

## What Collaborative Counsel Does for the Collaborative Client

by Laurie Israel, Esq.

Collaborative law is a form of alternative dispute resolution for divorcing couples who prefer not to endure litigation, but desire vigorous legal representation. One of the first issues of concern for every potential Collaborative Law client is whether the attorney will serve as a strong advocate for that client.

Often potential clients believe that everything in the collaborative process is done as a “team”. They believe that all parties (clients, Collaborative Counsel, and other collaborative professionals) work together at all times to achieve a solution to the divorce. There is a fear that this increased transparency in the collaborative process will cause their own Collaborative Counsel to fail to adequately protect the client’s own individual needs, issues, and concerns. They fear that their interests will be “sold out” in the process.

While understandable, these fears are generally unfounded. It is true that some of the collaborative process is purposefully transparent. However, much of the work in the collaborative case gets done in private between Collaborative Counsel and his or her own client. This “off- line” work is done between the group meetings, in person, on the phone, or by e-mail. During these times, Collaborative Counsel (much like ordinary counsel) works alone with the client to provide legal advice and case strategy.

Here are some of the matters that Collaborative Counsel addresses privately with the client as the client’s advocate while the case is ongoing:

**Education about the Law.** Collaborative Counsel will give the client a “crash course” in divorce law fairly early in the case. Most Collaborative Counsel think about the resolution of a particular case as being consistent with the framework of existing laws, cases, and judicial decisions. This model is termed practicing “in the shadow of the law”. There will be variations to this template, as agreed to by the clients after informed consent.

**Legal Advice.** Collaborative Counsel will apply the facts of the case to the relevant law and give the client a private, personal, confidential report based on counsel’s legal analysis.

**Work on Strategy.** Even in collaborative cases, attorneys and clients need to work on strategy. They work privately between the group collaborative meetings, using legal conclusions, as well as information gathered from, and progress made (or lack thereof), in each group meeting. In addition, when an impasse occurs in the process, Collaborative Counsel is trained in methods to help overcome these roadblocks.

**Analyze Finances.** This is a crucial aspect of virtually all divorce cases. Collaborative Counsel is a divorce attorney experienced in reviewing numbers and finances, who can assist the client greatly in thinking about settlement, and what the finances will look like after the divorce.

**Client Receives the Benefit of Counsel's Experience.** Lawyers, including Collaborative Counsel, give the divorcing client the benefit of their experience, both legal and practical. This includes the attorney's experience with how typical divorce issues have been dealt with, addressed, and resolved in other cases. Counsel's advice and input goes beyond purely technical and legal advice, and will include other issues such as the practical and the personal.

**Be a Sounding Board.** Collaborative Counsel provides a sympathetic but rational "ear" for some of the disruption and fears a client may be undergoing during the divorce. Divorce can be very upsetting, and your attorney will be very well-versed in your situation and will be able to provide emotional ballast for you during the process.

**Provide Objective Guidance.** Collaborative Counsel will provide neutral, unvarnished feedback to the client regarding the matters that arise during the collaborative process. These include interpersonal relationships between the spouse and children (or in-laws), finances and other issues. Having a trained professional give you objective advice during the process is very helpful.

**Analyze Agreements/Proposals.** As proposals are generated during the collaborative process, they need to be analyzed by the clients and the lawyers. Much of this work is done with Collaborative Counsel and the client "off-line", in private. Collaborative Counsel will provide an unembellished analysis and evaluation of all aspects of the proposals.

**Help with Decision-Making.** At many points in the collaborative process, the collaborative client will need to make decisions on various matters. Collaborative Counsel will assist by assessing the matter and providing feedback in private to the client to help the client come to a decision. This will involve evaluating the client's aims, wishes and desires (and those of the spouse) against the legal and practical considerations. All advice will be informed with the realities (economic and personal) faced by the divorcing client.

**Help with Problem-Solving.** One of the strengths of the collaborative process is that all parties are included in participating in solving the problems of the divorce. I call this "a marriage to the divorce". A great deal of brainstorming goes on, some of it usable, some not. Collaborative Counsel participates in this problem-solving both "on-line" in the joint meetings, and "off-line" in private with the client.

**Other Functions of Collaborative Counsel.** Other functions of Collaborative Counsel include helping the client gather all documents needed, working with financial information, presenting and obtaining financial disclosure, and preparing court-form financial statements. Collaborative Counsel also drafts, reviews, and revises the very important Separation Agreement, a requirement for the divorce. The written Agreement sets forth all the terms of the divorce, including the financial terms and those relating to the children. This Agreement will serve as the roadmap for future interactions between the divorcing spouses.

## **Conclusion**

As is apparent from the above list, Collaborative Counsel actually performs all of the functions for his or her client *in private* that conventional counsel offers in a non-

collaborative case. This should give a potential collaborative clients confidence that their needs and concerns will be protected and safeguarded by their own Collaborative Counsel in a collaborative divorce. In this way, Collaborative Counsel maintains the capability to be an advocate for his or her client.

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