



Collaborative Law Divorce Offers Faster, Less-Hostile Alternative to Divorce Litigation. Eases Overburdened Courts.

Experts Say Collaborative Law Divorces Easier on Children

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By Ellen Stuart

In our modern society, virtually everyone is touched by divorce. It happens to neighbors, your family members and friends, maybe even you. In New Hampshire, about 39% of marriages end in divorce, according to data from the State's Division of Vital Records Administration.

When it does happen, most couples resolve divorce through litigation in the court system. This can be a long and painful experience for the entire family. Going to court can mean life-altering impacts on children and it can leave ex-spouses feeling more hostile toward each other than ever.

But there is an alternative method of resolving divorce: Collaborative Law. Increasingly popular throughout the nation, Collaborative Law is also taking hold here in NH. A training seminar this past spring sponsored by the NH Psychological Association and the Collaborative Law Alliance of NH in Manchester drew more than 20 lawyers, mental health professionals and financial experts for a two-day session.

The session focused on teaching the technique of Collaborative Law, which involves tackling divorce as a team and treating it not only as a legal event but also as a major life change. It is a change that impacts several dimensions of the family, including law, finance, and mental health, according to attorney Jeanmarie Papelian, president of the Board of Directors for the Collaborative Law Alliance of NH.

"(A Collaborative Law Divorce) is about more than hiring a mediator," said Papelian. "In Collaborative Divorce, both parties have lawyers throughout the process who are specially trained in the collaborative technique. Early on in the process, those lawyers and the couple determine whether other professionals, such as mental health or financial professionals, should be added to the collaborative team. All members of the team are trained to help couples reach agreements that meet their needs without having to go to court."

The two-day training session helped professionals embrace the philosophy of alternative dispute resolution which aims to resolve family disputes and divorces with cooperation, respect and dignity. It also stressed the three principles Collaborative Law is based on: a pledge not to go to court, an honest exchange of information by both spouses and a solution that takes into account the highest priorities of both spouses and their children.

An Amicable Divorce

NH resident Moe Guernon recently went through a divorce using Collaborative Law in NH because he wanted an amicable divorce. He ultimately achieved an amicable split from his ex-wife but also credited the Collaborative Law process for a divorce remarkable in its privacy, speed, and lower cost than a traditional, litigated divorce.

"Divorce is grueling no matter the process, but using Collaborative Law, life returned to normal perhaps a year or more quicker than with a litigated divorce," Guernon said. "Another

considerable advantage is cost. I estimate that legal fees with this process ended up being a third or half of what they would have been if done through the normal court process.”

All meetings necessary for his divorce were held in the privacy of an attorney’s office, said Guernon, instead of “in front of an unknown number of strangers that would otherwise have been privy to all deliberations of our private business in a courtroom.”

Guernon called the collaborative process “an accelerated divorce process.” The couple had only three meetings with all parties (his ex-wife, their lawyers and Guernon), as well as separate meetings with their respective attorneys. By comparison, a litigated divorce in NH can take up to two years from filing to finalizing in state courts.

“It was difficult,” Guernon said. “Everything about divorce is. But it was made much easier with this process. Not having our private discussions in an open courtroom makes it much easier to go through... There were difficult moments for both of us, but we were able to work through it to a final agreement that all believe is fair.”

A Salve for Budget-Strapped Court Systems

Collaborative Divorce may also prove to ease some of the burden on the cost-weary NH judicial system that has sought to cut millions from its operating budget the past few years by reducing staffing. By keeping some divorces out of the courts, Collaborative Divorce could help alleviate the backlog of court cases the state faces due to recent budget cuts and layoffs in the judicial system.

In 2010, the state closed courts for monthly furlough days in an effort to cut \$3.1 million from the budget, according to a Dec. 2010 report in the Portsmouth Herald. The cost-cutting measures and scheduling adjustments have continued in 2011.

Edwin Kelly, a district and family division administration judge, recently told the NH Bar Association that district courts currently have a backlog of 60 days for family division cases. This means couples seeking divorce in court must wait longer to even start the process, which can take as long as two years from start to finish. Collaborative practice, which skips the courtroom altogether, can be a way out of the long waits and bureaucracy of the court system.

More Control for Those Divorcing

Attorney Cathy Shanellaris, of Nashua family law firm Shanellaris & Schirch, has extensive experience with collaborative practice and is a member of the Collaborative Law Alliance of NH. She noted that because parties involved in a Collaborative Law divorce may never have to enter the courtroom, the divorce proceedings only last as long as couples need to make their own decisions, according to Shanellaris.

“In court from the time you file to the time you get an initial hearing can be six months,” Shanellaris said. “But through collaborative practice, you could have your entire divorce finalized in that time.”

Collaborative Divorces are settled in sessions the parties schedule according to their work and life commitments, instead of having to work around dates set by the court. Shanellaris said most Collaborative Divorces are settled in between five and eight sessions. She said the most important part of Collaborative Law is the amount of control it puts in the hands of the individuals getting divorced.

“Everyone is going to work together to get the parties divorced,” Shanellaris said, “and the great thing is that the parties themselves are able to determine the outcome of the case. Everyone there is there to help, but not make decisions. The parties are really in the driver’s seat.”

A Better Alternative for Children

If there are young children involved in a family going through divorce, parents will need to co-parent their children once they are divorced for many years to come.

Collaborative Law can provide tools and a framework to discuss different parenting styles and achieve the best balance without the cost and expense of a courtroom confrontation, according to Karen Ela Kenny, MSW, MICSW, a mental health professional who has spent 30 years working with couples and families going through divorce.

Two years ago, Kenny underwent collaborative practice training. She she found it to be a much more peaceful option for everyone involved.

“Collaborative Divorce is a healthier divorce,” Kenny said. “We see so much fallout from the bitter, protracted, antagonistic, litigated divorces; and we’ve seen that children do much better with a calm, low-conflict divorce.”

When it comes to the emotional side of a divorce, Kenny stressed that collaborative practice uses mental health professionals for education, support and to advise attorneys. She said certified collaborative practice mental health professionals act as coaches, not therapists, and their most important role is helping both parties stay rational and respectful as they make important decisions with long-term impacts.

“We provide support that calms the emotional intensity of the process,” Kenny said. “And it’s important to be calm because (the parties) involved are going to be making the decisions themselves about how to divide their assets and reconfigure their family”

Common-Sense Financial Resolutions

Financial planner Jill Boynton of Cornerstone Planning is a member of the Collaborative Law Alliance of NH and recently started working on collaborative divorce cases.

“I only did my first collaborative case recently, but I’ve been working with parties going through divorce for about seven years,” Boynton said. “Collaborative practice is definitely more respectful, more amicable. The big difference is that both parties want to work something out and come to a conclusion. They’re not trying to fight each other.”

Boynton said working with a financial professional as part of a collaborative divorce can help a couple see how the division of their assets will affect them, not just in the present, but 30 or 40 years in the future. One of her main roles a financial planner fills in collaborative practice is to come up with a cash flow projection for each party, showing how their finances will be shaped in the future if their assets are divided according to plan, taking into account alimony and child support.

“By going through this exercise, they can see the outcome of the divorce,” Boynton said. “And sometimes that makes them come to a decision faster because they know, financially, they’re going to be okay.”

Shanelaris said that collaborative practice only works when both parties can agree to work out their separation without going to court and when everyone understands how the process works.

“Both parties have to be educated by their attorneys about how it works, what the expectations are and if this process is right for them. It needs to be a good fit,” she said.

Shanelaris said that Collaborative Law is not suitable in cases of spouse or child abuse, or when drug or alcohol addictions are involved. If a collaborative divorce fails and no agreement can be reached, the parties must go back to square one, hire new lawyers and enter into traditional litigation.

Kenny said she believes that collaborative divorce is a better divorce.

“I’ve seen over and over the ramifications of high-conflict divorce,” she said. “And when it’s a low-conflict divorce, I’ve seen how much better these families regroup, reconfigure and move forward.”