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COLLABORATIVE LAW: WHAT IT IS AND HOW IT WORKS

By Steven A. Paquette

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From time to time, many of us, even those who may not practice frequently in Matrimonial Law will be asked by a client, friend or colleague, "I am considering a divorce. Should I try mediation? What is collaborative law?"

Often times we may gloss over or combine the concepts and respond to the inquiry that they "are very similar" or that collaborative law is "a way to dissolve your marriage by negotiating directly with your spouse." Or occasionally, one might admit, "I don't know, exactly."

Collaborative law is a different way of doing business. Some practitioners in other parts of our state and nation dedicate themselves entirely to the collaborative law methodology in terminating marriage. Others, including those in our community, use collaborative law as a distinct and perhaps preferred method for bringing a marriage to an end, but add it to a full repertoire of available services that include traditional lawyer-to-lawyer negotiation of an opting out agreement, and, of course, the service of a summons and complaint, and the court-assisted resolution that ultimately follows.

Whether or not one practices collaborative law or serves clients in the matrimonial and family law arena, each of us must be aware of what it is and how it works in order to adequately advise our colleagues and clients. In essence, collaborative law assists parties in winding down the marriage relationship in a setting that allows for conversation and compromise, and affords clients the opportunity to forge their own understanding. The parties seek to prioritize and resolve issues in a way that is consistent with their wishes and needs. They seek to do so *collaboratively*, with the assistance of independent counsel and with the use of carefully selected experts to provide advice in complex areas, including the proper distribution of retirement assets, the sophisticated evaluation of closely held businesses and other assets, and even professional degrees. The process may include the use of financial planners to determine what the parties' financial world will look like post divorce, and, where appropriate, the use of mental health professionals to help ease the transition for both parties and their children.

In a collaborative setting no legal pleadings are filed. The parties contract with one another to seek exclusively to utilize the collaborative law process. Each promises the other that fresh counsel will be brought in if the collaboration fails so that each party may feel comfortable speaking frankly and openly about their assets, liabilities and concerns. The parties gather at a series of meetings, in "round-table" fashion, sometimes facilitated by third parties, often times assisted by experts in the particular area to be addressed at that session, with the goal of achieving a resolution that will leave the parties as financially secure and emotionally intact as circumstances allow.

Just as each divorce case is different, each collaborative law case "plays out" differently. Some collaborations result in an agreement after only a couple of sessions. Others require multiple meetings



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with each session ending with a specific set of assignments for the participants and an identified time for the parties to return to the table to address the next issue.

Ultimately, successful collaborations result in an opting out agreement that is enforceable in court just as if it had been worked out by attorneys. Except that in the best cases, the parties feel that they have been a part of the process, a part of the solution, and have maintained a modicum of control over this next phase of their lives. Better agreements result in better long-term relationships and less post-divorce litigation and rancor, which is particularly important where children are involved.

In Central New York, over thirty-five attorneys have undergone the necessary training to become part of CNY Collaborative Family Law Professionals. In addition, non-attorney professionals such as financial planners, CPAs, psychologists, social workers and others have joined ranks with attorneys in order to assist clients in this process. Collaborative law requires the joining of two collaborative law participants, and there now exists a sufficient number of collaborative law attorneys and related professionals to successfully cultivate this important practice area. The Central New York group, headed by Greg Monashefsky, conducts monthly meetings, frequent training of new professionals, and maintains a web site at www.cnycollaborativelaw.com. It is part of a larger international association that supports collaborative law methodology.

The next time one of us is asked what collaborative law is, we may accurately say, "a method by which divorcing parties seek an amicable solution to transition to divorce that leaves participants greater voice in their own destiny, seeks to preserve assets and relationships, and terminate the marriage with dignity." Now isn't that better?

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