

## **A Civilized Divorce Process**

How you can help your clients avoid a messy and destructive divorce.

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The collaborative divorce method is private and fosters open, honest communication. This is in marked contrast to traditional divorce methods, which are intended to be adversarial. They can foster emotional pain long after the divorce.

### **What Is Collaborative Law?**

Collaborative law is based on three principles:

- A pledge by attorneys and spouses not to go to court.
- An honest exchange of information by both spouses and all professionals.
- Negotiations based on the highest priorities of both spouses and children.

Unlike a traditional divorce where the judge determines property settlement and child-custody issues, collaborative law enables couples to create unique settlements tailored to their family needs. Past president of the Collaborative Law Institute of Texas, Austin family law attorney Jennifer Full, states, "In the courthouse, the judge has a set of rules that must be strictly followed plus other 'guidelines' that are routinely followed in every case. The judge knows this cannot be reversed if the statutory guidelines are followed. Therefore, after a trial, couples are stuck with 'one size fits all' judicial decisions. In contrast, during the Collaborative Law process, couples can customize the provisions to fit their particular circumstances."

In collaborative divorce, the couple has control over their divorce. They can have privacy and confidentiality that is not available in a traditional litigated divorce. In court, spouses may have to be on the witness stand and say things that can never be erased. Every word in the trial is public record.

### **Available Options**

There are basically three options a couple may consider when contemplating divorce: trial, mediation, or collaborative. Trial divorces are rarely amiable. Attorneys present their case to a judge with convincing arguments in favor of their respective clients. Preparing for trial includes gathering information, interpreting the data and preparing for testimony. In the end, the judge makes the decisions for the family under the limitations of the law.

In mediation, the neutral mediator does not make decisions. The parties make the decisions. Spouses may bring their attorneys to mediation. If mediation fails, the couple has to go to court and go through the trial process in the end.

In collaborative divorce, the focus is on the couple's interests and goals. This contrasts with a focus on the potential legal outcome in the courtroom in a trial.

### **What Collaborative Cases Entail**

A typical collaborative case begins when one spouse hires a collaborative law attorney and suggests to their spouse that they might want to try the collaborative approach instead of the traditional adversarial divorce method. The divorce process is comprised of a series of team meetings in which both spouses and their respective attorneys meet to talk over the issues, concerns and alternatives for their particular situation.

The more sophisticated the clients, the faster they see the value of the collaborative process. Family law attorneys are more efficient because they do not need to prepare for trial. Hiring one neutral CPA is more efficient and cost-effective than hiring two opposing CPAs. The collaborative process is most effective when the clients are able to think rationally. They don't have to actually be rational during every moment of the process. But, due to the flexibility inherent in the collaborative process, there are opportunities to move back to rational thinking before the divorce is final.

"The financial professionals need to have a clear understanding of their role," emphasizes Norma Trusch, past president of the International Academy of Collaborative Professionals. "They need to maintain complete communications with the attorneys and clients." The CPAs need to have training in effective neutral communication techniques. Any appearance of favoritism can derail the entire process.

In addition to the Financial Professional, an interdisciplinary approach includes a neutral "Communications Professional." This can be a licensed mental-health professional who is particularly trained in communications. This team member helps the individuals to navigate their emotions while resolving the legal issues in a non-adversarial way. In the neutral role, they help clients maintain focus on settling their disputes with the least cost to the family members. The neutral communications specialist keeps the discussion moving along when it might otherwise come to a standstill.

With the two attorneys, the Financial Professional and the Mental Health Professional, there is a full team. Together, these four professionals work together to help the couple resolve their differences, communicate better and make their own choices, which are then memorialized in their financial settlement and parenting plan (when children are involved). When attorneys present the divorce decree to the judge, they rarely change the agreements. In doing your job, you help your clients negotiated their divorce successfully and privately.

## **Conclusion**

Collaborative clients see the value of having a good relationship with their spouse long after the divorce. They recognize that they are not abandoning their family but are reorganizing the family structure. For years to come, there will be weddings, holidays and ceremonies to attend as a redesigned family unit. The top reasons clients choose the collaborative process are to maintain control over their divorce, to keep it private and to prevent emotional devastation to their family.

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