



# Five Reasons Why Collaborative Divorce is Better for YOU (and your client)

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When I was asked to write an article for the Spring Commentator, I reflected on our Section Chair, Elisha Roy's theme for this year "taking care of yourself so you can take care of others." I decided to write an article that incorporated this theme with what I actually do in my practice that not only takes care of me, but also fills and inspires me to take care of others. The purpose of this article is not to educate or inform the reader on what Collaborative Divorce is or its' history. For those who don't know about collaborative divorce I would suggest you visit the International Academy of Collaborative Professionals website ([www.collaborative-practice.com](http://www.collaborative-practice.com)).

Collaborative Divorce has been and most likely will continue to be a controversial topic, both locally and nationally. I am blessed to have wonderful colleagues and friends on both sides of the fence and I respect all opinions. However, the reality is that these collaborative professionals are happier and healthier than their non-collaborative counter-parts. Unfortunately, there are times when the only option is to litigate family law cases. For example, court intervention is needed when issues of child endangerment or blatant denial of access exists.

In a perfect world, family law attorneys would have a regular ongoing stream of "A" and "B" list clients that would pay a "fair" and reasonable fee (without having to track billable hours). Additionally, hearing times would be available within days or

weeks (not months) of our requests and Judges would never feel the strict constraints of time. And, by the way, opposing counsel would not be totally unreasonable about everything.

The collaborative process jointly resolves many of our concerns and our clients' concerns. As I stated above, this article is about "taking care of yourself so you can take care of others." Below I have listed the top five reasons I believe collaborative law accomplishes that for me and, as a result, for my clients. I have also acknowledged some challenges in those accomplishments.

1. **CLIENTS** - In my experience, the client who chooses the collaborative process generally meets all of the requirements on my check-list for being an "A" or "B" list client. They typically have a higher level of education and income. They are future-focused and not past-focused. They want a "fair" result, but understand that fairness is subjective. Mostly, they are not out to take the other person down or blame their advocate for undesired outcomes.

Statistics show that my collaborative client experience is consistent with other client experiences across the country. The preeminent collaborative organization, the International Academy of Collaborative Professionals (IACP), has more than 5,000 members across the globe. In the IACP's Spring 2012 issue of "The Collaborative Review", the IACP provided demographics of collaborative clients. In part, the IACP survey data showed that more than three-quarters of all clients had a four year college education or higher with a sig-

nificant majority of cases having estates of \$500,000.00 or more. Eighty-four percent of the collaborative participants had children together.

Well-educated, high-income earners (particularly those who own their own businesses) are learning about collaborative divorce and asking for it by name. They are particularly interested in the confidentiality of the process and the preservation of relationships for the future of their children.

**Challenge** - There are times when a client comes to me asking for the collaborative process, because their spouse wants the process. It is imperative to me that I make sure my client consents to the process and is not using the process for an ulterior purpose. Clients must understand and acknowledge that collaborative is an unveiled process with a no "hide-the-ball" element to it.

2. **FEES** - In the collaborative process, payment of all legal, mental health and financial professional fees are discussed upfront. Typically, clients agree to make payments from a liquid marital asset with the understanding that there will be less to divide at the end.

I have handled many collaborative cases and my fees have always been paid on time, in full and generally without complaint. Though I do keep track of my billable hours and provide my client with a monthly billing statement, the time spent on tracking billing is much lower than an average case. I schedule meetings with

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## Collaborative Divorce *from preceding page*

my client to coincide with the full team collaborative meetings. Mental health professionals deal with matters involving children and financial professionals deal with financial matters.

The benefit to the client is there are few surprises from a financial perspective with the client having more input and control over how the money for fees is spent. At each team meeting, the team discusses fees and each professional gives projections as to the status of fees.

Challenge – Studies show that particularly for potentially acrimonious cases the collaborative process from beginning to end is substantially less expensive than the same type of litigated case. However, the upfront retainers for all collaborative professionals is generally more than the initial litigation retainer for two attorneys. Many attorneys offer lower retainers for collaborative matters and some even lower hourly rates. Additionally, many areas have pro-bono and low-bono alternatives. The overall benefit to the client is more of the billable work is transferred from the lawyers who tend to be the highest hourly rate billers to the lower hourly rate professionals who specialize in those areas.

3. **TERM OF PROCESS/NOT BOUND BY LIMITS OF THE COURT SCHEDULE** – Since the clients' interest and goals drive the collaborative process, the clients generally determine how fast or slow the process moves. The collaborative professionals typically prepare the clients for three to five full team meetings. This is based upon the clients meeting certain requirements such as getting all of the financial information to the financial professional by the first meeting so the professional

can prepare to cover the financial piece at a later meeting. If there are children, they also need to have a schedule for meeting with the mental health professional to complete the parenting plan. The collaborative process is generally more time efficient with professionals working to their strengths.

Any temporary issues that mediation, or a magistrate or Judge would address are dealt with during collaborative process at each meeting. Since the process is generally kept completely out of the court system until the collaborative settlement agreement is signed, there is no concern as to court timelines or judicial discretion. Collaborative cases tend to last months rather than years. At the beginning of the process, you should know when your next three or four full team meetings are and be able to schedule meetings with your client to prepare for each team meeting in advance. There are few last minute surprises regarding scheduling.

The benefit to the client is they drive the process, helping to determine what happens at each meeting; establishing a timeline that they understand and are actively participating in. Clients are not subject to waiting for arbitrary scheduling of mediation dates or hearing times.

Challenge – It is imperative that as many full team meetings be scheduled prior to or at the first full team meeting. Even if some meetings need to be cancelled, it is better to schedule at least three or four full team meetings at the first meeting. It is difficult when you have four professionals and possibly two professional clients to identify three-hour blocks of time where everyone can meet.

4. **TEAM APPROACH** – The core of what makes collaborative law so fulfilling for me is the opportunity to work with a team of professionals who are working toward the

goals set by the clients. Does this mean that there is never a time I think one of the team members is out of line? No. Does this mean that every attorney I have ever done a collaborative case with has been easy to work with? No. Does this mean I always feel the team has my back? No.

The magic is that within the team process I can express these concerns in an honest way that allows me and the other professional to grow. (This is where the doubters start talking about singing Kumbaya and drinking Kool-Aid). The truth is, at the end of each full team meeting the professional team has a 30 minute debrief where we discuss how we did as a team. We honestly appraise how we performed individually and as a team. I have received some harsh feedback at some of these meetings, but it has made me grow not only as a collaborative attorney, but also as an advocate for my clients and the process. My foundation in my collaborative practice is the law.

I can say I have never had a collaborative case that I thought would have ended better through litigation. However, I have had several litigated cases that I thought would have gone better collaboratively.

## 5. GROWTH OF BUSINESS

It is my hope that I do not have family law clients that are either serial divorcers or have ongoing post-divorce matters, so I know most clients are one-shot deals. Unlike many other areas of law such as corporate, intellectual property or even real estate, we do not get large clients that bring us business in an ongoing fashion. The future of my practice is through my network of referral sources.

Prior to my collaborative training the majority of my referrals came from attorneys that practice primarily other areas of law



or practice family law but not in my counties. Since being collaboratively trained, the number of referrals I receive from mental health and financial professionals (for both collaborative and non-collaborative cases) has increased.

Mental health counselors, particularly those that provide marital counseling are imminently aware of when a divorce is about to happen and have a true concern for how that process will proceed. Building a network of mental health and financial professionals that trust you with their clients' lives and money is extremely valuable. These are often the same group of professionals I trust and rely on in my non-collaborative cases.

Don't take my word that collaborative is better for YOU. Take action...go to the website for your local collaborative organization or to the Florida Statewide Collaborative website ([www.collaborativecoun-](http://www.collaborativecoun-)

[cilflorida.com](http://www.collaborativecouncilflorida.com)) to find a collaborative attorney in your area and take them to lunch. Ask them if being a collaborative professional has been better for them. Better yet, take a collaborative training course and see what the buzz is all about (training information available at [www.collaborativecouncilflorida.com](http://www.collaborativecouncilflorida.com)).

*Lori Caldwell-Carr is a family law attorney practicing in Maitland Florida as InFocus Family Law Firm. She has a true passion for helping people work through family law matters with the goal of making positive, well-informed and future-focused decisions about their case. Lori is actively involved in the legal community locally, statewide and nationally. She is AV rated from Martindale-Hubbell, a certified family law mediator and a certified trainer by the IACP (International Association of Collaborative Professions).*

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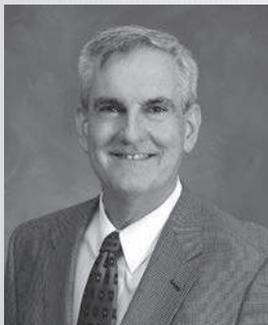
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John N. Bogdanoff is a graduate of the University of Florida Levin College of Law (with honors). During his more than 25 year career as a senior attorney at Florida's Fifth District Court of Appeal, he served appellate court judges Frank D. Upchurch, Melvin Orfinger, Joe A. Cowart, Warren H. Cobb, Robert J. Pleus and Richard B. Orfinger. Additionally, he served as the Court's public information officer and on the State Appellate Court Continuing Education Committee. He represented the Fifth District Court of Appeal at the National Judicial College's 2003 program on Media and the Courts. Currently he serves on the Daytona State College Legal Studies Advisory Committee and has been an adjunct professor at the college. Mr. Bogdanoff is also accredited with the Department of Veterans Affairs to present and prosecute administrative appeals on behalf of veterans. Mr. Bogdanoff has successfully argued appeals in the Florida district courts of appeal as well as in the United States Court of Appeals for the Eleventh Circuit.

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