What is Collaborative Practice?

Collaborative Practice is a new option for divorcing couples to resolve disputes respectfully and equitably without going to court.

The goal of collaborative practice is to help divorcing and separating couples to focus on their most important goals, especially children, throughout the divorce process. The end result is a more efficient, targeted and productive way to resolve disputes.

What distinguishes collaborative practice from other methods for divorce?

Collaborative Practice promotes respect and keeps spouses in control of the process, not judges.

It addresses each couple’s unique concerns, as opposed to litigation which is driven by the general rule of law meant to apply to all.

Because clients agree not to go to court, the process is more open and less adversarial. The goal is to enhance communication throughout the process and lay the foundation for a healthier relationship after the divorce.

What is the biggest difference between collaborative practice and mediation?

Personalized Counsel—both you and your spouse are represented by your attorney throughout the entire process.

Team Approach—the entire collaborative law team is there to help facilitate communication between the spouses, working towards the best possible solution for all and making sure all issues are addressed.
LITIGATION

• A “win at all cost” system pits lawyer against lawyer, husband against wife.
• Continuing conflict aggravates existing painful emotions.
• Legal costs soar.
• As the conflict escalates, children suffer.
• Confidential financial and personal matters become public record and open to scrutiny.
• A Judge divides property and establishes custodial provisions using standards that may not meet families’ particular needs.
• Negotiations all too often take place in crowded courthouses under intense pressure.
• Proceedings may be prolonged.
• Most of the cases settle, but only after damage has been done and substantial costs have been incurred.

COLLABORATIVE DIVORCE LAW

• Husbands and wives, assisted by trained attorneys, reach a settlement with minimal antagonism.
• A structured and controlled setting encourages trust and objectivity in the negotiations.
• Legal costs can be contained.
• Parties can protect children’s feelings and interests.
• Since there are no public hearings, confidentiality is more easily maintained.
• Attorneys and spouses can craft more creative property agreements and custodial arrangements.
• Negotiations occur in a neutral environment and on a timetable agreed upon by the parties.
• Agreements can be reached more efficiently.
• Parties agree to settle at the outset, in a process conducive to helping them heal and move forward.
Getting a Divorce Without Going to War

Introducing Collaborative Practice
A way of resolving conflict that looks to the future...

For many people, divorce is synonymous with warfare. There’s battling over children, and haggling over personal belongings. And in the end, all the parties often have to show for their turmoil are huge bills from their attorneys.*

From the International Academy of Collaborative Professionals (IACP):
“But it doesn’t have to be this way. A growing number of parting couples, along with other professionals such as lawyers, mental health professionals and financial specialists, have been seeking a more constructive alternative. These professionals have developed the Collaborative Practice Model.

Collaborative Practice is a reasonable approach to divorce based on three principles:

• A pledge not to go to court
• An honest exchange of information by both spouses
• A solution that takes into account the highest priorities of both adults and their children.

Mutual respect is fundamental to the collaborative way. You may cease being spouses, but you don’t cease being worthy human beings. When respect is given and received, discussions are likely to be more productive and an agreement reached more easily.” **

Advantages of a Collaborative Divorce:
• It enables the divorcing couple, not a judge, to determine the terms of their divorce.
• It encourages mutual respect.
• It focuses on the needs of the children.
• It keeps private information out of the public domain, unlike a traditional divorce.
• It usually costs less and takes less time than a traditional divorce.

Disadvantages of a Collaborative Divorce:
• It is not for everyone, particularly parties unwilling to negotiate.
• If a settlement cannot be reached, the couple’s attorneys have to withdraw from the case, and the parties would need to hire new attorneys to bring their case to court.

“It’s good for the courts, it’s good for the parties, it’s good for the children, and it’s good for the community. This is a system that empowers people to resolve their own disputes, and to do it in a more creative and lasting manner than has ever been achieved by a court order.”
—Family Court Judge

To contact an attorney in the Jersey Shore Collaborative Law Group, or to find out more about Collaborative Law, please visit our website: www.AtlanticDivorceMediation.com

More information on Collaborative Practice is available through IACP: www.collaborativepractice.com

*Excerpted from: Getting A Divorce Without Going to War
By Kathleen Hopkins, Staff Writer, Asbury Park Press, Sunday June 11, 2006

**Excerpted from an IACP membership brochure
Roles and Expectations for the New Paradigm

OLD PARADIGM

• Third party decision maker
• Lawyer maintains control over outcome
• Lawyer reacts to client’s fears/anxieties
• Strident and positional
• Timing based on litigation template
• Concentrate on legal issues only
• Reinforce the Shame/Blame cycle
• Win/Lose “If anyone leaves my court happy, I’ve made the wrong decision”
• Juranic

NEW PARADIGM

• Self-determination
• Lawyers redefine successful outcome, control process to meet spouses’ needs
• Educate my client: Resolve small pieces to de-escalate anxiety
• Thoughtful and perceptive
• Pacing based on both spouses’ needs
• Solution that meets both peoples’ work with everything that’s important to each spouse
• Educate the client about what really happens when we go to court, about the limits of judges and evidence
• Normalize the “Good Divorce”
• Client Empowerment
• Do No Harm
Finding Solutions Together*

How Collaborative Law Helps Ease the Pain of Family Breakdown

Sometimes, talking things through can seem the hardest challenge of all. Especially when relationships break down, hurt, bitterness and anger are often the strongest feelings. But almost always, the very best solutions are those which you work out for yourselves, together—in which everyone involved can share.

At its simplest, that is what collaborative law is all about—reaching solutions together, to ease the pain of relationship breakdown and create the best chance of building a brighter future.

Changing the way people resolve family breakdown

Traditionally, when couples split, they each take independent advice from specialist family lawyers. Working through their lawyers, they try to reach agreement on how best to settle their differences. They work out how to share the assets—and the responsibilities, for the children for example—as they each go their separate ways.

In many cases, with the help of resolution lawyers, many couples reach agreement in this way. Where they don’t, it is left to the family courts to decide, and that leads to uncertainty, and often more heartache.

So, imagine the alternative. You and your former partner sit down and with the help of your own attorneys, all together in the same room, you work it out, face-to-face. Rather than dealing through your lawyers, you work with them, to reach the best solutions for you and your family.
Finding Solutions Together
continued

What it needs to make it work

It sounds so straightforward, but to make it work, it needs the right people, with the right frame of mind:

- A genuine desire to make it work.
- A willingness to disclose, fully and honestly, information about all assets.
- Skilled, trained law attorneys who are working the collaborative process with each party
- An agreement that you will reach a solution without going to court.

What makes it so successful

You still benefit from having your own independent legal advisor. However, you are in control, without the threat of court proceedings hanging over you.

You set the agenda, so you talk about the things that matter most to you and your family.

You set the pace—because you are not governed by court dates and appearances.

You maintain contact with your former partner. That way, you have the best chance of understanding each other, and finding the right solutions.

Remember, if children are involved, you will both remain parents, and it will help your children to cope better with your separation if they see that you are working things out together.

Most importantly, they key decisions you make about your future are yours—they are not made by a stranger in a courtroom.

The collaborative approach is fundamentally changing the way people think about family law. For couples who genuinely seek a fair solution, and want to minimize the pain of family breakdown, it may offer the very best way ahead.

Collaborative lawyers sign an agreement with you which disqualifies them from representing you in court if the collaborative process breaks down. That means they are absolutely committed to helping you find the best solutions by agreement, rather than through conflict.

Client Questionnaire
From The Collaborative Way to Divorce

My ability to achieve a successful outcome in the divorce primarily will depend on the decisions I make during the process.

In order to achieve my most important goals, I am willing to let go of some smaller short-term issues, even though it may be very hard to do so.

I am capable of making the emotional commitment necessary to achieve the best possible outcome.

I am not afraid of or intimidated by my spouse.

I am willing to try to see things from my spouse’s point of view in order to help achieve the best possible outcome.

I believe it is possible for my spouse and me to restore enough trust in each other to achieve a successful outcome.

I am willing to commit myself fully to resolving the issues through the Collaborative process by working toward common interests rather than simply arguing in favor of my positions.

It is important to me that my spouse and I maintain a respectful and effective relationship after the divorce.

I have accepted the fact that this divorce is going to happen.

I believe that it is very important that our children maintain a strong, healthy relationship with both parents.

Total Points ______
Typical Ground Rules for the Client in the Collaborative Family Law Process

- Attack the problems and concerns at hand. Do not attack each other.
- Avoid positions; rather, express yourself in terms of needs and interests and the outcomes you would like to realize.
- Work for what you believe is the most constructive and acceptable agreement for both of you and your family.
- Be willing to commit the thime required to meet regularly. Be prepared for each meeting.
- Be patient—delays in the process can happen even when everyone is acting in good faith.

Four-Way Meetings

During the four-way meetings with your attorney (both attorneys, and both clients, are present) remember the following:

- Do not interrupt when the other or their attorney is speaking. You will have a full and equal opportunity to speak on every issue presented for discussion.
- Do not use language that blames or finds fault with the other. Use non-inflammatory words. Be respectful of others.
- Speak for yourself; make “I” statements. Use each other’s first name and avoid “he” or “she.”
- If you share a complaint, raise it as your concern and follow it up with a constructive suggestion as to how it might be resolved.
- If something is not working for you, please tell your attorney so your concern can be addressed.
- Listen carefully and try to understand what the other is saying without being judgmental about the person or the message.
- Talk with your attorney about anything you do not understand. Your attorney can clarify issues for you.
ALBANY, Feb. 26 – Chief Judge Judith S. Kay, in her annual address on the judiciary, announced plans to create a new family law center in New York City that is intended to make divorce faster and cheaper for couples who want amicable settlements.

New York, which does not have no-fault divorce, is notorious for judicial delays that turn even the least fraught divorces into expensive, acrimonious affairs. Judge Kaye, who has long championed overhauling state divorce laws, repeated her call for no-fault divorce in her speech on Monday, but that idea has stalled in the Legislature in the past.

The planned Collaborative Family Law Center, which will serve all five boroughs, does not require legislative approval, and it will serve as a pilot project on alternative approaches to divorce when it opens in Manhattan this year.

"Too much money, too much delay, too much agony," Judge Kaye said in her speech, describing the state’s divorce laws. "We anticipate that spouses who choose this approach will find that the financial and emotional cost of divorce is reduced for everyone involved—surely a step in the right direction," she added.

The new family law center would put the state’s imprimatur on an alternative approach to divorce proceedings that started in Minnesota more than a decade ago and has migrated around the country since then, but that experts say is only sporadically used in New York.

"It’s much less contentious," said Henry S. Berman, who practices collaborative law and is a partner at Berman, Bavero, Fracco & Gouz in White Plains.

"If people come into collaborative law wanting to do the right thing and not wanting the last drop of somebody’s blood, and they’re open about their assets and income, it’s a terrific way to do it." He said. "The litigators will tell you it doesn’t work when people aren’t honest and open, and that’s true. It takes a certain mindset."

Under the process, lawyers still represent both sides, but they agree not to continue representing their clients if the negotiations fail and the matter ends up in court. That way, advocates of the process say, the lawyers are deprived of a financial incentive for failing to resolve the matter amicably. The participants also agree not to go to court for a certain period of time while the alternative process is under way.

continued on next page
The sides would still have to negotiate grounds for the divorce, unless they used a so-called conversion divorce, which allows couples who stick to a separation agreement to divorce after a year without finding fault.

“The basic premise behind it is that by providing folks with access to lawyers who are knowledgeable in matrimonial law, who are committed to negotiating on behalf of their clients an amicable settlement without being stuck in the adversarial environment, they are able to limit expenses and foster a more collaborative process,” said Daniel Weitz, a state coordinator for the Office of Court Administration.

Jacqueline W. Silbermann, deputy chief administrative judge for matrimonial matters, said the state’s embrace of the process would mean “we will have court oversight of the collaborative law center, and very importantly, we will be providing lawyers for people who can’t afford lawyers to represent them.”

Some lawyers said the practice had limited appeal because many people in the midst of divorce want to maintain the threat of going to court while negotiating settlements.

“I just see that people here are more apt to want to use lawyers to the full extent possible when they hire them, and that means letting them go to court if necessary,” said Alton L. Abramowitz, a Manhattan divorce lawyer who is chairman of the matrimonial committee of the New York City Bar Association. He noted that he was not speaking in his capacity with the bar association.

Though Judge Kay’s call for a no-fault divorce has stalled in the Legislature, Senator John a. DeFrancisco, a Syracuse Republican who is chairman of the Senate Judiciary Committee, said the two chambers were working on reducing the amount of time it takes to get a conversion divorce, from one year to a few months, a step that would move the state closer to something akin to a no-fault divorce.

<Text concerning juvenile justice system and other non Collaborative Divorce topics omitted here in the interest of focus>

Christine Anderson, a spokeswoman for the governor, said, “We look forward to reading the report and considering its recommendations.”
What is Mediation?

Mediation is a method of dispute resolution whereby an independent person facilitates an agreement between parties. The mediator does not make any decisions, but rather serves only to facilitate the parties to arrive at their own agreement. The terms, and the fairness of the agreement, are decided by the parties themselves, with independent advice from their own attorney.

Advantages to Mediation

- The costs can be reduced by the parties both paying one person, the mediator, during the course of the negotiations. Each party will be advised to have their own attorney during the mediation process, to meet with independently to advise the party of their rights during the course of the mediation.
- The parties have complete control over the manner and timetable in which the agreement is reached.
- The negotiations can occur prior to the filing of any pleadings with the Court, allowing the parties to focus on the issues while avoiding allegations about the other.
- It resolves the issues outside of the adversarial proceeding and many find the process allows the parties to maintain a more healthy relationship.

Disadvantages to Mediation

- The financial disclosures made by a spouse will not be subject to the same standard for falsity or omissions.
- There is no ability to compel discovery from third parties.
- In a mediation attended by the parties only, the mediator simply serves as a facilitator who does not seek to advance or protect either party’s interest. While this is beneficial in that it may serve to reduce the adversarial nature of the proceeding, the parties miss the opportunity to have an advocate directly involved in the negotiating process.
In typical divorce, spouses don’t communicate directly with each other, leaving lawyers to negotiate for them. Mediation breaks through this communication barrier, and sets a tone of cooperation and commitment. Along with the mediator, spouses actively work together to reach a fair agreement on the essential issues of support, assets and parenting.

Since your attorneys act as Legal advisors during the mediation process and don’t have to spend numerous hours preparing for trial, as in a contested divorce, you will generally save a substantial amount in attorneys’ fees.
Benefits of Mediation Over Contested Divorce
Faster, Saner and More Affordable

<table>
<thead>
<tr>
<th></th>
<th>Mediation</th>
<th>Contested Divorce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost for Both Parties</td>
<td>$1,500–$4,900*</td>
<td>$8,000–$60,000+</td>
</tr>
<tr>
<td>Timeframe to Agreement</td>
<td>Two to Three Months</td>
<td>Up to One Year</td>
</tr>
<tr>
<td>on Issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tone</td>
<td>Cooperative</td>
<td>Adversarial</td>
</tr>
<tr>
<td></td>
<td>Constructive</td>
<td>Antagonistic</td>
</tr>
<tr>
<td></td>
<td>Fair</td>
<td>Divisive</td>
</tr>
<tr>
<td>Decision-Makers</td>
<td>You and Your Spouse</td>
<td>Court System</td>
</tr>
<tr>
<td>Likelihood of Post-Divorce Litigation</td>
<td>Low</td>
<td>High</td>
</tr>
<tr>
<td>Privacy</td>
<td>Confidential</td>
<td>Subject to Public Disclosure</td>
</tr>
</tbody>
</table>

*Does not include consultation with attorneys or Property Settlement Agreement.
Mediation and Collaborative Practice

Advantages to Mediation

- The costs can be reduced by the parties both paying one person, the mediator, during the course of the negotiations. Each party will be advised to have their own attorney during the mediation process, to meet with independently to advise the party of their rights during the course of the mediation.

- The parties have complete control over the manner and timetable in which the agreement is reached.

- The negotiations can occur prior to the filing of any pleadings with the Court, allowing the parties to focus on the issues while avoiding allegations about the other.

- It resolves the issues outside of the adversarial proceeding and many find the process allows the parties to maintain a more healthy relationship.

Disadvantages to Mediation

- The financial disclosures made by a spouse will not be subject to the same standard for falsity or omissions.

- There is no ability to compel discovery from third parties.

- In a mediation attended by the parties only, the mediator simply serves as a facilitator who does not seek to advance or protect either party’s interest. While this is beneficial in that it may serve to reduce the adversarial nature of the proceeding, the parties miss the opportunity to have an advocate directly involved in the negotiating process.

Why might one choose Collaborative Practice over Mediation?

In mediation, the participants negotiate for themselves with a neutral third party helping to guide the discussions. While the mediator may give legal information to the participants, he or she may not give legal advice to either.

Some people, for various reasons, are not comfortable negotiating on their own behalf. For example, there may be a pronounced imbalance of power between the spouses. Moreover, there are those who do not trust themselves during such emotional and vulnerable times to speak up adequately for themselves.

In Collaborative Practice, negotiations occur in a neutral environment and on a timetable agreed upon by the parties. The clients sit down and, with the help of their own attorneys, all together in the same room, work it out face-to-face.