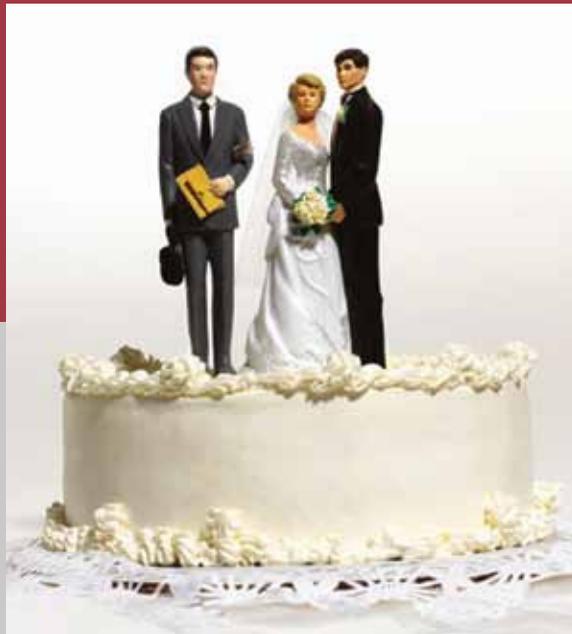


The Collaborative Law Process

A New Way of Doing Divorce



Presented by

The Collaborative Family Law Institute



The Role of the Mental Health Professional (MHP)

Divorce is a relationship problem with emotional, financial and legal implications,” asserts Lana M. Stern, Ph.D. *“The inclusion of the Mental Health Professional in the Collaborative Divorce Process is still fairly new but I believe it is the perfect utilization of these professionals who have been working with families, couples and individuals for years. Mental health professionals are painfully aware of the long-term consequences of a hostile, contested, litigated divorce, and the collaborative divorce process is clearly the better way.”*

It is a natural union for legal, mental health, and financial professionals to work together in these matters. The goal of the entire team is to facilitate a healthy, respectful divorce process so both parties achieve the best outcome with dignity and respect and preserve the post-divorce relationships.

At the Collaborative Family Law Institute, the mental health professionals include: psychologists, marriage and family therapists, mental health counselors and social workers who have been specifically trained in the collaborative process, which is quite different from traditional therapy.

Different from Therapy

These are some of the key differences between traditional therapy and the role of the neutral collaborative mental health professional:

- A therapist focuses on the internal, interactive dynamics of the couple. The mental health professional in the collaborative process is a trouble-shooter, focusing on the best way to help the couple get through emotional issues that may impede the forward progress of the divorce.
- A therapist helps the couple examine and resolve issues from the past. The mental health professional focuses on the future and on the post divorce relationship
- Therapy is a confidential process. Collaborative divorce is a transparent process and information may be shared with the team.
- A therapist is an advocate for the patient. In the collaborative process the mental health professional is neutral.
- A therapist usually does not consult with an attorney. In a collaborative case, the mental health professional works closely with the attorneys and the financial neutral.

Part of the team

Initially, the mental health professionals were called into the collaborative process only if there was a problem. The attorneys quickly found that it sent the wrong message

to clients, and it was decided to make the mental health professional a part of the collaborative team from the beginning.

The mental health professional meets individually with each party before the first team meeting. This enables them to establish rapport, “hear each person’s story,” assess their readiness for the divorce process and determine their individual strengths and weaknesses. They discuss their concerns, goals and interests, including where they think the conflicts may lie and where things might break down. The mental health professional then shares this information with the attorneys to help facilitate the process.

Modeling collaboration

Each team meeting lasts for two hours and has a pre-set agenda. By setting these meeting parameters, the clients know what will be addressed and perceive a safer, more respectful environment. There is a code of conduct presented at the first team meeting that includes the following:

- Participants will focus on the future and avoid unnecessary discussions of the past.
- They will focus on resolving conflicts rather than assessing blame.

“Mental health professionals are painfully aware of the long-term consequences of a hotly contested litigated divorce, and collaboration is clearly the better way.”

—Lana M. Stern

- They will focus on their shared goals, such as best interests for the children, healthy co-parenting and improved communications.
- They agree that arguing is pointless and will be respectful to all participants.

Stern often changes the seating arrangements at the first team meeting, to achieve a more collaborative environment. Instead of one attorney and client on one side, facing the other attorney and client, she puts the couple next to each other and the attorneys next to each other with herself at the head of the table to model the spirit of collaboration.

“You’d be surprised at the message it sends, after all, the couple still has to co- parent children at the end of the divorce. It goes a long way toward diffusing the potential adversarial feeling,” she said.

After a team meeting, the professionals hold a debriefing session to analyze the meeting and to discuss the best strategies and direction for the next meeting.

Keeping the process going

One of the key roles of the mental health professional is to monitor the emotional climate of the team meetings and to keep the process going. If it becomes apparent that a participant is unable to continue because an issue is too emotional or painful, the mental health professional

can call a “time-out” and allow the parties to regroup, confer with their attorney or just regain their composure. This imparts a sense of safety and protection during the difficult negotiation process. If there is an imbalance of power between the parties and one party is not participating during the meeting, the mental health professional can encourage that person to communicate directly or through their attorney. When disagreements occur, the mental health professional can intervene and prevent them from escalating into disruptive events. In some cases, they

might offer advice regarding the co-parenting plan, or call in a child specialist as a neutral person to focus on the interests of the children. In other cases, a referral for therapy may be recommended for one or both of the parties.

Throughout the process, the mental health professional helps the parties prioritize their concerns and learn conflict resolution skills, some as simple as talking rather than yelling or learning to use “I” messages rather than pointing fingers with “you” messages.

The professionals who participate in the collaborative process are “role models” for good communication between the parties. It is not unusual for the professionals and/or the parties to apologize for things they have said or for interrupting the other person. Collaborative law truly encourages a different spirit and reduces the stress level of the situation for everyone involved.

Preserving relationships

For the sake of the children, the family and friends, it is the hope of the collaborative process to help preserve relationships after the divorce. Collaborative divorce diffuses if not dissolves the adversarial relationship and gives each party the opportunity to move forward, recover from the divorce, reorganize the family and help the parties become whole again in their new life.

