

“Divorce” and “Collaborative” in the Same Sentence?

By Martha Mason

Given that at least 50% of all marriages in this country end in divorce, it is likely that someone you love has experienced the trauma that the “legal system” for divorce can add to an already emotionally-frayed situation. Dear friends of mine went through that trauma, and my response to their experience is one reason I now am practicing family law within a new and more peaceful paradigm that provides an alternative for families undergoing the painful experience of separation and divorce.

My interest in alternative processes for divorce has developed over the last twenty years. In the 1980s, I was engaged in a general litigation practice that often proved to be contentious and unduly focused on procedural issues. At the same time, several of my close friends decided to separate and divorce and were utilizing the same litigation system in which I was practicing. This only served to exacerbate their already excruciatingly difficult situations.

My friends followed the only course they knew to follow – they hired the best and most aggressive lawyers they could afford to “protect their interests.” I’m sure they could not envision what was to happen: The adversarial legal system added unnecessary suffering to the already grueling emotional process and deepened their animosities. Court hearings, or even the threat of them, fueled the flames of anger, fear, and anxiety. The usual legal advice to not communicate directly with each other but only with and through their respective lawyers served to derail any hope they might be able to communicate in a healthy way, even for the sake of their children. Moreover, the litigation system’s motto to “go for the jugular” regarding the issues at hand held my friends in an “I have to win at all costs” mindset, and at the end of the day, everyone lost. I could only stand on the sidelines with a heavy heart and a resentment of the same legal system to which I had devoted my career.

Then, in 1989, a family lawyer in Minnesota named Stu Webb had so tired of the siege mentality of the adversarial court system that he decided to retire. Before doing so, he began to experiment with different approaches to the practice of family law. In his own



words: “In late 1989, I was involved in one of the worst litigation cases of my career, a real showcase of everything that’s wrong with litigation (lying, nasty tricks, hiding assets, endless court hearings, and so on). That case in and of itself could have been enough to convince me to retire. However, in the midst of one of those awful hearings, it occurred to me that there should be settlement-only specialists available for divorcing couples - specialists who would work with the couple outside the court system, and who would turn the case over to trial lawyers if and only if the settlement process failed. That, in a nutshell, was the birth of Collaborative Law.” (Quote taken from: Webb, Stuart and Ronald Ousky, *The Collaborative Way to Divorce*. New York: Hudson Street Press, 2006.xv.)

Since that time, collaborative divorce law has become a national and international movement driven by divorcing couples who want the protection afforded by having a lawyer and who also wish to find a more peaceful and transformative alternative to the adversarial system. In the collaborative process, the divorcing spouses and their lawyers all agree that the lawyers are disqualified from going to court. This agreement removes the process from the adversarial court system yet allows couples to obtain necessary legal help. Eliminating the possibility of a court action renders the collaborative process significantly less expensive (financially and emotionally), greatly shortens the amount of time involved, and heightens the possibility that the couple will be able to shift from a negative intimate relationship to a positive business-like one.

Good collaborative attorneys are trained and experienced in non-adversarial conflict resolution, interest-based

negotiation, and in facilitating difficult conversations. In addition, collaborative attorneys and their clients agree to disclose information fully and voluntarily, to reach parenting decisions based upon the best interests of the children, and to negotiate the issues surrounding the divorce in “four-way conferences.” These conferences include the two spouses and their attorneys. The attorneys do not negotiate for their clients, but rather help the couple have the conversations

necessary to decide the important issues of dividing the assets and debts, meeting the cash-flow needs of two households, and, when children are involved, co-parenting. Specialists in such fields as child development and financial planning who have also been trained in the collaborative process are brought on board as necessary to assist the couples.

Prompted in large measure by my desire to help couples divorce in a way that could avoid the customary trauma, I decided several years ago to become a full-time collaborative divorce lawyer. My experience has been deeply rewarding. Time and time again, I have witnessed the transformational shift that can occur when the spouses’ fear that they are engaged in a “win-lose” battle recedes, and, with the assistance of their lawyers, they become able to explore “win-win” options and to reach amicable resolutions that can endure over time. I’m left only to wonder whether my friends and their children, who suffered through the ordeal of the entrenched, adversarial divorce process, might have had different and happier lives had this option been available to them. I wonder, even, whether my friends might have danced together at their children’s wedding receptions. I smile, though, when I consider that my clients have chosen a divorce process that allows for just this sort of possibility.



Martha Mason is a member of Separating Together, Inc., a Collaborative Practice group located in Raleigh. Visit www.SeparatingTogether.com or call (919) 755-

1923 to learn more about the Collaborative Process.