

Collaborative Law: A New, More Peaceful Approach to Family Law

There is no way around the fact that divorces create difficult circumstances for families. Emotions run high; clients fear the worst about their financial futures; children sometimes bear the brunt of their parents' anger and frustration. Litigation makes matters worse. Clients, already emotionally exhausted, spend thousands upon thousands of dollars to focus on the worst things about each other and their relationship so that they can "win" their divorce.

In fact, there are often no winners in divorce litigation. There are injured feelings, destroyed relationships and clients who feel that the remains of their financial and emotional lives are not worth salvaging. The lawyers close the file and move on to the next case while the clients try to make sense of the divorce experience and figure out how to move on with their lives.

Fortunately, there is a new process called Collaborative Law, which gives divorcing couples an alternative to divorce litigation. Collaborative Law was the brainchild of Minnesota native Stuart Webb in the 1989. The process is built around three principles:

1. **No Court**. Clients and their lawyers agree in advance that no one will take any contested issue to court. This allows the parties and their advisors to focus all their attention on settling their case without the fear that they can be called to a hearing on three days' notice. It also allows them to feel free to express their feelings, explore creative options, and discover solutions that work for their unique situations.
2. **Transparent Process**. All information is freely exchanged in Collaborative Law. There is no need for formal discovery, because the parties and their attorneys contractually agree to provide all relevant information to the other party, whether it is requested or not. The parties further agree that they will not engage in any surveillance or other clandestine information-gathering activities.
3. **Interest-Based Negotiation**. The parties' interests drive the settlement talks. This is different from traditional negotiation, which is usually driven by the parties' positions. In Collaborative Law, the group looks behind what the parties say they want to discover the perceived benefit to the client of what he or she says she wants, then they look for creative ways for the clients' interests to be satisfied.

"Everything done in Collaborative cases is designed to lead the parties closer to a resolution that is acceptable to both spouses," explained Kristen Algert, a Collaborative lawyer with Ausley, Algert, Robertson and Flores in Austin. "The Collaborative process encourages parties to treat each other with respect and empathy. This paves the way for them to have a more successful, less stressful relationship in the future."

A good working relationship between ex-spouses is one of the most important gifts

parents can give their children, according to Syd Sharples, LMSW, a therapist who works with divorcing couples in the role of divorce coach. “Children understand intuitively that they are half Mom and half Dad,” said Sharples. “If it’s not okay with Dad for a child to love Mom, the child begins to believe, ‘If Mom is bad then that means that half of me is bad.’ Parents may not mean to give this message to the children, but that’s what happens when parents can’t find a way to treat each other with respect and dignity throughout and after divorce,” Sharples explained.

Collaborative cases often involve a team of neutral professionals who guide the spouses through the uncoupling process. “Divorcing couples will often benefit from the expertise of someone other than their lawyers when they are tackling tough issues like how they will meet their living expenses after their divorce, or what will be the best visitation arrangement for their children,” Algert, who is certified as a specialist in family law by the Texas Board of Legal Specialization, said. “Financial and mental health specialists trained in the Collaborative process make more efficient use of the clients’ time and money, and they give the parties a different perspective on their situation,” she added.

Divorce coaches like Sharples help parties manage their emotions as they move through their divorce so that they can make the most appropriate decisions for their family. “The process of dividing property is like making a business decision,” said Sharples. “It’s difficult to make business decisions when you’re furious at the person you’re negotiating with. As a divorce coach, my job is to give the parties an outlet for their emotions so that they can focus on the business of making wise decisions when they are with their attorneys.”

Jan Demetri, CPA, is a certified divorce financial analyst who works as a financial neutral in Collaborative cases. She sees her job as educating the clients about their financial futures. “You would be surprised at how many people who are getting divorced have no idea what they own or what they owe,” Demetri commented. “Both men and women often take an ostrich-like approach to their finances, burying their head in the sand and hoping that things will take care of themselves.”

But financial matters rarely do take care of themselves, Demetri said, and the clients need to carefully consider how to divide their marital estate so as to maximize the benefit to both parties. “Whether a spouse gets his or her part of the community estate in the form of retirement dollars or equity in a house can make a huge difference in how his or her financial future will look,” Demetri said. “What might look like an even property division on paper might well be a windfall for one spouse and a tax nightmare for the other. Factors like the age of the spouses, their ability to earn money through their work, and their expected future expenses need to be considered in order to get them to a place where they can make informed decisions.”

Decisions about the details of the parties’ divorce are always made by the parties themselves while they are in the Collaborative Law process. The Collaborative attorneys’ job is to make sure that the parties are aware of all their options, know the consequences associated with each option, and make fully-informed decisions. “The clients get to make choices based on their own priorities and values,” Algert said. She added that the allowing the clients to exercise informed autonomy is sometimes difficult for family law attorneys who are accustomed to the

litigation system. “The challenge for the attorneys is to let go of the idea that divorcing couples and their attorneys are in a competition,” she commented. “The clients have important personal relationships that will continue long after the lawyers have forgotten the details of the case. The parties are the only ones who can decide what will work for them, and after we do our part to help them identify their options, we need to get out of the way of their decision-making process.”

Learn more about Collaborative Law at The Collaborative Law Institute of Texas website: www.collablawtexas.org.

About the Author:

Jennifer Tull is a Collaborative family lawyer in Austin. She will assume responsibilities as president of the Board of Trustees of the Collaborative Law Institute of Texas in March, 2006. Tull is certified as a family law specialist by the Texas Board of Legal Specialization. She is also president of *A Spa for the Soul*, a retreat program for women in relationship, career, or family transitions.