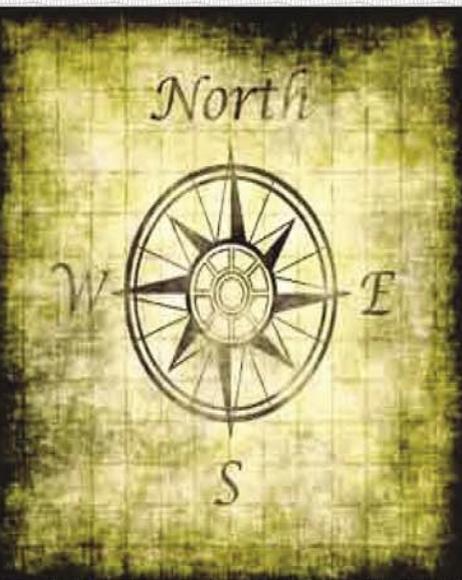


Collaborative Divorce:

# Coming Apart, Together



**COLLABORATIVE DIVORCE ASSOCIATION  
OF NORTH JERSEY**

**A New Path to Respectful Resolution**

**[CollaborativeDivorceAssociationofNorthJersey.com](http://CollaborativeDivorceAssociationofNorthJersey.com)**

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# Forward

**T**he Collaborative Divorce Association of North Jersey is comprised of lawyers, mental health and financial practitioners who are committed to the resolution of divorce cases before instituting divorce proceedings. We are experienced practitioners who have realized that contested divorce litigation is unnecessarily contentious and, too often, results in the destruction of family relationships and far too much money. Statistics confirm that 99% of all contested divorce cases settle before trial. So, the obvious question becomes, why litigate if you are ultimately going to settle anyway?

We believe that almost all divorces can be resolved in a respectful, civil process in which the goal is to settle before engaging in costly litigation. We strive to be creative problem solvers to help our clients create reasonable solutions that work for the family and allow divorcing couples to move forward in their lives in a more dignified and less contentious manner.

The following chapters explain the process of collaborative divorce and why it offers a better alternative to contested litigation. Settlement is our first goal, not the last resort. If you are considering divorce, we suggest that you arrange to meet with one of the attorneys in our group who can answer your questions about the process and the advantages it provides.

*Steven R. Rubenstein, Esq.*



# Before You Start The Divorce Process

## *You can't make another person be something they aren't.*

In a perfect world, you probably would not be getting divorced. So if you are going to go through mediation, the collaborative process or litigation, your soon-to-be-ex-spouse is not going to have a major personality change. If he/she was selfish during the marriage, he/she will be selfish during the divorce. If he/she was stingy, he/she will continue to be that way.

## *Keep an open mind.*

If you approach the divorce process with a mindset like: "I only will accept X, Y and Z and nothing else." then not only won't you do well in the mediation or collaborative process, you will spend a significant amount of unnecessary funds in the litigation process, as well. Yes, you should have a basic plan. Yes, you should have an understanding of your financial picture and where you want to be at the end of the divorce. But you also need to be flexible and able to compromise. You also need to hear what your counsel is saying. If you think you'll be the first to get something no one else gets – what we lawyers refer to as "making new law" – then great. But, remember, you may not be successful and whether you are or are not, it will cost you thousands of dollars to get there. ***For everyone else, consider these tips:***

- ***Get advice from a specialist in your state!*** Family law differs from state to state. Even neighboring states such as New Jersey and New York have significant differences.

- ***Be transparent.*** Be honest and open when providing information to your spouse and the professional working on your case. Trying to hide or mislead the other side about pertinent information, such as the existence of bank accounts, can deal a fatal blow to the entire process. Even if you don't think it's a big deal, when the other side finds out that you lied about something relevant, it may not be able for him or her to trust your information any longer. The voluntary process of mediation or collaborative law could then fall apart.

- ***Act in good faith.*** If you reach an interim agreement during the mediation or collaborative process, abide by it. If you agree in your mediation session not to disparage the other party to the children and then you go home and disparage him/her, you're being counterproductive to the process. If you agree not to spend money from a certain account and then withdraw most of the money, it will just cause the other party to get angry and distrust you. Eventually, you will end up in dragged out litigation. The more you uphold the interim agreements, the more likely your spouse will have reason to believe you will abide by the final agreement.

- ***Take responsibility for your actions and your future.*** Don't blame everything on everyone else and don't rely on everyone else. Bad outcomes are usually a two-way street. This applies to your marriage and to your final settlement. Don't rely on the professionals to make all of the decisions. Be actively involved and know your finances, figure out what is best for you, and work with the professionals. You are your own best friend and your worst enemy. The divorce process is a stressful time for everyone involved so you need to find time to relax and get over the trauma of the separation. At the same time, you need to keep your emotions from causing you to agree to terms that you can't live with. You shouldn't agree to a settlement you're not satisfied with, out of guilt about how the marriage failed or out of the hope that there will eventually be a reconciliation.

• *Justice?* There is a misconception that “having your day in court” will not only give you the chance to plead your case to a judge, but will result in justice. For example, believing the Judge will punish your spouse because he/she had an affair – not likely to happen. There are rules of evidence and, often, the things you think should be heard can’t be and, many times, the things you think are important to the outcome, are not. The reality is, that leaving matters up to the court is often a disappointing experience for both parties.

*Just Because You Don’t Like It, Doesn’t Mean It’s Not Fair.* You won’t get everything you want. A divorce involves compromises made by both sides. If both parties are satisfied, but not overjoyed with the results of the process, then it likely resulted in fairness. Focus on the issues most important to you and be prepared to compromise, even if you’d rather not. If neither side agrees to compromise on any matters of significance, you’ll end up in litigation and your divorce will become a much more expensive, painful and prolonged exercise.

These are some of the things to consider when you weigh the merits of collaborative law, mediation and litigation. Resources like [www.collaborativepractice.com](http://www.collaborativepractice.com) can put you in touch with collaborative professionals in your state and [www.apfmnet.org](http://www.apfmnet.org) can put you in touch with mediators in your state.

***Lorraine Breitman, Esq., In Memoriam***

# The Birth and Development of Collaborative Law

## *Come Now and Let Us Reason Together*

Stu Webb, a Minnesota divorce lawyer, is credited with giving birth to the practice of Collaborative Law. It was the late 1980's and Stu had been practicing divorce law for nearly 20 years. He saw the damage that the adversarial process caused to his clients, their families, and to himself.

*In his book, **The Collaborative Way to Divorce** (A Plume book 2007) he says:*

*"In late 1989, I was involved in one of the worst litigation cases of my career, a real showcase of everything that's wrong with litigation (lying, nasty tricks, hiding assets, endless court hearings, and so on). That case, in and of itself, could have been enough to get me to retire. But in the midst of one of those awful hearings, it occurred to me that there should be settlement-only specialists available for divorcing couples, specialists who work with the couple outside of the court system, and who would turn the case over to trial lawyers if and only if the settlement process failed."*

Stu gave up litigation and began practicing collaboratively. Soon, other attorneys in his area were doing so as well.

A few years later, the Minnesota lawyers introduced Collaborative Practice to a national audience at a conference in Washington, D.C. Inspired, a group of California attorneys, including Pauline Tesler, brought the concept home. Webb, Tesler and others began training programs for interested attorneys around the United States and Canada.

Meanwhile, a group of family psychologists and a group of financial planners were also working to help divorcing couples in a collaborative manner.

The idea of an inter-disciplinary, team approach to Collaborative Divorce using attorneys, mental health professionals and financial experts spread throughout the country. The American Institute of Collaborative Professionals was formed to bring together the professionals and foster the practice of Collaborative Law.

As the collaborative movement became international, the organization's name was changed to the International Academy of Collaborative Professionals (IACP) which now boasts over 5,000 members and more than 325 practice groups in 24 countries. The IACP provides collaborative practice training. It has formulated ethical guidelines for collaborative practitioners and was at the forefront of the drafting of the Uniform Collaborative Law Act. The American Bar Association, the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers all have collaborative law committees. The practice groups, including the Collaborative Divorce Association of North Jersey require and provide initial and continuing training and education for their members.

In 2009 the Uniform Collaborative Law Act became available to the individual states to enact as law. It was adopted in New Jersey in 2014 as the New Jersey Family Collaborative Law Act.

The New Jersey State Legislature explained:

The family collaborative process is different from other dispute resolution methods because the couple intends to resolve their differences in a voluntary non-adversarial manner, without court intervention.

It is a process involving not only the couple and their attorneys, but also other professionals such as financial planners, accountants and mental health professionals.

If either party goes to Court before the matter is settled, the process ends and the couple must hire new attorneys to litigate.

Because the process requires full disclosure of all financial and other relevant information, the parties are protected by a rule that prevents disclosure to a Court or non-collaborative professionals of any privileged collaborative communication.

*Stu Webb's quest for a better way to divorce has become a reality.*

*Marcia K. Werner, Esq.*

# Taking Control Over Your Divorce

*“You may not control all the events that happen to you, but you can decide not to be reduced by them.”  
.....Maya Angelou*

Your divorce is just that: your divorce. It doesn't define you and you should not be defined by it. You may have chosen it or it may have been your spouse's choice. Regardless of how you have come to be in the divorce process, or what stage you are in, you can choose to take control. You should consider a process to get through this chapter of your life that does not destroy your relationships, your family, your confidence or you.

The familiar, traditional litigation process, managed by the impersonal and possibly overwhelming judicial system doesn't necessarily work for everyone. No matter how excellent the judges are in your particular jurisdiction, or how fabulous your attorney is, once you file or are served a complaint for divorce, you are bound by the metaphorical handcuffs of the process. You are told what documents you need to file with the court, when to appear, how your case will be managed and are often told, *Athe court wants {fill in appropriate demand here}.*” If you do not comply in a reasonable manner, then you run the risk of being in violation of an order or contempt of court.

Divorce litigation attempts to create a strict and orderly process out of a naturally chaotic, life-altering event. There is a voluminous book of court rules, found on every attorney's desk, with hundreds of pages and precise intricacies that set deadlines, page limits and procedures. Every case that enters the system is unique, but in litigation, the same rules apply to all.

Depending on where you live, your judge could see multiple cases a day. Even if there are just 10 cases per day before a judge and there are 5 judges in the family court. That's 50 cases a day, 250 cases a week, maybe 700 cases a month and possibly 5,000 a year (accounting for dropped cases, settled cases, cases that come for multiple days). How much can a judge determining the outcome of your case -- your entire life -- actually know about you? How much could they know about your family, your children, your needs and desires? Of course, you have every fair opportunity to tell the judge, in the form of a written submission called a legal brief. Again, multiply that out with the number of cases (and double it, because each side had their own theory of the case) and the amount of pages a judge has to read is astronomical. The harsh reality is that in the judicial process, you are a name on the docket. You may have 15-30 minutes with the judge at a court appearance, so is virtually impossible for him or her to give you the attention your case demands and deserves. Further adding to the stress and expense of litigation is that may take a year or more to finally have your case heard by a judge and your trial “day in court.”

Judges are people, they want to perform well, even excel, at their job. Most have good intentions and want to give you and your family the fairest decision that they possibly can. However, mentally, physically and emotionally, due to the volume of divorce in this country, it is not realistic to expect a judge to get it right, every time. It is the function of the court to dispense a fair and neutral ruling for the outcome of your case. But, everyone has his or her own notion of what is fair – and, if you don't like the decision of a family judge at the trial level, you always have the sacrosanct right to an appeal.

Appeals are time consuming and costly. Moreover, very few divorce cases are overturned on appeal. There is a general notion in the law that a trial court that actually sees the evidence and hears the testimony is a better judge of credibility, character and overall general impressions of the parties. Unless there is a glaring error in law, there will not be a reversal. The facts are as the trial court judge determines because he or she is the ultimate decider of fact and has the utmost discretion on which party in the “he said/she said” battle is more credible. Thus, the very nature of divorce litigation should be a breeding ground for settlement.

Collaborative law is a different way to transition families in divorce. It is a way for you to take control over your life and future. In a collaborative divorce, the process is controlled by the parties with the guidance of a team of professionals hand-picked to help navigate the divorce. There is no “cookie-cutter” mechanism: you and your spouse are guided to resolve conflict in a non-adversarial manner and encouraged to generate creative solutions through out of the box thinking.

In a collaborative divorce, your attorney is your advocate, not a litigator. In fact, at the beginning of each collaborative case, the parties and attorneys sign a participation agreement, specifically agreeing that in the event the collaborative process breaks down and litigation commences, the attorneys will withdraw from the case. This is a strong motivator, for both the attorneys and the parties to work cooperatively towards successful completion. Once the participation agreement is executed, the parties jointly assemble their team, which may include a divorce coach/facilitator, child specialist or financial expert to assist in efficiently resolving the case.

Collaborative divorce replaces traditional litigation because it removes the impersonal and overwhelming judicial system, but it does not take the “law” out of the case. You are entitled to know all of your legal rights and obligations.

In a series of team meetings, outside “homework” for the parties, individual consults with neutral professionals, the collaborative process is tailored to fit your families’ needs. Outside of the team and with a background of the applicable law, you and your attorney will identify individual issues and develop a strategy focusing on your interests and needs. After information gathering is completed, the parties and their team will create alternative solutions to resolve divorce issues.

In a collaborative process, unlike in traditional litigation, you do not focus on positions, but the underlying motivations. The “why” you have a particular view is the cornerstone to resolution. When you reach a level of deeper understanding of yourself and your spouse, it is possible to gain perspective. Ultimately and within the framework of the process, you and your spouse cooperatively become the judge of what outcome is best for your family. Collaborative divorce allows you and your spouse a safe space to understand, on a deeper level, your unique conflicts and work together to resolve your differences. This process further sets the ground work for handling post-divorce conflicts in a healthy, productive manner.

*I invite you to make the choice to take control over your divorce. I invite you to Collaborative Divorce.*

***Jennifer Bretz, Esq.***

# How Collaborative Divorce Works

This is the story of one my best divorces, one that started out miserable, and full of (justified) anger and betrayal, but evolved to a respectful and fair conclusion.

Allison was furious. After 15 years of marriage, Dan was having an affair. More than furious: betrayed, embarrassed, insulted...there were not enough adjectives in her vocabulary to describe how she felt. “I mean, we didn’t have the best marriage—who has a perfect marriage?” But with Diane—of all people...her best friend? Dan said that he just couldn’t take it anymore, and that he was sorry, but that he should have disclosed that he was unhappy and unfulfilled but “didn’t want to hurt” her. Allison felt betrayed all over again.

Allison’s parents were angry, too—then sad, then angry again; they thought of Dan as the son they never had—“how could he have done such a thing?” How could Diane? Allison and Diane were friends since middle school. Allison’s sister reacted harshly: “rip his eyes out...hire the biggest SOB lawyer you can find and gouge!!” That is exactly what Allison was determined to do.

She visited that attorney. She promised to do (metaphorically, that is, in the legal system) to Dan all they things she (and her sister) wanted to be done to exact a price for his behavior—she wanted the marital home, alimony, child support, his pension, a BIG piece of his business. The attorney said she would need a \$25,000 retainer to get started, and said that she’d “go to war” for her, but that it might well go over \$150,000 by the time they finished and—one more thing: were her parents able to sign on as guarantors of her fee?

Allison was emboldened, but shaken. Dan moved out the day she found out about his affair... now there were two sets of bills to pay. She and the kids were not alone: she had her parents, her sister, her friends, and her therapist. In her therapy sessions she railed against Dan and cried a good deal too. She saw the toll this was taking on her. She was still furious at Dan, but he was a good father to them and they loved him. He saw the kids on weekends, from Saturday afternoons to Sunday evenings. She couldn’t deny that they were truly happy to run out to the car to go off with him. They didn’t register the same hurt she did. How could they? He is the only father they have.

In therapy, Allison started to second guess her initial plan of going to war. As her initial anger and hurt subsided, she began to think about the emotional landscape of a contested divorce and the effect it would have on her and the kids, not to mention the financial consequences. Did she really need that? Over the years she had talked about other’s people’s divorces and vowed she’d never do that to her kids.

Allison researched alternate ways to divorce. She didn’t think that she could discuss finances with Dan at the dining room table, on her own—she was too angry and hurt; he knew too much about their finances, his income and benefits; and she still didn’t entirely trust him. She would need help. She heard about mediation, but she’d be on her own with him there, too—and a neutral mediator, true, but still—it would be just Dan and Allison in a room with the mediator. There would be no lifelines, and she couldn’t call a friend.

Allison's therapist mentioned something she had heard about at a conference—collaborative divorce. Each client has an attorney—but they contract not to go to court and to work out all the issues at the conference table. There would be a mental health professional moderating the discussions, taking notes and reporting after each session what documents each spouse had to produce, what they agreed to, what they would discuss week by week: custody and shared parenting time, alimony and child support, college, the marital home, Dan's pension. There would be a Child Specialist available to help her or the kids if the going got rough, as well as a joint accountant to value Dan's business. The work of solving the family financial puzzle would be performed with a team and not against adversaries.

Allison went to see a collaborative divorce attorney. His approach was completely different from the first attorney's. She felt that he understood her anger and betrayal as she told him her story, and let her vent without joining (or exacerbating) her fantasies of retribution. He had an "it shall pass" attitude. Yes, it was bad now, and it will be bad, but it will also be better. She felt seen and heard by this collaborative lawyer—as opposed to the litigator whom she would use as a tool to get even with Dan. He mentioned her as yet untapped resilience. Her therapist talked about this, too, but it was too early for Allison to recognize it.

She retained the collaborative lawyer, whose retainer and expectations of the cost of the collaborative process were much less than the litigator's. Allison thought this might be a lot less divisive and more economical. Her lawyer sent Dan a letter suggesting that he, too, see a similarly trained and committed attorney. Dan was guilty about what he had done, and was seeing, weekend by weekend, how their separation was playing out with the kids. He missed being home with them. He missed his house. The dog. He even missed Allison, but knew that he would not be able to continue with her. He thought that collaborative may be a better way to get all of this unpleasantness out of the way. He, too, hired a collaborative attorney.

They had a series of meetings—four parties at first: Allison and her lawyer, Dan and his. Together, they discussed and signed a Participation Agreement, where they committed to resolve all of their issues out of court, in discussions with each other and the team of professionals. In this fashion, all of the negotiations could be contained by the team. In the unlikely event that one of them wanted to abandon the collaborative process, they could, but they would have to retain new counsel—their current attorneys would be unavailable to represent them in court. This meant that with each meeting, as they went deeper into resolving their issues, there was increasing motivation to continue and complete the mission. This collaborative approach put a lid on either one of them going ballistic—which meant that Allison could make demands upon Dan without fear that he'd "go nuclear" (and, conversely, that Allison would not be gouging out Dan's eyes). Instead of everything spilling out in court, Allison and Dan embarked on a more contained, controlled and private way to divorce.

At the first meeting, they decided to retain a mental health professional (a psychologist or social worker trained in collaborative divorce practice), to serve as a Facilitator who would guide the negotiations and keep everyone on track. Together, they decided on an agenda for each meeting. The Facilitator monitored the exchange of documents proving the value of the marital assets and debts.

Dan and Allison visited a child specialist, a collaboratively-trained therapist, who assisted them with a Custody and Shared Parenting Time Agreement. The Child Specialist interviewed Dan and Allison together and separately and saw the kids as well. She got to know each member of the family, and their hobbies, their school-work, and how they spent their family time. She then sat with Allison and Dan to work out details of their future living arrangements. Allison and Dan each felt seen, heard and recognized by the therapist, and together they crafted a shared parenting time agreement that they felt met the needs of the children and gave each parent good enough time with the kids.

This was a major accomplishment for this couple. Dan's actions had torn the fabric of the marriage and family. That could have been continued for years in court. A contested divorce would have maintained and amplified everyone's rage, self-justification and suffering. Instead, the kids were going back and forth between Allison and Dan and were happy. And each parent was happy to see their kids happy. Maybe things wouldn't be as bad as Allison originally thought.

The next meeting focused on Allison's staying in the marital home with the kids and how they would pay for it. After the third meeting, they called in a collaboratively-trained accountant, who consulted for both of them, reviewed their incomes and expenses and helped craft a support package that respected their incomes and the budgets in both households. The accountant also reviewed the tax returns and books and records of Dan's consulting business, and came up with a valuation to support the discussions about what Allison's share would be and how she and Dan could use a combination of cash and assets to buy out Allison's marital share.

At another meeting, Dan announced that he found a home a block away and wanted to purchase it, so that the kids could go back and forth between their homes, attend the same schools and have the same friends. Dan could not afford this and still make the payments he needed to Allison...at least not until Diane sold her home. Yes, he was still with Diane, who was herself divorced and living in her marital home. They were planning to marry. What about Allison and Diane? Best friends, to the surprise of many, stayed best friends, although that took more than a few long talks, over several bottles of wine.

In this most unusual and enlightened divorce, Allison and Dan (and their families and friends) were able to mourn the loss of what was and focus instead on living in the present and moving on with their lives. In fact, Allison's parents (who were retired, and well to do) agreed to put up the \$300,000 Dan and Diane needed to close on the house, which they would repay, with interest, as they would a bank, as soon as Diane's home closed.

With another meeting (their fifth), they completed their negotiations. Their attorneys prepared a formal Marital Settlement Agreement based upon the understandings reached in their collaborative sessions and recorded by their Facilitator. After a month of exchanging drafts and fine tuning the terms, they appeared in Court for an uncontested divorce hearing. Even the Judge congratulated them on "how well you have retained control over your family, your finances, your destiny."

Why would anyone do any of this? Because each of them saw the benefits of moving on and not indulging their wounded pride or outrage. Allison was furious—she had a right to be. Dan could have been as well—defending his pride and self-esteem with never before spoken allegations of how Allison disappointed him in their marriage. All of those emotions were very real for each of them, but they did not want to visit “all this adult unpleasantness” upon the children.

Collaborative divorce helped Dan and Allison grow beyond the rupture of Dan’s affair and let each of them repair their losses and go on with life. Allison, too, found someone a year later, although she is not ready to get married again. She is content with being single and felt herself to be “born again”, as she told her therapist.

And the kids? The kids are fine, doing well in school, playing sports and going back and forth between two homes where they know they are loved for themselves, without the stain or scars of their parents’ emotional lives.

Divorce isn’t pretty—no one expects to have to go through one as they walk to the altar. But if it has to happen, and problems between spouses cannot be resolved, there is a way to go through the transition without having to leave families scarred for life.

This story is as much about the resilience, patience and understanding of Allison and Dan (and their families) as it is about the collaborative divorce process. The collaborative model enabled Allison and Dan to be the architects of their future, by keeping their children—and themselves—in mind at all times, resisting the temptation to call themselves “litigants” and empower lawyers and a Judge to decide what their lives would look like.

This is the story of one of the best divorces I have ever handled. And I’m happy to say that it is not the only one—there were several others.

The important thing to note is that it can happen...for you as well.

*Paul D. Kreisinger, Esq., LCSW*

# The Collaborative Facilitator

Divorce can be an emotional roller coaster. Collaborative divorce is an interdisciplinary approach to helping families transition from turmoil to civil compromise. The collaborative divorce facilitator is an integral member of the divorce team helping all involved to work together toward respectful expression and resolution of their differing perspectives and needs.

When making decisions for their post divorce family, couples must deal with practical and emotional issues. When we look beneath the surface of conflict, we often find emotional obstacles that interfere with an objective problem solving approach to resolving the couple's differences.

It's not if marital dynamics enter into negotiations but when and how. The facilitator is there to identify those dynamics and help the team and the couple manage them. S/he is present to identify the roadblocks and work to keep the process moving with the couple focused on the end results.

The facilitator grounds and processes the couple's emotional experience. There are many hurdles and new processes to learn. Often each partner/spouse is in a different phase of a divorce. One may have initiated the divorce and the other person may still be experiencing denial, shock and awe. This situation feels unbalanced and is hard for couples to handle. It is challenging to uncouple and still team up as mom and dad. In a collaborative divorce, all professionals work to help parents establish a well transitioned family.

Collaborative divorce facilitating is NOT therapy. It is not about examining why a couple came together nor why the relationship/marriage fell apart. The facilitator serves as a laser, focused on helping couples achieve a durable resolution and arrive at a family centered result. If therapy is indicated, a coach can make a referral for therapeutic counseling.

The collaborative method is an holistic approach and coordinates its teams to provide the best results for a family during a challenging transition time. The facilitator is a vital team member, keeping the emotional temperature in the room calm, avoiding storms that could undermine the results. The prediction is a sunnier forecast for the future of the family.

***Shireen B. Meistrich, LCSW***

# The Collaborative Child Specialist

*“When you’re a little kid, you don’t know what’s going on”*

*“When they fight, I go to my room and cover my ears. Why do they have to do that? They tell me and my sister not to fight”.*

*“I think it’s my fault that they are yelling”.*

*“I just want things to be like they used to be. My little brother comes into my room. He gets so scared. Me too”.*

*“I want them to know how I feel but they might feel bad or get angry”.*

*“I’m stuck in the middle...and it doesn’t feel good”.*

These are some of the comments I’ve heard from children of divorcing parents over many years. It’s heart-breaking. They love both parents and share their parents’ pain. Children may be confused by what they see and hear and feel disappointed or upset with their parents’ behavior. Most often, they won’t, or can’t, articulate their upset to their parents for fear of upsetting them. Parents, frequently pre-occupied and distressed, are trying to cope and struggle to hold things together during a very trying time. The majority of parents are not fully aware of what their children are experiencing.

Divorce is a multifaceted and draining experience. If you are considering it, or going through it, you know that. There will be a number of transitions in your life, possibly a change of residence and/or children’s school(s), lifestyle changes such as having to get a job (even if you have not had one for a long time), which can affect other aspects of your life - activities, vacations, going out less, cooking more, fewer indulgences for all, etc. There may be shifts in how you relate to in-laws, or how they relate to you. All of these changes impact your children. Sometimes ‘couple’ friends choose one ‘side’ and withdraw from the other, which can also affect the children.

Another stressful transformation is preparing to live on your own, learning about and doing things that your spouse/partner took care of; again, these changes trickle down to children. If your spouse is involved with a new partner, there will be a period of acclimation for you and your children. Even if they like the new person in their life, there are often issues related to their other primary parent. Loyalty tugs. Much of children’s feelings about such a situation depend on how their parents feel and handle it. “If I like Mary, will mom feel bad or be upset with me”? “If David plays ball with me, how will dad feel”? In a blended family situation there will be new and different family rituals and rules to be absorbed by children...the time([and how) they eat dinner, rules of behavior, holidays and vacations, to name just a few situations that require adaptation on everyone’s part. If your partner’s or spouse’s new partner (or yours) has children, additional layers of adaptation need to be considered and managed.

Children don't cause divorce but they do have to live with its consequences. Confusion, sadness, anger, guilt and feeling lost and powerless are some of the feelings expressed by children living through divorce and its aftermath. Parents need to protect their children from having to do the hardest thing of all – choose between parents. One way to protect them is to minimize or eliminate the negative and angry aspects of the divorce experience. If parents don't create two sides, children won't feel conflicted about having to take a side. It's important to allow them to feel safe and able to hold on to cherished family memories as the family transforms.

Single or shared parenting is a new and challenging experience for parents and children. If your spouse/partner relocates farther away:

- *You may find yourself with most of the parenting responsibilities.*
- *You long for your children when they are with the other parent.*
- *Your children may be missing one parent much of the time, especially initially.*

If you live near the other parent, your children's needs, schedules and desires will be best served by flexibility on the part of both parents. There are so many 'ifs' and cooperative co-parenting is crucial!

One of the benefits of collaborative divorce is that stressful transitions can be eased. The level of divorce related tension is largely determined by how you and your spouse/partner navigate the divorce experience. When you work together, with dignity and respect, everyone feels more comfortable - family members, including in-laws, other couples and friends in your sphere but, most important, your children. As you and your spouse/partner make decisions together, with the assistance of experienced and understanding professionals, in a safe environment, your joint efforts to put your children first will generate priceless rewards.

The child specialist is a licensed professional who has expertise in working with children, adolescents, adults, family systems and divorce. S/he is knowledgeable about the emotional and cognitive development of children and can provide answers to your questions and guidance, as needed. Child specialists are experienced in gathering information and sharing recommendations with parents that are specific to each child's Age, personality and needs. Having been trained in mediation and collaborative divorce, in addition to fulfilling the requisites of their clinical professional licenses, they are well qualified to help you create a Parenting Plan, which covers all aspects of your children's needs following the dissolution of a break-up or divorce.

The child specialist is a member of the collaborative divorce team who first meets with both parents to gather background information on the children's personalities, predilections and possible problems. He/she will want to know what the children already know about the divorce and how the parents have dealt with, or plan to deal with, the situation. S/he can advise you on how to tell the children about the change in your family and how to prepare them to meet with the child specialist. Parents often seek guidance on the best way to inform their children, about separation, and/or divorce. The child specialist's role is to understand what is especially important and meaningful to each child and share that information with parents. S/he educates parents about the impact of divorce and family transition on their particular children, given their ages, personalities and established relationships with each parent. Working with both parents, the child specialist tailors the Parenting Plan to each family's specific needs. Cooperative co-parenting, at all times, is basic to insuring continuity and consistency.

The children's contact with the child specialist is often brief and focused. They are seen individually and/or together, as appropriate, in a gentle and friendly manner. They are helped to understand that they are their parents' priority and their input is important to their parents although it is their parents' responsibility to make decisions. The child specialist can also be available, if child related issues arise, following divorce.

After working with parents and children during the collaborative divorce process, I have been so happy to hear more different comments from children:

*"I got punished a lot so thought it was my fault that mommy and daddy were getting divorce. Now I know it wasn't my fault, just something between them. I don't know what, they said it was grown-up stuff".*

*"They used to fight but now they talk more – even so, they still don't want to live together".*

*"They said Santa will know and come to both houses!"*

*"We're still a family but don't live together any more, that's all".*

*"I think they are both happier and it's easier".*

Ah, music to my ears!

***Sharon Klempler, MSW, LCSW, BCD***

# Kids and Divorce

## *Never Too Old To Protect*

For most couples seeking a divorce or dissolution of their relationship, children are the primary concern and rightly so. We fall in love, partner or marry, expand the family and then, too often, problems develop and the end of a partnership or divorce ensues. Divorce is the choice of parents so it is our responsibility to 'protect' our children from the fallout of the dissolution of a relationship or divorce and the subsequent changes in their lives. We agonize over custody and parenting time, vacation and holiday schedules, camp, activities etc. Discussions and papers abound, in media, on how to plan for younger children and divorce but often fail to address the impact of divorce on older children - teen-agers, young adults and, even adult children. It is so important for parents to be mindful of the needs, concerns and feelings of that population too. As long as we have parents, we are still children, no matter our age in years.

Teen-agers, especially those over sixteen, are often ambivalent about home. They have one foot out the door, preferring to be with their peers, thinking about being more independent, their romances, learning to drive, contemplating or preparing for college or work and being away from home with no parent to tell them when to sleep, study or set curfews. At the same time, home is also that safe place they have known for all of their years. Parents often complain about their teens' thinking they know it all while still exhibiting childish behaviors. There can be a lot of testing limits.

Learning about parents separating and/or divorcing can shake a teen's emotional foundation (what they've always known or thought) and lead to feelings of loss of control. They have more opinions than younger children and may take to blaming both or one parent, especially if they think, or are told that, one parent caused the breakup. They may feel that they have to be in charge, particularly with the parent they feel has been hurt and is not managing well.

It's important to allow teens to express their feelings, including disappointment and anger. You need to keep the communication door wide open so teens don't resort to acting out their feelings, with alcohol, drugs, sex, dropping school work and other self-destructive behaviors. Listening to their anger, etc. doesn't mean that you don't maintain many of your boundaries and restrictions. Don't drop your boundaries because you feel guilty or bad for them. They need to see that life goes on. Teens are especially vulnerable. Being able to do or get away with anything can be just as unsettling to a teen as having too many limits. This is why cooperative co-parenting is the best way to go.

Many parents believe that their emancipated offspring are launched, often with families of their own and not affected by their parents' marital dissolution. Wrong! Once children leave the nest, they are still impacted by the breakup of their family unit. As a therapist, I have heard: "I've never seen a normal relationship," "I'll probably make the same mistake," "I'll need to take care of myself because I don't trust anyone now" and "Why are they doing this to us now?" Older children worry about their parents, how they will each manage, financially, emotionally, etc., especially the parent who says they did not want the divorce, feeling they need to be protective of that parent and angry with the other...another good reason for parents to be vague about such details.

Divorcing parents need to protect all their children from ‘adult information’, even when those children are parents themselves. They should not be placed in the middle and not be a confidant to either parent. That’s what friends are for! Adult children who become parental confidants are at risk of becoming less secure about the future of their own relationship or marriage. Also, they may need to deal with their children’s feelings and reactions to their grandparents coming apart, particularly if they are close to them. Their own children may worry if that will happen to them.

Adult children have to alter their ways to remain connected with both parents, more so if parents no longer live near each other. How, if possible, to split or alternate holidays and other visits? Some families are still able to share holidays, grandchildren’s birthdays, graduations, etc. together. Concerns can arise, with older parents, who are divorcing at increasing rates, about how to take care of them, as they age and are living alone. Older adult children may also have reactions to a parent’s new love interest, especially if that is presented during or soon after a divorce.

So be aware that your coupled or married children are still vulnerable. Here are some guidelines:

- *Agree with your partner/spouse to keep certain personal information confidential.*
- *Tell your child(ren) calmly and peacefully together; it sets the tone for “We are coming apart but are not enemies”.*
- *Never ask, or hint, that they need to take sides.*
- *Never speak negatively about the other parent or his/her new partner.*
- *Have a good support system (friends, family) and let your child(ren) know that. Take your care of yourself!*
- *Be accepting and flexible with their having to divide visits and holidays.*
- *Reach out, when possible, to include the other parent in family celebrations, to demonstrate civility and respect and not have your children celebrate twice or miss one parent on special occasions.*

It’s about how you ‘do’ divorce that determines much of how your children, young, teen-age or adult children will fare. The work is not easy but the rewards are so well worth it!

***Sharon Klempner, MSW, LCSW, BCD***

# The Financial Specialist

## *Getting Down To The Nitty Gritty*

The financial issues in divorce – alimony, child support and distribution of real and personal property – have the potential to cause tremendous anxiety and to ignite conflict. Often one party has a great deal more knowledge of the couple's finances or more expertise in handling money. The other partner may feel frightened and at a disadvantage.

Geraldine had been a stay at home Mom for twenty years. She is 45 now and while she has a Bachelor's Degree in English, and was president of the PTA, her last job was 20 years ago as a publicity assistant at a publishing company in New York. The business world has changed enormously during the time she has been rearing the parties' three children, one of whom is now in high school and the other two of whom are in college.

Her husband Geoffrey is 47 and owns a local bookstore. They own a house worth about \$500,000 with a sizable mortgage that was refinanced to grow the bookstore. Geraldine wants to stay in the house until all of the children are out of college (another 6 years). Geoffrey wants to sell the house to finance the children's college educations. Geraldine and Geoffrey have \$200,000 in securities and Geoffrey has an IRA, part of which he had before he married Geraldine, containing \$350,000. The bookstore is very successful since he has been able to attract notable authors to signings and he serves wine and beer to patrons.

Geoffrey and Geraldine's most recent tax returns show income of \$125,000 but in that same year they spent over \$200,000.

Geoffrey thinks that Geraldine should be able to earn at least \$40,000 per year because she is smart (it was her idea to have the book signings and to serve alcohol). Geraldine wants to go back to school for her MSW and doesn't think she can work until she gets it.

Geraldine and Geoffrey have hired collaboratively trained attorneys and have signed a participation agreement. Their attorneys have brought in a financial specialist as a member of the team. Here's how it works:

The role of the financial specialist on the collaborative team is to de-mystify the process by working with the couple to determine what the assets and liabilities are and what they are worth. This can include the valuation of a closely held business, income producing real estate, complex compensation packages and retirement assets as well as bank and brokerage accounts and the marital home. Only when the couple has this knowledge can they intelligently decide how their assets and debts should be divided.

The financial specialist also helps couples figure out their lifestyle – what do they spend each year on shelter, transportation and personal expenses? What have they historically saved? If one or both of the parties are un or under employed, what could/should that person be earning? If there is a closely held business, what is the owner's true cash flow? How much money does each spouse/partner need to move forward comfortably into her or his new life and where will that money come from – earnings, support, income on investments?

The financial professionals work with couples and their attorneys to ensure transparency of financial information. They design financial options, guided by the needs, wishes and best interests of the couple.

The Collaborative Financial Specialist may hold credentials as a CPA, Certified Financial Planner, Chartered Financial Consultant and/or a Certified Divorce Financial Analyst and is trained in mediation and the Collaborative process to assist couples in making educated, workable financial decisions in a non-threatening, supportive atmosphere.

Geraldine and Geoffrey and their attorneys worked with their financial specialist to first determine the value of their assets and liabilities. The value of the bookstore and their true cash flow were analyzed. Geraldine and Geoffrey worked with the financial specialist to figure out where their income was being spent and how much each of them needs going forward. The financial specialist helped Geraldine understand the cost of going back to school and her potential earning capacity after graduation and worked with Geraldine and Geoffrey to evaluate the pro's and con's of keeping the house.

With the help of their attorneys, divorce coach and financial specialist, Geraldine and Geoffrey were able to fashion an agreement that suited their needs as individuals and as a family.

***Megan A. Sartor, CPA, ABV, CFF***

# Why Is A Team Approach So Successful?

*“Alone we can do so little, together we can do so much” – Helen Keller*

As a matrimonial attorney practicing for thirty years I have a profound appreciation for the collaborative process because it is so different, and provides so many lasting benefits for a couple than any other divorce process.

The vast majority of couples contemplating divorce in New Jersey elect to resolve their differences with one of the following five options:

- 1) direct negotiation between spouses (with or without counsel involved)*
- 2) traditional litigation*
- 3) mediation*
- 4) arbitration*
- 5) collaborative divorce*

Each process differs fundamentally in the approach to solving problems and each process has a different cost structure. Some divorce options are more focused on client centered approaches to problem solving (collaborative divorce, mediation and direct negotiation). Others rely on the power of a stranger to resolve the problems with little control by and input from the divorcing couple (traditional litigation and arbitration). Some options offer complete confidentiality while others result in public disclosure of private issues. Litigation can be extremely expensive while direct negotiations between spouses is generally the least costly option.

The collaborative divorce process is the only one which approaches issues facing the divorcing couple with team-oriented problem solving. It is the main focus on teamwork, with the ultimate goal of achieving a solution that meets the needs of all family members, which makes the collaborative method so fundamentally different from other divorce options.

The team approach to problem solving has long been used with success in the healthcare field, Silicon Valley and many other professions. The collaborative process is the first divorce process to employ an interdisciplinary team approach to the field of conflict resolution. No longer does a divorcing couple have to “go it alone”. A couple contemplating divorce can utilize the collaborative method to benefit from a team of highly skilled professionals, all who have specialized collaborative & mediation training, to assist them in resolving their disputes in a private and respectful manner. The collaborative team provides the support needed to assist a divorcing couple in creating goals for their future and reach a customized solution.

The collaborative divorce is non-adversarial and most often begins when the couple chooses their collaboratively trained attorneys although some couples may be introduced to the collaborative method by therapists, marriage counselors or members of the clergy. From there, the collaboratively trained attorneys will utilize their specialized training to assess the reasons why the family finds itself in conflict and how to best assemble other collaborative professionals who assist in diffusing underlying emotional or communication issues which can be impediments to resolving issues related to the children and family finances.

Collaborative attorneys work together, with the assistance of a neutral facilitator, (also known as a divorce coach) in an effort to cost-effectively address the underlying non-financial issues that often exist and create obstacles to settlement. Those non-financial issues can range from custody and parenting time issues to the parties' inability to engage in healthy, civil communication, their lack of trust of the other, the existence of an imbalance of power which may hinder honest and respectful negotiations, anger issues or other non-financial issues that often serve to derail the important discussions needed to reach a resolution of issues regarding children or finances. The divorce coach promotes an atmosphere of mutual respect to keep the focus on obtaining mutually acceptable solutions while ensuring that the needs of children are protected. The divorce coach can also serve the important function of helping the parents remain focused on healthy co-parenting, both during and after the divorce process.

In addition to a divorce coach, the collaborative attorneys help select a neutral, collaboratively trained financial professional whose focus is to serve the economic needs of the clients who often have differing concerns regarding child support, alimony and division of family assets and liabilities. The financial neutral, either a CPA or Certified Planner, is instrumental in helping the divorcing couple reach an understanding of family assets and liabilities, construct realistic post-divorce budgets and helps design financial options to be reviewed and discussed by the clients with their attorneys and each other.

Lastly, when parents can't agree on custody and parenting time issues, a child specialist can be used as a valuable resource to speak with the children and have their voices be heard. The input of the child specialist provides the parents with a better understanding of their children's needs and wishes. Such information enhances parents' decision making in creating a parenting plan.

While it may not seem counter-intuitive team of professionals can be less costly to other alternative divorce options, experience has proven that is often the case. The collaborative method offers expanded expertise and the possibilities of lower fees by utilizing neutral professionals. The neutral financial and mental health professionals help the couple get to and remain on the same page when it comes to their children or issues involving family finances. The quicker a couple agrees on issues the shorter and less costly the process. In addition, neutral professionals often bill at a lower rate than attorneys so there is a cost benefit to the divorcing couple when the neutrals use their expertise and training to focus on specific aspects of the divorce.

Other divorce methods which don't provide the support of highly trained neutral professionals often deteriorate into a costly and drawn out adversarial contest which pits one spouse against the other. By contrast, collaborative professionals seek to promote the best interest of the children while balancing respect for the individual financial needs of the parents.

The collaborative team is dedicated to achieving a resolution that meets the needs of all family members – mom, dad and especially the children. Collaborative divorce is completely confidential and private. Moreover, the collaborative divorce approach permits a spouse and his/her partner to negotiate a mutually beneficial resolution of their differences without leaving it to a court to decide the issues. In addition, the collaborative method both encourages, in fact mandates, transparency while promoting fairness by focusing on the needs and interests of the entire family.

For those couples who want to maintain control over the divorce process, collaborative divorce provides an interdisciplinary team approach to solving problems of the family in a manner which is often quicker, less costly, and with far less trauma to all family members than a traditional litigated divorce.

Larry J. Esposito graduated from Seton Hall University School of Law and has specialized in the area of family law for 30 years.

Larry is a recognized leader in the field of collaborative divorce having handled collaborative divorces for more than ten years. He has received extensive collaborative divorce law training and is a founding member and immediate past President and former Board member of the Collaborative Divorce Association of North Jersey. He is also a member of the International Academy of Collaborative Law Professionals and a member of the New Jersey State Council of Collaborative Practice Groups. As a leader in the Collaborative Law community, he has lectured on various Collaborative Divorce topics and has appeared on numerous expert panels on various issues relating to family law. He is a member of the Family Law section of the New Jersey State and Bergen County Bar Associations and a former Master and group leader in the Northern New Jersey Family Law Inns of Court.

***Larry J. Esposito, Esq.***

# The Leaver and The Left

For the majority of couples who come apart or divorce, it is a trying time, to put it mildly. There is the loss of hopes and dreams that most of us have when we embark on such relationships, compounded by the reality that has evolved.

When one partner/spouse is convinced that the relationship is no longer viable, the other partner/spouse doesn't feel they have a choice. They are no longer in sync with their thoughts and feelings. Each person needs to understand the other in order to be able to part in a respectful manner, especially when children are involved.

The leaver has made the decision that it is necessary to come apart, after experiencing sadness, anger, hopelessness, etc. about the relationship. These realizations and the ensuing decisions don't come lightly or quickly. S/he mentally slogs through the disagreements, disappointments and considerable differences between them. Both adults experience the five stages of having and accepting a terminal illness when going through the end of a relationship:

- *Denial - feeling this can't be happening to us, it's unreal.*
- *Depression - any changes in eating and sleeping, energy level*
- *Anger - impatience, resentment of their partner.*
- *Negotiation - seeing the need for change and how to achieve it*
- *Acceptance - we will be coming apart.*

What the leaver needs to know is that their partner/spouse may not feel the same way about their relationship, for a variety of reasons, and may not conclude that coming apart is the only or best solution. Hopefully, the leaver appreciates that their partner/spouse will need ample time to adjust, going through the same phases. These stages are generally experienced in the order above but people often shift back and forth through them, especially in the beginning.

It helps when the leaver can present his/her decision calmly and gently, clearly stating the reasons for the decision and then being patient for his/her partner/spouse to catch up or, at least, be more accepting of the idea of dissolving the relationship. Doing this can open the door to a less emotional, and more civil, dissolution of the relationship or marriage, important to the couple and crucial when there are children.

The person who does not want to end the relationship, for a multitude of possible reasons, is thrust into the first phase listed above. "This can't be happening!", "I knew we had problems but...not this", "How can you do this to me (and the children)?" Everyone's coping mechanisms vary in how this phase, and all of the phases, present. Once anger boils up in the 'left' partner/spouse, s/he frequently resents the leaver, feeling that they are doing so well and the situation is "easy for them", not realizing that the leaver has, most often, suffered through the same stages before and is now just ahead of them. That understanding can make it easier for both for both to progress to negotiating and coming to terms with the situation. Then acceptance can follow.

In any relationship, it is always beneficial to thoughtfully step into each other's shoes, rather than being stuck in the mud of our own perspective. This ability is vital during a relationship/marriage and just as important when two people are coming apart.

***Sharon Klemner, MSW, LCSW, BCD***

# Divorce and Mourning

As a divorce lawyer and psychotherapist, I work with people before, during and after divorce, and I see the effects of divorce on parents and children. There are many personal meanings to marriage and the losses experienced in divorce. I would like to discuss why fully mourning these losses is so important to your future.

Marriage serves a variety of psychological functions.

There is the *ritual of marriage*: the courtship, engagement, wedding planning, the wedding service and reception, the blending of two families into a new family.

Marriage is an important phase in an individual's *separation and individuation* from his or her family of origin. It is a move to independence: for some, it will be the first time living outside of the birth family's home.

Marriage, therefore, is the culmination of a search for someone who can mirror our expectations of what we want to keep and what we want to let go from our past, in the process of realizing our romantic and personal dreams and aspirations. At the same time, we are also trying to heal wounds we all carry from childhood, with the promise that this new family will make things right in the future.

The decision to divorce, especially when it is not one's own idea, tramples upon all of the hopes embedded in a marriage. There are a number of losses one must bear.

- The loss of couplehood, of a friend and intimate partner with whom one can navigate life's difficulties.
- The loss of family as we knew it.
- The loss of the hopes and dreams embodied in the marriage.
- The unanticipated repetition of painful childhood experiences the marriage was supposed to heal.
- The loss of relatives, friends, status, position in the community, the marital home, having to share the children in two different homes.

There is also the loss of an identity separate from the family of origin, and sometimes even a return for economic aid or shelter. Where marriage was once a gesture of independence, divorce now marks a return to the family from which one was struggling to be free.

Loss triggers a grief response. Specialists in mourning advise that there are four tasks in dealing with grief: (1) acknowledging what has been lost; (2) experiencing the sadness however painful it may be; (3) living in the present, memorializing the loss, not reliving it or replaying it in mind; and (4) re-examining one's beliefs and values (asking yourself "what is the meaning of this?").

Some can acknowledge their loss and grieve, while others choose to defend against these feelings of loss by turning them on their heads, so that anger, retaliation, and vengeance become the order of the day. This is done in active denial of loss, a refusal to feel the loss, refusing to grieve and instead acting out their loss in anger, carrying grudges and bitter memories.

The point I want to make to you is that the bitter entanglements we see in our own divorces, or those of others, are signs of failed mourning, or, even worse, a bitter and stubborn refusal to mourn.

Angry, vituperative exchanges over the children, parenting time, money, assets and debts are manic defenses against loss. Manic, because they are stilted, heightened, out of control, panicked, impassioned. Defenses because they are used to stave off sadness, and prevent mourning.

So, too, are the compulsive behaviors of substance abuse, sexual abuse and domestic violence. Rather than bear the pain of loss, many get busy abusing themselves or others, or go on the attack, and use children, money and each other as the prime vehicles of expression. This relentless pursuit of emotional equilibrium through anger and attack is largely unconscious, even though quite deliberately acted out.

People who cannot (or refuse to) tolerate loss transform their grieving into external interpersonal battles. Getting difficult or angry flips loss on its head, turns it into anger and recrimination, and evacuates those feelings from the self and pastes them onto others.

To survive divorce, to grow past and beyond the losses of divorce, one must be able to experience and work through the sadness, the loss, the grief of divorce.

*In other words, we must mourn.*

As a child we mourned the loss of grandparents, pets, maybe even a parent or sibling. In so doing, we learned of necessity the limitations of life, the passage of time and how to relinquish the familiar. Mourning, then, is our letting go of attachments that have ceased to exist, or have outlived their usefulness. Mourning helps us let go, and permits us to move on, to grow and develop in new ways.

The process of mourning lets us symbolize the loss, metabolize (digest or process) the loss and move past it with new experiences, so we can accept the loss and can look back at it without sadness, as one of the many things in life that we cannot change and must therefore accept.

By mourning and detaching from the past, we also create a sense of continuity that affirms our emotional connection with what we have lost, and thus we learn to use our memories to balance our losses. It is a bridge between past and future.

Those who refuse to mourn or who mourn incompletely become trapped in a web of unhappiness, actually continuing their suffering. The denial of loss does not ward it off...indeed, it serves to maintain and reinforce loss as a life sentence.

The inability to contain and control aggression is a signature trait of pathological mourning, where one attempts to mitigate shame, humiliation and loss of self-esteem with anger, blaming and acting out the pain of divorce in physical ways.

Your ability to be happy in the future, to accept and transcend the losses involved in your divorce, and for you (and especially your children) to move on with life largely depends on your willingness and ability to experience and process the sadness and loss you are feeling now.

A Persian king in the sixth century commissioned the royal jeweler to “make me a ring that will console me in bad times as it will restrain me in good times.” The puzzled jeweler pondered this for weeks, and returned to present the king with a gold ring inscribed “It Shall Pass.”

I can give you no greater gift than to tell you that the pain and sadness you feel now will ultimately stand you in good stead as a parent, and as a person.

Indeed, your ability to tolerate, experience and work through the various losses you are experiencing will permit you to continue another day as a person of vitality and joy.

***Paul D. Kreisinger, Esq., LCSW***

# High Value Asset or Celebrity Couples

## *The Benefits of Collaborative Divorce*

There are benefits for all couples and their families in choosing the Collaborative Process for resolution of issues in divorce. The benefits have been described in many other sections/chapters of this book. Although all of the benefits which generally result are partially present, there are distinct additional inducements for families/couples who enjoy high net worth or celebrity status.

*Consider the following:*

When Russell Berrie (Russ Berrie and Company, Inc. – manufacturer of the TROLL figures and plush animals) was divorcing his second, and then, his third, wives, there was newspaper coverage and reported decisions – creating a permanent record in the court reporters, even if much of the public eventually forgot the radio news reports of the largest divorce settlement in NJ records (for Mrs. Berrie #2). It would be safe to assume that Mr. Berrie was more pleased by FORBES Magazine naming him as one of the 40 most generous Americans in 1998, than he was of the notoriety or humor generated by his various divorce proceedings.

Another prominent businessman, in Bergen County, was involved in a divorce and the parties could not agree on temporary support. The judge's decision was announced in the radio news and newspapers as the largest pendente lite support award ever made in NJ.

When Michael Strahan's marriage was dissolving, there was a very public Domestic Violence proceeding, liberally covered by news media. Subsequently, there was a reported decision pertaining to child support, which quoted the infamous "three pony rule", which originated in Kansas. It was first adopted in an earlier reported New Jersey decision regarding appropriate child support for children of high wage-earning parents: "No child, no matter how wealthy the parents, needs to be provided with more than three ponies".

The mother demanded items of support for three year old twins, including a vacation for their nanny and her family to Jamaica, diamond jewelry for their grandmother, \$27,000 per year in clothing (to permit new outfits on every visit with their father) including the need for multiple purses as one of the three year old girls did not like to leave home without a purse, \$30,000 in landscaping expenses, \$3,000 annual audio visual expenses, and \$36,000 per year for unexplained "equipment and furnishings". The Judge reiterated the principles that the needs of the children must be established and reasonable, even though some incidental benefit to the custodial parent may coincidentally result.

The divorce trial terminating the first marriage of Joe Piscopo was routinely followed by the press, reporting on his affair with the nanny, who sometimes accompanied Mr. Piscopo to Court. A reported decision pertaining to value of "celebrity status" was published as a result of trial of that issue.

The prenuptial agreement between John and Cristina DeLorean generated litigation in both California and New Jersey, when the relationship deteriorated to acrimony and contention, which is the opposite of the anticipated result when a prenuptial agreement is entered by prospective spouses in anticipation of marriage. The unflattering impression (a portion of his testimony was described by the judge as vague or evasive) created of Mr.

DeLorean in the reported decision of the New Jersey court, was not beneficial for a businessman, illustrates two general recurring circumstances:

- Litigation often results because one spouse is extremely contentious or unreasonable, not merely because parties disagree.
- Unpleasant publicity or notoriety may result when private matters are determined in a public forum.

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There are numerous decisions in New Jersey pertaining to support and equitable distribution in New Jersey which do not particularly relate to novel, esoteric legal issues, but rather to bitter contests between parties in high income/high asset value matters. These also appear in the official books as a permanent record.

While the recitation of facts and depiction of contested issues, which either are reported in the printed or oral news, or are memorialized in reported decisions, may be entertaining in a voyeuristic way for outsiders, it is highly likely that both parties, their children and/or their extended families will regret the publicity and the notoriety achieved. In news reports of celebrity figures, it may not be true that any publicity is good publicity. In the case of reported judicial decisions, it may be an ongoing negative phenomenon for business owners, professionals or financial industry figures to have these private aspects of one's personal affairs analyzed, disclosed, and memorialized indefinitely.

Most people don't relish, or aspire to, having their most personal events, sadness, or their finances, become the subject of testimony in a public courtroom, over and above the personal trauma of actually discussing such matters in public and being questioned in detail about these matters by an attorney representing the estranged spouse.

Again, most business people do not wish the details of their businesses to be the subject of public disclosure and testimony – either because private details may be disclosed to competitors, or may be discovered by business associates who may take undue advantage of information to which they might not otherwise be privy, or because s/he may simply be embarrassed that friends or neighbors are hearing private details concerning him/her.

It is logical to assume that privacy, with respect to financial matters, is at least as valued by most people as privacy with respect to personal details of their daily lives, beliefs, eccentricities, practices and conduct.

Once a matter becomes the subject of a court action, the likelihood that some, or all, private matters will be publicly disclosed is created. It has long been fairly common knowledge in legal circles that very high income/high net worth individuals value their privacy and make significant efforts to safeguard it – even to the point of negotiating private arrangements to avoid divorce. Most people have an innate sense of dignity, which leads them to wish to keep private matters confidential. This is so even if one, or both, spouses temporarily succumb to emotions in the initial stages of the dissolution of a marriage/break-up.

The most secure way to preserve privacy and control, during a divorce, is to participate in a process designed to maintain privacy, confidentiality and to foster progress according to the needs and timing of both spouses and the entire family in making decisions with long term impact, without a schedule imposed by external authority, without public disclosure of private matters, and without such decisions being made by one who has never met either party or their children prior to hearing the most private details of their lives and making decisions for them.

*Sharon Clancy, Esq.*

# Help After Divorce?

## *How The Collaborative Process Can Help*

*“Things do not change, we change.” – Henry David Thoreau*

Although the goal of any settlement is to achieve a permanent, long lasting, comprehensive settlement, that is always not possible. As Henry David Thoreau pointed out, “we change”. In many divorces, new and unforeseen issues arise after the initial settlement is reached. Often, those issues are financial. The list of possible changed financial scenarios arising after a divorce are easy to imagine and endless: people lose their job or change careers, they become sick or disabled, children need to be educated or become emancipated, bonuses that were once paid are no longer paid, retirement, bankruptcy, etc.

In addition to change financial issues arising after a divorce, many divorced families have to deal with changes involving custody and parenting time: work and parenting schedules change, people remarry and create blended families, relocations occur for employment or a new relationship, children mature, conflicts arise in step-families, etc.

Historically, when changed financial circumstances arise in the context of a divorce which was resolved using traditional litigation, couples were forced to return to court to seek relief. That process starts with a costly filing of an application with the Court to modify some financial aspect of the divorce agreement. What then occurs is often lengthy and expensive financial discovery, multiple court appearances, followed by negotiations and possibly mediation or a trial. In the case of a trial, the judge, who may have limited or no knowledge of the facts and who is bound by constraints, imposed by statutes and legal precedent, will be called upon to make a decision.

When a custody or parenting time issue arises after a divorce and the couple chooses to handle the issue through litigation, the process also starts with the filing of an application to the court. Multiple court appearances are frequently necessary and the court often requires a custody or parenting time expert to conduct an evaluation. If one parent is dissatisfied with the expert’s findings, they may then choose to hire their own expert. That decision significantly prolongs the time it takes for a resolution and increases the financial and emotional costs for both parents. The court may then require the children to submit to a judicial interview. No parent wants his or her child to be subjected to that experience.

In the litigation process, regardless of whether the issue is financial or non-financial, couples do not control the outcome. The judicial process, besides being lengthy, costly and inflexible, is not designed to bring a lasting resolution that serves the needs of all family members. By contrast, the collaborative process provides an option that provides predictability, flexibility and the ability to resolve problems quickly and efficiently to the benefit of families.

I was involved in a matter which was resolved through the collaborative divorce process. The parents entered into a comprehensive settlement agreement which provided for a custody and parenting plan, distribution of assets and spousal and child support. Several years after the divorce financial issues arose due to one parent’s

loss of employment. In addition to the financial pressures created by the loss of a parent's employment, significant parenting issues were created by a parent's new girlfriend. The unforeseen financial and parenting issues could have significantly upended the settlement achieved years earlier with costly litigation the couple could hardly afford. The couple decided to return to the collaborative process. The same team who helped the couple achieve a resolution that was in the best interest of all family members at the time of the divorce, was reengaged to help with the new problems. The couple's decision to return to the collaborative process helped them navigate the very challenging financial and parenting time issues, unexpected at the time of the divorce, in an efficient and cost effective manner without the rancor, evaluations and prolonged court proceedings which would have taken a severe emotional and financial toll on all family members had there been litigation.

Change is inevitable. It often occurs subsequent to a divorce despite a comprehensive settlement agreement. Those who have used the collaborative divorce method to initially resolve their divorce issues already understand that it is the best process to deal with future changes in custodial or financial circumstances occurring after the divorce. They know the collaborative process will help them navigate post judgment issues in a manner that respects the interests and needs of all family members in a cost effective, solution-oriented manner.

In view of the cost an adversarial custody and parenting time or financial dispute can take in the court system, as well as the resulting financial and emotional harm to the parents and children, a collaborative solution to any post judgment financial or custody and parenting time issues should be pursued whenever possible – even in those cases where the collaborative divorce process was not used at the time of the divorce.

*Larry J. Esposito, Esq.*

