



Collaborative Divorce

An official but somewhat unknown ADR option for New Jersey divorces. What exactly is it and how does it benefit divorcing couples?

By Anna-Maria Pittella and Karen P. Sampson

Family Law practitioners are all too familiar with the turmoil created by a litigated divorce for clients and themselves. The intensity of emotions created by an adversarial process can leave a family in shambles when there is a win-at-all costs agenda. Lawyers carry just as much emotional upheaval and often hefty accounts receivables. With this backdrop, many practitioners turn to other methods of resolving family matters, such as mediation.

There is another statute-based alternative dispute resolution process that should be thoughtfully considered: Family Collaborative Law.

Early History of Collaborative Law

Stuart G. Webb, known as “Stu,” a family law attorney in Minnesota in 1989, had been practicing for 18 years and was weary of the negativity in his cases. He felt that litigation provided little or no opportunity to create a climate that would allow parents to have a healthy relationship with their children or escape the invariable “blame game.” He was ready to quit the practice of law. Then, in 1989, during one of the worst cases of his career, it occurred to him that there should be lawyers who act as settlement-only specialists and make themselves available for clients to work with them on their family law case outside of the court system. He reasoned that if, and only if, settlement negotiations failed, then the case would be turned over to litigation counsel. With this idea, Webb declared himself to be a “collaborative lawyer,” and the movement began with attorneys limiting their skills to problem-solving.¹

Driving this process would be the clients making the decision not to go to court. The clients would choose attorneys solely for the purpose of negotiating for them. Webb found other like-minded attorneys and they began to offer this option to potential clients. Word spread of this novel approach, and he was asked to speak at various law forums.

Pauline Tesler is another pioneer in this field. A family lawyer from San Francisco, she was also searching for the missing piece in her divorce practice in the late 1980s after 10 years of practice. She came upon Webb in 1993 and embraced his principle of commitment to resolution by a divorcing couple and their attorneys solely by negotiation. She had also been working closely with mental health professionals to address the emotional

aspects of divorce and began integrating their supportive services for couples.²

From Webb’s model of collaborative law, there was an expansion to collaborative practice, engaging not just attorneys and clients but also including mental health professionals and financial neutrals, all under the umbrella of confidentiality by contract and a pledge not to litigate with the lawyers the couple had hired.

By the late ’90s, Webb and Tesler had begun joint collaborative training for other professionals. Out of their individual and joint efforts, as well as those of other like-minded professionals, an organization was born, known initially as American Institute of Collaborative Professionals (AICP). In deference to the broad appeal of collaborative process, especially in Canada, the AICP was renamed International Academy of Collaborative Professionals (IACP).³ IACP holds an annual forum, offers a multitude of training opportunities and public and professional materials.

IACP started with approximately 50 people and now has more than 5,000 members throughout the United States and the world. Within the last two years, Tesler trained more than 150 new professionals in Brazil. The process is capturing professionals because it simply makes sense.

Being that the collaborative divorce process is a professional team approach, non-profit local collaborative practice groups comprised of attorneys, mental health professionals and financial professionals have been formed nationwide to educate and promote the process.

The New Jersey Family Collaborative Law Act

In 2004 the collaborative movement began in New Jersey. In reaction to the same experiences expressed by Webb and Tesler, New Jersey attorney Linda Piff, invited 10 other New Jersey attorneys along with some mental health and



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financial professionals to explore the tenets of the collaborative process.⁴ These individuals formed the first collaborative practice group in New Jersey, known as The Jersey Shore Collaborative Law Group (JSCLG). The concept of collaborative law and process was soundly embraced by these early members. They sought an ethics opinion (Opinion 699)⁵ regarding the association of attorneys and non-attorneys and gained direction on limited representation and screening for the collaborative process.

Since 2004, additional collaborative practice groups have formed in New Jer-

sey, including the New Jersey Council of Collaborative Practice Groups (NJCCPG) in 2009. The NJCCPG website, collaboratenj.org, states:

[t]he New Jersey Council of Collaborative Practice Groups (NJCCPG) supports excellence among the community of collaborative divorce professionals, and promotes and expands the use of quality Collaborative Practice throughout New Jersey. The Council serves as a unified voice and central resource for education, training, networking and development of standards of practice as well as expanding public and professional awareness. The New Jersey Council of Collaborative Practice Groups (NJCCPG) supports excellence among the community of collaborative divorce professionals and promotes and expands the use of quality Collaborative Practice throughout New Jersey. The Council serves as a unified voice and central resource for education, training, networking and development of standards of practice as well as expanding public and professional awareness.⁶

The NJCCPG was involved in the drafting of the NJ Family Collaborative Law Act⁷ (NJFCLA), lobbying for its passage and testifying at the Judiciary Committee.

The NJFCLA was signed into law by Governor Chris Christie on Sept. 10, 2014. The NJFCLA models the Uniform Collaborative Law Act which was approved by the Uniform Law Commission in February 2011. It offers uniformity, clarity and privilege to the participants of the collaborative process.

The NJFCLA requires that a participation agreement be signed by the parties prior to commencing the collaborative process. Several items must be included in the participation agreement.⁷ Such items include but are not limited to the parties' intent to use the collaborative process, the nature and scope of the family law dispute, the identification of

each party's attorney, the confidentiality and evidentiary privilege of communication, and the commencement and termination of the process.

As mentioned earlier, neutral professionals can also be part of the collaborative process. They sign the participation agreement as well. Neutral mental health professionals can serve as divorce coaches and child specialists. Neutral financial professionals can help the parties with a variety of financial issues, including but not limited to business evaluations, cash flow analysis, spending plans and scenarios for alimony and child support. The process provides an environment for the parties to decide together in a confidential, privileged and private manner how to resolve their divorce issues with the assistance of professionals outside of the court system. Throughout the process, each party has the legal representation of their own attorney while the neutral professionals assist both parties in a neutral fashion. Since the collaborative process is voluntary, either party can terminate it at any time. Upon the process being terminated, the participating attorneys and their associated firms cannot continue to represent their clients in litigation. However, with screening and a written pledge in the participation agreement, the parties and their attorneys are highly incentivized to stay in the collaborative process to reach agreement.

The NJFCLA states that the collaborative process is not permitted to continue when "either party is subject to, or obtains, a temporary or final restraining order against the other party in accordance with the 'Prevention of Domestic Violence Act of 1991,' P.L. 1991, c.261 (C:2C:25-17 et seq.)".⁹

There are nine collaborative practice groups in New Jersey. They are:

1. Association for the Advancement of Collaborative Practice
2. Collaborative Divorce Association of

North Jersey

3. Collaborative Divorce Professionals
4. Family Focused Divorce
5. Jersey Shore Collaborative Law Group
6. Mid-Jersey Collaborative Law Alliance
7. Monmouth County Collaborative Divorce and Mediation Professionals
8. New Jersey Collaborative Law Group
9. South Jersey Collaborative Divorce Professionals

Most of these local practice groups have websites that can be researched for more information.

Basic collaborative training is a 16-hour course available for attorneys, mental health professionals and financial professionals. The course is offered in New Jersey every year by different organizations, including NJICLE and the NJ Council of Collaborative Practice Groups. ☺

Endnotes

1. The Collaborative Way to Divorce, Stuart G. Web & Ronald D. Ousky, Penguin Group, May 2006, p.xiv-xvi
2. Understanding Collaborative Family Law, *Interdisciplinary Team Collaborative Practice: Transforming the Way Lawyers Understand and Deliver Conflict Resolution Services*, Pauline Tesler, ThomsonReuters/Asportore 2011, p.279
3. International Academy of Collaborative Professionals, History of IACP, collaborativepractice.com/resources
4. Developing a Collaborative Family Law Practice, *Creating a Collaborative Identity*, Linda Piff, Esq., ThomsonReuters/Asportore, p.24
5. Opinion 699, Advisory Committee on Professional Ethics (NJ)
6. <http://www.collaboratenj.com>
7. NJSJA 2A:23D-1 et seq.
8. *Id*
9. *Id*