

18 September 2011

Malcolm E. McCollam, J. D.
MalcolmLaw - The Legal Specialist
1316 East 35th Place, Suite 200
Tulsa, Oklahoma 74105

Re: Collaborative Law Divorce

In District Court in and for Tulsa County State of Oklahoma
In the Marriage of: __HUSBAND__ and __WIFE__
Case No. FD-2011-0625
Docket B
Judge Martha Rupp Carter

Dear Mr. McCollam:

It became clear to me several months ago I could not let pass without comment my observations of a recent Collaborative Law Divorce. The letter is long, yet it only touches the surface of a process that I believe to be rife with conflict and inability to carry out its proposed intent.

Three definitions follow only for informational purpose:

COLLABORATE:

intransitive verb

1: to work jointly with others or together especially in an intellectual endeavor (Merriam-Webster, 2011)

DIVORCE:

1: the action or an instance of legally dissolving a marriage (Merriam-Webster, 2011).

COLLABORATIVE DIVORCE: Family Law Statistics show nearly half of all marriages end in divorce. If you are interested in a less painful and less destructive process than traditional litigation, a Collaborative Divorce may be right for you. Collaborative Practice began in the USA in 1992. There are more than 3,105 members of the International Academy of Collaborative Professionals and 227 Practice Groups in the U.S. Collaborative divorce began in Oklahoma in 2002 with the formation of the Oklahoma Academy of Collaborative Professionals practice group.

The Collaborative process focuses on your needs and the needs of your spouse and children to preserve your dignity, preserve assets and focus on the welfare of your children.

Lawyers agree not to take part in any litigation. This allows everyone to focus on settlement, rather than wasting your time and money preparing for a trial that will

likely never happen. (Malcolm Law - The Legal Specialist (n.d.) malcolmlaw.com

Collaborative Law Divorce seems like the perfect solution. However, in my opinion, few claims outlined on the MalcolmLaw web page were implemented regarding the above-indicated Collaborative Law Divorce, for which you served as HUSBAND's attorney.

During my research on this subject, I learned that two firm advocates of Collaborative Law Divorce, Pauline H. Tesler, M.A., J.D. and Peggy Thompson, PhD, co-authored a book entitled: ***Collaborative Divorce: The Revolutionary New Way to Restructure Your Family, Resolve Legal Issues, and Move on with Your Life***. Apparently, both professional women had witnessed the devastating effects of lengthy, costly, litigated divorces and believed there was a better way. Thus, they were instrumental in founding the Collaborative Law Divorce process and co-authoring the above-mentioned book.

After significant research, I have come to the conclusion Collaborative Law Divorce was designed and tailored primarily by women, for the benefit of women and, specifically, for the benefit of women with minor children. Of note, there were no minor children to be considered in this collaborative divorce. The three young women (children) are all of legal voting age.

My research has also shown that collaborative divorce attorneys often demonstrate manipulative practices in collaborative divorce procedures. It appears many collaborative divorce cases are lengthy and drawn out, by design, as a means for professionals to justify additional hours and cost. Furthermore, I learned it is not uncommon for attorneys to use the tactic of "wearing down" a petitioner or respondent, then coercing agreements and signatures from one party or the other. I believe such bullying is exactly what happened during this particular collaborative divorce.

In this case HUSBAND, the petitioner, entered into a Collaborative Law Divorce contract in good faith, with honesty and integrity, only to be devastated personally, emotionally, and financially. It seems obvious if one person wants dissolution of the marriage, and the other does not, then collaborative divorce would not be the right choice for them.

Unfortunately, the contract was eventually signed, yet I firmly believe the couple was not fully informed, or aware, of the many caveats contained therein. Attorney's are well protected by the contract, while the same is not true for the divorcing couple.

The divorce **was** painful; the divorce **was** destructive; the process certainly did **not** focus on the needs of HUSBAND. However, I believe it definitely focused on the needs (wants) of the respondent, WIFE. The process **did not** preserve dignity for either party, nor did it preserve assets. In actuality, it more represented

effects of a litigated divorce than that of Collaborative Law Divorce protocol. Perhaps litigated action would have better served this couple, in terms of equal representation and equal resolution.

I know WIFE to be well educated, to have been responsibly employed in the past, until a recent move to Tulsa. She continues to have the necessary skills, good health, capability and interest in returning to the work force. I believe this has always been her intent and desire.

I trust counsel recognizes a large sum of marital assets **was** wasted during this collaborative divorce process. Additionally, an unfair portion of HUSBAND's assets was awarded to WIFE, including an unreasonable and obscene maintenance fee for the next five years. Add to this figure, costly professional fees well over \$65,000. Such an injustice.

Included in the divorce decree, “.....**Said alimony payments shall not be taxable to WIFE, nor deductible by HUSBAND.....**” What is the insane rationale behind this flagrant action? Did you have any involvement with terms set forth in the final decree? Probably not, since near the end you had withdrawn from the process. Then, was WIFE and her attorney solely responsible for assembling the divorce decree? It is my understanding HUSBAND requested relief from this particular clause, to no avail. Unfortunately, HUSBAND was often held hostage with threats made by WIFE or her counsel if he did not agree with various provisions offered during the long course of collaborative proceedings, with apparently no objections from counsel. Is this the manner in which the process was described to either party before signing the agreements?

The quoted timeframe of three to four months costing \$30,000 to \$35,000, for completion of a Collaborative Law Divorce, was certainly a long way off the mark. The actual process took nearly twelve months and more than \$65,000. I'm not certain this figure even includes months of housing expenses for HUSBAND. As you know, HUSBAND left his marital home in the spirit of cooperation, as suggested by WIFE's divorce team, which then deprived him of his personal and joint property for nearly twelve months. I doubt he had to move from his home without legal action. I fail to see where any of this fits within the guidelines and touting of Collaborative Law Divorce. However, I do see it as a failure of the process.

Consequently, I believe ethics could be questionable in this particular case, as follows:

- Not the ideal process for this divorcing couple - little discussion to that end
- Months of time consuming, costly, unproductive meetings (for which HUSBAND was never given the courtesy of pre-agendas; for which he was paying and entitled)
- Continuous requests for documents by attorneys/teams/WIFE (which HUSBAND had previously provided very early in the process)

- WIFE's actions:

Changing the door locks on their home (approval required)?

Denying HUSBAND access to his own home, workshop, personal possessions, paperwork....and his beloved dog (even after divorce documents were signed)

Unnecessary travel and spending - domestic and foreign

Insisting on counseling for adult children (at HUSBAND's expense)

Manipulating adult children to support her position. (To wit, these young women have enjoyed "the good life" and should have been given opportunity to remain neutral during proceedings.) Likely not important to counsel, but definitely causing even more dissension in a difficult post- divorce time. Collaborative Law Divorce?

- Huge cost of 2/4/6/7/8-way meetings, with little or nothing accomplished
- Many delays and time lags over nearly twelve months - perhaps by design
- Counsel's lack of communication with HUSBAND about his concerns, questions, requests and suggestions, which he trusted would lead to fair and equitable negotiations and settlement
- Little encouragement for couple to work out their own fair and equitable distribution of wealth and property (as prescribed by Collaborative Law Divorce)
- Counsel's threat to withdraw on April 22, 2011 - with no further communication as promised - then apparently withdrawing sometime during the final days
- WIFE's legal team illegally altering vehicle titles, rendering them invalid
- Counsel withdrawing without immediately notifying his client

As issues continued to arise during the long drawn out collaborative process, HUSBAND had minimum direction or support from his legal counsel. Yet it appears WIFE enjoyed the advantage of complete cooperation and advice from her attorney and divorce team throughout the process.

It was **not** unreasonable for HUSBAND to request an agenda before scheduled 2/4/6/7/8-way meetings. WIFE and her counsel always had timely information.

HUSBAND advised there was seldom a good flow of communication with counsel. His request for this information produced little or no response, despite the fact counsel's fee was paid up front 100%, then counsel most flagrantly missing during the end period when the decree was finalized and written.

It was **not** unreasonable for HUSBAND to decline hiring a financial neutral. I am under the impression a collaborative divorce process is about cooperation

and making choices; for **both** parties. What WIFE wanted, or didn't want, went unchallenged. She will continue to live her accustomed lifestyle with a large monthly alimony to supplement her professional earning capability; on which HUSBAND pays the income tax and on which he cannot deduct for tax purposes.

WIFE is also the recipient of 62% of HUSBAND's wealth. This action will be detrimental to adult children in the future, as HUSBAND will be unable to continue his former lifestyle, which included provisions to assist with their financial needs. Suffice to say, I need not go into the obvious reasons. Does this sound like Collaborative Law Divorce to you? Not to me and not according to MalcomLaw website and other sources advocating collaborative divorce.

It **was** unreasonable for HUSBAND to be denied access to his own home for which he was paying the mortgage, taxes and bills. This denial prevented him from having access to personal possessions for nearly a year. Neither attorney intervened in his behalf to ameliorate WIFE's actions.

Perhaps it **was** unreasonable for HUSBAND to have paid the entire legal fee to counsel before beginning the collaborative divorce proceedings.

It **was not** unreasonable for HUSBAND to request his attorney to, at the very least, attempt negotiating a lower monthly maintenance or alimony fee. Was there any negotiating over WIFE's demand, or had counsel already left the table by then? Also, it **was not** unreasonable for HUSBAND to request a more reasonable property and financial settlement - in line with advertised benefits of Collaborative Law Divorce.

It **was not** unreasonable for HUSBAND to request results of team meetings. WIFE had timely and updated information. Apparently, counsel felt this was neither necessary nor important as the petitioner rarely received requested information. Unfortunately, lack of agendas and pertinent information left HUSBAND at a huge disadvantage during all collaborative divorce meetings, with WIFE enjoying the advantageous edge at these gatherings. Perhaps it was intentional.

As a thirty-five year diabetic, was HUSBAND's health ever considered in the process? Was any consideration given to his employment and health situation, i.e. over the next five years? Is it possible a micromanaged marriage contributed to an escalation of his health condition and his desire to end the marriage? Contrary to the principals of collaborative divorce, a serious side effect can be, and often is, the vulnerability of physical, emotional and mental health. With counsel's supportive action, perhaps these issues could be minimized.

Was any consideration given to HUSBAND's realistic, perhaps necessary, reason for seeking a divorce? HUSBAND and WIFE have been in and out of marital counseling for more than sixteen years to no avail, which I prefer not to address at this time. *And*, please do not insult my intelligence with rhetoric about

a “third party.” A “third party” had absolutely no relevancy in HUSBAND filing for dissolution of the marriage. It appears no one examined any of the facts or incentives behind HUSBAND’s decision to seek a divorce. It seems everyone’s focus, perhaps intentionally, missed the point.

It **was** reasonable for HUSBAND to expect cooperation from his attorney during the entire collaborative process. Why would legal counsel withdraw support during final days of the process, even though he had earlier (April 22, 2011) threatened to take such action, but did not? Given the prolonged proceedings, is it possible counsel felt the process had “used up” a prepaid fee of \$12,000? So, do you just drop your client?

The petitioner was literally left to fend for himself, contrary to the contract, during the last vital and important days of the collaborative divorce process; and while the decree was being finalized. Of note, again threats were made by WIFE and her divorce team as to the consequences if HUSBAND did not accept the final agreement as written, with no input from his point of view. “Agreement” being the key word here, and an advocated goal of Collaborative Law Divorce. Was it an “agreement?”

AGREEMENT: 1.

a : the act or fact of [agreeing](#)

b : harmony of opinion, action, or character : [concord](#). (Merriam Webster. 2011.)

Often times HUSBAND was not in “agreement,” but very little attention was given to his point of view regarding an “agreement.”

The following is incidental, but does indicate how the “process” worked, or didn’t work. It was agreed WIFE would acquire all of their household furniture with HUSBAND retaining his wood working tools. Working alone, she removed everything in sight, not just furniture. Personal items were to be sorted and divided in the presence of one another. WIFE did not honor the agreement, taking and packing what she wanted, including items belonging to HUSBAND. What little remained was left in piles about the house. These actions were brought to counsel’s attention with barely a response and no indication of interest in the matter.

Working together and making choices to resolve issues, as defined by the collaborative divorce process, certainly did not happen in this case. WIFE apparently was driven by her attorney and her divorce team, while HUSBAND relied solely on his attorney and team for guidance and advocacy, which didn’t happen. HUSBAND is a scientist, not an attorney. Counsel was retained to represent HUSBAND through to the end of contract negotiations, which didn’t happen. What a shame.

In February 2011, I attended a meeting with counsel and HUSBAND, when you suggested a “financial neutral” be added to the process. HUSBAND did not deem this necessary, but asked the approximate cost if he were to agree to such action. Counsel clearly said....”somewhere between \$2,000 and \$3,000. When we left counsel’s office HUSBAND commented it would likely be more than the mentioned fee. Total cost for the addition of a financial neutral (against petitioner’s wishes) was over \$23,000. Later in the process, it is my understanding counsel denied having made such a comment.

Please be advised, I was present during the session and I did witness counsel’s answer to HUSBAND’s question.

What is an accurate definition of Collaborative Law Divorce? In my opinion, it seems like a very clever design for a very lot of people to make a very lot of money, despite the promise of “less expensive.” The fact remains, HUSBAND was financially and emotionally devastated by the very process designed to **not** let this happen. It appears to me the process failed, the legal system failed and counsel failed client-attorney responsibility, regardless of whatever conditions may have existed during the process.

If counsel was uncomfortable with such responsibility, perhaps he should have withdrawn early in the process, as allowed by the Collaborative Law Divorce contract, thus giving HUSBAND the opportunity to engage a more compatible attorney. In my opinion, the contract provides far more protection for professionals than it does for parties of divorce.

As you know, HUSBAND is well educated (holding two degrees from Washington University, St. Louis), an intelligent, articulate person, and a very respected individual in his profession. To have been treated with such disdain by a collaborative divorce process, and by his counsel, is demeaning and simply appalling.

I believe counsel shares responsibility for the financial devastation of his own client. Was it because your client questioned the process, and did not always agree with counsel and teams, that he paid the ultimate price? By the end of five years, this divorce will have cost HUSBAND at least 1.4 million (approximately six times his annual earnings.) This, thanks to a misapplied Collaborative Law Divorce and lack of an interested, diligent counsel.

HUSBAND should have had representation until the very end of the process, as required by contract. This would be the only fair way to protect the rights of both spouses. At the onset, HUSBAND paid 100% fee for 100% representation. It appears the only persons privy to the fact that counsel had withdrawn **sometime** during the final days of the collaborative process were WIFE and her team. HUSBAND was not advised at the same time. This action, of course, left him with no legal representation during the final and very critical days of the process.

Could this be considered a breach of contract?

Yes, we have a broken family. I fail to see where a Collaborative Law Divorce provided any relief for either HUSBAND or WIFE. I will always believe the goal during these proceedings was to undermine, demoralize and financially devastate HUSBAND in order to reach a settlement that paid the team well. No person should suffer the indignities that obviously can be wrought by a Collaborative Law Divorce. Unfortunately, once a person is caught in the “web” of a Collaborative Law Divorce contract, there is no escape without bizarre consequences.

These are but a few of my observations of just how a Collaborative Law Divorce process can go awry and abrogate its founding purpose and principal.

Such a travesty and injustice.

Sincerely,

CONCERNED MOTHER OF HUSBAND in Collaborative Divorce Case

cc file: et al.

Merriam-Webster On Line Dictionary. (2011). Retrieved July 25, 2011 from <http://www.merriam-webster.com/dictionary/collaborative>

MalcolmLaw - The Legal Specialist www.malcolmlaw.com/site/malcolmlaw/section/10 88(n.d.). Retrieved July 26, 2011