There Has Got To Be A Better Way
One attorney's pitch for the collaborative law approach to divorce

I am a Pennsylvania divorce lawyer, and I apologize for my ego, but I am a very good divorce lawyer. I base that on the fact that I stay current on the developments in Pennsylvania law, and often teach other lawyers on divorce law issues. I have a thriving practice, and I truly enjoy litigating in the courtroom, primarily in Bucks County. Nothing makes me happier than when I tell a client what to expect as the outcome of a hearing and then the exact same words come out of the Judge's mouth. I look at the face of my client to see how pleased he or she is that they knew what to expect. That is my definition of a good lawyer, although it may not be everyone's.

Having explained why I think I am a good lawyer, it almost goes without saying that I really like my job. I went into divorce law because I wanted to help people and I knew my verbal skills would be valuable in having my clients be heard during their efforts to resolve what might be the most difficult time of their lives. I truly try to listen to my clients even from the first meeting. My favorite accomplishment is when a new client is happier after meeting me for an hour than before they came into my office. They may not have enjoyed talking about the shared custody schedule (implicit in that discussion is the realization their children won't be in their house every morning when they wake up). They may have a lot of anxiety about the discussion of a solution to running two households instead of one on the same income. Yet, if they leave my office knowing there is a solution that will lead to a way they can be happy again, then I have been successful.

So far it sounds perfect, doesn't it? I am betting that if you've been through a divorce, or know someone who has been, "perfect" is not in anyone's description of the process. In fact, let me tell you a story about one client's less than perfect divorce process. When she came to see me she explained her marriage was over, but she and her husband cared very much about their children and that they were the priority. She explained the family was doing well financially and was hopeful that resolution of economic issues would be easy to resolve. Her husband hired an attorney shortly after I was hired and I received formal discovery requests that he paid his lawyer to draft and send me. Both parties started talking to separate forensic accountants to assist them in reading all the documents and giving their opinion on the values of the assets and the income of the parties. After the documents were exchanged, depositions were scheduled. During the depositions, which lasted 15 hours over three days, the lawyers asked all kinds of questions "on the record" to explore the documents. We had to take three breaks during the depositions because my client was crying. Two of the depositions ended with people yelling (I am not proud of the fact that I was one of the "yellers"). While the parties were spending all of this energy, time and money on figuring out the economic issues, they were also going to see a custody evaluator for input on what schedule would serve their children's "best interests." The evaluator determined what the schedule should be and issued a report with his recommendations.

Over the next six months we were in the Bucks County Courthouse four times. The first trip was on custody because although after reading the evaluator's report they agreed the children would live with mom, neither were happy with the suggestions on the father's schedule (for different reasons). they went to court for the judge to decide those issues (had they not agreed on who the children lived with that would have been a multiple day hearing with the evaluator.
coming to testify). On the day of the custody hearing, we waited 4 hours for our turn before the judge. The judge did make the decision regarding the custody exchange times on Friday nights, and how to divide the holidays, based on what the judge thought would be best. Neither party was happy with the result. They were forced to go home and explain to their children that they were all now going to do what the judge thought was best for these children, whom he had never even met. The other three court days were for the support hearing. Again, on the first day we waited five hours for our turn with the judge and then after three hours of testimony, we were scheduled to return another day. That happened again on day two. Since our court system doesn't schedule days consecutively it meant both attorneys charged their client to prepare before each day so the complicated financial facts were fresh in our minds for court.

After those six months of proceedings, the clients had paid their attorneys over $30,000 each and had a custody and support order to show for it. The story is similar for how much was done and time spent in court to get the court to decide how to divide their assets and debts. After a year the divorce cost each party $50,000 and both sides were equally unhappy with the result (that is, after all, how the court defines success).

You may think that I made this story up for purposes of this article. I did not. In fact, that is not only one client's true story, but very similar to the story shared by many clients. There are some clients who spend less, money, but there are some who spend much more. I have countless clients who start the process that think they need the court so "justice can be done" and somewhere during the process they feel like they've lost control. I've very rarely, if ever, had a client say "thank goodness the court distributed justice in my case." Instead, most of them are left thinking, there has got to be a better way. I've practiced family law for 15 years and, while it is frustrating, I did not think there was a better way.

I will defend the system, based on the fact that the system does not ask people to get divorced and bring their issues to court for resolution. Neither do the lawyers. I know many of my clients truly want to avoid the cost and the emotional anguish of the process; however, they cannot avoid it without risk that they won't see their kids, or won't receive money from the higher income spouse to be able to support themselves and their children. I have many cases that at the outset look like everyone's intention is to be fair and divide the assets equitably by agreement but lose sight of that goal over time. It is also fair to acknowledge that when people are fighting over the finances, or even the children, they are really fighting about all the hurt and anger that led to the dissolution of the marriage. So, for my entire career I continued to assume this was the way that would lead people through dissolving the financial union of their marriage and establish them on their individual newly single path.

That was a very long introduction for me to introduce the concept of Collaborative Law. That introduction is necessary because I don't think there are enough people looking for the better way until it is too late. If just one family reads this before they head down the traditional path and benefits from knowing it is something they should try to avoid then I get to go to heaven. (Just kidding!) What I really want is to educate people that there is another — better — way to get divorced.

In 1990, Stuart Webb, a family law attorney in Minnesota founded the "collaborative law movement." The model is a negotiation based resolution process where the parties agree (and sign a legally binding contract) that their lawyers cannot go to court. Without court, the lawyers
and the parties have to find a way to reach their resolutions by agreement. The concept includes limiting the toxicity of the divorce process while helping people to communicate respectfully and develop their own solutions. The collaborative law model is different than mediation because it still involves each party having an advocate. The advocate, the collaborative law lawyer, not only advises their client of their legal rights and gives their opinion to their client as to what position is reasonable to take on the issues (as all divorce lawyers do) but also assists in communicating with the other side.

The model also includes bringing in other experts. If the parties are very emotional about the break up and the issues that need to be addressed the team can work with a therapist to address those issues. While, as I mentioned before, I recommend that all clients seek therapy during a divorce, the difference in this model is that the therapist can work with the lawyers regarding the resolutions and how to get there. The other member of a collaborative law team when there are considerable assets or complex income issues is a financial expert. Again, while financial experts are common in the traditional divorce the difference in collaborative law is that all of the financial information is turned over to one expert who in turns works with the team to outline the resolution options. The process is that the members of the team and the parties meet regularly to resolve the issues involved in the divorce. The frequency and duration of meetings depend on the complexity of the case, and the success in reaching agreements. The result of these meetings are Stipulations that are made Court Orders (so they are enforceable) on custody, support and division of assets. The parties keep control of the results. The parties pay their lawyer for the time they spend working towards resolution. Collaborative law is the better way.

I think it is obvious that collaborative law is the better way. Yet it has grown very slowly. I started getting involved in collaborative law over a year ago and although I've described it to many clients who were at the beginning of their divorce process, not one of them has gone in that direction. They all stay on the traditional path. Why? I think it is for two main reasons. The first is that I have not successfully convinced them how difficult the traditional process can be. They think I'm a super lawyer (although I probably told them that I was) and that I will just "get it done" for them. For many reasons, it is easier to turn the proceedings over to me than to be involved. In their mind, they will end up with a custody order they can live with, a support order based on the math formula set out by the PA legislature, and half of their assets. They are tired and worn out by the drama that led to the decision to divorce and they don't want to continue to interact with their spouse. This is a difficult thing for me to argue with; however, I will continue to try to convince them that avoiding the process is not going to make it any easier. The second reason is they think all those meetings are going to be more expensive then just going to court and getting it done. This reason is easier for me to argue with because it is about money well spent. Is it not obvious that paying for four hours of negotiating and discussing what is important is better than spending four hours in a waiting room at the courthouse?

My hope is that divorcing families read this article, and I sincerely hope they give collaborative law a chance to be the better way.

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