

COLLABORATIVE FAMILY LAW PACKET

If you are facing a divorce or other family law issue, you have options surrounding how you proceed to resolve your conflict. Collaborative family law is an alternative to the way couples have traditionally approached a divorce. The Collaborative process is a dispute resolution option that requires each party to hire a Collaboratively trained lawyer. The Collaborative process emphasizes solutions rather than blame and focuses on solutions that provide the best overall outcome for the entire family. Parents agree to keep the children the number one priority.

This Collaborative packet is given to all family law clients of this firm who are proceeding with a Collaborative divorce or who are interested in the Collaborative family law process. The information contained in this packet will help the client understand the procedures and terms used in a Collaborative divorce case. After reviewing this information, if you have any questions, please contact us.

The basic tenets of the Collaborative process are:

1. **No Court**: Everyone makes a commitment not to go to court to resolve their disagreements;
2. **Transparency**: Everyone agrees to produce all relevant information voluntarily and to provide as much information as anyone needs in order for everyone to make an informed choice;
3. **Interest-Based Negotiation**: All negotiations are premised on the concept of interest-based negotiation instead of the more typical competitive negotiations.

The essence of Collaborative law is the shared belief of the participants that it is in the best interest of the parties and their families to commit themselves to avoiding litigation and thereby a court imposed solution. Major goals of the Collaborative process are to minimize the negative economic, social and emotional consequences of protracted litigation to the participants and their families. Many individuals are attracted to the Collaborative process because it is a very private way to resolve personal, family issues.

The Collaborative lawyer is a conflict specialist who works with, and on behalf of the client to achieve the best possible outcome for the client and the client's family. The firm's Collaborative lawyers are competent, caring, and experienced. Clients often are overwhelmed by the legal, financial, emotional, and spiritual implications of divorce. All of these aspects of divorce are addressed in a Collaborative divorce. This, along with the reality that many relationships must continue after the divorce is final, makes it important for the client to choose a Collaborative lawyer wisely.

We, as a team, are here to give you the most efficient and the most skillful service possible. Please read the remainder of this packet for more information about the Collaborative process.

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COLLABORATIVE INFORMATION

I. HOW IS THE COLLABORATIVE PROCESS DIFFERENT FROM THE TRADITIONAL PROCESS?

A. Key Differences:

The Collaborative process differs from the traditional in several key ways. First is the commitment not to go to court to resolve differences. In a traditional divorce, trial settings and formal discovery are sometimes used as weapons to create fear and anxiety, or to force someone to a conclusion before that person is ready. In Collaborative divorce, we want clients to make informed decisions without fear or anxiety and without being pushed into something he or she does not ultimately think is in their or their family's best interests. The second difference is the agreement to produce all relevant information voluntarily instead of through formal discovery. Instead of sorting through years of perhaps irrelevant documents, clients are encouraged to ask for what they need and to produce information before it even is requested. The third significant difference is asking clients to negotiate on the premise of interest-based negotiation rather than through a competitive back and forth negotiation comprised of offers and counter-offers. An Interest Worksheet is part of this packet. You may want to review it and start thinking about what really matters to you in the divorce and what really matters to your spouse. For more information about the differences between a Collaborative divorce and a litigated divorce, see the handout that is part of this packet.

B. The Collaborative Team:

Collaborative law allows for other expert professionals to participate in the Collaborative process depending on the needs of a particular family. For example, mental health professionals often are included as part of the professional "team" to help facilitate communication among the participants, help problem-solve, assist with more emotional (and less legal) issues that are impeding forward progress, assist the parents to create parenting plans, and an assortment of other tasks that may arise in a divorce case. Financial professionals may be included in a case to assist with financial information gathering, educate a less sophisticated spouse about the financial aspects of the divorce, help one or both spouses with budgets (both historical and future), give tax advice regarding the consequences of handling assets/debts in particular ways, and value business interests. These professionals are "neutral" meaning they are not advocates for either spouse; they simply are providing their expertise to the process. The team concept will be discussed in more detail with your lawyer.

II. HOW DOES A COLLABORATIVE CASE TYPICALLY PROCEED?

After you have made the decision to proceed with a Collaborative divorce, these steps generally are followed: (If your spouse has filed for divorce, you may want to refer immediately to Section III.)

A. The Roadmap

Every Collaborative case proceeds according to the following five steps. Some cases move through the steps quickly and others more slowly. How fast or slow a particular case proceeds depends on the divorcing couple. We do not skip steps even if the clients are tempted to do so. In our

experience, proceeding according to the structure of the Roadmap increases the likelihood of a satisfying and acceptable outcome to both parties.

Identify Issues and Interests:

We first want to identify what the clients' goals are and what is most important to the clients. We also want to begin identifying the issues in the case (for example, valuing a business, supporting a child, etc.). Sometimes there are immediate issues or temporary issues that need to be resolved such as who will live in the marital residence while the divorce suit is pending.

Gather Information:

Everyone agrees to provide all relevant information so that both parties are fully informed and educated. This includes information related to finances and the children. When both parties believe they have sufficient information in order to go forward and look at settlement options, the case moves to the next step.

Generate Options/Identify Choices:

As a group, we begin brainstorming and looking for solutions that satisfy the interests of both clients. We do not evaluate options as we go, rather we generate as many options as possible that satisfy both parties' interests and then later, we evaluate the options. The "law" provides some options and so does the "real world" (what is truly possible based on the facts that exist). The most creative options generally come from the clients themselves.

Evaluate Options and Consequences of Choices:

The lawyer and other Collaborative professionals assist the clients to evaluate the options and to review the consequences of proceeding with a particular option. Again, one goal of the Collaborative process is to allow clients to make fully informed choices.

Negotiate and Make Best Decision:

After evaluating options, it is time to put together the final settlement. This can involve intense discussions and more than one settlement meeting. Once an agreement is reached, it will be memorialized in an Agreed Final Decree of Divorce.

B. Filing the Original Petition:

Usually, a Collaborative divorce is not initiated by one party filing a divorce Petition and serving their spouse. Instead, the parties and their Collaborative lawyers discuss and agree on the timing of filing, who will file, and whether a joint Petition will be filed.

The Original Petition for Divorce is the legal document that begins the entire divorce process. This instrument is filed with the District Clerk's office in the county of your legal residence and is

accompanied by a check for the filing fees. Upon filing an Original Petition for Divorce, you are designated as "Petitioner" in the suit and your spouse is designated as "Respondent." If your spouse has filed the suit for divorce, the terms will be reversed. If there are minor children in the marriage (children under the age of eighteen years), the Petition is filed also "In the Interest of" the children. If you and your spouse agree to file a joint Petition, then both of you are designated "Joint Petitioners".

C. Residency Requirements:

You must have lived in the State of Texas for at least six months prior to the date you file the divorce Petition, and you must have been a resident of the county in which you are filing for at least 90 days prior to the time the Petition is filed. If you are at all doubtful about your residency status, please voice your questions to the attorney at the earliest possible time.

D. Giving Your Spouse Collaborative Information:

Sometimes both you and your spouse understand the Collaborative process and choose to proceed in this manner. Sometimes, you have learned of the Collaborative process and you would like your spouse to consider the Collaborative process. You cannot proceed Collaboratively unless both clients agree and hire Collaborative lawyers.

In many instances, you can discuss proceeding Collaboratively directly with your spouse or in a counseling session (with advance notice and agreement of your marriage counselor). We have brochures we can give you to give to your spouse as well as this Collaborative packet. The Collaborative Law Institute of Texas' website, www.collablawtexas.org, provides a lot of information about the Collaborative process too. In some instances, a client is unwilling or unable to communicate directly with his/her spouse about proceeding Collaboratively. In those instances, it might make sense for us to send a letter to your spouse with information about the Collaborative process. This is a topic that you can discuss more specifically with your lawyer.

E. Joint Meetings:

Assuming your spouse hires a Collaborative lawyer, the lawyers will contact each other (and the other professionals) and schedule a joint meeting. Most settlement discussions take place in the context of joint meetings with both lawyers and clients present. All joint meetings are governed by an Agenda created in advance of the meeting. Joint meetings take place at an agreed upon location (generally a conference room at one of the lawyer's offices).

At the first joint meeting, the lawyers and clients typically discuss filing for divorce, sign a Participation Agreement, review separation guidelines, and discuss any immediate issues. Also, if other professionals are participating in the case, they are present and introduced to the clients. At the end of the joint meeting, another meeting will be scheduled. Usually joint meetings are scheduled two to four weeks apart. In this packet are a blank Participation Agreement and the Separation Guidelines.

III. WHAT HAPPENS WHEN MY SPOUSE HAS FILED FOR DIVORCE?

A. Proceeding Collaboratively:

If you are the party who is the Respondent in the suit and you are interested in proceeding Collaboratively, then you may wish to discuss the Collaborative process with your spouse as described in section II D above. Or, your lawyer can contact the Petitioner's lawyer to discuss whether the case could proceed Collaboratively. In order to proceed Collaboratively, you spouse and his/her lawyer must agree. Assuming your spouse and his/her lawyer agree, then the case would proceed as described in section II above.

B. Filing the Respondent's Original Answer:

The Respondent's Original Answer is the legal document that will be filed on your behalf with the District Clerk's office. This document places the Court on notice that you know a divorce suit is on file.

C. Filing the Respondent's Counter-Petition:

When we represent the Respondent, we usually file a Counter-Petition for Divorce. A Counter-Petition for Divorce is the Respondent's independent request for a divorce. If you are uncomfortable with filing your own suit for divorce, or if you do not understand the reasons for filing a Counter-Petition in your case, please ask your attorney for a more detailed discussion of this issue.

IV. DURING THE PENDENCY OF THE SUIT

After the divorce suit has been filed, sixty days must elapse before the divorce can become final. Few divorces are resolved in just sixty days. Therefore, a period of time passes while you and your spouse attempt to come to an agreement.

A. Temporary Agreements:

Often a couple will agree at the first meeting how bills will be paid, how property will be used, and how they will spend time with the children.

In most counties, the court imposes an automatic temporary mutual injunction on both parties at the time the Petition for Divorce is filed. In these instances, the terms of the injunction apply to both parties on an equal basis. The intent is to promote dialogue among the parties and their attorneys prior to the time any decisions, particularly financial decisions, are made or before any community property is encumbered or lost.

Temporary injunctions allow you to make expenditures and incur indebtedness that are considered "reasonable and necessary" or usual in the "ordinary course of doing business." Now is not the time to buy a vacation condominium, fur coat, or new car. If you have any doubts about selling or

transferring any property, about incurring any additional indebtedness, or about making any purchase, please ask your attorney before you make the purchase.

B. Collecting Information:

In order to evaluate your case and advise you of your options, you and your attorney must begin collecting information related to the issues in your divorce case. If other professionals are part of the team, they also will begin collecting information on financial matters and the children.

In most Collaborative divorce cases, the parties create an Inventory and Appraisal of all assets and debts. The Inventory and Appraisal includes the following information:

1. A complete list of all property you claim as your separate property;
2. A complete list of all property you claim to belong to your community estate, with fair market values listed.
3. A complete list of all indebtedness owed by you and your spouse.

C. Moving Toward Finalizing the Divorce:

One of the first questions a client often asks is "When will my divorce be final?" Texas has a mandatory 60-day waiting period before a divorce can be granted although most cases seldom conclude on the 61st day. Divorces are granted after the parties reach an agreement on all divorce-related issues. When you and your spouse reach an agreement, then a Divorce Decree and other closing documents will be prepared, exchanged, approved and signed. Then, either you and your attorney or your spouse or his/her attorney will appear in front of a judge and obtain the divorce and the judge's signature on the Divorce Decree.

V. THE END OF THE SUIT

At a minimum, every divorce requires a Final Decree of Divorce to be drafted and signed by the Judge. If your estate is more complex, there may be real estate documents, powers of attorney, security agreements, stock powers, and various releases to be drafted and signed by each party. Sometimes other professionals are hired and paid to draft needed closing documents.

If one or both parties possess pension and/or profit-sharing plans, then a Qualified Domestic Relations Order ("QDRO") must be drafted to ensure that the non-employee spouse will receive any future benefits awarded to him or her in the Decree.

Once the papers are drafted, reviewed, revised, approved, and signed by all parties and attorneys, the judge's signature is obtained.

VI. YOUR JOB AS THE CLIENT

This packet intends to give you basic information regarding terms and procedures facing you the next few weeks and months. We encourage you to read it and then discuss any questions you may have with your attorney or the legal assistant at the time of your next visit.

We believe that the client is an active participant in his or her case, and that the client has a responsibility to assist with the case. The information in this packet does not answer every question you may have, or cover every issue that may arise during your lawsuit. The sole purpose of this packet is to acquaint you with some of the procedures and terms that you will encounter. We hope that this information will be beneficial to you; however, there is no substitute for communication between the client and the legal staff. Please remember that we are always here to answer your questions.

Comparison of Litigation Process and Collaborative Process

Litigation Process Descriptors:

Parties in disputes often feel intimidated, fearful, anxious, powerless, out-gunned, and not in control. Litigation does nothing to calm this uneasiness and, in fact, a common successful litigation tactic is to make the other side so uncomfortable they are coerced into settling.

Process often focused on determining blame or fault for problems.

Unpredictable results.

May get results that you do not want or agree with.

Unsafe atmosphere-subject to cross examination, subpoenas and depositions.

Public.

Inconvenient scheduling-court and other side may determine the parties' schedules.

Filtered process-information often exchanged subject to discovery rules and lawyer/party discretion. Often negotiate indirectly through lawyers.

Much time, money and energy spent getting ready for a trial that most likely will never occur. 90% of cases settle but 90% of legal fees are not spent on settlement efforts.

Legal expenses are not all within your control. Other side can force you to spend money on depositions, discovery and hearings that you do not want.

Cannot just "try" litigation.

Collaborative Process Descriptors:

Collaborative process affirmatively seeks to make both parties feel safe, respected, in control of their lives and as comfortable as possible while working towards resolutions-coercion is not part of the process. The goal of the process is to allow the safe expression and resolution of conflict.

Process focused on reaching solutions to problems.

Predictable results.

There will be no result without your express agreement.

Safe atmosphere-civil, dignified, respectful.

Private and confidential.

Schedules for meetings are by agreement.

Transparent process-same information available all parties/attorneys at same time. Parties develop options and negotiate for resolution in joint meetings.

100% of all time, money and creative energy is spent on settlement efforts-fewer wasted financial, emotional and mental resources.

All legal expenses are discussed and agreed upon. Legal resources and expenses are more efficiently used.

Can "try" collaboration-if it does not work, you can always litigate.

COLLABORATIVE PROCESS ROADMAP

1. Identify Interests and Issues (assess and ask questions)
 - * temporary/immediate
 - * final

2. Gather Information
 - * transparency
 - * inform and educate

3. Generate Options/Identify Choices
 - * law model
 - * real world model
 - * client generated model

4. Evaluate Options and Consequences of Choices
 - * what are the consequences
 - * how would each choice affect everyone concerned

5. Develop Settlement Model
 - * negotiate and make best decision
 - * memorialize agreement in final order and related documents

COLLABORATIVE LAW PARTICIPATION AGREEMENT

PURPOSE

[FULLNAME1] and [FULLNAME2] (“the Clients”) have chosen to use the Collaborative Law process to resolve their family differences. [FIRSTNAME1] is represented by [LAWYER1]. [FIRSTNAME2] is represented by [LAWYER2]. The “Collaborative Team” consists of the Collaborative Lawyers together with any additional collaborative professionals who sign participation agreements. We adopt this conflict resolution process, which relies on honesty, cooperation, and professionalism geared toward the future well-being of the restructured family. Our goal is to eliminate the negative economic, social and emotional consequences of litigation. We commit to the Collaborative Law process to resolve differences with the goal of achieving a resolution that is acceptable to the clients under the circumstances.

COMMITMENTS

We commit to a collaborative problem-solving process which is based on:

1. Identification of the goals and interests of each client;
2. The Clients’ empowerment to make decisions;
3. Full disclosure of relevant information;
4. The Collaborative Lawyers’ assistance to their respective clients in identifying issues, analyzing relevant information, developing options, and understanding consequences; and,
5. The lawyers’ commitment to the Protocols of Practice for Collaborative Family Lawyers promulgated by the Collaborative Law Institute of Texas, Inc.

OTHER COLLABORATIVE PROFESSIONALS, EXPERTS AND ADVISORS

Unless otherwise agreed in writing, if other collaborative professionals, experts or advisors (hereinafter sometimes referred to as “consultants”) are needed, they will be engaged jointly as neutrals. The Clients may engage consultants for purposes of communication facilitation, financial and tax advice, valuation, cash flow analysis, resolution of parenting issues, and assistance with any other issue that requires specialized or expert advice and/or recommendations. The Clients will agree in advance how consultants will be paid. Unless the Clients, Collaborative Lawyers, and consultants agree otherwise in writing, the consultants engaged are disqualified from testifying as fact or expert witnesses, and their writings are inadmissible in a judicial proceeding between the Clients. This disqualification does not apply to individuals engaged by the Clients to assist them in other matters independent of the Collaborative Law process, such as preparation of tax returns and estate planning. Nothing contained herein precludes a Collaborative Lawyer from consulting with other professionals as necessary to better understand the factual and legal issues presented in the case.

Consultants may communicate with Clients, the lawyers, other consultants engaged in the Collaborative Law process, and any lawyer consulted for a second opinion during the Collaborative Law process.

Once a neutral consultant has been engaged to serve as a member of the Collaborative Team and has signed a Participation Agreement, neither client may unilaterally terminate his or her services. A request to remove or replace such a consultant will be an agenda item for discussion by the entire Collaborative Team. Insistence upon terminating such services may be grounds for the termination of the Collaborative Law process. The Clients may agree to the termination of the services of such a consultant and the replacement with another consultant to serve on the Collaborative Team. This provision does not prohibit either client from unilaterally substituting a new Collaborative Lawyer as his or her lawyer.

COMMUNICATION

Constructive and Respectful Communication. We agree to effectively and honestly communicate with each other. All written and verbal communications will be respectful and constructive. Joint meetings will focus on those issues necessary to the constructive resolution of the matter. We agree not to engage in unnecessary discussions of past events.

Settlement Discussions. The Clients agree to discuss settlement with each other only in the joint meetings, unless they agree otherwise. A request to discontinue any such discussion outside of a joint meeting will be immediately honored. Settlement issues will not be discussed at unannounced times in any manner. The lawyers plan agendas for settlement meetings and draft or review documents, but no agreements will be made by the lawyers on behalf of the Clients.

Electronic and Written Communication. The Clients authorize the use of unencrypted email, facsimile, or any other electronic communications to relay information and deliver documents in the Collaborative Law process. Joint communications of agendas, minutes, drafts of documents and agreements may be sent simultaneously to the Clients and the Collaborative Team.

Transparent Communication. If a client sends any written communication to the other client's Collaborative Lawyer, the client will copy his or her own lawyer with the communication. A written communication sent by a Collaborative Lawyer to the other client will be copied to the client's Collaborative Lawyer. A Collaborative Lawyer shall promptly forward all client-to-client communications to all other team members.

Written Team Communication. In order to facilitate the process, there are times that the Collaborative Team may engage in written internal communications intended only for the Collaborative Team. A written communication designated as a "team communication" will not be communicated to the Clients.

Communications Regarding Children. The Clients acknowledge that inappropriate communications can be harmful to their children. Communication with the minor children regarding the case will occur only as agreed by the Clients.

Our goal is to reach an agreement that promotes the best interests of the children. No client will unilaterally seek a custody evaluation while the matter is in the Collaborative Law process. No member of the Collaborative Team will interview the minor children unless both Clients agree, and

the children's therapist and neutral child specialist, if any, approves.

FULL DISCLOSURE

The Clients agree to make such full and candid exchange of information as is necessary to make a proper evaluation of the case. Full disclosure of the nature, extent, value of, and all developments affecting: the client's income, assets and liabilities; and all other relevant matters is required. Full disclosure of all relevant information relating to the Clients' children is also required. Any material change in information previously provided must be promptly updated. The Clients authorize their respective lawyers to fully disclose all information which in the lawyer's judgment must be provided to the Collaborative Team in order to fulfill this commitment.

No formal discovery procedures will be used unless specifically agreed to in writing. However, the Clients may be required to sign a sworn statement making full disclosure of their income, assets and debts (a sworn inventory and appraisal). Affidavits may be utilized to confirm specific matters, such as the unavailability of certain information, or the existence or non-existence of documents or tangible things.

We shall maintain a high standard of integrity and shall not take advantage of each other or of known mistakes, errors of fact or law, miscalculations or other inconsistencies, but shall identify and correct them.

CONFIDENTIALITY

In accordance with the Texas Family Code, the Clients agree to maintain the confidentiality of all oral and written communications relating to the subject matter of the case made by the Clients or the Collaborative Team, whether before or after the institution of formal judicial proceedings. The Clients agree that all oral communication and written material in the Collaborative Law process will only be admissible or discoverable if it is admissible or discoverable independent of the Collaborative Law process. This paragraph does not apply to reports of abuse or neglect required by law, agreed formal discovery, sworn documents prepared in this matter, a fully executed Collaborative Law Settlement Agreement or evidence of fraud.

A client and/or his or her Collaborative Lawyer is free to disclose all information to a lawyer hired to render a second opinion for that client in the Collaborative Law process or to that client's successor Collaborative Lawyer. In the event the Collaborative Law process is terminated, a client and/or his or her Collaborative Lawyer are free to disclose all information to that client's litigation lawyer.

This provision does not prohibit disclosure by a member of the Collaborative Team of case information for educational purposes without disclosing the identities of the Clients, nor does it prohibit participation by the Clients or either of them in educational forums or media interviews to discuss the Collaborative Law process.

OTHER LEGAL OPINIONS

Neither client shall consult a litigation lawyer about this matter so long as the Collaborative Law process continues, except for the limited purpose of obtaining a private opinion as to the potential outcome of the case in an adversarial proceeding. If at any time in the past twelve months or during the Collaborative Law process a client privately secures an opinion about this matter from another lawyer, including a litigation lawyer, the client agrees to disclose the identity of such lawyer to the Collaborative Team. If the opinion was sought prior to the signing of this Participation Agreement, then the client represents that the identity has been disclosed to the Collaborative Team before this Participation Agreement was signed. If the opinion is sought during the Collaborative Law process, the client agrees to disclose the identity before the client's initial consultation with the lawyer and promptly inform the Collaborative Team of the occurrence of each consultation the client has with such lawyer.

The client should give any lawyer offering an opinion on an issue(s) all information necessary to give informed advice, including reports of consultants whose services have been engaged in the Collaborative Law process. The Clients agree the work product and opinion of such privately engaged lawyer are attorney-client privileged and are not required to be disclosed in the Collaborative Law process.

The Clients agree a lawyer privately engaged to offer an opinion, and any other lawyer associated in the practice of law with that lawyer, are not disqualified from testifying as a fact or expert witness pertaining to attorneys' fees and are not prohibited from representing the consulting client in an adversarial proceeding between the Clients.

If both Clients jointly seek a second opinion from a lawyer then the opinion is to be disclosed to the Collaborative Team, and the lawyer is to be considered a neutral expert and is disqualified from testifying as a fact or expert witness in an adversarial proceeding between them and is prohibited from representing either of them in an adversarial proceeding between the Clients.

The Clients agree the work product, opinions, mental impressions, and the facts upon which they are based, of a consulted lawyer are not discoverable and are inadmissible in an adversarial proceeding regarding the case or in any other adversarial proceeding between the Clients, unless the Clients, the Collaborative Lawyers and consulted lawyer agree otherwise in writing.

AGREEMENTS

The Clients may agree to the entry of temporary orders. Upon request of either client or as required by local rules, the Code of Conduct set out in Exhibit "A" attached hereto shall be filed with the court as mutual injunctions. Further, whether entered as injunctions or not, the Clients agree to abide by the terms of Exhibit "A" until it is modified by court order or written agreement. The Code of Conduct and a fully executed Collaborative Law Settlement Agreement are contracts between the Clients and may be the basis for a claim against the client violating their terms in the event of termination of this process. In the event enforcement is sought, the Collaborative Lawyers shall withdraw.

Any partial or final written agreement, which is signed by both Clients and their respective Collaborative Lawyers, may be filed with the court as a Collaborative Law Settlement Agreement and may be made the basis of a court order. The Clients and the Collaborative Lawyers shall cooperate in preparing the documents necessary to effectuate the Clients' agreement. A Collaborative Lawyer may require the preparation and execution of all closing documents necessary to complete the case before entry of judgment. Either or both Collaborative Lawyers shall be permitted to appear in court to have agreed judgment(s) entered.

LEGAL PROCESS

Suspension of Court Intervention. The Clients and the Collaborative Lawyers agree that court intervention shall be suspended while the Clients are using the Collaborative Law process. Seeking court intervention for a judicially-imposed decision regarding an issue in the case automatically terminates the process.

No motion or document will be prepared or filed which would initiate court intervention, other than a Petition for Divorce, to Modify Prior Order, or other matter and responsive pleading. If necessary, service of citation will be accepted by the Clients' respective lawyers. No hearing shall be set thereafter, other than to enter agreed orders and judgments.

Termination by Client. A client who has decided to terminate the Collaborative Law process shall notify his or her Collaborative Lawyer in writing. That client's Collaborative Lawyer shall then give prompt written notice to the other client through his or her Collaborative Lawyer and to the court. Upon notice of termination of the Collaborative Law process to the other Collaborative Lawyer, there will be a 30-day waiting period (unless there is an emergency) before a court hearing to permit each client to engage another lawyer and make an orderly transition.

If a client chooses to terminate the Collaborative Law process by seeking court intervention for a judicially-imposed decision, both Collaborative Lawyers shall withdraw. Neither Collaborative Lawyer (including any lawyer associated in the practice of law with the Collaborative Lawyer) may serve as a litigation lawyer on behalf of a client in this case or in any other matters between the Clients thereafter (other than a suit to enforce payment of the lawyer's fees). Each Collaborative Lawyer will cooperate in transferring the file.

Termination by Collaborative Lawyer. The Collaborative Law process must be terminated if a client engages in any of the following behaviors and persists in doing so after counseling by the client's Collaborative Lawyer:

1. Refuses to disclose information, including the existence of documents, which in the Collaborative Lawyer's judgment must be provided to the other client or the Collaborative Team;
2. Answers dishonestly any inquiry made by a client or member of the Collaborative Team;
3. Takes an action that results in compromising the integrity of the process; or,
4. Fails or refuses to take an action which failure or refusal compromises the integrity of the process.

Under any of these circumstances, if the offending client refuses to terminate the Collaborative Law process, each client acknowledges that his/her respective Collaborative Lawyer has a duty to terminate the Collaborative Law process on behalf of the client, and by signing this agreement, each client authorizes his/her Collaborative Lawyer to terminate the Collaborative Law process by written notice to the Collaborative Team.

Withdrawal of Lawyer. If the Collaborative Law process is terminated, both Collaborative Lawyers shall immediately withdraw. If there is no termination of the Collaborative Law process, either Collaborative Lawyer may withdraw unilaterally by giving three days' written notice to his or her client and the other Collaborative Lawyer, unless substituted by a successor Collaborative Lawyer in which case no such notice is required. Notice of withdrawal of a Collaborative Lawyer does not necessarily terminate the Collaborative Law process; however, in order for the Collaborative Law process to continue, the client whose Collaborative Lawyer has withdrawn must engage a new Collaborative Lawyer who will agree in writing to be bound by this Participation Agreement. If the client whose Collaborative Lawyer has withdrawn chooses to represent himself or herself, the Collaborative Law process terminates and the other Collaborative Lawyer must withdraw.

REPRESENTATION AS TO PROPERTY

The final documents reflecting the Clients' financial settlement may include the following, or similar provisions, if either client requests the inclusion thereof:

Representations and Disclosures. The Clients represent to each other that the property listed represents all of the property in which either of them may have an interest.

Separate Property. Any property which is not listed or described and which is later determined to be the separate property of a client shall be and remain the separate property of that client.

Property and Liabilities Mistakenly Omitted. Any mistakenly omitted property which is not listed or described and is later determined to be the community property of the Clients, shall be subject to future division by the court. Any mistakenly omitted liabilities which are later determined to have been the joint liabilities of the Clients shall be subject to future allocation by the court.

Property and Liabilities Intentionally Omitted. Any community assets later determined to have been intentionally and fraudulently undisclosed by a client are set aside 100% to the other client. Any liabilities determined to have been intentionally and fraudulently undisclosed by a client are allocated 100% to the client who incurred the liability.

MEDIATION

Prior to termination of the Collaborative Law process, the Clients agree to give serious consideration to participation in mediation with a mediator who has received training in the Collaborative Law process.

PROFESSIONAL FEES

The Clients understand that the Collaborative Team members are entitled to be paid for their services. The Clients agree to make funds available from their community or separate estates, as needed, to pay these fees. The Clients understand that, if necessary, one client may be asked to pay all fees (including fees of the other client's lawyer) from community property managed solely by him or her (e.g., his or her salary) or from separate funds. The Clients agree that, to the extent possible, all fees and expenses incurred by both clients shall be paid in full prior to entry of a final judgment. Nonpayment of fees is cause for withdrawal by a Collaborative Team member, but not for a termination of the Collaborative Law process.

USE OF INTERNS AND COLLABORATIVE PROFESSIONALS AS OBSERVERS

The Clients agree that interns and collaborative professionals may observe one or more joint meetings in this Collaborative Law process, provided the observers agree to sign a written observation agreement preserving the confidentiality of any such observed meeting. The observer will not participate in the joint meetings except as an observer. Such observing shall be at no charge to the Clients.

UNDERSTANDINGS

The Clients understand that each Collaborative Lawyer is independent from the other and each represents and is an advocate for his or her client only in the Collaborative Law process. No attorney-client relationship is created between one client's Collaborative Lawyer and the other client by entering into this Participation Agreement or the Collaborative Law process. No legal duty, by contract or otherwise, is owed to a client by the other client's Collaborative Lawyer.

The Clients acknowledge the following: There is no guarantee that the Collaborative Law process will be successful in resolving the matter. The Collaborative Law process cannot eliminate concerns about the differences that have led to the current conflict. The Clients are expected to assert their own interests and their respective Collaborative Lawyers will help each of them to do so. The Collaborative Law process, can involve intense good-faith negotiation, but best efforts will be used to create options that meet the interests of both clients. Compromise may be needed to reach a settlement of all issues. Although the likely outcome of a litigated result may be discussed, the threat of litigation will not be used.

The parties understand that by agreeing to this process, they are giving up certain rights, including the right to conduct formal discovery (other than sworn inventories and appraisements), the right to participate in adversarial court hearings, and other procedures provided by the adversarial legal system, unless the process is terminated. The terms of this Participation Agreement may be modified, in a manner consistent with Texas law, only by written agreement signed by the Clients and the Collaborative Lawyers. However, the prohibition against either Collaborative Lawyer or any lawyer associated with that Collaborative Lawyer representing their client in contested matters against the other client is irrevocable and may not be modified.

Both clients and their respective Collaborative Lawyers hereby agree to comply with the spirit and letter of this Participation Agreement. Both clients and their Collaborative Lawyers acknowledge that they have read this Participation Agreement, understand its terms and conditions, and agree to abide by them.

Signed on _____.

[FIRSTNAME1]
Street Address
City, State, Zip code
Email

[FIRSTNAME2]
Street Address
City, State, Zip code
Email

[LAWYER1]
Collaborative Lawyer for [FIRSTNAME1]
SBN #
Street Address
City, State, Zip code
Office Phone
Fax Number
Email
Paralegal's email

[LAWYER2]
Collaborative Lawyer for [FIRSTNAME2]
SBN #
Street Address
City, State, Zip Code
Office Phone
Fax Number
Email
Paralegal's email

**EXHIBIT A
CODE OF CONDUCT**

Either client may:

1. Make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, entertainment, education and medical care.
2. Make expenditures and incur indebtedness for reasonable lawyers' fees and consultants' fees and expenses in connection with this matter.
3. Make withdrawals from accounts in financial institutions only for the purposes authorized by this agreement.
4. Engage in acts, make expenditures, incur indebtedness, make investments, and acquire, sell and transfer assets, as is reasonable and necessary to the conduct of either client's usual investment activities, business and occupation, subject to all such activities being fully disclosed and accounted for to the other client.

The Clients agree not to:

1. Communicate with the other client in an offensive manner.
2. Place telephone calls without a legitimate purpose of communication.
3. Destroy, remove, conceal, encumber, transfer, or otherwise harm or reduce the value of the property of one or both of the clients.
4. Falsify any writing or record relating to the property of either client.
5. Damage or destroy the tangible property of one or both of the clients, including any document that represents or embodies anything of value.
6. Tamper with the tangible property of one or both of the clients, including any document that represents or embodies anything of value, thereby causing monetary loss to the other client.
7. Sell, transfer, assign, mortgage, encumber, or in any other manner alienate any of the property of either client, whether personalty or realty, and whether separate or community, except as specifically agreed to in writing or as specified in this agreement.
8. Incur any indebtedness, including but not limited to borrowing against any credit line or unreasonably using credit cards or cash advances against credit or bank cards, except as specifically agreed to in writing, or as specified in this agreement.
9. Make withdrawals from any checking or savings account in any financial institution for any

purpose, except as specifically agreed to in writing, or as specified in this agreement.

10. Spend any sum of cash in the possession or subject to the control of either client for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
11. Withdraw or borrow in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically agreed to in writing.
12. Enter any safe-deposit box in the name of or subject to the control of either client, whether individually or jointly with others, unless the Clients accompany each other and jointly enter the box for the sole purpose of inventorying or dividing its contents by mutual agreement.
13. Withdraw or borrow in any manner all or any part of the cash surrender value of life insurance policies on the life of either client, except as specifically agreed to in writing.
14. Change or in any manner alter the beneficiary designation on any pension, retirement plan or insurance policy, except as specifically agreed to in writing.
15. Cancel, alter, fail to renew or pay premium, permit to lapse or in any manner affect or reduce the value of the present level of coverage of any life, disability, casualty, automobile, or health insurance policies insuring the Clients' property or persons, except as specifically agreed to in writing.
16. Change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other client.
17. Terminate or in any manner affect the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at the residence of the other client or in any manner attempt to withdraw any deposits for service in connection with those services, except as specifically agreed to in writing.
18. Exclude the other client from the use and enjoyment of his or her respective residence.
19. Enter or remain on the premises of the residence of the other client without the other's consent.
20. Open or divert mail addressed to the other client, except as specifically agreed to in writing.
21. Sign or endorse the other client's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempt to negotiate any negotiable instrument payable to the Clients or the other client without the personal signature of the other client.

22. Take any action to terminate or limit credit or charge cards in the name of the Clients or the other client, except as specifically agreed to in writing.
23. Transfer balances between credit cards or open new credit card accounts, except as specifically agreed to in advance in writing by the Clients.
24. Pay more than the outstanding balance owed on a credit card or charge account, except as specifically agreed to in writing.
25. Take any action to freeze or put a hold on any account with any financial institution from which the other client has the right to withdraw funds for purposes consistent with the authorizations contained in this agreement.
26. Operate or exercise control over the motor vehicles in the possession of the other client, except as specifically agreed to by the Clients.
27. Discontinue or reduce the withholding for federal income taxes on either client's wages or salary, except as specifically agreed to in writing.
28. Destroy, dispose of, or alter any financial records of the Clients, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.
29. Destroy, dispose of, or alter any relevant e-mail or other electronic data, whether stored on a hard drive or on a diskette or other electronic storage device.
30. Conduct surveillance of the other client's activities, including accessing the other client's emails, computer files and voice mail messages, and including the use of an investigator, detective or other individual paid for or engaged by a client or third party, or use of electronic listening or tracking devices, until this Collaborative Law process is terminated.
31. Engage the services of a stand-by litigation lawyer so long as the Collaborative Law process continues, except for the limited purpose of giving a second opinion in accordance with the provisions of this agreement set out in "Other Legal Opinions."
32. Exercise any stock options and warrants except as specifically authorized in advance by written agreement of the Clients.
33. Exercise any general or limited power of attorney, whether or not recorded, granted by one client to the other.
34. Pay any indebtedness owed by the Clients or either of them prior to the date the indebtedness is due, unless agreed to specifically in writing by the Clients.
35. Create or contribute to, or reduce the value of or withdraw from or terminate, any trust of

any kind or nature except as specifically authorized in advance by written agreement of the Clients.

36. **Make any gift of any kind or nature, other than usual and customary gifts to family members of either client or mutual friends or their child(ren).**
37. **Create or contribute to any uniform gifts/transfers to minor act accounts or any trust of any kind or nature, except as specifically agreed to in advance in writing by the Clients.**
38. **File any extension or form with the Internal Revenue Service with regard to federal tax liability for any years of the marriage that limits the other client's choice of filing status, unless agreed to in advance in writing by the Clients.**
39. **File any federal income tax return or amendment to any federal income tax return for any year of the marriage during the pendency of the matter without first providing a true and correct copy of such proposed return to the lawyer of record for the other client at least 14 days in advance of the proposed tender to the Internal Revenue Service. This shall apply whether or not such filing is proposed to be by electronic methods or hard copy filing.**

Separation Guidelines for Divorcing Couples

This document has been created as a guide for couples who are recently separated. It is intended to help individuals make an easy transition from living together to living apart by acknowledging that boundaries need to change as relationships change. It is also meant to be the basis for an ongoing dialogue between separated or divorcing couples as they define and adjust to their reconfigured relationship.

People who have been sharing a household for some time develop habits and patterns based on that arrangement. When only one person is in the home formerly occupied by both, issues of privacy for the person who remains in the residence arise, while the person who moved out may feel displaced and separated from familiar surroundings and creature comforts. A period of adjustment is to be expected, during which time clear communication is critical. As difficult as these conversations may be, they are less difficult than the kinds of hurt feelings and unintended consequences that will likely be the result if they don't occur.

Discuss and agree on the following issues regarding access to the property:

- Will each person possess a key to the other spouse's residence?
- Are there recurring occasions when one spouse has permission to enter the residence of the other spouse when the resident is not present?
If so, what are those occasions? (Note: Specific needs may arise from time to time when the non-resident is given permission to enter the premises when the resident is not present. These should be discussed on a case-by-case basis. This question addresses *recurring events*.)
- Will the locks be changed on the doors of the marital residence?
If so, what is the date by which the locks will be changed?
- How much notice will one spouse expect if the other needs to come to his or her residence?
- What information will be given to friends and family members and how will it be disseminated?
- If calls are received at the marital residence for the spouse who moved, how should telephone calls for a spouse be redirected?
- Who should be notified in the event of an emergency?
- If mail is received at the marital residence for the spouse who moved, how should it be delivered?

Most people find that the following rules help them make the transition easier for all concerned:

1. Neither spouse should go to the residence of the other spouse unannounced, or enter the house or go onto the premises without an invitation or permission from the resident.
2. Neither spouse should sell, discard or destroy anything in that spouse's possession without first asking the other if he or she wants or needs the item. Property or household items will be accepted or declined within one week of receiving notice that a spouse intends to discard the property.
3. The spouse who continues to live in the marital residence will make reasonable

accommodations for the other spouse to retrieve his or her personal items from the residence until such time as the property is finally divided and moved.

4. Neither spouse will enter the residence of the other spouse without ringing the doorbell or knocking and gaining permission to enter from the resident.
5. Neither spouse will remove any item from the other spouse's residence, permanently or temporarily, without the knowledge and agreement of the resident.
6. Both spouses will keep all furniture, clothing and personal property safe and in good condition to his best of his or her ability. Both spouses will notify the other spouse in the event there is damage to any property that has not yet been divided, or that belongs to the other spouse.

Create Clear Boundaries

Divorcing spouses who have clear boundaries about what is and is not expected and acceptable can make the transition from living together to living separately more smoothly. Mixed messages are often the source of hurt feelings and anger. Acts of kindness can be misinterpreted as invitations to rekindle a relationship. Often, it is helpful to put into words sentiments like, "I want to be able to be nice to you without your thinking that we will be getting back together," or, "It's too painful for me to have your furniture in the house, so we need to find a time for you to move it out." These feelings, if left unexpressed, can get in the way of making progress in the divorce process. So, as uncomfortable as it is to say these things to someone with whom you have shared a life, the short-term discomfort may pave the way for long-term healthy restructured relationships.

If there are Children

1. Neither spouse will ask a child for access to the property of the other spouse, and will decline a child's invitation to enter the property of the other spouse without the permission of the resident parent. The invitation shall be declined in a way that does not blame the resident parent.
2. If a child in one parent's possession needs something from the residence of the other parent, arrange with the resident to retrieve the item, or ask the resident to deliver it.
3. Keep your commitments about when children will be picked up and/or delivered. If there is an emergency that interferes with keeping a commitment, notify the other parent immediately. It is sometimes helpful to designate a range of time between which pick up and/or delivery will occur (i.e. between 5 and 5:30). Consider carrying a cell phone or pager so that messages about children can always be received in a timely manner.
4. Do not make appointments or commitments for your children during time when they are with the other parent without that parent's consent. If a child receives an invitation to an event that occurs during the other parent's time with the child, make the other parent aware of the invitation, but do not lead a child to believe that he will be or can attend the event without the other parent's consent.

New Relationships and Dating

New relationships pose challenges for separated and divorcing couples in a variety of areas. In most situations, one person has mentally and emotionally “moved on” more than the other. Although there are certainly exceptions to this rule, it should never be assumed that a person will not be hurt, embarrassed, or otherwise affected by the fact that his or her spouse is involved in a relationship before the marriage is terminated. This delicate subject should be addressed directly, and with a high degree of respect for the feelings of both spouses.

Generally, divorce attorneys will recommend that clients not enter into new relationships, or put new relationships on hold while their divorce is pending. There are several reasons for this which can be discussed either individually with one’s attorney or in a joint meeting.

Mental health experts and child specialists generally agree that seeing a parent in a new relationship before the divorce is finished is not good for children. At best, children are confused by the new significant adult in their lives; at worst, introducing a new romantic relationship to the children too soon can alienate children from one or both parents. Child specialists recommend that a parent wait at least six months after a divorce is final before introducing children to new romantic partners.

If separated spouses discuss the issue and agree that dating will be acceptable during the pendency of their divorce, the following issues should also be considered:

- Are there places to which the dating spouse can agree not to go with a new romantic interest (religious services, favorite restaurant, exercise class, etc.) in order to avoid discomfort and embarrassment?
- Are there places to which the non-dating spouse can agree not to go so that there are clearly-defined “safe” places to which the dating spouse and the new partner may go?
- How much information does the non-dating spouse want about the new relationship? For instance, if the dating spouse is planning a vacation with the new partner, should that information be shared or kept private?
- What is each party’s expectation about use of funds that might still be owned by the community estate?
- What agreements can be made about the new romantic interest that will help avoid confusion of and damage to the children?

These are just a few examples of issues that can arise and should be addressed when couples are separating. You can expect that other issues will arise. Here are some guidelines for starting a discussion about these topics:

- Make an appointment with your spouse to discuss issues about your separation. Make sure your spouse knows the topics you want to discuss, and ask if he or she has others to add.
- Agree to meet at a neutral place at a time when children will not be around.
- Make the appointment time-limited.
- Agree in advance that you will each do your best to make the conversation respectful and fruitful, but that if either of you feels uncomfortable at any time, for any reason (or no reason), the conversation will be terminated.

WORKSHEET: IDENTIFYING INTERESTS

List the top three goals you wish to accomplish in this collaborative divorce.

1. _____
2. _____
3. _____

For each goal listed above, state why the particular goal is important to you:

1. _____
2. _____
3. _____

For each goal, state how achieving the particular goal will improve your situation over the long-term:

1. _____
2. _____
3. _____

For each goal, state whether you think your spouse's goals will or could be compromised if you achieve the particular goals you have listed:

1. _____
2. _____
3. _____

For each goal, list all alternative ways you can think of to achieve your goal:

1. _____
2. _____
3. _____

List the three things you are most afraid of with regard to your divorce.

1. _____
2. _____
3. _____

List the three things you believe your spouse is most afraid of with regard to your divorce.

1. _____
2. _____
3. _____

from the October 09, 2007 edition - <http://www.csmonitor.com/2007/1009/p09s01-coop.html>

A healing approach to the law

Collaborative law doesn't have to be an oxymoron.

By David A. Hoffman

Boston

The civilized resolution of conflict in American society recently took a giant step forward with the issuance of an important ethics opinion by the American Bar Association (ABA) upholding the use of "collaborative law" agreements by lawyers.

The concept of collaborative law may seem like an oxymoron to some, but it is a widely used process in which the lawyers and clients agree that the lawyers will participate solely for the purpose of settlement negotiations and that if the case goes to court, the parties will hire new counsel. Collaborative law has been hailed by many lawyers and clients as a godsend, rescuing them from the quagmire of courtroom battle.

Prior to this year, ethics committees in five states (Kentucky, Minnesota, North Carolina, New Jersey, and Pennsylvania) had approved the use of collaborative law agreements. However, in February 2007, the Colorado Bar Association issued a maverick advisory opinion declaring such agreements to be unethical. According to the Colorado opinion, collaborative law agreements put lawyers in the ethically untenable position of having divided loyalties – to represent the client but also to honor the contractual commitment to the other party to withdraw if litigation ensues.

After the Colorado opinion was issued, thousands of lawyers across the United States who have been using the collaborative law process waited uneasily to see which way the regulatory winds would blow in their states.

The ABA Ethics Committee puts these questions largely to rest, with an opinion (#07-447) squarely supporting the use of collaborative law so long as clients are well informed about the process. According to the ABA, the Colorado opinion is simply wrong: if a client chooses to hire a lawyer for a limited purpose (i.e., just negotiation), there are no conflicting duties – the lawyer is committed to serving the client in the negotiation, but not beyond.

Outside the legal profession, these distinctions may seem like so many angels dancing on the head of a pin. But for lawyers, and ultimately for the public, the stakes are high. Confidence in lawyers and our legal system has plummeted in recent years as the cost of courtroom conflict has soared. Collaborative law – along with mediation, arbitration, and other forms of dispute resolution – provides a powerful tool for reducing those costs and regaining the public's trust.

Collaborative law originated in Minnesota in 1990, when a disgruntled family law attorney, Stuart Webb, decided that he had had enough of courtroom brawls and the ensuing family carnage. Along with some like-minded lawyers there, he began taking cases solely for negotiation. This idea spread to San Francisco in the early 1990s and throughout the US, Canada, and the globe over the past 15 years. Tens of thousands of divorces and other conflicts have been resolved using collaborative law. In two weeks the 3,000-member International Academy of Collaborative Professionals will meet in Toronto for its eighth annual networking conference.

A majority of states in the US now have groups of lawyers engaged in collaborative practice. Although individual states are not required to follow the ABA's lead in ethical opinions, most do. Therefore this new opinion gives collaborative-law attorneys a much-hoped-for green light, but with a flashing yellow light regarding the importance of informing the clients about the risks, as well as the benefits, of this relatively new process.

What are the risks? Experience to date with collaborative law suggests that the primary risk is that one party may claim to be ready to negotiate but then resists settlement. The collaborative law agreement lacks a mechanism for overcoming such foot-dragging, other than persuasion – or going to court, which means abandoning the process altogether and hiring new counsel. Critics of the collaborative law movement also contend that lawyers must be zealous in representing clients and that agreeing to collaborate dilutes this commitment.

However, most clients in a dispute are looking for an honorable peace, not war, and collaborative lawyers can be just as zealous about seeking such a peace as litigators are about victory in the courtroom. Empirical studies to date suggest that clients in collaborative law cases are satisfied with both the process and the settlements achieved. One of the primary reasons for this success appears to be self-selection – in other words, the clients and lawyers who embrace the collaborative process tend to be those who are seeking to resolve conflict rather than prolong it. In addition, the collaborative law process creates a container for conflict – one that promotes information-sharing, problem-solving, and respectful communication. Sometimes the collaborative process enables people to do more than just settle their differences but to actually resolve them on a deeper level than is possible with the bare-knuckles negotiation that is typical in noncollaborative cases.

The ABA's approval of this process is a watershed moment for the collaborative law movement, and will probably increase the use of collaborative law dramatically throughout the US, thus giving lawyers a greater opportunity to fulfill the role that Chief Justice Warren Burger once described as vital for attorneys – to be "healers of conflict" as opposed to simply hired guns.

David A. Hoffman, a lawyer and mediator at Boston Law Collaborative, LLC, is chair of the Collaborative Law Committee of the American Bar Association Section of Dispute Resolution and teaches mediation at Harvard Law School.

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Separate Peace

BY STEPHANIE COONTZ

In March, comedian Robin Williams and his estranged wife, Marcia Garces Williams, filed for divorce after 19 years of marriage. But tabloids hoping for a juicy celebrity battle may be disappointed. In court papers filed last month, the couple announced they would conduct a collaborative divorce, pledging to be "honest, cooperative and respectful" and to put their children's interests first.

The past two decades have seen an explosion of interest in alternatives to adversarial divorce. Growing numbers of couples now handle their split without lawyers, often consulting "do-it-yourself" Web sites. Divorce mediation was unheard of before the 1970s. Today, about four-fifths of states either mandate it or allow judges the discretion to require it before they will set a trial date.

Why collaborative divorce is best for kids—and parents.

Collaborative divorce takes this cooperative spirit even further: The divorcing couple and their attorneys agree in advance that they will disclose all pertinent information and will jointly engage neutral experts rather than hired guns if experts are needed. The attorneys agree not to litigate; if the process breaks down (as it does in about 5% of the cases), they are bound to withdraw rather than pursue the case in court. If the spouses then choose to litigate, each must hire a new lawyer and start from scratch.

Pioneered in 1990, collaborative divorce has spread rapidly. In the past decade, the number of professionals involved in this process has increased 20-fold. It is not without its detractors, though. In February 2007, the Colorado Bar Association deemed the process unethical because it diluted a lawyer's undivided loyalty to the client. Many attorneys still advise divorcing clients that they'd be foolish to give up any potential advantage in a struggle with so many consequences.

From a different perspective, some people believe that "normalizing" divorce leads couples to

take its consequences too lightly. "Divorce is a tragedy and should be treated as such," said one "pro-family" advocate on a radio talk show, in response to the idea that something good might come from the Williamses' divorce. "Telling people they can help their kids by divorcing civilly is like offering them low-tar cigarettes instead of explaining that smoking causes cancer."

But a growing body of evidence suggests that normalizing divorce and surrounding it with expectations of cooperative behavior is far better for everyone than the two extremes of trying to prevent people from divorcing at all or encouraging them to "win" or prove fault in a divorce dispute. Especially when children are involved.

It might seem that making divorce harder to get would benefit children, since children whose parents divorce are more likely to exhibit behavior problems than those in intact families. But a longitudinal study released in April by the Council on Contemporary Families found that many child problems commonly attributed to divorce actually have their roots in family dynamics that long predate the parents' separation.

Poor impulse control, antisocial behavior, disengaged parenting, contemptuous behavior toward a partner, and untreated physical or mental problems all make couples more likely to divorce. But each factor also raises the likelihood of maladjustment in the children even if the parents stay wed. Sometimes divorce, however painful, is the best outcome for a poorly functioning family.

There are instances, however, when divorce does make things worse for kids, and it is precisely the behaviors associated with adversarial divorce that have the worst effects. Children suffer when

parents assign fault, justify their own behavior, compete for their children's loyalty, bad-mouth each other, or ask the children to take sides, keep secrets or tattle on the former spouse.

Constance Ahrons's 20-year look at 173 children from 98 divorced families showed that when divorced parents were able to maintain a civil and at least minimally cooperative relationship with each other, the children experienced no long-term problems associated with the divorce. But when parents remained in conflict or totally disengaged from each other, their children continued to be distressed even 20 years later.

There is ample evidence that we can increase the incidence of "good" divorces. In a 12-year follow-up of couples randomly assigned to either mediation or litigated divorce, Robert Emery and his colleagues found that as little as five to six hours of mediation had powerful long-term effects.

Parents who took part in mediation settled their disputes in half the time of parents who used litigation, and they were much more likely, even 12 years later, to jointly discuss children's discipline, moral training, school performance and vacation plans. Non-residential parents with mediated divorces maintained much more contact with their children than those who had litigated.

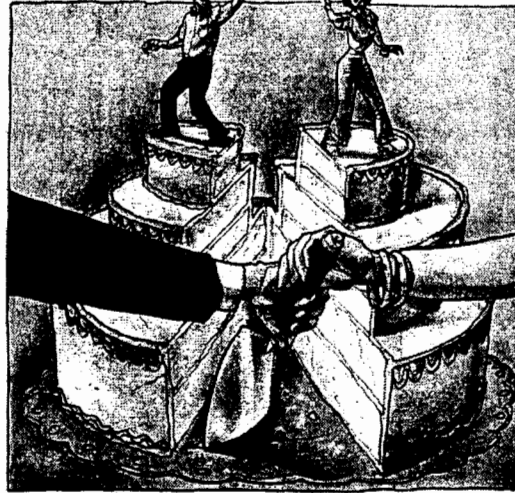
In August 2007, six months after the Colo-

rado Bar Association deemed the collaborative process unethical, the Ethics Committee of the American Bar Association repudiated the state bar's opposition and endorsed collaborative divorce. Attorney William J. Howe argues that lawyers involved in family law cases have an ethical duty to regard every child whose welfare may be affected by the outcome as a "phantom client," with interests that must be taken into account before advocating for the self-interest of adult clients.

Hugh McIsaac, a retired director of Family Court Services in Los Angeles and Portland, Ore., advises divorce attorneys to represent their clients' long-term interests, not their short-term anger. The average cost of a mediated divorce is less than \$7,000 and of a collaborative divorce less than \$20,000. This compares with nearly \$27,000 for a divorce negotiated by rival lawyers and about \$78,000 for a fully litigated divorce.

And it's not just the financial toll. When a parent maximizes his or her emotional position by undermining a child's respect for the other parent, this "victory" carries long-term costs. Researcher Paul Amato notes that children who report being put in the middle of their parents' problems are less likely to be close to either parent as they age.

Cooperative divorces deny clients the short-range satisfaction of "beating" their exes, and they deprive attorneys of a lucrative source of income. But the benefits clearly outweigh these costs. So best wishes to the Williams family and their attorneys: Maybe we can learn something from a celebrity divorce after all.



David Klein

Ms. Coontz teaches history and family studies at The Evergreen State College and wrote "Marriage, a History: How Love Conquered Marriage."

FINAL OUTCOMES

We realize that when you move forward with a family law case, you are making an emotional commitment, a time commitment and a financial commitment. Most clients have a lot of discomfort surrounding these commitments and would like some certainty about the end – the end of the high emotions, the end of the case, and the end of the legal fees and costs.

⇒ Question: Will my feelings of anger, hurt, sadness, or disappointment be addressed in the final outcome?

⇒ Answer: There often are no legal solutions to the emotional wrongs that you may feel have been committed toward you. We strongly recommend that our clients pursue individual counseling, join a support group or grief workshop, and/or develop a strong support system of family and friends.

⇒ Question: How long will my case take?

⇒ Answer: It is impossible to predict how long any particular case will last. In our experience, cases can last anywhere from 2 months to 2 years. The following factors impact how slow or fast a case proceeds:

- Existence or non-existence of complicated facts;
- Existence or non-existence of complicated legal issues;
- Addiction issues;
- Mental health issues;
- Ongoing family violence;
- Schedules of lawyers, clients, and courthouse;
- Reasonableness of lawyers and clients;
- Whether one or more parties reside outside of the central Texas area;
- Competence and skill of the opposing lawyer; and,
- The level of support a client needs from the lawyer and staff.

⇒ Question: How much will my case cost?

⇒ Answer: It is impossible to predict how much a client will spend on any particular case. In our experience, our clients have spent anywhere between a few thousand dollars to hundreds of thousands of dollars on their case. The following factors impact the cost of the case:

- Existence or non-existence of complicated facts;
- Existence or non-existence of complicated legal issues;
- Addiction issues;
- Mental health issues;
- Ongoing family violence;
- Schedules of lawyers, clients, and courthouse;
- Reasonableness of lawyers and clients;
- Whether one or more parties reside outside of the central Texas area;
- Competence and skill of the opposing lawyer; and,
- The level of support a client needs from the lawyer and staff.

TEXAS LAWYER'S CREED
(Lawyer to Client)

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.