

COLLABORATIVE LAW

HOW DOES IT WORK IN A TEXAS DIVORCE?

A BASIC INFORMATION MEMO

***ROBERT JENSEN MATLOCK
WOODS-MAY-MATLOCK, P.C.
Practitioner Of Collaborative Law
Attorney, Mediator & Arbitrator***

***McKinney Office:
1700 Redbud, Suite 190
McKinney, Texas 75069
972-387-9955 972-529-1850 fax
rjmatlock@earthlink.net***

***Frisco Office:
2500 Legacy, Suite 204
Frisco, Texas 75034
214-387-8501 214-387-9987 fax
www.matlocklaw.com***

**A COLLABORATIVE APPROACH TO FAMILY LAW – A
BETTER WAY TO HANDLE A DIVORCE**

Tragic Events

Family law disputes are devastating to individuals and families on both a short and long term basis. The thought of such consequences makes it tempting to ignore a troublesome situation with the hope that it will vanish or somehow resolve itself. Frankly, that usually is not the case and failure to address the difficulties sometimes makes them worse. If the circumstances require that you address a family conflict, then the collaborative process can reduce the negative impact for all concerned.

Collaborative Law - What Is It?

It is an alternative to the “win at all cost” approach frequently seen in the litigation of family law cases. The process is based upon an agreement by the parties to negotiate rather than litigate – to stay out of the courthouse and exhaust all avenues to resolve matters without contested litigation.

The divorcing parties and their attorneys agree to participate in a series of conferences geared toward settling the conflicts. During the conferences, the areas of friction are defined, alternatives for resolution are evaluated and possible solutions are devised. The objective is the construction of a settlement agreement that satisfies the needs of the parties. As a by-product of the process, the parties lay the foundation for dealing with one another in a civilized manner after the suit has been concluded.

What Makes The Collaborative Process Unique?

The commitment by the lawyers to work within the negotiation process and avoid litigation. A written agreement is signed by the parties and the lawyers stating that each of them is committed to pursuing all avenues that may lead to resolution of the conflict short of litigation. The collaborative law agreement also provides that if a solution can not be reached, the lawyers will withdraw from representation of the clients and refer them to competent counsel who will litigate the remaining disputes. In other words, both the parties and their lawyers are locked into the negotiation process and pointed toward the same objective – solving the problems.

Is The Litigation Process A Monster?

Yes and no. The trial process offers an avenue to handle disputes that is far superior to those utilized in other parts of the world. For some people and some disputes, there is no method short of trial that will bring a conflict to a conclusion. For that reason, the litigation process is a valuable tool and it will continue to be a vital part of our society.

On the other hand, the litigation system has several definite costs associated with it: 1) the loss of time, 2) the expense of attorneys’ fees and 3) the emotional or psychological cost. Even when the litigation process operates at peak efficiency, those three costs mount quickly and take their toll on the litigants.

Settlement Vs. Litigation

The vast majority of family law disputes are settled without proceeding to trial. What differentiates one suit from another is the level of costs incurred while reaching the resolution of the case. Clearly, if the loss of time, financial expense and psychological toll can be reduced, the parties are better off than they would otherwise be.

Initiating a case in the litigation system places into effect certain timetables that are built into the rules governing lawsuits. Although the deadlines help move the matter along through the process, they can force the parties into the expenditure of time and money that might not be necessary if the procedures had greater flexibility about them.

Collaborative law allows the parties, with the assistance of their counsel, to establish the order of events and time boundaries that are appropriate in their particular case. The process also allows the participants to define the sequence in which the issues are addressed. In effect, the collaborative process permits the parties to fashion a set of rules that are customized for application to their particular case.

Why Is A Settlement Better Than A Judge's Order?

Family law cases, particularly divorce suits, are different from other lawsuits. Generally, the parties are embroiled in emotional turmoil and beset by a multitude of problems that leave them feeling as if their lives are entirely out of control. As the dispute escalates, the financial resources of the parties decrease and the economic squeeze adds to the elevated anxiety levels. In short, the parties are forced to address difficult problems at times when they are not best equipped to do so.

Texas family law is replete with rules that lend a level of predictability to the process, but may not provide the best result in a particular case. Likewise, there are other parameters that the judge will impose in reaching a decision in a contested family lawsuit. The net effect is that there are some things the court can not do and other things the court will not do. Those "Can't Do" and "Won't Do" limitations severely restrict the alternatives available to a judge in handling a family law case.

Generally speaking, the best solutions in family disputes involve crossing some of the "Can't Do" and "Won't Do" lines. That means the parties must negotiate an agreement and avoid litigation in order to achieve the best results in their case. The collaborative law process provides a method of addressing all of the alternatives for resolution of the case – including those that are off limits if the matter is presented to the court.

Control Over The Result

The litigation process is adversarial, competitive and disempowering. It culminates in the parties surrendering control of their fates to the judge or jury. Obviously there are risks involved in the process and even the best of litigation lawyers refer to a trial as "rolling the dice". The only certainty is that judge will

sign an order dictating to the parties how their lives will be altered from that moment onward.

Within the collaborative process, the parties and attorneys retain control over the final outcome. Doing so increases the odds that the final settlement terms are “workable” and that both parties will perform their future obligations. Fashioning the resolution of the disputes also lays the groundwork for the parties to minimize future conflict.

Are Two Lawyers Necessary?

Yes. The reason is simple – each party needs a legal advisor whose primary concern is the welfare of one client. By providing the clients with legal and practical advice, the attorneys establish a sense of stability for the parties while assisting them toward the resolution of the case. In addition, the collaborative lawyers guide the process along a constructive path and set a pace commensurate with the abilities of their clients.

Are There Other Professionals Involved In The Process?

What Does It Cost?

Generally, yes. In handling collaborative cases one of the objectives is to maximize the benefit offered to the clients while minimizing the cost of the divorce process. By utilizing a “team” of professionals, the clients’ dollars go farther. A mental health professional and a financial advisor are often included on the team because their billing rates are lower than those of the lawyers. As neutral professionals they assist both parties in gathering pertinent data and composing settlement alternatives – that costs less than utilizing the lawyers to perform those tasks.

Is Collaborative Law For Everyone & Every Case?

No. Although the process can assist in rearranging a client’s perspective and priorities, it is not a miracle cure for all the ills spawned by family conflicts. Persons intent on using the litigation process as a punishment tool or desirous of wreaking financial havoc or interested in inflicting psychological trauma are generally not good candidates for the collaborative law process – at least not at the outset.

What Do I Have To Lose?

Some time and some money. Of course, the same is true of the litigation process and the costs of both time and money are usually greater in that arena.

How Do I Know This Will Work?

There is no absolute warranty that the collaborative process will work. However, there is one very important assurance - there will be no settlement made without your agreement. That is your guarantee that nothing will happen without your knowledge and consent.

Goals Of The Process

1. An equitable settlement agreement that is “workable” from the perspective each party.
2. The minimization of damage to family relationships, particularly those that will extend beyond the date the case is closed.

What If My Spouse Will Not Agree To Collaborative Law?

You don't know until the question is asked. Statistics indicate that a growing percentage of people faced with domestic relations problems are turning away from the litigation process and toward collaborative law for solutions – even in the tough cases.

The lawyers who comprise the Dallas Alliance Of Collaborative Professionals are veterans of the litigation process as well as practitioners of collaborative law. Every one of them is perfectly capable of handling any domestic relations matter through the traditional litigation system or via the collaborative process. Therefore, Dallas Alliance members can assist you even if your spouse refuses to participate in the collaborative process.

Share The Information

Sharing this booklet and the roster of Dallas Alliance Of Collaborative Professionals with your spouse is a very good idea. Information and a level of comfort can be realized through a telephone conversation or a face to face conference with any prospective lawyer. Indeed, it is probably not wise to retain an attorney without doing so. By sharing this booklet and the roster with your spouse, you increase the likelihood that he/she will contact a competent lawyer and, hopefully, decide to pursue a collaborative approach to the dispute.

How Do I Start?

Enclosed is a membership list for the Dallas Alliance Of Collaborative Professionals. They are not the only lawyers trained in collaborative law, but they are among the best. With the noted exceptions, all of the attorneys are certified by the Texas Board Of Legal Specialization in family law and every one of them has many years of experience in the field. Encouraging your spouse contact one of these attorneys and voice an interest in learning more about the collaborative law process will be the best first step.

Collaborative law focuses on the present and the future – not on the difficulties of the past.