

HOW COLLABORATIVE DIVORCE CAN BE DIFFERENT

By Karen L. Keyes and David L. Ginsberg

Every family is unique. When marital problems arise, the family needs a **process** that offers the flexibility to meet the specific challenges and needs of that family. Collaborative Divorce enables the parties to organize a team that includes the professionals that they need and to design a process that fits their situation.

Those in the legal profession frequently ask: “How is Collaborative Divorce different? **Isn’t that what we already do?** We settle most of our cases. What does the client get out of a collaborative settlement that they do not get from a traditionally negotiated settlement? We go to court only after we have tried to settle the case.”

So **how is Collaborative Divorce different** from mediation and attorney-attorney negotiation? How can the outcome be different? How can it impact relationships over time?

At the outset of a case, the emphasis is on the client’s concerns and questions. The team collectively develops goals and interests that the parties’ want to achieve in their divorce settlement. These goals often include items that a Judge may not have the authority to address in a courtroom, but the parties want to resolve.

When considering settlement options, the parties are encouraged to consider a variety of reference points including, but not limited to, legal rights to determine what a “fair” settlement would be. Attorneys help their clients create options that accomplish their goals rather than locking into positions. As the parties create options and explain the rationale behind them, they get the opportunity to express their feelings to their spouse. Not only does the process provide the parties with a safe environment to share these feelings, but it also allows them to do so without the limitations of evidentiary rules and/or a question-answer format. Rarely does a party leave the Collaborative Process feeling as if the result would have been different if only the Judge/Spouse/Opposing Attorney had only heard the full story.

What are the benefits of letting a client express himself/herself? The clients believe that they are reaching an agreement that is based on all of the relevant information. They understand why and how the agreement’s terms were reached, and they tend to be much happier with the outcome. When clients accept how they reached the agreement, understand why, and are pleased with the outcome, they are much more willing to comply with its terms.

How can **the process be customized for parties?** How **does this add value?**

One requirement of Collaborative cases is that both parties have an attorney. The parties and attorneys jointly determine who else should be on the team. Other team members such as mental health specialists and financial specialists can be neutrals. As a neutral, these specialists help everyone, and they are able to avoid situations in which experts are competing with one another. In addition, neutrals act as facilitators and are invaluable in moving discussions forward when they might otherwise get bogged down with parties and/or attorneys locking into positions.

Attorneys still provide legal advice to clients, but they also help the clients negotiate issues that arise in the real world, not just issues over which the Court has authority.

Mental Health Specialists serve as Divorce Coaches and/or Child Specialists. Coaches and Child Specialists help clients develop Parenting Plans that are truly designed to meet the child's needs and interests, and also to establish communication protocols that will work for the parents and children. Coaches are invaluable in helping clients manage emotions, expectations, and communication in a productive manner, and thereby enabling attorneys to focus on the legal and negotiating aspects of the case.

Financial Specialists are always neutral (instead of an expert on each side). They frequently are responsible for gathering financial information, performing tax calculations, preparing financial projections, and assisting parties with developing and evaluating settlement options. The Financial Specialist helps the parties understand their finances, discuss money in a constructive manner, and enables them to see what their financial projections are before signing an agreement.

How does the team function? Like all teams, collaborative teams require coordination to operate efficiently, but the sum of their parts is greater than the individual. By focusing on the parties' goals, the team members can fulfil their roles in a manner designed to keep moving the case forward. While each professional focuses on his or her specialty, it is done within the team process with an understanding of what the ultimate objective is.

Is all this teamwork helpful? The focus on communication (especially listening), and use of terminology that is respectful makes a huge difference. Not only does this language enable the parties to explore a variety of creative options, but the free flowing conversation makes it much easier to reach a settlement. The advantages of open and improved communication, rather than the acrimony arising from traditional negotiation tactics, benefits the parties well after the divorce process is complete, especially when children are involved.

Furthermore, the Collaborative Process creates an **opportunity for transformative experiences** through apology, trust building, improved relationships, and happier independent lives. Although not every Collaborative case leads to a transformative experience, many create healthier long term environments.

What are **some examples** of how the Collaborative Process enabled the parties and their families to meet their goals/interests?

(1) When one parent is a recovering alcoholic or suffering from mental health issues, the children and parents benefit if both parents are healthy. Adversarial negotiation may be too stressful or difficult for such a parent, and could cause the parent to regress. A supportive team, whose collective goal is to create an environment in which both parents can have positive influences on the children, will give that parent the best chance at overcoming his or her challenges and being a good parent. Coaches and Child Specialists can have difficult conversations, create manageable and effective restrictions in a parenting plan, address safety issues, help develop a plan that both parties embrace. The Collaborative Process gives the

recovering spouse the best chance to succeed as a parent, family member, employee, and enables both parents to improve trust while protecting their children from risks and conflicts.

(2) One or both parents may be concerned about a child's (even an adult child's) reaction to his or her parents' divorce. This concern may derive from religious beliefs, the parent's identity as a parent, or a fear that he or she will be blamed for the divorce. The team can develop a strategy for the parents to employ when talking with their children about the separation, and also create a settlement that incorporates religious holidays, family vacations, special traditions, etc. with the children to minimize the impact on the children. Child Specialists/Coaches talk with the parents and children to ensure that the settlement is designed to meet everyone's needs to the extent possible.

(3) One party wants to avoid sorting through everything that happened in a long-term marriage, particularly when the other spouse has a history of depression, and a primary goal is to keep that spouse healthy. By emphasizing the importance of calm, respectful, and supportive conversations, the parties could honor the lengthy marriage and generate forward focused solutions. The parties adopted a narrative with mutual responsibility for their separation and for agreements reached going forward.

(4) The parties are not communicating. They have a child with special needs. Their finances are strained. A Coach helped the parties move from no communications to using dialogue, email, text etc. without involving the child in the conflict. A Financial Specialist worked with the team to create a child support arrangement that did not interfere with the government benefits available to the special needs child.

(5) The father has a complex compensation package. The mother focused on parenting and knows little about the family finances. Now that the parties are separating, they need two homes and the mother is scared about her financial future and how she will afford housing. A Financial Specialist helped the parties prepare current and projected budgets together. This enabled the parties to reach a settlement that the mother understood and with a feeling of comfort that she could make ends meet.

Conclusion

How is the **settlement itself better** than a traditionally negotiated settlement? The work product may be a custody, support and/or property settlement document. The result may be more than what is "on paper". The experts that form the Collaborative team, e.g. Child Specialists, Divorce Coaches, and Financial Specialists, as needed, approach cases with the goal of finding solutions that work for the entire family. These experts are looking to find a "win" for everyone, not one client over the other. Although this approach pays huge dividends in every case, it is especially important when children are involved and parents gain the tools to create a positive emotional and financial environment for their children during the divorce process and afterward. It is not merely a settlement but an opportunity to change lives.

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