

The Benefits of Collaborative Law for Business Owners

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The benefits of alternative dispute resolution are well-known in the business community. In the family law context, alternative dispute resolution is highly valuable and creatively utilized to resolve disputes privately, quickly and respectfully. This is particularly true now, when the courts are experiencing an unprecedented shortfall of judicial officers and resources. For intelligent 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 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. Some such options include: attendance at mediation over several short sessions without attorneys (and potentially consulting with attorneys outside of mediation as "mediation coaches" as needed); attendance at mediation with attorneys over one or more days; neutral evaluation; negotiation; arbitration; or a new and rapidly expanding approach known as "collaborative law." As the other approaches are well-known or self-explanatory, this article will focus on collaborative law.

Collaborative law centers on each party's interests, in light of resources and realities, as opposed to wishes, entitlements and rights. It recognizes that family disputes, particularly divorces, are primarily financial and emotional events, although they have significant legal ramifications. 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 collaborative 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. Then the coach 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. Collaborative financial specialists are often utilized to help parties gather relevant financial information and assist with modeling and forecasting of financial results. For example, the financial specialist may run various calculations concerning keeping a house at various income levels, the long-term financial impact of electing an asset over a taxable income stream, or the financial impact over time of a global settlement package under discussion. 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. In the collaborative process, the parties exchange what information they desire, as opposed to litigation, in which Rule 1.25-A requires certain mandatory disclosures, including a substantial production of monthly, quarterly and year-to-date business financial statements and tax returns, personal bank statements, credit card statements, employee benefit information and the like. 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. Parties are more satisfied with settlements that they design than litigated outcomes over which they have no control.

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 collaborative team works together, in a series of private meetings and entirely outside of the court process, to explore the issues and ideas for settlement proposed by either party. The number of meetings necessary to resolve a case varies, but most are resolved in four to eight such 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, timeframe 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 now takes approximately two years, from the date of the first filing to the final decree. Collaborative cases are significantly less expensive and time consuming than such cases. Many are resolved in a matter of months.

The collaborative approach allows the parties to control the resolution of their personal affairs. The parties choose the involved professionals. Personal information, financial documents and confidential information remains private. Only basic settlement documentation is filed with the court. Parties can even waive their appearance at a final uncontested hearing, so they will likely never appear in court relating to their divorce. Collaborative law offers a private and dignified way to resolve family issues as well as an opportunity to reach cost- effective and creative agreements that suit the parties' needs.

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

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