

## Collaborative Divorce

### “The Benefits of the Collaborative Divorce Process to the New Hampshire Bench and Bar”

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The Collaborative divorce process provides some obvious benefits to those of us who practice family law. Operating outside the court system, we can set our own hours for meetings. So for practitioners who have young children, or who want to work part-time as they near retirement, this flexibility can be a life-saver. Successful and even satisfying resolution of most Collaborative clients' divorces, *usually within less than six months*, even with complicated cases, means an increase in referrals by happy “customers.” Also, as awareness grows, and as more clients demand the Collaborative divorce process, we are ready to answer the call, having been trained in the methods and protocols, and having partaken in the networking and learning opportunities provided by local professional Collaborative Practice Groups.

But what about the benefits of the Collaborative divorce process to other members of the New Hampshire bench and bar? Can a referral to a Collaborative divorce practitioner or to the website at [www.CollaborativeLawNH.org](http://www.CollaborativeLawNH.org) bring positive effects to professionals who do not represent divorcing clients directly? What about strictly transactional practitioners such as estate and taxation attorneys, or business attorneys; and what about those of you who are part of the judiciary?

Business and transaction attorneys know all too well how a protracted and high-conflict divorce can adversely affect their clients. Business owner-clients become distracted and less productive. The books and records of privately-held enterprises are subject to public scrutiny, to the dismay of owners. Competing business appraisers need to be hired, which can greatly diminish the parties' marital savings. All of these financial and emotional costs can pull billable hours away from the business attorney until the client's divorce is complete - often a full year and a half after the divorce process begins.

By referring clients to the Collaborative Divorce process, the business and transaction lawyer helps clients avoid the problems of decreased productivity, unwanted public disclosure, and the high costs of dueling experts. The Collaborative process allows clients to achieve a focused, efficient divorce, where 100% of the available resources are devoted to settlement, where one financial neutral is hired by the parties, and where all business information remains private.

Non-litigation attorneys who help clients with estate and tax planning see the often devastating effect on the family unit when couples and their divorce lawyers view their break up as a war to be won, rather than a problem to be solved. The Collaborative process helps divorcing clients settle their issues with respectful communication, through the assistance of a neutral divorce coach/facilitator who has also been trained in the Collaborative process. The estate planner who refers clients to, and whose clients choose a Collaborative divorce, will in the vast number of cases have clients who perceive themselves as part of a restructured family, rather than the victims of a war, filled with allies and enemies.

On a daily basis, marital masters, judges and court personnel experience the harm caused by a clogged and underfunded judiciary. Once in the court system, it is highly unusual for a case to resolve within less than 18 months. Parties often must wait four months before their temporary issues can be resolved. Contested cases often result in a higher rate of post-divorce litigation so the case may continue to drain the system for years. With the Collaborative divorce, once both parties retain counsel a meeting is scheduled, at the parties' convenience, to address and resolve any immediate issues. By spreading the word about Collaborative divorce court personnel can help citizens to resolve their family disputes without ever stepping into a courtroom all while helping to relieve the court backlog.

So, what does the Collaborative divorce look like? For referring attorneys and court personnel, it is important to be able to explain the process to the end user, the divorcing client. At its most basic, the process is as follows.

At the outset, the parties agree that they will sit down with counsel and act in a responsible and respectful fashion toward each other. With Collaboratively-trained attorneys even high conflict cases can be managed once the table is set. The parties need to agree that there will be full disclosure of all assets and liabilities --- without the need for formal discovery (and the costs connected therewith). The lawyers agree not to use the court to resolve the issues of the divorce. In fact, if the parties cannot settle their issues, they must obtain new litigation counsel, but this occurrence is relatively infrequent because the parties have invested both time and money in the Collaborative process.

A Collaboratively-trained mental health practitioner is usually hired by the parties and serves as a neutral divorce coach. Their role is to address the emotional underpinnings, work with the parties to address the "he said – she said" aspects of the case and to help the parties efficiently focus on the future, rather than on the past. It is not therapy, but is useful for parties who can't communicate "on the same page at the same time." Addressing the emotional challenges and ensuring that each party's concerns are fully heard goes a long way toward achieving a settlement. The cost for the divorce coach is generally less than having two attorneys go back and forth trying to address emotional issues which are often not fully appreciated due to our lack of psychology education.

Since divorce involves financial challenges and planning for the future, there is little doubt that a New Hampshire Financial Affidavit falls significantly short in helping the parties plan for the future. It merely reflects today's assets and liabilities, not how food will be put on the table a year from now or the mortgage paid. For this, we usually bring in a financial professional who is also trained in the Collaborative process. This individual, who is neutral, avoids the need for separate experts and works with both parties to maximize their financial resources as a restructured family or even as just ex-spouses without children. The goal is to make the most out of what is available so that both parties are as comfortable as practical after the divorce, taking into account their needs, and when appropriate, the needs of their children.

This entire process is completed before anything is filed with the court. The timeframe is totally controlled by the parties. They move as fast as their emotional needs dictate and take a "time out" when desired. There is no pressure to make snap decisions since there is no court

hearing scheduled. It allows the parties to remain in control of the process and to preserve their dignity by putting little on the court record. The Final Decree and supporting documents are filed with the court through the mail. The parties never set foot in the courthouse.

Even the mere possibility of litigation that is present in all other forms of family dispute resolution, including mediation, can cause clients to remain positional and strategic, rather than cooperative and interest-based in their negotiations. A commitment to the Collaborative process frees clients from the threat of litigation and allows them to communicate their real concerns, so that resolution is more likely to occur. If one party feels “entitled”, the other often shuts down and will not compromise. Yet, if the same party expresses a fear of being indigent in the future, a dialogue can occur, with solutions offered by both.

Often, even with the divorce coach and the financial planner, the cost is far less than following the traditional litigation model. Best of all, clients leave the process more satisfied because *they* have made the decisions as to their future. Judges do a great job, but the court system is clogged and they only hear the filtered version presented by two skilled lawyers who are trained to push for the best for their individual client. No, not every case is suitable for Collaborative practice, but those that aren't are the minority and are a much smaller group than you might think.

The benefits to clients in stress reduction, schedule management, durability of the agreements, and financial savings are real.

The benefits to family law practitioners in work-life balance, flexibility, client satisfaction and referrals are obvious.

The financial benefits to business and estate planning attorneys, whose clients are facing divorce, may not have been obvious to those of you who practice in those areas, but are real nonetheless.

And for the over-burdened judiciary, any easing of their caseloads should be welcomed.

Perhaps it's time for you, fellow attorneys and members of the judiciary, to consider referring parties to the Collaborative divorce process. Or, if you are a family-law practitioner, consider obtaining the training to become a Collaborative divorce professional yourself!

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