



Business Owners, divorce and collaborative law

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For New Hampshire citizens who value privacy, cost- efficiency, expediency and outcome control, choosing an alternative dispute resolution mechanism is the optimal way to resolve most differences between parents and former spouses -- whether the issue involves divorce, parenting rights, modification of existing orders or another family matter.

This is especially true for business owners in the midst of such a dispute.

In light of the shortfall of judicial officers, hearing dates and resources, Circuit Court Administrative Judge Edwin Kelly has recommended that attorneys "work collaboratively with each other to settle the cases that you can either on your own or using alternative dispute resolution methods ... and notify our courts immediately so that hearing time can be given to others."

A wide array of alternative dispute resolution options are available to families, including mediation sessions with or without attorneys, neutral evaluation, negotiation and arbitration.

A new and rapidly expanding approach is collaborative law, which centers on each party's interests, in light of resources and realities, as opposed to wishes, entitlements and rights.

The collaborative approach encourages understanding and consideration of concerns underlying the legal issues by all parties and professionals involved (for example, a business owner's concern about making an immediate lump- sum property settlement payment in a divorce).

Each party is encouraged to be open, communicate directly, propose ideas and work toward a global resolution of the dispute.

The parties and professionals work together, in a series of meetings, discussing issues and creative solutions in an effort to meet the parties' interests and goals while simultaneously resolving the issue confronting them. Resolution of disputes through this technique are often highly creative and durable.

In the collaborative process, the parties and their selected professionals work as one team, not as opposing sides or parties, to resolve the case. The collaborative team consists of the couple, two collaborative attorneys, a divorce coach and a financial professional.

The divorce coach is a mental health professional who meets with the couple for the limited duration and purpose of the collaborative case. The parties and coach discuss issues of concern, potential roadblocks, communication issues and how to move forward. The coach then provides feedback to the attorneys to keep the case progressing positively and constructively.

This holistic approach ensures that all issues are heard and constructively resolved. If children are involved, then a child specialist may be added.

Financial specialists are often asked to help to gather relevant financial information and assist with modeling and forecasting of financial results.

The collaborative financial specialist is an independent financial professional with no prior (or subsequent) relationship with the parties.

The third- party specialists are shared, jointly retained and jointly paid, thereby reducing the cost to each party. Further, the entire process is relatively brief and total expenses are minimal, especially compared with litigation.

Collaborative meetings are scheduled at the convenience of the team, unlike court events. As issues or questions arise, the parties may gather information between sessions, discuss issues with the coach or review proposals with the financial specialist.

The fact- based and constructive approach taken in collaborative meetings allows the parties to express and hear concerns (especially with the help of the coach), then make decisions based on the realities confronted by each, and to construct agreements together with ideas and assistance from the entire team.

When respectfully and rationally resolving their own disputes, parties can agree to something that a court may not be inclined to order, such as a

longer payment duration with a lower interest rate for a property settlement that must be paid over time, increased alimony in lieu of a greater share of property, variable parenting schedule or other terms.

In other words, the parties hold the keys to their own freedom from the dispute and, in many ways, can design the agreement as they wish.

All team participants must sign an agreement to participate in the process openly, honestly and in good faith and all involved professionals are disqualified from participation in any future litigation. This is unique to collaborative law and is a powerful motivating force to stay with the process once it is started.

The number of meetings necessary to resolve a case varies, but most are resolved in four to eight sessions. How quickly a case can be resolved depends upon the motivation of each party. However, parties who resolve their disputes are more satisfied with the outcome and less likely to return to court for subsequent litigation of the involved issues.

Collaborative law offers a cooperative, dignified and often quick resolution that protects business owners from often- raised concerns about adjudication of cases in the court system. The public nature, voluminous and repeated production of documents, duration, acrimony and expense of family litigation are serious concerns for business owners. The inability to control the process, location, time frame and outcome are less than desirable. Harm to personal or business reputation, release of sensitive or proprietary information or diminished performance at work during the case may result from prolonged or particularly hostile proceedings.

In this era of judicial branch budget cuts and staff reductions, the average litigated divorce takes approximately two years, from the date of the first filing to the final decree. Collaborative cases are significantly less expensive and time- consuming. Many are resolved in a matter of months.

To learn more about collaborative law, visit the International Academy of Collaborative Professionals at collaborativepractice.com or Collaborative Law Alliance of New Hampshire at www.collaborativelawnh.org.

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