
THE HELP: THE ADDITION OF THIRD PARTY NEUTRALS FOR COLLABORATIVE DIVORCE PRACTICES

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Since the 1990s, the collaborative divorce practice has been reviewed as a healthier, easier, and more efficient way to conduct divorce settlement negotiations.¹ In fact, the increasing growth of the collaborative divorce practice has been considered to be “one of the most significant developments in . . . family legal services in the last 25 years.”² This practice was developed around the concept of becoming an “interest-based” negotiation practice.³ Indeed most title this practice as a “client-centered, nonadversarial negotiation process.”⁴ Unlike regular settlement negotiations, an interest-based negotiation practice does not start by identifying the standard criteria or precedents that surround such settlements.⁵ Instead, this practice focuses on the sole needs of the parties involved and decides what resources need to be made available for them to

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1. Luke Salva, *Collaborative Divorce: The Unexpectedly Underwhelming Advance of a Promising Solution in Marriage Dissolution*, 48 FAM. L.Q. 179, 179–80. (2014) (noting collaborative law began about 25 years ago and aided “parties [to] separate in an amicable and equitable manner, which leaves the door open for healthy future relationships”).

2. JULIE MACFARLANE, *THE EMERGING PHENOMENON OF COLLABORATIVE FAMILY LAW (CFL): A QUALITATIVE STUDY OF CFL CASES 1* (2005).

3. *See id.* at 33–34 (noting interest-based negotiations are “no less . . . normative judgment[s]” than rights-based negotiations).

4. Salva, *supra* note 1, at 179.

5. MACFARLANE, *supra* note 2, at 34.

adequately resolve the dispute.⁶ By focusing on the specific needs of the family members involved in the dispute, collaborative divorce provides an efficient, supportive, and accommodating settlement method that has become attractive to families seeking a divorce settlement.⁷

I began practicing law in June of 1996 and have practiced family law exclusively since 1999. For the first nine years of my professional career, collaborative law in Iowa was nonexistent. Mediation was the only option for those parties who wished to settle their family law matters outside of court. While mediation was a wonderful tool, I personally felt that other options were missing. A group of like-minded family law attorneys agreed and convinced Stuart Web, the grandfather of family law, to come to Des Moines to do a training.

As collaborative divorce prides itself on being an interest-based practice, many settlement disputes will include the use of a third party to help resolve a specific issue in the settlement negotiation.⁸ Although this is completely at the discretion of the client, the addition of a third party, or “third party neutral,” can be helpful to both parties of the dispute.⁹ In Iowa, collaborative divorce lawyers have regularly sought help from collaborative divorce coaches, child specialists, and financial specialists.¹⁰

As indicated above, I have been practicing in the collaborative arena since 2005. The use of third-party professionals is becoming a more common practice in collaborative divorce. This Article outlines the collaborative divorce practice and how the addition of a third-party neutral can positively impact these settlement negotiations. As a practice that prides itself on being interest-based, the addition of third-party neutrals is helpful to the negotiation process and all of the parties involved.

I. THE COLLABORATIVE DIVORCE PROCESS

Collaborative divorce negotiations are different than most divorce negotiation practices. To start, both of the parties come to an agreement about the scope of the divorce negotiations and to use good faith efforts in reaching a

6. See Salva, *supra* note 1, at 179.

7. See *How Does This Work?: Find Out More About the Process*, IOWA COLLABORATIVE DIVORCE, <http://iowacollaborativedivorce.com/how-it-works> (last visited Jan. 31, 2017) [hereinafter *How Does This Work?*].

8. See *id.*

9. See *id.*

10. *Id.*

mutually acceptable settlement for the parties.¹¹ From that point, each side takes a nonadversarial approach to the settlement negotiations and works together to reach a settlement outside the presence of the court.¹² The process allows “family friendly litigators” to create a safe and productive negotiation environment in which each party may benefit without resorting to the pains of litigating the issue before the court.¹³ In reaching a mutually favorable settlement for both sides, collaborative divorce works to place less emotional strain on the parties involved and truly seek their best interests. Most commonly, collaborative divorce is known as a “team approach” to divorce negotiations.¹⁴ In this team approach, the lawyers work with each other, their clients, and outside professionals to reach a settlement agreement that benefits all parties involved.¹⁵

Most importantly, the collaborative divorce process allows the lawyers to utilize this team atmosphere by hiring outside coaches and specialists that will benefit the parties in producing a settlement.¹⁶ The use of these outside coaches and specialists is an added benefit to the collaborative divorce negotiation, as it allows the parties to seek outside help in matters the lawyers in the negotiation may not be able to provide.¹⁷ This use is designed to cater specifically to the needs of each client and may help each party achieve their specific needs under the divorce settlement.¹⁸ As each divorce negotiation will come with its various needs, different types of third parties may be utilized in collaborative divorce negotiations.¹⁹

II. THIRD PARTIES

A. Collaborative Divorce Coach

As divorce is particularly stressful time in individuals’ lives, many times clients are paralyzed with emotions—fear, anger, sadness—to name a few. In

11. *What is Collaborative Divorce?*, INT’L ACAD. OF COLLABORATIVE PROF’LS, <https://www.collaborativepractice.com/public/about/about-collaborative-practice/what-is-collaborative-practice.aspx> (last visited Jan. 31, 2017).

12. See Susan Gamache, *Collaborative Practice: A New Opportunity to Address Children’s Best Interest in Divorce*, 65 LA. L. REV. 1455, 1462 (2005) [hereinafter Gamache, *Collaborative Practice*].

13. *Id.*

14. Stu Webb, *Collaborative Law: A Practitioner’s Perspective on Its History and Current Practice*, 21 J. AM. ACAD. MATRIMONIAL LAW. 155, 165–66 (2008).

15. See *id.* at 166.

16. *Id.* at 165–66; Gamache, *Collaborative Practice*, *supra* note 12, at 1460.

17. See Webb, *supra* note 14, at 165.

18. *Id.* at 166.

19. *Id.*

general, collaborative divorce coaches are mental-health professionals that have expertise in family dynamics, divorce-related dynamics, and family-related psychology.²⁰ Each party will work with his or her respective coach to identify and prioritize his or her concerns in the dispute.²¹ These coaches work as problem solvers and assist the lawyers in this negotiation by adequately communicating and mediating issues between the parties.²² Coaches are also able give their opinions on improvements within the family dynamic.²³ These improvements may include changes communication between family members, stress management, and setting goals for the family after the divorce negotiation.²⁴ Divorce coaches may also be valuable in the practical experience they bring to the collaborative divorce negotiation. Coaches are able to assist in conducting conversations between the parties, mediating between each side of negotiation, and give insight to the needs of the children in these negotiations.²⁵ Having a collaborative divorce coach present can assist the lawyers in reaching a settlement as the coach will be able to give their perspective and knowledge to each side and, hopefully, smooth out the negotiation transition.

In one particular case of mine, a divorce coach was extremely helpful. This coach, a mental-health professional, was also trained in the collaborative process. One of the parties was experiencing some significant anxiety and sadness over the breakup of the marriage. The divorce coach was hired to assist the individual with not just coming to terms with the end of the marriage, but also with the details that parties to a divorce process must deal with: budgeting, locating another residence, even dividing the cell phone bill. To this individual, these tasks were overwhelming, but with the assistance of a divorce coach, the individual was able to complete them, which also fostered confidence for this individual to allow the individual to move forward in the healing process.

B. *Financial Specialist*

Sometimes it may be helpful to bring in outside help when the family is facing a difficult financial situation. For the process of collaborative divorce, the use of a financial specialist can sort out the financial differences each of the parties have. While collaborative divorce lawyers and coaches are respective to each side of the negotiation, financial specialists are truly neutral to the

20. Paulina H. Tesler, *Collaborative Family Law, the New Lawyer, and Deep Resolution of Divorce-Related Conflicts*, 2008 J. DISP. RESOL. 83, 92 n.23 (2008).

21. *Id.*

22. *Id.*

23. *See id.*

24. *Id.*

25. *Id.*

negotiation.²⁶ The financial specialist will review both of the parties' finances with each of the parties so that they may have a better understanding of their financial situation.²⁷ Here, the specialist assesses each of the parties' assets, funds, debts, and financial obligations to help the family find a solution that benefits both of the parties.²⁸ Just as the collaborative divorce coach may benefit the negotiation by lending their practical expertise, a financial specialist may assist in providing a range of scenarios, plans, and future analysis for the financial needs of the family.²⁹ Financial specialists may not be necessary in all collaborative divorce negotiations. However, they can serve as a valuable asset to the collaborative process when the family may be facing a financial dispute.

In one particular case, the parties were fortunate to have significant assets, but both were moving into the retirement phase of life and therefore, unsure as to the "right way" to divide their assets. The financial neutral that the parties hired met with them outside of the collaborative meeting to gain information. From there, the financial neutral drafted several different scenarios to divide these assets. The scenarios also included what income would be earned for each party from the respective proposed divisions. The parties, counsel, and the financial neutral met in a session where the financial neutral was able to display these scenarios to counsel and the parties for discussion. Since the display was done electronically, the parties and counsel were able to ask questions, and the financial neutral was able to move assets and incomes between the parties so everyone could see the outcomes. Not only did the parties feel as if all of their questions were answered, it was an efficient use of time and funds, as the parties were "hearing" the same message, not lining up with their respective experts.

I have also used financial neutrals to appraise business interests and provide cash flow scenarios for spousal support and child support purposes. In one particular case, one of the parties had been out of the work force throughout the length of the marriage, while the other party moved up significantly in the party's career—earning a substantial income, which included many employment benefits. The financial neutral was helpful to the parties in valuing the true income, not just that reflected on the W-2, but where the financial neutral truly "earned" his money was during settlement negotiations, where both parties relied on the financial neutral's advice and guidance.

26. Glen L. Rabenn et al., *Collaborative Divorce—Follow Up*, 55 ORANGE CTY. LAWYER 32, 35 (April 2013), <http://www.ocbar.org/AllNews/NewsView/tabid/66/ArticleId/1039/April-2013-Collaborative-Divorce-A-Follow-Up.aspx>.

27. *Id.*

28. *Id.*

29. *Id.*

I have also had cases where counsel has directed the parties to meet with financial neutrals for budgeting purposes. As in many cases, the parties have no real understanding of their current expenses, let alone their estimated future expenses. Meeting one-on-one with a financial neutral to assist with this process is extremely helpful.³⁰

C. Child Specialist

The role of a child specialist will always be important to the collaborative divorce process when the family has one or more children.³¹ The child specialist serves as a neutral party that meets directly with the child to ask them about their concerns and feelings about the divorce between their parents.³² The specialist meets with the child directly and provides feedback to the parents in regards to the child's needs during the divorce negotiation.³³ This specialist provides a safe place for the child to express their feelings, emotions, wants, and needs without being torn between each parent.³⁴ The specialist will be available during the divorce negotiation meetings and provide valuable feedback to the parents regarding their child's needs.³⁵ The addition of a child specialist can help both sides of the negotiation focus on the needs of the child and allow the child to voice their concerns to someone other than the parents.³⁶ The child specialist may become valuable to both parties of the negotiation by asserting the best interests of the child in the divorce negotiations.

D. Team Leader

For some collaborative divorce settlements, the use of a team leader may be necessary for the organization of the parties involved. A team leader does not have direct contact with each of the parties.³⁷ Instead, the team leader is charged with organizing the parties, facilitating schedules for the settlement negotiations, setting dates for meetings between the parties, and keeping the parties on

30. See Rabenn, *supra* note 26 (noting the financial third-party neutral gathers information and presents findings to both individuals, often providing a solution which meets the parties' needs).

31. Gamache, *Collaborative Practice*, *supra* note 12, at 1473–74.

32. *Id.*

33. Webb, *supra* note 14, at 165.

34. See Daniel B. Pickar & Jeffrey J. Kahn, *Settlement-Focused Parenting Plan Consultations: An Evaluative Mediation Alternative to Child Custody Evaluations*, 49 FAM. CT. REV. 59, 62–63 (2011).

35. *Id.* at 63.

36. *Id.*

37. Susan J. Gamache, *Family Peacemaking with an Interdisciplinary Team: A Therapist's Perspective*, 53 FAM. CT. REV. 378, 382 (2015).

schedule with the negotiation.³⁸ The use of a team leader could be beneficial for parties to have a third party to keep them on track and organized throughout the negotiation process.

III. IACP STANDARDS FOR THIRD PARTY NEUTRALS

As collaborative divorce is becoming increasingly popular, lawyers are seeking to implement collaborative divorce in their family law practices.³⁹ The collaborative divorce negotiation process is governed by the International Academy of Collaborative Professionals (IACP).⁴⁰ The IACP provides their own set of rules, standards, ethical guidelines, and training to ensure that the clients and professionals may engage in the highest quality and principled collaborative process.⁴¹

The IACP has a certain set of standards for the use of third-party neutrals and coaches.⁴² IACP Standards and Ethics section 10.1 defines the scope and limits to the use of third-party neutrals.⁴³ Under section 10.1, neutral parties to the lawsuit cannot function outside of their role as a neutral party.⁴⁴ Thus, as a neutral party, the coach or specialist may not become involved in the case in a way which would make them impartial to the negotiation. The neutral party must also stay within their desired role in the negotiation process.⁴⁵ The benefit of having a neutral party is that they may help both sides in negotiating the divorce.⁴⁶ Due to that benefit, the specialist or coach must work for either or both of the parties, but not outside of their designated role or designated party.⁴⁷

The IACP standards also govern the amount of involvement that each third party may have with the clients during and after the divorce negotiation. IACP standards section 11 governs the use of child specialists and coaches in the collaborative divorce context.⁴⁸ Section 11.1 states that collaborative divorce

38. *Id.*

39. Webb, *supra* note 14, at 157.

40. International Academy of Collaborative Professionals (IACP), *IACP Standards and Ethics*, <https://www.collaborativepractice.com/professional/resources/iacp-standards-and-ethics.aspx> (last visited Jan. 31, 2017).

41. *Id.* The IACP Standards and Ethics can be found on the IACP website. *Id.* (located on the right side of the screen).

42. *See* IACP Standards and Ethics (2015).

43. IACP STANDARDS r 10.1 (2015).

44. *Id.* r. 10.1(A).

45. *Id.* r. 10.1(C).

46. *Id.* r. 10.1.

47. *Id.*

48. *Id.* r. 11.

coaches can remain available to the children and family after the divorce has reached a settlement.⁴⁹ However, section 10.1(A) states that a financial specialist cannot maintain a further relationship with the client after the divorce has been settled.⁵⁰ As each specialist and coach has their own set of standards and ethics, it is important to understand the various IACP provisions that govern each third party.⁵¹

In practice, first and foremost, I do think it is essential that the third parties are trained in the collaborative process, just as it is imperative that parties to a collaborative divorce be represented by attorneys trained in the collaborative process. Practicing in the collaborative way is a different mindset. Practicing collaboratively also means that the third parties are able to recognize, understand, and negotiate the emotions that come up during the meetings. Secondly, I also find it imperative that the duties and scope of the work of the third party professional be outlined—in writing. Just as attorney fee contracts and retainer agreements are critical to the practice of family law, so is a documented agreement regarding the use of third parties in a collaborative case.⁵²

IV. CONCLUSION

What makes the collaborative process appealing for most clients is the ability to work as a team to solve the problems that the divorce entails.⁵³ From this team based process, collaborative divorce allows the parties to use the resources of neutral coaches and specialists to fully understand and resolve the problems they are facing.⁵⁴ The addition of these third-party neutrals benefits both sides of the negotiation and allows the lawyers to truly find the best interests for the family members.⁵⁵ Unlike other divorce settlement negotiations, collaborative divorce creates an environment in which all of the parties involved may work together to settle their differences.⁵⁶ The addition of these third-party

49. *Id.* r. 11.1.

50. *Id.* r. 10.1(A).

51. *See e.g., id.* r. 10, 11 (defining roles of neutral parties and child specialists).

52. *See* IACP STANDARDS r. 7 (2015) (establishing requirements of a collaboration agreement).

53. *See* Webb, *supra* note 14, at 157 (listing an advantage of collaborative divorce as being “motivated to learn what works to achieve settlement”).

54. *See id.* at 158 (discussing the presence of child, financial, and mental health professionals as an advantage to reaching settlement).

55. *See id.* at 157–58 (discussing the advantages of collaborative proceedings, especially the focus of lawyers on “win-win settlement skills” and the assistance of specialists).

56. *See* Pauline H. Tesler, *Collaborative Family Law*, 4 PEPP. DISP. RESOL. L. J. 317, 318 (2004).

neutrals makes that process easier and more beneficial for the clients and lawyers involved in the process.⁵⁷

Based upon my experience, the use of third-party neutrals has only strengthened the collaborative process. First, it has spread the word about collaborative law as an option. I have always believed that use of collaborative law will increase when the consumer—the client—demands it. These third party neutrals have helped spread the word. Second, the foundation of collaborative law is a team approach.⁵⁸ I realized long ago in my practice that I could not be everything to every client. Having third-party neutrals involved in collaborative family law matters allows me to be the lawyer—not the therapist, not the financial planner, not the child specialist. Finally, having third-party neutrals to rely on is the “extra” something I can provide my clients. Long ago, when I was a young lawyer, I was told “it is not just what we do for clients, but how we do it” that separates good lawyers from great lawyers. All together, the addition of third-party neutrals in collaborative divorce negotiations helps clients, which is what we all strive for.

57. See IACP STANDARDS r. 2 cmt.

58. Webb, *supra* note 14.