules of civil procedure and the court's schedule. Issues of marital property division, for example, will not be heard in court until either both parties have filed affidavits of consent to divorce or the parties have lived apart for two or more years.

In the collaborative process, as the issues are discussed, the parties often reach consensus agreements. These agreements may be interim, such as an agreement not to change anything unilaterally, but instead to maintain the current status quo situation until the parties agree otherwise, or more permanent, such as an agreement to share the cost of any repairs needed for the 10-year-old car until funds for the purchase of a new car become available through division of marital property.

Use of Allied Professionals as Neutrals

The third major difference between collaborative law and family litigation is the opportunity to engage and work with experts jointly as neutrals. These jointly engaged experts are referred to as "allied professionals" and are trained in collaborative law. Such an expert is able to participate in a collaborative settlement conference and use his or her expertise to assist the parties in reaching a resolution. Allied professionals can be business evaluators, real estate appraisers, child development specialists, financial planners, mental health professionals, coaches and any other kind of professional that the parties agree could provide expertise helpful in reaching resolution.

For example, at the beginning of the process, a mental health professional or coach can be jointly retained to meet separately with each party to identify and defuse emotional triggers and "hot button" issues. No therapy is provided; instead, the focus is on moving each party forward to resolution and avoiding the rehashing of past arguments and perceived injustices. With each party's permission, the coach can also provide coaching tips during the conference to help keep that party's emotions under control and thus allow good exercise of reason and decision making.

By contrast, in divorce litigation, although the parties can agree to jointly engage an expert, the more common practice is for each party separately to engage an expert. Each party's expert prepares a formal written opinion and offers testimony by deposition or in court explaining and advocating his or her opinion and pointing out the problems with the opinion of the other party's expert. The expense of two experts preparing written opinions and testifying can be significant. In the usual collaborative process, neither a formal written opinion nor expert testimony in support of that opinion is necessary. Moreover, the process of having one expert meet with both parties and their counsel facilitates an open discussion and exchange and is neither as intensive nor expensive as the use of experts in court proceedings.

Resolution of All Issues by Agreement

The resolution of each of the big four issues in every domestic case is set out in a writing. The final important difference between collaborative divorce and litigated divorce is the greater degree of understanding and satisfaction each collaborative party has in the final result and the sustainability over time of the collaborative result. Because the parties have controlled the entire process and have actively participated in all collaborative conferences, each is familiar with and has agreed along the way to accept each of the individual components of the settlement

agreement. The settlement agreement contains no surprises and no item has been unintentionally omitted. The end product should also contain no mistakes because in the collaborative process, each party and attorney is obligated to point out and correct any mistake or miscalculation made. Often the collaborative parties also anticipate the possibility of a future dispute and agree to a protocol for addressing, handling and resolving any such future issues. The collaboratively reached agreement is a working agreement that incorporates flexibility and anticipates that future occurrences may require adjustment to the agreement at a future date.

The end product of a litigated divorce could be a judge's decision entered following trial or a consent order written by the attorneys on the courthouse steps or read into the record at trial. Few of these end products will have been prepared with the careful attention to detail and weighing of alternatives as has been given by the parties during the collaborative process. Court orders and agreements reached outside the collaborative process have a greater likelihood of unwelcome surprises, mistakes and misunderstandings.

Seeking corrective change to the court or consent order is an involved and expensive process with an unknown likelihood of success. Worse yet is the additional time, effort and money spent in this endeavor. Until the corrective effort is concluded and all the issues are

resolved with finality, the parties often remain in limbo and are unable to concentrate on rebuilding separate lives.

Conclusion

The collaborative divorce process offers couples privacy out of the public eye, control over the speed of the process and a voice in setting the sequence of issues to be addressed. More importantly, the collaborative process is more efficient and economical in the joint engagement of allied professionals as neutrals and not advocates for either party. In the collaborative process, each party can receive the professional support necessary to reach a custom tailored resolution which includes flexibility to address changes in circumstances in the future.

Ultimately, at the conclusion of the collaborative process, each party has successfully transitioned from married to single with respect and courtesy and thereby has created a positive legacy for their children, family and extended family. Collaborative law offers an alternative to divorce litigation that produces greater satisfaction for the couple and is healthier for all involved.

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Lea leads the firm's Family Law practice, which includes the Collaborative process. Since 2007, Lea has concentrated her family law practice in the methods of out-of-court alternative dispute resolution, which include mediation and collaborative law. Each process reaches resolution by settlement customized to address the needs of each separate case. Collaborative law focuses the parties on maintaining healthy relationships with children and extended family during and after the divorce. With over 80 hours of focused mediation training, Lea will help mediating parties find the solution right for them.

While Lea is dedicated to the collaborative process, she also recognizes that, at times, court is inevitable. She is an experienced litigator in traditional divorce matters, including equitable distribution, support and alimony issues, custody matters, property negotiation and settlement of marital claims (including real estate matters). Drafting and enforcing pre-marital agreements is also an important component of her family law practice.



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