

## **Collaborative Law: The Kinder, Gentler, Divorce**

See why the Collaborative Law is considered the kinder, gentler divorce, and how this alternative process might become a future trend when it comes to divorce.

By Anita Cutrer

Collaborative law is a non-litigation approach to problem solving that takes "going to court" off the table. It is especially effective in family law cases in which the parties need to maintain an ongoing relationship.

In a case being resolved through collaborative law, the parties and their respective lawyers engage in four-way settlement meetings. They all work together to establish agendas, set realistic deadlines for document exchanges, and create a safe, open, and fair environment for resolving conflict.

The process works because the attorneys are trained to listen to their client's needs and interests, while at the same time demonstrating concern for the other party's needs and interests. Although each attorney represents his or her own client first and foremost, both attorneys are focused on the big picture of resolving the problem to the benefit of both clients and to the benefit of the children.

In traditional litigation, each side prepares their case to persuade the judge that only their view has merit. All actions are driven by that goal. In a collaborative law case, facts and figures need not be manipulated because the parties will not present their case to a judge. Rather than "smoke and mirrors", the collaborative law case process is based on the parties' understanding of each other's point of view. This does not mean that they will agree on everything, but it does facilitate settlement, enhance trust, and reduce hostility.

### **How does Collaborative Law Differ from Mediation?**

Collaborative law differs from mediation in several important ways. First, the collaborative client can rely on his or her lawyer every step of the way. In mediation, the attorneys are often not allowed for part or all of the actual mediation, and parties have the option of not having counsel. A mediator cannot represent either party or and may not even be a lawyer. If not, the mediator cannot give legal advice nor can he draft the documents or finalize the case.

In collaborative law, *all* negotiations take place during four-way meetings with both parties and their counsel. Collaborative law attorneys guide settlement meetings, gather documents, strategize with their clients, and manage the flow of their cases.

One of the biggest considerations is what happens when mediation breaks down. Parties who have been represented by counsel during mediation may keep their attorneys and move on to litigation. Their counsel may prepare for trial with knowledge gained through mediation. By contrast, if the collaborative-law process breaks down, collaborative attorneys must withdraw and the parties must retain new counsel. Documents gathered during the process cannot be used by successor counsel in any litigation unless both parties agree. Both parties are put at the disadvantage of "starting over" which takes its toll financially and emotionally. As a result, there is built-in motivation to stick with the collaborative law process even when the going gets tough.

### **Who Should Use Collaborative Law?**

Collaborative law is the answer for any client interested in resolving their case "outside of the system" in an amicable and respectful setting.

This process also provides a safe yet empowering environment for those clients who might be uncomfortable stating their position to the other party. Having an attorney at your side to help gather and interpret financial information, explain documents, or refer a client to an accountant, financial planner, therapist, or other expert is likely to give the confidence that clients need to participate fully in decision-making.

In those cases when one partner gives the appearance of having more influence, power, or information than the other partner, the collaborative law process balances the power between the parties. Any relationship with a history of even subtle emotional or verbal abuse inhibits equal participation in mediation or other settlement discussions and makes the collaborative process preferable.

### **What Role Do the Attorneys Play in the Collaborative Process?**

Attorneys have an ethical obligation to represent their clients vigorously and completely. Although it may appear that your attorney is being sympathetic to your partner's point of view, remember that your attorney is modeling respectful and open listening. Affirming what your partner has said does not mean that your attorney agrees with your partner's position or that he or she is abandoning your position. Because all four of you are trying to solve the same problem, your partner or your partner's attorney might just have an idea worth considering.

Remember too that communications between you and your attorney are confidential unless you instruct your attorney otherwise. However, because the goal of collaborative law is frank, candid, and honest negotiations, you and your attorney must carefully evaluate whether you can withhold information while still upholding collaborative-law principles.

## **How Do I Choose a Collaborative Law Attorney?**

If you choose collaborative law, you should hire an attorney trained in the process. Although most attorneys are adept at negotiating settlements, the techniques, protocols, and documents that make this process work are vital to its success. Collaborative law is still relatively new, but even if it's your attorney's first case, if they have been trained in the process, it will still work. Look for an attorney who inspires your confidence, has been trained in collaborative-law protocols, is a good listener, is going to be a good advocate for you, and is someone who understands your needs, interests and goals.

Many times, your partner or spouse may select a collaborative attorney before you find one. Sometimes that attorney has had exceptionally good experiences with certain colleagues and may recommend some attorneys. In the collaborative law process, you can choose to interview an attorney recommended by your partner's attorney with more confidence in the collaborative law cases because trained collaborative law attorneys are trained to have the same goals and mindset in dealing with the case.

## **The Kinder, Gentler Divorce**

Collaborative law is the wave of the future. No other alternative process has caught on so quickly or been adopted with such enthusiasm. Mediation enthusiasts struggled for years to gain acceptance, while attorneys resisted the movement even more than clients.

In collaborative law, attorneys need not "give up" their clients to the mediator. Instead, they form a partnership with their clients to reach a non-litigated settlement.

The adversarial/trial process is designed to drive a wedge between whatever remains of the marital and parental relationship. The opportunity for mutual trust and respect is shattered by trial preparation, interim court appearances, and the trial itself. The other party's weaknesses, failures, misdeeds and mistakes are all fair game for public display. After such a wrenching experience, a healthy, respectful post-divorce partnership has little hope of succeeding.

The collaborative-law process is a breath of fresh air to attorneys and clients alike. The goal of maintaining a respectful, ongoing post-divorce relationship, especially but not exclusively between parents, requires that everyone behave with restraint and respect. When disputes arise between parties in a family context, collaborative law is the best way to maintain the relationship, or to at least move on with your life with dignity and peace.