

By Daniel Pollack and Alisa Peskin-Shepherd



Collaborative Law and Public Human Services Agencies

Collaborative law is a nonadversarial alternative for resolving disputes and conflicts that emerge in divorce and other family law matters. By negotiating mutually acceptable out-of-court agreements, the parties often save time and money and endure less family stress. Incorporating the skills of other professionals, in addition to collaboratively trained attorneys, such as financial advisors, asset evaluators, child and family psychologists, and social workers, divorcing couples can arrive at solutions that are acceptable to everyone. Of course, a collaborative law approach may not be right in all situations.

Collaborative law relocates the focus from adversarial, combative litigation to a needs and interest approach where each party's retained counsel, along with the entire team who are specifically trained in collaborative law, supports a settlement. The focus is to commit to settlement from the onset, though clients do not permanently abandon their right to litigation.

According to the Global Collaborative Law Council, as of January 2017, there were 16 jurisdictions that had enacted the Uniform Collaborative Law Act statute, adopted court rules, or a combination thereof. How can public human services agencies in these states best interface with collaborative attorneys to benefit their mutual clients? Michigan attorney Meredith Dahlen observes, "For some public human service agencies the collaborative process feels like a natural extension of mediation, now used by many states



in child protection cases. When child protective services (CPS) is involved in a matter, the school of thought used to be that there was no place for alternative dispute resolution processes. We know now, though, that when CPS or foster care workers can come together with families, attorneys, and other specialists, the parents and caregivers may be empowered and have the necessary tools to develop solutions that will stick. These agreements can not only further the best interest of the children involved, but may be adhered to by those who are

part of the decision-making process. Utilizing these types of processes can lead to faster reunification and slower returns to the agency's or court's attention. Utilizing the collaborative process in these types of matters gives professionals another valuable tool to use in order to come together in a trusting, more transparent environment, where all interests can be heard and addressed."

Public human services agency employees can greatly benefit from

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interdisciplinary basic collaborative training. The training, which usually takes place over the course of two days, teaches participants about each professional's specific role in the process, and focuses on the necessary paradigm shift from adversarial, positional behaviors to a whole family, solution-oriented mindset. The psychology behind negotiations and settlement for the parties is also addressed as a central element when looking at the often highly emotionally charged issues addressed with public human services agencies. Collaborative training participants engage in role playing case scenarios, learning from the other professionals within their own field and across the professions involved in the process.

The paradigm shift also raises the level of trust and requirement of transparency between and among all the participants. If the attorney, clients, and agency employees are committed to the collaborative process, they operate as a team for the benefit of the family and agree to full and complete disclosure of all information that is pertinent or that may have an impact on the case. We know that trust between people, especially those advocating on opposite sides or with conflicting interests, does not necessarily come naturally. Within the collaborative professional setting, collaborative practitioners strive to build trust and intentionally work on maintaining that trust as part of their on-going professional development. Successful collaborative practitioners regularly attend educational workshops, professional meetings, and social events together, connect one-on-one or in small groups, and ultimately, when they have a case together, are provided with a real-time experience.

Things don't always go smoothly, but it is each person's individual commitment to a way of practicing, getting through difficult situations, working together to problem-solve, and overcome potentially damaging client behavior, when collaborative

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attorneys are able to rely on their counterparts. While the client may not know the agency employee to trust her or him, the attorneys and the agency employees should work outside of their cases to get to know one another and engage in learning together, and seek opportunities to share views. Strengthening the relationship between the professionals will benefit the clients and the overall system.

Trust is also possible because of the privacy and confidentiality surrounding the collaborative divorce process. The Participation Agreement (PA) that clients and professionals sign is a contract to which the participants are bound just like any other contract. An employee of a public human services agency involved would be required to sign the PA. It is central to the agreement that the participants commit to settle the case without court intervention. This includes not threatening to go to court either. Once signing the PA, the attorneys also cannot represent the client in court litigation. Keeping the matter out of court protects the privacy of the individuals and the family involved.

The PA also specifically states that information provided during the

collaborative process is confidential and will not be disclosed to anyone outside of the team, unless professional ethical obligations require otherwise. This commitment supports the clients' disclosure of personal, sensitive information. The confidentiality requirement also allows professional team members to communicate freely with each other. Because the attorneys are not able to represent the client in court, they can share information and exchange ideas without concern for weakening a position, or "giving away" potentially unfavorable facts. The attorneys are not adversaries against each other or the agency. They are working cooperatively together and with the agency as advocates for their clients, seeking a solution that will work best for the unique family. The agency can also feel safe, knowing that information shared will only be used within the collaborative process, and in a court proceeding only if the collaborative process is terminated and a court case is filed. At that point the information to be used in litigation would have to be obtained separately through formal discovery channels.

Ultimately, how a couple decides to proceed in divorcing or resolving other family law matters is their decision. If there is a need for involvement by a public department of human services, this should not preclude the couple's decision to use a collaborative law approach. 

Daniel Pollack is a professor at Yeshiva University's School of Social Work in New York City. He can be reached at dpollack@yu.edu; (212) 960-0836.

Alisa Peskin-Shepherd is a family, divorce, and custody attorney, mediator, and collaborative divorce practitioner in Birmingham, Michigan. She can be reached at aps@transitionslegal.com; (248) 290-0560, or through her website at www.transitionslegal.com.