

The Collaborative Practice Revolution in Divorce

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We have all been touched by divorce. Whether we practice Family Law, have been through a divorce ourselves, are the children of divorce, or know friends who are divorced, we all know the pain that divorce can cause, and we all know how it goes in the adversarial legal system: It takes too long, it costs too much, the kids get caught in the middle, and the divorcing couple spends so much time fighting each other that by the end, they have usually destroyed their parenting relationship for years to come. In the worst cases, former couples keep coming back to court even after the divorce, and spend their children's college funds on their anger with each other. There are exceptions, to be sure, but it is the exceptions that prove the rule.

None of us are happy with this adversarial system, and yet, if a friend asked us for advice today because they just decided to get a divorce, what would we do? We would probably refer them to a "great attorney" that we know, and send them right back into the same adversarial system that has made so many people we care about so unhappy.

But what if there was another way? What if there was a different system we could refer divorcing couples to? A system that not only values honesty, openness, and respect, but actually achieves it. We have all seen how good people do bad things in the adversarial system – because the system rewards it. What if there was a system where even bad people would behave well – because the system rewards it?

The system is Collaborative Practice, and your colleagues in the Legal, Financial, and Mental Health professions are bringing it to Brevard County.

What is it?

Collaborative Practice, is a new way for a divorcing couple to work as a team with trained professionals to resolve disputes respectfully, without going to court. When we say "new" we mean "new to Brevard County." Collaborative Practice has been around since founder Stu Webb created the process in Minnesota in 1990, and Collaborative Practice Groups now thrive in Canada, Australia, Europe, and 29 states in the U.S., including *ten* practice groups right here in Florida.

How Does it Work?

In a Collaborative Divorce, each spouse hires a settlement attorney, whose sole job is to settle the case without going to court. Each participant (including attorneys) signs a binding contract (the Collaborative Agreement) that requires all participants to treat each other with honesty and respect, and which prevents those particular attorneys from ever taking the case to court. The clients can still go to court if they cannot resolve their issues, but their settlement attorneys cannot go with them. This does two important things: First, it removes any incentive for an attorney to torpedo a settlement, since they will not earn any additional money if the case goes to trial. Second, signing the contract creates a serious financial disincentive for either party to abandon the process.

The Collaborative Agreement creates a new environment for the divorce. Since the only way to resolve the issues is by the agreement of the parties, the environment rewards honesty,

openness, respect, creativity, courtesy, and cooperation. Rather than destroying a couple's parenting relationship, the Collaborative Divorce provides an opportunity to rebuild the trust and communication skills the couple will need post-divorce.

But signing a contract alone is not enough. In order to make the process successful, the couple will need a team of professionals who are trained to help them with the problems inherent in divorce.

Who is Part of the Team?

The Collaborative Process starts with the clients' needs, and consequently attorneys are only some of the professionals a couple may need in making the transition from a romantic relationship, to the business partnership of raising their children.

Financial Specialists are needed not only to craft a fair distribution of assets to both partners, but also to plan a distribution of financial resources in a way that maximizes security and opportunity for each party and their children.

Mental Health professionals usually play one of two equally important roles: Child Specialist and Divorce Coach. The Child Specialist gives the children a voice, and gives needed suggestions for creating a successful post-divorce parenting partnership. The Divorce Coach acts much like a football or basketball coach, helping a couple to focus on improving communication around parenting concerns, and to improve the emotional climate within the family. These mental health professionals provide needed support during the transition to two households, and supply the best chance of minimizing any long term negative effects from the separation or divorce.

According to the signed Collaborative Agreement, financial specialists, child specialists, and divorce coaches are mutually agreed-upon neutral professionals who do not go to court. The particular professionals needed are determined by the specifics of each case.

Legal, Financial, and Mental Health professionals all receive specialized training in the Collaborative Process, and so bring a different and much needed skill set to the negotiating table.

Why Collaborative Practice?

In short, because Collaborative Practice is **Better**, **Faster**, and **Cheaper**. It is **Faster** because right now, a typical contested divorce in Brevard County generally takes at least eighteen (18) months to resolve. At the last Family Law Network Meeting, our Family Court Coordinator told the assembled judges and attorneys that at that time, trial dockets were so backlogged that from the time of noticing a case for trial, it could take more than a year to get on some judges' trial calendars. The Collaborative process averages 6-9 months – half as long.

It is **Cheaper** for the parties because the typical litigated divorce costs \$26,000 (total for both sides), while Collaborative Divorce, even with Financial Specialists, Child Specialists, and Divorce Coaches averages \$6,000 - \$10,000. Also, recent data shows that 90% of all litigated cases will return to court, while 90% of Collaborative cases never return to court. Consider the financial and emotional value of that future cost savings.

It is **Better** for us as practitioners and for our clients. We acknowledge the toll that working in this flawed system takes on our own happiness and peace of mind. Family Law is a high burn-out area of practice because it is so conflict ridden. We know in our hearts that there must be a better way, for ourselves, and for the families we serve, and Collaborative Practice is that way. Right now, Judges and Attorneys joke that the way to tell a good settlement or Order is

that neither party is happy. Collaborative Divorce isn't a bed of roses, but afterward, clients do say things like:

- " I was pleased with the process and will recommend it to anyone I know who is...thinking about separation or divorce"
- "It was very emotional but also empowering for me to negotiate the settlement that I felt was fair for both parties."
- "It was a positive process for me. I actually found the self-confidence to stand up for myself and verbalize my own needs."
- "I was pleased that it actually cost less than I figured"
- "I'm really glad we chose this process. For our family and for each other, it allows us to have sustainable amicability"
- "You listened well to me, and my upset and my needs. You handled things in an orderly, thorough and gentle manner. I feel I got every penny's worth..."
- "... Divorce is difficult, and with the passage of time, and all of your help and support, my life is happy. Thank you, thank you, thank you."
- "It's done. I can sleep. I can laugh. I can play. All thanks to you."

Is Collaborative Practice for Everyone?

No. Like mediation, collaborative practice requires a certain amount of equality between the parties. Serious power imbalances can thwart or distort the process, therefore cases which involve Domestic Violence, Active Drug Abuse, or Untreated Mental Illness raise red flags and are inappropriate for Collaborative Practice.

Conclusion

Collaborative Practice is a better way to divorce, especially for couples with children. The process creates and maintains a safe environment that actually achieves the respect, honesty and openness we all seek in legal proceedings. Collaborative Practice acknowledges that divorce is not simply a legal problem, but is rather a family problem with legal, financial and emotional aspects. It engages talented lawyers, financial planners and mental health professionals to work together as a team to serve their diverse needs. Collaborative Practice is not right for everyone, but for most divorcing couples it offers a faster, less expensive, more satisfying way to end their marriage respectfully, and take their first steps into a positive future for themselves and their children.

More Questions?

Hopefully, this introduction on Collaborative Practice has raised many questions for you. If you like the idea, want to get involved, or simply have more questions, please contact your professional colleagues in the Collaborative Association of Brevard (CAB), 7630 North Wickham Rd, Ste 102, Melbourne, FL 32940. 321-757-3233.

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