BLOG ARTICLES

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Collaborative Divorce: The Basics (Part 1)

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By: Plog & Stein PC

This part one of a two-part series on Collaborative Divorce in Colorado addresses what collaborative divorce is, who is involved, and some reasons that couples who are divorcing choose this process.

Collaborative divorce is an alternative disputes resolutions (ADR) process which couples can choose to engage in when they have decided to end their marriage, but would like to avoid the negative effects often associated with contested litigation. The goal of a collaborative divorce process is to reach a full out-of-court divorce settlement through a series of meetings between the couple and their Collaborative Divorce Professional Team (see below). It is a transparent process in which everyone involved agrees to operate in a manner that is honest and forthcoming. Please note, this does not mean that the process will be 100% pleasant, after all a marriage is still ending and no process no matter how smooth can remove the emotional, financial, and formal stresses associated with a divorce. Some states have even adopted statutes regarding **collaborative divorce**. Colorado is not yet one of them.

Who is Involved?

The Collaborative Divorce process typically involves 6 major players: you, your spouse (referred to in collaborative divorce as clients rather than parties), your attorney, your spouse's attorney, a collaborative divorce facilitator (CDF) and a Financial Neutral (FN).

The CDF and FN are both neutral professionals that will be jointly chosen by you and your spouse. The CDF's role consists of organizing the process, working with the couple to figure out the major terms for the

parenting plan (if children are involved) and ensuring that both clients are getting what each need out of the process. The CDF is typically a trained mediator, coach and/or mental health professional. The FN's role is to handle the financial aspects of the divorce, including ensuring he necessary financial disclosures (Which the court requires) are completed and working with clients to make informed decisions regarding the finical agreements that hey are discussing. The FN may create projected budgets for the clients and advise as to how they may be able to meet financial goals such as purchasing a new home or funding college tuition.

Each of the client's will choose your own attorney for the collaborative divorce process. The attorneys will handle all of the paperwork that needs to be filed with the court in order for the couple to obtain a divorce. They will advise you regarding your legal rights and responsibilities. The attorneys will advise you as to whether a contemplated settlement is or isn't something a court might order. You and your spouse respectively will have attorney-client privilege with your respective attorneys just as you would if you were litigating the case. Your collaborative attorney will never share information without your consent; however, in the spirit of the collaborative process, which is a transparent one, your attorney may encourage you to share certain information with the rest of the collaborative team if the attorney believes it is material to the agreements being discussed.

Why to Choose Collaborative Divorce

Although collaborative divorce isn't for everyone, here are some reasons why people choose it.

Timing: Couples can choose their own timeline for the various steps in the divorce process (there are no court-imposed deadlines or consequences for not meeting those deadlines;

Privacy: couples can maintain a better sense of privacy (there are no appearances or chances that others in the community might see them at court)

Structure: Collaborative divorce has aspects of mediation with the added benefit of more structure (the collaborative team sets agendas for each meeting and ensures the process is progressing)

Satisfactory Resolution's: many couples choose this process because it offers them the chance to come up with more creative solutions that meet their family's needs than a judge would. This can result in better outcomes for everyone.

Agency and Autonomy: The collaborate divorce process is driven by the clients not the court and not the attorneys. Everyone on the team works to meet client goals and to advise them how to get there.

- **Future Benefits:** The collaborative **divorce process** encourages the parties to work through problems themselves with respect and a desire to meet each other's needs. These skills help couples to continue doing this after they are divorced, which for almost all collaborative divorces results in no post-decree litigation and allows parents to be effective co-parents.

Stay tuned for mote on collaborative divorce . . .

*In addition to legal representation in the traditional divorce litigation setting, Plog & Stein, P.C. is also able to offer Collaborative Divorce representation.

Get Ready . . . Get Set . . . Go: What Will Happen at Court?

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By: Plog & Stein PC

If you have ever called a law office seeking legal services in a pending case, you were probably asked whether anything was set with the court and, if so, what was set. This information is crucial because what one can expect and what one needs to do in order to be prepared for a setting with the court depends upon what type of setting it is. In **family**

law court, there are generally five major types of settings. Each is explained below.

Status Conferences

Status conferences differ from hearings in the sense that the court typically is not taking evidence at a status conference. The types of orders that are issued after a status conference are generally procedural in nature or to the extent they are substantive, they reflect stipulations of the parties. Status conferences are set routinely: at the beginning of a new case, in order to oversee the implementation of some orders, to ensure parties are ready for a hearing and at the request of the parties. Holding a status conference is a way for the court to manage and oversee the case. The most common type of status conference is an initial status conference.

Initial status conferences (ISCs) are held early in a newly filed domestic relations case. The initial status conference can be overseen by a judge, a magistrate or a family court facilitator depending upon the court and whether parties are represented by attorneys. Where the location of the ISC is will help you to determine who is presiding over the ISC. At the ISC the court will determine what is needed to get your particular case from that day to final resolution. The court will set deadlines and hearings as the court deems necessary based upon the circumstances of the case. You should bring a calendar to the ISC to clear proposed

hearing dates. The ISC is not a time to make your case to the court. However, it can be a time to let the court know that there is an urgent matter that needs attention. The court can then deal with the matter appropriately by either instructing you to file a motion or to set a hearing.

Temporary Orders Hearings

Temporary orders refer to orders that will be in place from the time of filing a petition or motion until resolution of the case. Temporary orders are requested at the initial status conference or by motion to the court. Temporary orders hearings are contested hearings that are usually set for 1 to 3 hours. Temporary Orders Hearings can be presided over by a judge or magistrate depending upon the subject matter and the court. The court will take testimony and admit evidence at the hearing. Parties can ask for temporary orders for maintenance, child support, exclusive use of property, payment of bills or debts, parenting time and decision making. What is decided at a temporary orders hearing does not have to be the same as what will be entered at a final or permanent orders hearing.

Permanent Orders Hearings

Permanent order hearings refer to hearings that are held to resolve the ultimate issues in the pending petition for dissolution of marriage or allocation of parental responsibilities. These are contested hearings at

which the court will hear testimony and take evidence. They are typically set for a half day, full-day or sometimes even two days. These hearings are presided over by the Judge.

Non-Contested Hearings

A non-contested hearing is a hearing that the court may set when parties have filed a stipulated parenting plan and/or separation agreement resolving all the pending issues between them. The court does this to take jurisdictional information from the parties needed to enter the orders and to ensure that both parties have entered into their agreements freely and voluntarily.

Emergency Hearings

Emergency hearings refer to protection orders and motions to restrict parenting time. Because a party can get an order that restricts the other party based upon alleged danger in an ex-parte (one party talking to the court without the other party) proceeding, the court is required to hold a hearing within 14 days of the issuance of such an ex-parte order. There is often less notice and time to prepare for these hearings. However, they are still hearings at which the court will take testimony and exhibits as evidence.

Other types of hearings

There are other types of hearings that the court can set under various scenarios, including motions hearings (to resolve post-decree motions), contempt advisements/hearings and preliminary hearings (to determine pre-requisite matters such as whether ra party has capacity to participate in a hearing, whether there was a common law marriage, and whether certain evidence should be allowed). Essentially, the court could hold a hearing on any matter that may arise in a divorce, **child custody**, or other family law case. They key thing is to ensure you know what the subject of the hearing will be long before you show up.

What is an Expert and Why are Experts Involved in Divorce Cases?

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By: Plog & Stein PC

An expert is somebody who is uniquely qualified by his/her education, knowledge and experience to offer opinions regarding matters that are scientific, technical or that require specialized knowledge. ***See* C.R.E. Rule 702**. Although any witness could potentially by certified as an expert by the court if he/she possess the requisite education, knowledge and experience, not every witness can offer expert opinions to the court.

In some family law cases, hiring an expert is crucial to the success of your case. This is particularly true when your case turns on a fact that requires an expert opinion (an opinion that is based upon specialized knowledge). For example, if your case is based upon a showing that your child's emotional development is being substantially impaired, you will likely need a developmental psychologist to offer an expert opinion regarding this and why this is the case.

Even if your case does not strictly need an expert, many cases benefit from the use of experts as expert opinions can be useful to: 1) facilitate settlement (when the impasse between the parties is being caused by a dispute that an expert opinion can resolve); 2) offer recommendations and solutions (when the parties are truly unsure what is correct or best under the circumstances); 3) facilitate the admission of evidence in the court proceeding (when you need to get into evidence hearsay statements of a minor, a minor's therapist or even just consolidate a lot of information into a more digestible format) and/or 3) bolster one party's

position. While the use of experts flows from C.R.E. Rule 702, in most **family law cases, C.R.C.P. Rule 16.2** is going to govern timing in terms of disclosing experts for court.

Types of Experts

The following types of experts are commonly appointed in divorce cases.

- Real Property Experts:
    - Appraisers are the most commonly appointed real estate expert in divorce cases. Appraisers are hired to determine historical and present-day fair market values for real property.
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    - In some cases, the parties need to determine what the fair market rental value for a property is. This can come up if one party is living rent free in a home that a third party owns or when one party will be keeping a rental property or in some other circumstances.
- Financial Experts
    - If one or both parties own a business, there may be a need to determine the fair market value of the business.

    - If one or both parties own separate property that has been exchanged from one type of asset to another throughout the marriage, a separate property tracing expert may be needed.
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    - Not all assets are treated the same for tax purposes. For this reason it is some times needed for a certified public accountant to offer an opinion regarding the tax consequences of various transactions or contemplated transactions.
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    - It is common to hire a trust expert if either party is a beneficiary to a trust. This trust expert will offer on opinion regarding whether there is a property interest in the trust and, if so, the value of such interest.
- Vocational Evaluators
    - The income of each party is important in a divorce as such income is used to determine maintenance (alimony) and child support. However, sometimes the reasonable earnings of a party are uncertain. In such circumstances a vocational evaluation can help resolve this dispute and determine what reasonable earnings are for such spouse.
- Parenting Experts

- A Child and Family Investigator (CFI) is a parenting expert that is appointed to investigate a specific parenting issue and to provide recommendations regarding that issue to the court.
- A Parental Responsibilities Evaluator (PRE) is a parenting expert who will investigate and provide recommendations about parenting to the court. The difference between a PRE and a CFI is that a PRE can do a more in-depth investigation that often includes psychological testing of the parents.

When do Experts Need to be Appointed?

Because each expert will need to gather information in order to provide an accurate opinion, it is important to plan ahead and give the expert enough time to do his/her job. Expert witnesses are by general rule to be disclosed 63 days before a hearing and their reports are due 56 days before a hearing. Although the court might change such deadlines upon request, this timing is ideal when it can be met so that both parties have time to determine if a rebuttal expert is needed and have time to use the report in settlement discussions before trial. Your **Denver family law lawyer** will be keenly aware of these deadlines and should discuss them with you in more detail as needed, or as they approach.

How do I Find an Expert?

Of course, experts can be found through an internet search. However, an internet search does always get you to the best expert for your case and it can often lead you away from a good expert (due to a disgruntled party's review of them). Expert recommendations can be provided by family law attorneys, professional organizations that deal in family law and by the court.

Do I Have to Go to Court to Get Divorced in Colorado?

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By: Plog & Stein PC

Many people are reluctant, nervous, or even fearful of going to court. This is understandable because most people have never been to court and find the formal setting uncomfortable. Additionally going to court can be inconvenient to people who live far away from the courthouse (sometimes even out of state) or for people who have to take time off of work during the court's business hours. Given the inconvenience of going to court, people often ask if they can just "file the papers." In essence, what they want to know is whether it is possible to get divorced without going to court.

In Colorado, you CAN get a divorce decree without ever stepping foot inside the courthouse. If this is your goal, the most reliable way to ensure that you avoid ever going to court (and, in some cases, the only way) is for you and your spouse to consult with and work with attorneys. Even if all necessary documents are filed and full agreement has been reached, the parties will still need to attend a quick, final hearing unless they have submitted what is a called an "**affidavit for decree without appearance of parties**." This document basically lets the court know that everything has been filed and asks the court to enter the divorce decree without anyone having to physically appear. This Affidavit can only be used as a means to avoid court altogether if there

are no minor children of the marriage or, if there are kids, both parties have attorneys representing them in the divorce.

The aim in every divorce case is to receive a declaration to all concerned that you and your spouse are no longer legally married. Such declaration is accomplished by obtaining a decree of dissolution of marriage that has been signed by a judge or magistrate.

In general, before a judge or magistrate will sign your decree, thereby divorcing you and your spouse, he or she is required to make factual and legal findings including:

- That the marriage is irretrievably broken.
- That it has been 91 days since the court obtained jurisdiction over both parties.
- That **marital property** has been divided equitably.
- That any provision with respect to maintenance (**alimony**) for either spouse is fair and not unconscionable.
- If there are children of the marriage, that parental responsibilities have been allocated in a manner that is in the best interest of the children.

A court does not necessarily need to hold a formal hearing in order to make these determinations, especially if both parties have reached a full

settlement agreement and there is no genuine issue of material fact. However, the court does need financial and practical information from the parties in order to make the findings. This information can be provided to the court in writing by filing various documents.

Filling for Divorce On Your Own

Although the court can provide forms for divorcing parties to fill out and use for this purpose, knowing what to file, how to fill it out, and if you have everything can be confusing. Furthermore, doing it all without a **Denver divorce lawyer** typically requires going to the courthouse for a variety of reasons, including physically handing the documents to the clerk for filing; appearing at the initial status conference, and appearing at a non-contested, final hearing.

Divorce attorneys know exactly what needs to be filed, what information needs to be in a particular filing, and when documents ought to be filed to accomplish certain goals. They can file documents on your behalf so that you do not have to go to the courthouse to hand them to the clerk. They can also advise you regarding certain documents that could be completed and filed with the court in order to eliminate the need for you to appear at an initial status conference or a non-contested hearing.

Furthermore, attorneys can draft important documents, such as separation agreements and parenting plans, in a manner that the court is

more likely to approve. If the court has a question about what was filed, attorneys can often address such questions quickly and without need for the parties to appear. Conversely, vague, incomplete, or unclear agreements can lead to the court requiring the parties to appear to explain, clarify, or give more detail to their agreements

Assuming all necessary documents are on file with the court and the parties have submitted an affidavit for decree without appearance, a couple can get divorced from start to finish without setting foot in a courthouse. All that being said, every once in a while we do see a new or random judge make everyone show up for the final, **uncontested divorce** hearing, despite all requirements being met. These instances are few and far between.