

Interdisciplinary Collaborative Divorce: A Process for Effective Dispute Resolution

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Interdisciplinary Collaborative Divorce: A Process for Effective Dispute Resolution

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The practice of law is changing. Clients now demand quicker, less expensive, and more effective legal servicesⁱ. In fact, clients do not want legal services anymore. They want solutions.

This is especially true in family law and divorce matters. Fewer and fewer clients adopt the divorce is war mentality that characterized traditional divorce and family law processes.

Fewer and fewer clients are willing to tolerate the emotional, financial, and legal destruction that comes with adversarial divorces. Clients want to protect their children, preserve their financial future, and begin the next stage of their lives free of the trauma of an ugly divorce.

Interdisciplinary Collaborative Divorce (ICD) is designed to meet those needs.

However, most dispute resolution professionals either have not heard of ICD or lack sufficient familiarity with the processⁱⁱ. This paper presents an overview of ICD, seeks to explain the method, and describes the professionals involved in making it a highly effective dispute resolution processⁱⁱⁱ.

Origins of Collaborative Divorce

Collaborative Divorce was invented by Minneapolis-based attorney Stu Webb in 1990^{iv}. Webb experienced litigation as an inefficient and unnecessarily adversarial process that harmed clients financially and emotionally^v. His goal was to work with another attorney to address the needs and interests of both parties while attempting to settle the legal issues outside of court^{vi}. This approach is fundamentally different than the adversarial approach of our legal system. If the

Interest-based Negotiation

Interest-based negotiation may seem counter-intuitive to most family law professionals. After all, most lawyers are trained in the adversarial model, predicated on a win/lose outcome. Our competitive society programs cause most clients to see all conflict as a zero-sum game. In the experience of the authors, most clients have far more fundamental interests than winning. Their true interest is in their children being protected and in their being okay in the future. Winning, when dissected, is just a clumsy strategy for ensuring that they and their children will be okay.

Interest-based communication is an art and a skill, but it can be reduced to four basic steps. The four-step, interest-based negotiation model is central to the ICD process. The four steps are as follows^{xiv}:

1. Information gathering,
2. Identifying Needs and Interests,
3. Generating Options for Resolution, and
4. Resolving the issues by selecting options.

In step one all relevant demographic, financial, and logistical information is gathered and processed so that an accurate picture of the current situation can be visualized. This can include financial statements, account statements, pay stubs, titles, tax returns, deeds, and wills and trusts (among other documents) on the financial side. On the parenting side, it can mean any number of things as well – school schedules, IEPs for children with special needs, work schedules, and any other relevant information that will assist the professionals in aiding the spouses to make an informed decision later in the process.

projections and tax analyses that help clients make decisions. Mental health and child specialist neutrals can provide feedback as to how a particular option may impact children. Attorneys help their clients understand the legal ramifications and compare the available options to the range of likely litigated outcomes.

While the process appears linear, it is not. Frequently, the collaborative team realizes it must be missing data, failed to identify an important need or interest, and/or failed to generate sufficient options to resolve a matter. This inquiry needs to be made at each and every point that the team encounters sticking points in the negotiation. If a sticking point is reached in the resolution phase, then the team must re-assess whether important information is missing (leading to the use of subjective criteria or assumptions), whether a client is struggling with a need that is not being identified and met, and whether there are additional options that may better meet the client's goals. Similarly, if a client is resistant to producing important information in the data-gathering phase, the team and/or that client's team (attorney and/or client) must determine what need or interest the client is trying to serve by withholding the information. Thus, the process and the team moves between stages as the need arises.

The hallmark of ICD is the use of collateral professionals in the Collaborative Team. Obviously, every collaborative case requires a decidedly non-neutral attorney for each party. Some ICD processes also involve collaborative coaches that work primarily with a particular client. However, all other professionals on the collaborative team are hired by both parties jointly and are charged with being neutral in the process^{xvii}. This means that they do not have a primary duty to work for the benefit of either party to the exclusion of the other. They work individually with each client, but they are charged with working for the benefit of both parties.

There are two possible roles for mental health professionals: client coaches or child neutrals. As a coach, a mental health professional is not neutral^{xxii}. They are charged with helping their client manage the emotional and communication aspects of the ICD process. They do not undertake therapy with clients. Their services are engineered solely to help clients through the ICD process. Therefore, they will not try to resolve pre-existing emotional issues or conflicts. Instead they will provide skill building and tools to help clients mitigate the effects of counterproductive emotional issues or family dynamics.

These skills help clients communicate needs and make requests of the other party in a way that can be heard and effectively processed by their spouse. This reduces defensive, fearful, and other counterproductive reactions in the negotiation that often bog down other negotiation processes.

Coaches also help their client work through difficult emotional triggers or other issues outside of ICD negotiation conferences. This further reduces the amount of time that the team spends on emotional issues in the actual negotiation conferences. Further, it reduces the role of emotion in the decision making process. That, in turn, supports calm, rational, and effective decision making by clients.

Coaches spend time mining for needs and interests of their client. Coaches spend their careers listening in ways that collaborative attorneys learn only during and after their first ICD training. Therefore, they are often much quicker to identify the needs behind the client's statements and strategies.

However, as a child specialist, the professional is required to be neutral^{xxiii}. Their role in the ICD process is to meet with the children and parents and then provide feedback to the team (including parents) as to the children's coping, concerns, fears, needs, and interests. They are

custody outcomes, costs, attorneys' fees, and any other legal decisions that would be made in court.

When legal issues or questions arise, attorneys perform necessary research. *Both* attorneys typically share legal opinions in an ICD conference, rather than each attorney having a one-on-one session with a client. This prevents clients from unknowingly getting differing opinions from their attorneys on the law. If the attorneys differ in their view of the law, then the clients need that information to understand that legal opinions differ on the issue. Differing legal opinions provided in private generally create positional dynamics from the clients. Of course, the clients are informed that these opinions will be shared in a joint session.

Attorneys draft all agreements and other necessary paperwork to finalize any agreements reached. These agreements are reviewed independently with clients and also reviewed in an ICD session to ensure that they accurately reflect the parties' intent. The benefits of the ICD process are both immediate and longitudinal. There are benefits for clients as well as professionals.

One clear benefit of ICD is that clients get resolutions specifically engineered for their families. For example, rather than potentially destroying a family-owned business by transferring shares to an ex-spouse or forcing a liquidation, a buy-out can be agreed to over time with interest. Rather than getting a typical every other weekend and one day a week co-parenting agreement, the spouses may agree to a myriad of other schedules that fit their individual lives and the patterns of their family and children. Rather than have a court ordered sale of a home in a poor market, the couple can agree to hold on to the home after the divorce and wait until they can realize equity from a sale.

Perhaps the biggest benefit to clients is the durability of the agreements reached in the ICD process. Because the process identifies the true needs and interests of the parties, the

One of the most common complaints from clients in the adversarial process is the devastation wrought on their finances. The expense of hourly billing in litigation is often the most destructive aspect of a divorce. The parties may find themselves raiding retirement accounts, running up credit card debt, or borrowing heavily from friends and family to finance adversarial divorces. The ICD process typically costs significantly less than adversarial divorces^{xxxii}. Many ICD professionals use flat fees in lieu of hourly billing. This is possible because of the predictable structure and efficiency of the ICD process.

Perhaps more importantly, financial solutions in an ICD process are engineered to promote both clients' future wellbeing. When the win/lose paradigm is bypassed, solutions that optimize both spouse's financial futures are possible. Tax implications are discussed and resolved in ways that keep the most money possible in the hands of the family. With the help of financial neutrals, clients leave the process with a much better understanding of the current financial picture and the projections for their future.

Many clients enter the divorce process largely ignorant of the family's finances, as they may have left the financial side of the family to the other spouse. Thus, they are intimidated by financial issues and often experience great anxiety and fear when negotiating with what they perceive to be their more educated spouse. The beauty of the ICD process is that the more educated spouse, the attorneys, and/or the financial neutral can help educate clients on the financial issues. This alleviates the anxiety and fear that often torpedoes adversarial negotiations. In addition, the clients take that financial education into their future. Many clients feel financially empowered for the first time as a result of the ICD process.

Last, but not least, clients reach resolution significantly faster in the ICD process. On average, the Collaborative Divorce process produces a resolution in 17 weeks^{xxxii}. The average

more effectively, with less collateral damage than traditional processes. The demand for ICD is growing and wise professionals will make this process a part of their practices.

ⁱ Kerry Burleigh, *Collaborative Family Law*, 25 THE PEACEMAKER, (2011).

ⁱⁱ *Id.* at 3-4.

ⁱⁱⁱ See generally INTERNATIONAL ACADEMY OF COLLABORATIVE PROFESSIONALS, FAQ BASED ON CASES REPORTED TO THE PRACTICE SURVEY AS OF JULY 6, 2010, (July 2010), available at http://ccollaborativepractice.com_t.asp?cmbLanguage=English&q=survey&cx=008873985823673333676%3Atza5yk10keo&cof=FORID%3A11.

^{iv} STUART G. WEBB & RONALD D. OUSKY, THE COLLABORATIVE WAY TO DIVORCE XV (2006).

^v *Id.* at i-xix.

^{vi} *Id.*

^{vii} *Id.*

^{viii} IACP History, http://collaborativepractice.com/_t.asp?M=3&MS=3&T=History (last visited Feb. 27, 2012).

^{ix} Telephone interview with Ashley Lawrence, Executive Director of the International Academy of Collaborative Professionals. (February 17, 2009).

^x See e.g. N.C. Gen. Stat. § 50-70 to -79.

^{xi} Burleigh, *supra* note 1.

^{xii} ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN, 2d ed. (1991).

^{xiii} Such as Non-violent (empathic) Communication, active listening, reframing and other techniques.

^{xiv} See generally FISHER & URY 16-94.

^{xv} In reality, the professionals are mining for these needs and interests in the client's actions, body language and statements from their very first meeting.

^{xvi} The Separating Together Collaborative Practice Group frequently lists "burning down the house" as a farcical but helpful tool for teaching clients not to judge the options during the options phase.

^{xvii} IACP Ethics Committee, *IACP Ethics, Standards and Principles*, 11 THE COLLABORATIVE REVIEW 6, 6-15 (2010).

^{xviii} Also known as the "Full Team" process

^{xix} IACP Ethics committee, *supra* note 17, at 14.

^{xx} Michael Kothakota, *Divorce during Recession: Is it Affordable?*, 28 THE STANDARD, AFCPE 8-9 (2010).

^{xxi} Michael Kothakota, *Social Security: Caring for our Aging Population*, 28 THE STANDARD, AFCPE1, 1 and 8 (2010).

^{xxii} Non-neutrality is based on a two coach model. In a one coach model, one mental health professional acts as a coach for both parties, and therefore, must remain neutral. Non-neutrality