

THE DIFFERENCES BETWEEN DIVORCE LITIGATION AND DIVORCE COLLABORATION

By: Jeralyn L. Lawrence, Esq. and Amy Z. Shimalla, Esq.

In reality, the vast majority of divorce cases settle. It is a rare case that is tried to conclusion. The damage done to the parties and, more importantly, the children after a divorce trial and its accompanying litigation is severe and pervasive. I would say it is probably so traumatic that one never truly recovers from the wreckage of a trial.

So we must ask ourselves, “is there a better way to divorce?” The answer, thankfully, is “yes.” It is a collaborative divorce where the parties and their attorneys work together to solve the problems and issues raised in their divorce in a cooperative process. We can collaborate as a team and achieve settlement in a manner that is more dignified and less traumatic, which allows for a better start for a family and their post-divorce life.

Getting divorced should not be hard. Any good divorce lawyer worth their salt should be able to tell you within a reasonable range, within thirty minutes of hearing all the relevant facts, a likely outcome of a case. Of course, this is assuming the incomes are known, assets are identified and properly valued. So what delays the divorce process and causes so much damage to the divorcing couple? More often than not, they do. Their emotions are out of control. Their need for revenge or to vent trumps reasonableness. If we can show them a better way, however, I am sure they would prefer to divorce in a collaborative way.

Why collaborate a divorce instead of litigate a divorce?

1. The Collaborative Approach is Child Focused:

The focal point in a collaborative case is on the children. In cases where the parties cannot agree as to custody and parenting time, the collaborative process brings in child specialists to help work out the issues with the parties and their children.

In litigation, each party hires their own expert, which costs thousand of dollars, or tens of thousand of dollars in fees; they file *pendente lite* motions; serve interrogatories; the Court conducts child interviews; they take depositions; etc. Often times, the child is placed in the middle and becomes part of the contentious litigation, which will lead to lifelong scars the child must overcome.

2. The Collaborative Approach Is More Efficient and Certainly Much More Amicable:

In cases involving complex income issues or business values, the expert fees in a litigated case can become outrageous. Many times, I have seen accountant’s fees become higher than the attorney’s fees. The battle of the experts can be a very expensive and protracted process.

In the collaborative process, the parties agree on a neutral expert to work with them in an abbreviated yet efficient and open process. The expert meets with both parties and explains what they are doing and why. It is an interactive and thorough process designed to reach a fair and balanced result as apposed to a biased, hired-gun litigation minded result.

3. You Control the Timing and the Scheduling:

Instead of sitting around much of the day in Court waiting for your brief time with a Judge, you control when you meet, where you meet and the agenda for the meeting. Instead of incredibly expensive *pendente lite* motions, you can address those issues at your first meeting and discuss resolution.

Additionally, as issues arise during the case, instead of filing applications with the Court, you can sit down and discuss them with a mind-set toward reaching resolution and compromise.

If sensitive or emotional issues arise, a divorce coach can become involved to assist the parties in that area.

Moreover, you are not faced with unrealistic Court mandated deadlines and useless, unproductive appearances in Court. Each and every collaborative meeting is scheduled in advance and is productive and focused on addressing and resolving the issues at hand.

If lifestyle or budgets become an issue, a neutral financial expert can become involved to help paint a picture for both parties as to what their financial life will look like post divorce. This differs dramatically from what occurs in litigation where both parties fill out Case Information Statements, often inflating their budgets, and solely focus on their own needs which produces unrealistic expectations.

4. Collaboration Costs Less:

Since every meeting is productive and goal oriented, the parties are likely to spend less money through a collaborative process than through a litigated one.

When everyone is committed to settling the matter and looking for areas of commonality instead of areas where they cannot agree, and harping on those contested areas, it calls for less time to be spent, and less time being spent means less fees they will incur.

5. A Dignified End to a Marriage and A Workable Post Divorce Relationship is Possible:

If the parties are able to collaborate and to amicably resolve the issues of their divorce, they are likely to continue in that fashion and communicate in the aftermath of the divorce making their post divorce life more peaceful and manageable.

In litigation, even after a trial, there can be post-judgment motions, appeals and never ending litigation. These litigants will probably never figure out that there is a better way to end their marriage or raise their children. Sadly, they waste years of their life, tons of their money and place their health at risk. This hardly seems the best way to live your only life.

In a collaborative process, this is unlikely to occur, as the parties will continue to handle and address issues in a much more productive fashion focused on the children, cooperation, communication and collaboration.