

COLLABORATIVE LAW – THE PAINLESS DIVORCE

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OK, maybe an *entirely* painless divorce isn't realistic for most people. After all, getting divorced in North Carolina requires that one spouse file a lawsuit against the other and "serve" a summons on their spouse that pronounces: "A Civil Action Has Been Commenced Against You!" With that as the opener to what is already an inherently emotionally-loaded situation, and considering the vicious attacks that often follow (and which many attorneys actually encourage), it's no wonder that divorce proceedings can be the most difficult and emotionally traumatic experience of a person's life. The good news is, recent years have seen dramatic growth in the availability and use of alternatives to traditional court proceedings that can dramatically minimize the pain and difficulty of this life-altering transition.

I am convinced that the adversarial system is a necessary default; there will probably always be those cases that just can't be resolved any other way. But for the vast majority of divorcing couples (and unmarried

couples with custody and support disputes), far better options exist. These include mediation, mediating with lawyers, negotiating through attorneys, and arbitration. Each of these has worked for some, but each also has shortcomings; e.g., mediators can't advise you on the law; mediating with lawyers means you pay both attorneys' and mediator's fees; and arbitration, which is like an informal trial, can still pack a trial-sized emotional wallop. Furthermore, each of these approaches can also leave your fate largely to the mercy of others—your spouse, the attorneys, the mediator or arbitrator—so even solutions arrived at under these methods may leave you feeling uncertain and violated, and generally not in control of the critical decisions that will affect the rest of your life...

Enter "Collaborative Law", a novel approach with many unique benefits. Collaborative Law consists of a series of four-way meetings in which attorneys and spouses resolve all relevant issues cooperatively. All agree up front that if a resolution is not reached, the parties must use other attorneys in court, which enables the attorneys to serve as facilitators rather than

adversaries—something directly counter to their usual role in the traditional system. Furthermore, Collaborative Law is an “interest-based” negotiation process. Before possible solutions are even discussed, spouses and attorneys meet to fully explore each spouse’s needs and interests, with full disclosure of all relevant information. Only in a subsequent meeting, after all of the needs and interests have been shared, are possible solutions explored.

Collaborative Law’s advantages cannot be overstated. First, Collaborative Law supports and ultimately requires a shift from the usual “mud-slinging” strategic posturing prevalent in traditional divorce proceedings to a cooperative focus on present needs and interests. This process enables most cases to be resolved in as few as four meetings. Compare this to the weeks and months, or even years in some instances, that it can take to get a disputed matter to trial, and it’s easy to see that the savings—emotionally and financially—are potentially profound. Second, divorce may be a radical change to a relationship, but it is seldom the end of it, especially when children are involved. When spouses

cooperate to achieve a result, their ability to co-parenting and engage in any other necessary post-marital communications is significantly enhanced. Finally, when you participate directly in crafting solutions that address your interests, you feel more in control of your own life—because, quite simply, you are. The long-term benefits of this, for all concerned, can be immense.

For attorneys, Collaborative Law is a 180-degree shift from the traditional role of “adversarial advocate” to one of “peacemaker,” and generally requires special training. For spouses, it’s an opportunity to participate directly and cooperatively in resolving all of the divorce-related issues in a manner that promotes fairness, puts the children first, allows consideration of a broader range of possible solutions, supports healing, and which will probably produce an end result that is a better fit overall than solutions likely to be imposed by the courts. And while Collaborative Law isn’t for everyone, it doesn’t require two entirely “fault-free” spouses—only two who see the value in using this approach. If these ideas and ideals appeal to you, Collaborative Law is definitely an option worth exploring.

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