

Collaborative Law – A Different Approach to Divorce and Family Conflict

The end of a marriage or a relationship is usually tragic, and the process of divorcing only adds to the pain. Divorce can be especially costly, financially and emotionally to all involved. While many family law attorneys seek to reach amicable resolutions to divorcing couples, the truth of the matter is most people see the attorneys as the only winners in divorce.

Divorcing spouses often come to see each other as adversaries and the process afforded by the court system a battleground in which to wage all out war. Large sums of money are spent by both sides in the war of divorce, fighting for custody and dividing the spoils of property accumulated during the marriage. Children see and hear things about their parents that should be kept private and all too often become messengers between parents who cannot communicate with each other. The court battle rarely brings a sense of justice to either party. Instead spouses and children often feel confused and angry with decisions made by someone who simply does not know all the facts or have all the history of the family before them. The end of the court process rarely brings a resolution to the family crisis much less a feeling of hope for the future, and attorneys often wonder why their clients are still so angry even when they have achieved a "legal" victory.

It doesn't have to be this way. A growing number of parting couples, along with professionals such as lawyers, social workers, child psychologists and financial consultants are being trained in a more constructive alternative. These professionals have developed the collaborative process model. Collaborative law is a reasonable approach to divorce based on three principles:

- A pledge not to go to court
- An honest exchange of information by both spouses
- A solution that takes into account the highest priorities of both spouses and their children.

The collaborative model is designed to protect the interests of children and to help protect the privacy of the parties. The focus in the collaborative process is to find solutions that are workable for the parties by building on areas of mutual agreement. Divorce ends a marriage but need not sever family ties or relationships. Especially when children are involved, lifelong responsibilities remain. By preserving respect and encouraging cooperation, collaborative law can assist parents and children keep family bonds while embracing new lives.

Collaborative law consists of two clients and two attorneys who have been trained in the collaborative process, working together with other professionals, as needed, toward the sole goal of reaching an efficient, fair and comprehensive settlement that focuses on the future without going to court. The parties retain control of the decisions that will affect them and their future with or without children.

The collaborative practice offers a supportive team approach with trained professionals ready to assist the couple. Social workers, financial planners, child psychologists and mediators, all trained in the collaborative process are brought into the process as needed to facilitate and work with both parties to seek a resolution. More social workers are needed to meet the demand for working collaboratively with parties going through divorce. Trained in the collaborative process, these professionals understand the importance of their participation in helping construct solutions that deal with divorce's wide-ranging issues and assist the parties in establishing goals for the future. If the parties fail to reach an agreement through the process, the collaborative lawyers and other professionals involved are disqualified from further representation in the matter.

In collaborative practice, all agree to keep the lines of communication open as difficult and strained as that may be. The parties meet together with their attorneys in sessions that are intended to produce an honest exchange of information and expression of needs and expectations. Collaborative practice requires basic honesty, self-respect and some respect for the other party. For the process to work both parties must value integrity, civility, and a mutually fair outcome more than getting the biggest share of the pie above all else. They must be able to prioritize needs and to take ultimate responsibility for creating and accepting their own terms for settlement. The attorneys, also, must be able to undo instinctive behavior to see opposing counsel as an adversary and avoid jumping into the role of pit bull.

Collaborative law is not for everyone. Nothing is. It is inconsistent with domestic violence and with certain kinds of mental illness or character disorders. Some cases must be decided by a judge. However, as more professional are trained in the collaborative model, it is an exciting and healthy alternative to the usual court process. Ask your colleagues whether they have been trained.