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Dispelling the Top Misconceptions about Collaborative Law

MISCONCEPTION #1: Collaborative law is more expensive than other divorce processes.

TRUTH: ***Collaborative law generally costs 80% of a traditional process.*** Our practice group's anecdotal case data, confirmed by national statistics, shows that collaborative divorces cost about 20 percent less than a traditional process with lawyers not trained in collaborative law. Collaborative law has built-in efficiencies that other processes do not:

* Rather than both lawyers completing the due diligence of reviewing all financial documents (tax returns, account statements, pension plans, etc.), in a collaborative process both lawyers delegate that work to a neutral financial analyst. That way clients pay just one professional with a lower hourly rate (rather than two lawyers) to compile the necessary financial information prior to settlement.

* A collaborative process also involves a series of meetings with both spouses and both lawyers, in which all relevant issues are discussed in real time -- rather than the expensive "game of telephone" when lawyers trade offer and counter-offers back in forth and much gets lost in translation.

MISCONCEPTION #2: Collaborative law is only for spouses who feel friendly, trusting and "collaborative" toward each other.

TRUTH: ***Recent collaborative cases in our practice group have involved suspicions about one spouse hiding money, families struggling with the effects of mental illness and addictions, spouses with a history of domestic violence, and couples in high conflict.*** I've come to believe these sorts of cases actually need a collaborative approach more than "easier" cases. I often explain that "collaborative" describes the way the professionals work together (not necessarily the spouses). When families need coordinated support and conflict resolution for fragile situations, When professionals collaborate, that does not mean clients don't receive strong advocacy. It simply means that advocacy for one spouse won't trump all other considerations, such as preserving long-term family relationships, keeping lawyer fees in check, and bringing a reasonable perspective including the interests and long-term well being for all family members.

MISCONCEPTION #3: In collaborative divorce, I would probably get a worse settlement.

TRUTH: ***Outcomes -- asset division, child support, parenting plan -- achieved in collaborative law almost always fall within the likely range of what a judge would decide.*** When they don't, it's because both spouses agree they want to deviate from the norms that could expect in court. And those decisions aren't made until after both parties receive plenty of legal advice from their lawyers, and carefully weigh the pros and cons.

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MISCONCEPTION #4: It often doesn't work, and then the clients have to start over with new lawyers.

TRUTH: Collaborative law works well in almost all cases. A very tiny percentage of our practice group's collaborative cases have not successfully reached completion. In the last seven years, only two of my collaborative cases have required referrals to non-collaborative lawyers because we could not reach resolution.

MISCONCEPTION #5: Collaborative law isn't much different from traditional divorce, especially if I hire a reasonable lawyer who's not a bulldog.

TRUTH: Traditional divorce takes an arguably old-fashioned approach, in which a paternalistic lawyer directs the case and the clients, while looking for arguments that his or her client should get more. Even the most reasonable divorce attorneys use a very different process -- rooted in the adversarial and formal court system -- for reaching resolution. Collaborative law differs in many fundamental ways:

* Its structured meetings-based approach maximizes efficient and direct communications and avoids many misunderstandings and wrong assumptions.

* Surprises in the context of divorce almost always compromise trust and prompt strong negative reactions. In the collaborative process, we work hard to avoid surprises. Everything from the filing the divorce petition and setting meeting agendas to making plans for financial arrangements are done with input from both spouses.

* Collaborative lawyers counsel clients toward deescalating conflict through creative problem solving. Traditional divorce attorneys must, because of their role within an adversarial system, take their clients' "side," inevitably resulting in a win-lose mindset to resolving problems.

* In traditional divorce, the lawyers -- at their high hourly rate -- do a huge range of tasks, some outside of their specialized expertise: analyzing tax returns, considering parenting plan provisions, anticipating tax concerns, counseling emotional clients. In collaborative divorce, neutral financial analysts assist with evaluating assets and liabilities, mental health professionals help develop plans for parenting kids and assist with the emotional side of divorce. Those other professionals have more in-depth training in certain areas and typically charge a lower hourly fee. As a result, clients get more specialized support at a lower cost.

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