

THE ROLE OF THE ATTORNEY IN COLLABORATIVE DIVORCE

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In a Collaborative Divorce, the parties and their attorneys commit to settle matters without going to court. Each party and each attorney sign a Participation Agreement wherein it is agreed, if negotiations should break down, the collaborative attorneys will withdraw and not represent their client during any resulting litigation. During the collaborative process, attorneys do not prepare for trial. They do not engage in adversarial strategies. They do not seek strategic advantage over their opposing party. Information is not concealed, nor are there attempts to minimize or maximize the impact of any one relevant fact in the case. What, then, is the role of an attorney in the collaborative process?

First and foremost, it should be made clear attorneys in collaborative cases still maintain their duties of advocacy and loyalty to their clients. These do not go by the wayside during the collaborative process. Rather, the attorney in the collaborative process must do what he or she always does: determine, identify and investigate the issues surrounding the case at hand. They must advise their clients how they believe the law applies to their circumstances. They should use their experience to advise their clients how they believe a court might rule. They still maintain a duty to protect their client's interests. But, it is important to note, an attorney's role in a collaborative case goes beyond the usual.

An attorney in a collaborative case must employ a higher level of creativity than he or she might otherwise use. Brainstorming innovative solutions to difficult areas of conflict is part of the process. Not only do attorneys brainstorm with their clients, they brainstorm with opposing parties and opposing counsels in open sessions. Collaborative training teaches attorneys different methods to employ when trading ideas and problem-solving. Whereas attorneys in a traditionally litigated case may offer solutions inside a small narrowly-defined box, attorneys in collaborative cases often expand the box and may even step outside of it to reach a solution that reaps benefits not only for their client, but for their client's family and former spouse.

A collaborative attorney must work closely with other members of the Collaborative team. As such, a collaborative attorney may, as opposed to seeking a strategic advantage, be supportive of the other party, where appropriate. They will strive to recognize and understand the goals and interests of the opposing party as well as their own client. They may, if necessary, help their client see where their thinking or behavior is counterproductive to reaching settlement and will assist their clients in articulating his or her point of view and goals in a context which is best for the overall family, not just for the client as an individual. Where appropriate, the attorneys and parties work with a financial neutral and/or divorce coaches and child specialists to determine the impact of possible solutions not only on the parties as individuals, but also the family as a whole. Finally, a collaborative attorney may be called upon to explain principles of law which, when applied, may or may not favor their own client. Both attorneys in a collaborative case work together to assure the parties understand how the law impacts their case and how any potential settlement will impact their future and the future of their family.

In summary, a collaborative divorce attorney is not only concerned about the outcome of a case, he or she is also concerned with the process of the negotiations, the form and context of the parties' communication, and the impact of the resulting settlement on the entire family unit. By keeping the process in mind and not just the end result, collaborative attorneys attempt to minimize the financial and emotional scars often associated with divorce.