

After 7 Years, Collaborative Law Process Bill Moves to Governor

Commentary by Robert J. Merlin, Daily Business Review

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The Florida Legislature passed the Collaborative Law Process Act in the latest session. If Gov. Rick Scott signs the bill, Florida would become the 15th state in the U.S. to adopt such a law.

The Florida Supreme Court would have to implement rules of procedure and professional conduct before the measure could become effective, and that's expected within a year.

The act recognizes and creates certain legal requirements for the use of the collaborative law process in divorces and paternity cases. It is the result of more than seven years of work by a handful of attorneys who strongly believe that the collaborative law process is a healthier and more effective way to resolve differences for couples who want to dissolve their marriage or stop living together as an unmarried couple.

For years, traditional family litigators opposed passage of the Collaborative Law Process Act, viewing it as a threat to the way they practiced family law. Conversely, those of us who have been promoting the collaborative law process view this trend as an alternative to traditional litigation for couples who want to change the status of their relationship. Since the collaborative law process is voluntary, neither the couple nor the professionals can be forced to use it. Therefore, there was no logical reason for attorneys to oppose its statutory recognition.

Despite the fact that no one in any of the Florida Senate or House committees opposed the bill and the Senate passed it during the last two legislative sessions, it was a victim of political warfare in those years. This year, the bill unanimously passed the Senate and House committees, and it was finally passed on the floors of the House and Senate unanimously.

How It Works

Each party in the collaborative law process retains the services of a specially trained attorney. In Florida, a neutral mental health professional is retained by the parties to help them get through the emotional aspects of the change in their relationship and to help them with children's issues. When there are financial issues to resolve, a neutral financial expert is retained as well.

The parties and the professionals meet together to identify issues in dispute and to help the parties resolve their own case. In other words, they control their own destiny. Information and documents are shared between the parties and the professionals, but the process is confidential to outsiders, as opposed to litigation where information can be accessed publicly.

Because the process is voluntary, either party can terminate the collaborative law process at any time. But if the process is terminated, the attorneys are disqualified from representing the parties in contested litigation, and the professionals cannot be deposed or forced to testify in the subsequent litigation.

The collaborative law process necessitates that the professionals involved undergo a paradigm shift. For litigators, that means learning to develop skills other than threatening the other side to a battle in court. The goal in the process is to help the couple create the best possible future for themselves and their children, given the specific circumstances of their family.

Consequently, collaborative professionals go through training, not only to learn how the Process works, but to learn how to become better all-around professionals.

The collaborative law process is currently being used in Miami-Dade, Broward, Palm Beach, Orange, Alachua, Duval, Pinellas, Seminole, Hillsborough and Collier counties, but it is anticipated that many more attorneys statewide are going to start using the Process to help their clients resolve family disputes once the Florida Supreme Court implements the rules of procedure and professional conduct.

Reduce The Trauma

The collaborative law process is a respectful, private and often economical way to help families preserve relationships rather than destroy them, putting the best interests of the children up front.

As of today, there are approximately 500 family law attorneys, mental health and financial professionals in Florida who have been trained in the process. Family law attorneys are encouraged to educate their clients about this alternative to traditional litigation and its benefits. This is also an opportunity for nonfamily law attorneys to become aware of the process and to educate family members, colleagues, co-workers and the general public about it.

The acceptance of this forward-thinking process is a reflection of the changes that we are going through as a society. The vast majority of couples facing divorce today do not want to be subjected to contentious litigation that may have negative emotional and financial effects on all involved.

The Collaborative Law Process Act will result in the public and professionals who work with couples going through a divorce becoming aware of there being a respectful, efficient and private alternative to contested family law litigation. It is anticipated that the act will help couples to resolve their differences, thereby reducing the trauma to themselves and their children that so often accompanies a divorce or paternity action.

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