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Matrimonial Practice Through The Use Of Collaborative Law

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Many Rochester area matrimonial lawyers are now handling divorce actions and separation agreements through collaborative law. Collaborative law is a promising alternative to litigation and mediation. The adversity of litigation and unpredictability of outcome are removed by the collaborative process.

Collaborative law is a method where attorneys, together with their clients, meet during several sessions to resolve all of the parties' issues. Through these four-way conferences, each of the parties has a direct say in fashioning a settlement. Married couples sometimes choose to resolve their differences through mediation.

This avenue allows the couple to meet with a neutral party, who may or may not be a lawyer, to bring the parties to a compromise between their respective positions. Unlike mediation, in collaborative law the lawyers and parties together create a settlement, the provisions of which are recorded in the minutes of each meeting.

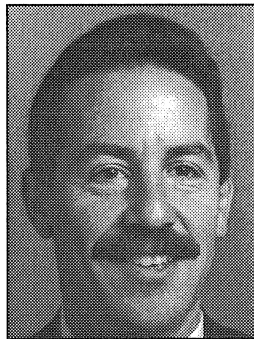
The essence of collaborative law is the commitment of the parties and their attorneys to serve the best interests of their families and themselves by resolving their differences with minimal conflict. To that end, the parties openly choose to refrain from engaging in a court proceeding. Collaborative law is ideal for those couples who wish to avoid the adversarial process of litigation whether it concerns divorce, child custody, spousal support or child support.

Association For Collaborative Law

During the last two years, the Association of Collaborative Family Law Attorneys was formed to train local lawyers in the collaborative process. To become a participating attorney in the association, a minimum of matrimonial and/or family law practice is required, as well as good standing in the New York State Bar. Each attorney must have completed a two-day intensive collaborative law training program and must attend such additional training as the association requires.

Many of the area lawyers who have an exclusive or primary practice in divorce and family law are now members

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of this association. The association meets regularly to provide on-going educational programs for its members and to promote the principles of collaborative law. Contact with the association may be made through its website at www.nycollaborativelaw.com. The roster of all participating attorneys, as well as a description of the process and pertinent resources are contained in the site.

Collaborative Process

What is the collaborative process? Following a consultation by each party with his and her respective attorney, the initial four-way conference is scheduled. At the first collaborative meeting the methodology is explained so that the buy-in of the parties is fully developed. In most initial meetings, specific issues of substance concerning the parties, their children or their finances are not discussed.

Collaborative attorneys have found that the process is much more effective if all participants are on the same wave length regarding the principles of collaborative law. The parties and their attorneys will review the ground rules for collaborative law. Certain rules instruct the participants to avoid taking positions.

Rather, collaborative law encourages each of the parties to express himself and herself in terms of needs and interests, as well as the outcome each would like to achieve. The aim is to seek the most constructive, acceptable agreement for both of the parties and for their family. Additionally, the rules instruct each of the parties to listen carefully and to try to understand what the other person is saying without being judgmental.

Participation Agreement

During the first meeting, the attorneys present the collaborative law participation agreement, and all sign this agreement. The process of collaborative law is dependent upon an atmosphere of honesty, cooperation, integrity and professionalism. These conditions are included in the provisions of the participation agreement. The agreement also contains terms of communication between the parties, the use of experts, confidentiality, and enforcement of the agree-

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ment. Of particular significance are those provisions contrasting the collaborative process to a court proceeding.

The parties acknowledge in the participation agreement that their representation by collaborative law attorneys is limited to the collaborative process. In the event the process breaks down, and is terminated prior to the parties' entry into an agreement, neither attorney can represent his or her client in a litigated proceeding against the other.

The participation agreement expressly provides that: "The parties understand that in the event of the termination of the status of this case as a collaborative law matter, it will be necessary to select new attorneys and additional fees will likely be required in retaining new counsel."

Furthermore, in the event of litigation between the parties, each party is precluded from introducing into evidence any information disclosed during the collaborative process or any information with respect to either parties' conduct or legal position regarding settlement. Neither party can compel the production in any court proceeding of notes, records or documents in possession of one of the attorneys that participated in the collaborative law process.

Additionally, the participation agreement restricts a party from requesting or issuing a subpoena to either attorney to testify in any court proceedings or to subject an attorney to a deposition regarding matters disclosed in the collaborative process.

Although it is accurate to describe the four collaborative participants as a team working to achieve a result fair to all, each lawyer does represent one party. Clients meet individually with their lawyers between collaborative sessions to discuss the application of matrimonial and family law statutes and case law to the issues at hand.

One of the great benefits of collaborative law is that the parties, through their direct and active voice in the resolu-

tion of issues, may fashion a settlement unique to their particular concerns and those of their children, far different than the narrow range of possibilities that a court may direct. However, the law must be acknowledged and the attorneys will offer advice accordingly.

Use Of Experts

Unlike the "hired guns" who may bolster the position of one party to a litigated divorce action adverse to the opposing party, the parties in collaborative law use neutral experts when appropriate for purposes of asset valuation, cash flow analysis, parenting issues, and any other issue that requires expert advice. A determination will be made in advance as to how the expert's fee will be paid.

For example, in the event of a complicated financial issue, a mutually selected accountant, appraiser, economist or financial planner can serve both parties. The expert would be invited to attend a collaborative meeting to present information upon which a solution could be based. There also are instances where a mental health professional provides recommendations within the collaborative context for appropriate parenting arrangements.

In Conclusion

The early experience of collaborative law is very positive. Numerous cases now have been settled through this process. Couples seeking to enter into a separation agreement or to terminate their marriage by divorce now have an alternative to the uncertainty and unpredictability of litigation.

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