

Chicago Daily Law Bulletin®

Volume 159, No. 206

Collaborative basic training can be an eye-opening experience

Divorce litigation is often the most contentious when found within the courthouse, as parties involved tend to get caught up in nasty arguments in order to fight for the "winning" position.

Fueled by raw emotions and dealing with the most personal issues, litigation does not offer much other than the opportunity to trade punches as each of the parties plod toward trial. By its nature, litigation requires each party to accuse, position, deny and strategize with a goal toward winning each hearing and ultimately getting the most for themselves in the end.

After litigating divorces for more than 16 years, Brad J. Pawlowski, a partner at Fritzshall & Pawlowski, asked these questions when pondering what was next for him in his career:

What if there was a divorce process available that didn't require posturing? What if the goal was not about winning, but about getting the best result for the family to move ahead separately, yet successfully, after the divorce?

Is it possible for a couple to get divorced without the process requiring accusations and distrust?

Pawlowski was relieved to discover the answers to all of these questions after taking the basic training offered by the Collaborative Law Institute of Illinois. After learning the fundamentals of the collaborative process, it was clear to Pawlowski there is a better way.

If the baseline of the overall divorce process is transformed from spouse-versus-spouse to a joint approach, the couple can invest themselves in their future. Rather than the joint focus being fixated on how to win, both spouses are concentrating on how to make it work.

This team approach extends to the professionals, as well. Often, in addition to each person having an attorney, there are trained mental-health professionals involved who serve as a coach or coaches

in the collaborative process. These professionals deal with the raw emotions that often derail solutions. Very often, the couple meets with their coach or coaches several times before meeting with their attorneys in order to prepare for the team meetings.

There is a one-coach and two-coach model, depending upon the couple's needs. A determination is often made among the couple and professionals as to which model is most appropriate.

Child specialists are available for custody and parenting time decisions which might have to be made. These are also trained mental-health professionals who go through specific training to become the "voice of the children" in the process.

Parties also rely on collaborative financial neutrals to assist the team with the distribution of assets, budgets and valuations, if applicable. A financial neutral can also do forensic accounting to determine whether one or both parties acted in good faith.

Unlike litigation, trust is required between the parties throughout the collaborative process. Transparency is a constant theme. While the attorneys remain advocates protecting their clients' interests, barriers are lowered in order to obtain necessary information.

Tax returns and account statements are freely tendered to the financial neutral. If a party needs backup information, it is given without any questions as to why. There are no subpoenas, no production requests and no issues related to discovery. Since the parties have voluntarily chosen to participate in the collaborative process, they have already agreed to freely exchange information.

Trust is implicit in the parties' ultimate goals, as well. In the initial team meeting, the couple discusses their goals and concerns. Even if their goals seem to conflict, and they often do, a free and honest exchange of what each party wants or needs allow the parties, with the help of the team,

COLLABORATIVE CONCEPTS



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to formulate plans to achieve the goals to the satisfaction of both. With the open dialogue occurring early on, the collaborative process does away with hidden agendas and surprise attacks.

Pawlowski said he was pleased to learn in his training that "professional team members clearly operate with a refreshingly trustful purpose. The lawyers, while protecting their clients, trust the documents tendered are complete and accurate. If they ask for verification or additional information, it is given. Since the parties are freely discussing their goals and concerns, the need for litigious skepticism over documents, timing or phrasing is gone, allowing

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the lawyers to simply focus on the legal issues.”

Once the participation agreement is signed at the initial team meeting, the process is special in that communication among the team members takes place very often via e-mail, with the couple and all the collaborative professionals being on a team thread.

For example, all team meetings are scheduled with consideration given for each members' availability. This is done most efficiently via e-mail. In addition, the agenda for each team meeting is often circulated in advance and the subject of "discussion" is determined in advance to ensure the couple and professionals are all comfortable with the topics to be addressed.

In addition, the financial neutral will often circulate several potential scenarios in advance of a team meeting so the couple can process possible outcomes prior to sitting down with the entire team.

Ultimately, the collaborative process will only work if the couple trusts the process itself. The question of whether the other party is being open and honest with their information and whether their goals and concerns are being fully disclosed can be unnerving. Should the trust be broken in the collaborative process, this method of divorce is no longer a feasible option for the parties involved.

For the same reason, not every case is appropriate for the collaborative model. Where the parties begin with enormous distrust over finances, infidelity or lack of honesty in general, litigation may be the only viable option.

However, for many individuals, there is tremendous appeal in the ability to control their divorce process, timing and, perhaps most importantly, the outcome. A couple's ultimate choice to work together toward a resolution, which ultimately affects each of their lives and the lives of their children forever, is thereby making them tremendous role models for their children and other families, as well.