

A Textbook CL Divorce:

Or CL Looks Easy When the Clients Totally 'Get It'

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On paper Collaborative Law (“CL”) certainly seems like an idea whose time has come – it is such an obvious improvement, in appropriate cases, over the ordinary way most disputes are handled, especially divorce cases. And yet in real-life CL cases, the road is often rocky.

For that reason, at almost every stage of the CL negotiations that led to the divorce of our clients Mary and Arthur, we were pinching ourselves, wondering how this case could be going so smoothly. And now that the case is concluded, we thought it might be worthwhile reviewing the elements that contributed to our clients’ success with the CL process. (We have changed our clients’ names, of course, for this article.)

First, Mary and Arthur both wanted the divorce. Mary came to that conclusion about six months before Arthur (and it actually took her that full 6 months from initial interview to retainer), but by the time the CL process began, both were on the same page. In our view, this can often be a critical component that affects the pace and level of cooperation in a negotiation.

Second, our clients are both exceptionally well-organized and financially-savvy people – more so, perhaps, than their lawyers. They readily assembled the necessary financial information, and Mary organized it into a series of spreadsheets. After negotiating a moderately complex parenting schedule, Arthur organized it into a computer-readable calendar that each of them can email or print out as needed.

Third, Mary and Arthur had similar values and goals. Both are experienced computer professionals with good incomes, and both are very devoted to their

children. They respect each other as people and are both very confident in each other's abilities as parents. Unlike many of our clients, Mary and Arthur were very successful at saving money, and therefore their finances were in good shape. In short, they had the material and emotional resources needed to make the transition from marriage to divorce – to a far greater extent, in fact, than 90% of the clients with whom we work.

Finally, they communicated effectively, collaboratively, and in a focused way. Our four-way meetings went smoothly because our clients were comfortable sticking with the agenda for each meeting. They kept their promises in the CL process, and completed their homework (such as data gathering) on time or ahead of schedule. Arthur moved out of the marital home, as agreed, and then cooperated with Mary when she refinanced the mortgage on that home. At no time in any of our five four-way meetings themselves, or the preparation for them, did either Mary or Arthur raise issues of accusation or other incivilities; indeed, they were so completely focussed on resolution, in spite of inevitable differences of opinion regarding money or children, that the efficiency was overwhelming.

With all of this resourcefulness and cooperation and respect coming from our clients, one might wonder how we, as counsel, added value, if at all. Our view is that the CL process created a safe container in which Mary and Arthur could take the risk of trusting each other. They knew, from the start, that their two lawyers liked and respected each other but at the same time would and could maintain appropriate professional boundaries. They knew that each of them would have opportunities for separate consultation with counsel, but in reality they did almost all of the work in four-way meetings.

The level of trust reached such a point that our clients began sending emails to all four-participants in the process, and we (as counsel) consented to direct four-way communications via email. At one point, after the divorce was over, Mary consulted David about a referral to a therapist he had mentioned, and she wrote a letter of praise to and for Paula, her own attorney, and the collaborative process.

The trust and feeling of safety that was created by the process came, in part, from adhering to practices that have become customary in CL: taking turns meeting at each other's offices (though many of the meetings were on David's turf because it was more convenient for the clients) and alternating in the preparation of a memo summarizing the discussions at each meeting. We gave our clients' a separation

agreement checklist, which helped us structure the negotiations. One of us drafted the Separation Agreement; the other edited. Paula prepared the papers to be filed in court. The division of labor felt balanced, and the clients felt they knew what to expect.

Mary and Arthur might have had a very amicable divorce even without CL – we will never know. However, it is clear, we believe, to all four participants, that CL gave these clients a supportive framework to keep their process on track. Their two young children will benefit from the wise decision these two parents made to collaborate.