

November/December 2009

Children of Divorce: Improving their future through collaboration

By Elizabeth Stabinski, LMFT

When two people are in love, it is hard to imagine it ending. Yet, divorce happens and it is inherently painful. For parents, it is even more complicated because they are worried about the effect on their children. The ideal divorce—the husband and wife separate amicably, co-parent without incident, and divide assets fairly—is the exception rather than the norm. Most couples are emotionally worn from years of trying to improve the relationship. For the children, the conflict from heightened familial discord, not the divorce itself has the potential to cause emotional distress.

Traditional divorce litigation causes more disruption. The emotional and financial costs of hearings, discovery, and depositions further erode the relationship. Custody disputes can leave children feeling torn and disloyal to one or both of their parents. Attorneys strategize ways to get the most for their client regardless of the emotional costs. Divorcing spouses often have significantly different opinions, leaving the important matters to judicial discretion. Where does that leave the children? How can they benefit from one parent triumphing over the other? Experience has taught us that the less conflict children are exposed to during a divorce the quicker they adapt to their family's new arrangement. Conflict is the nature of litigation.

Dissatisfaction with this flawed system led to the creation of Collaborative Family Law (CFL) where lawyers and their clients work together to end a marriage without destroying what is left of the fragile relationship.

In a CFL divorce, the husband and wife have their own attorney to advise them. However, CFL attorneys work together every step of the way. Collaboratively, they create a parenting and time-sharing plan and divide

assets. Gone is strategy and deception. Full disclosure is required. Clients develop goals to make the terms acceptable to each. Attorneys are focused on settling out of court because CFL contractually obligates them to withdraw from the case if it must be litigated. There is strong incentive to settle collaboratively.

One approach to Collaborative Family Law is the team model, utilizing two collaborative lawyers, a financial professional and a mental health professional, all trained in the collaborative process. The attorneys are advocates for their clients; the team is an advocate for the family. Everyone works together to create a divorce that will best suit the individual's needs, without losing the focus on the needs of the family. Group meetings are organized, goal-oriented, and client-centered.

Collaborative Family Law professionals understand that divorce signals the end of a marriage, but rarely the end of the couple's relationship. Even with grown children, there are graduations, holidays, events, and grandchildren to share. CFL professionals believe that the more control a couple has in creating the new family dynamic, the more likely the children will adjust to their new family structure while feeling loyal to both parents.

Divorce is divorce. A collaborative divorce isn't always easy or conflict-free. A collaborative divorce is akin to good parenting—it requires patience, maturity, and dedication. But the payoff is protecting children from the ugly fallout that often accompanies litigation. How couples divorce is as important as the decision to divorce itself.

Elizabeth Stabinski is a licensed marriage and family therapist and an affiliate of the Collaborative Family Lawyers of South Florida.