

An Alternative to a Messy Divorce

By Dr. Jill Materna, divorce coach, child specialist and mediator.

There is an alternative to high cost, messy divorce and nasty custody battles. It is Collaborative or “No-court” divorce. Collaborative practice is a new way of helping divorcing couples resolve disputes respectfully by using a team of trained professionals who all pledge not go to court. Minnesota attorney, Stu Webb, created the Collaborative Law model in the 1980’s and it is now an international movement.

Research shows that divorce is the second most stressful event for adults, after death of a spouse. Divorce is overwhelming due to the stress caused by conflict. It can be even worse for children. Studies have indicated that children of divorce experience twice the level of emotional and behavioral problems as compared to children from non-divorced families. And once again, the level of conflict between parents both before and after a divorce is the biggest predictor of these problems. Unfortunately, the traditionally litigated divorce actually fans the flames of conflict by further dividing couples with an adversarial, win-lose system. When it comes to divorcing families, if one person loses, the whole family loses. And the biggest losers are typically the kids.

The Collaborative divorce is a win-win process where people are treated with respect and dignity. Other benefits of a Collaborative divorce include it is client-centered. The couple has more control over the process and outcomes of the divorce. You do not have judges or other third parties making decisions about important life matters, nor do you have to wait for court dates and continuation of hearings that can significantly prolong the agony. Collaborative divorce utilizes a problem-solving approach and is far more efficient, which means it is typically much less expensive. The litigated divorce includes the high cost of preparing for trial even though many cases are settled at the last minute. The Boston Law Group reported the average cost of a fully litigated divorce in 2007 was over \$77,000, whereas a collaborative divorce averaged around \$17,000. (Such costs vary with location with fees generally higher on the two coasts and less expensive in the midregions of the country.) Furthermore, couples can keep their problems and assets private since there are no public court records. Most importantly, it is better for children and less stressful for adults. Divorcing couples meet with their collaborative team and craft their own mutually beneficial solutions in a time frame that fits their family’s needs. The team helps the couple through a difficult phase by creating a framework for effective, mutually respectful communication. This allows people to work towards establishing a postdivorce family that will foster healthy development for their children.

The collaborative team is made up of the couple, an attorney for each spouse, and either a divorce coach for each spouse, or one neutral divorce coach for both spouses. Other team members may include a financial neutral (such as a CPA) and a child specialist who serve as consultants to the process. Each professional member is trained in the collaborative process and pledges not to go to court. If the couple decides to litigate at a later time, none of the professionals or any of the information from the collaborative process can be used in court. This agreement is designed to create an incentive to stay at the table and keep working for a durable solution

Each spouse has their own attorney to provide them legal advice and protection throughout the process. But rather than going for an adversarial win, they are there to help the couple make their own legally sound decisions on matters such as child custody, support, financial settlements, and property distribution. The collaborative settlement is still a legal agreement. It is important to remember that collaborative lawyers are just as serious about seeking a lasting, mutually respectful solution as litigators can be about winning a court battle.

The divorce coach is a licensed mental health professional whose primary role is to create a safe environment and protect the collaborative process by helping all team members remain cooperative and collaborative rather than adversarial. It is most effective to retain coaches at the outset to prevent time consuming impasse. Each spouse meets with his/her coach to clarify his/her needs and goals, and to establish rules for conduct and communication. If only one neutral coach is retained, then the coach meets with each spouse separately to work on needs, goals, and rules for conduct and communication. The coach also helps identify emotional hot spots that might derail the process and teaches skills for handling these emotions and other stress management techniques. In addition, coaches are trained to navigate difficult issues such as histories of substance abuse and domestic violence in the family. This makes the whole process go smoother and is more productive in a shorter amount of time, thus saving money. The coaches further help parents develop a parenting plan that is appropriate to their children's developmental needs. During collaborative team meetings, the coaches help the couple keep the process respectful, solution focused, and moving forward to create a future they can be proud to give their children. While coaches are mental health professionals, the collaborative process is not therapy. There are no diagnoses or treatment plans. The process is time limited, goal specific, and educational.

A financial neutral is often added to the team to assist the couple in analyzing viable financial options for their future. The divorce settlement often greatly impacts each member of the family such as children's education and standard of living. The financial specialist helps the couple and their attorneys construct a plan for the financial wellbeing of the post-divorce family.

The child specialist, who is a licensed mental health professional expert in working with children, serves as the voice of the children to the collaborative team. An important goal of the collaborative process is to make children a priority not a casualty of divorce. The specialist meets individually with the children and helps them to express their feelings and concerns about the divorce as well as their hopes for the future. Then the specialist communicates these factors to the team for consideration when planning for the children's lives. Parents can also use the specialist to help them create two good homes for their children. This is done by helping parents to facilitate healthy relationships with their children as well as developing parenting plans and communication strategies that protect their children.

The collaborative process of divorce is far better suited to address the emotional and challenging task of ending a marriage while creating a durable post-divorce family environment that both protects the children and allows everyone to thrive.