



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

LEGISLATIVE PROPOSAL (FL-2007-12) ***COLLABORATIVE LAW GUIDELINES AND PROCEDURES***

TO: Larry Doyle, Chief Legislative Counsel, State Bar Office of Governmental Affairs

FROM: Diane Wasznicky

DATE: August 8, 2006

RE: Collaborative Law Guidelines and Procedures

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee/Standing Committee: April 7, 2006
Approval vote: 10-5

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DIGEST:

This legislation would introduce a new section to the Family Code recognizing and encouraging the process of Collaborative Family Law as a legitimate means by which to resolve and complete dissolution proceedings. This legislation would also establish jurisdiction and retroactivity, as the parties will sign a Collaborative Law contract stipulating to an extension of time to answer to retroactivity of issues.

PURPOSE:

1. There are currently no provisions in the law on this issue.

2. Currently many practitioners in Family Law are practicing “Collaborative Law” and there is growing recognition of this as an effective alternate dispute resolution tool in Family Law. However, there is no statutory guideline or procedure to insure consistency of practice for attorneys, Courts and parties, as there is with the mediation process. This creates problems for parties in their differing expectations and understanding of the process, as well as the attorneys utilizing this ADR tool.
3. This proposed legislation would provide the necessary basic framework of guidelines and procedures on a statewide basis to provide both consistency of practice as well as the statutory recognition of this valuable dispute resolution method – much in the same way that statutory recognition of mediation “legitimized” that valuable process in the eyes of the public and the Courts.

ILLUSTRATIONS: The history of the growth and acceptance of the mediation process in Family Law is the best relevant illustration.

DOCUMENTATION: None.

HISTORY: None.

PENDING LITIGATION: None.

LIKELY SUPPORT & OPPOSITION:

Support: Family Law Attorneys and Judges.

Why?: Because it provides a non-litigious form of resolution for parties in family law

Oppose: None identified.

Why?: Only argument I have heard is “why make it law.” No one objects to actual process or guidelines as framework. Response is “why not?” Just as statutory recognition of mediation brought greater understanding and acceptance of this as a process, such statutory recognition of the Collaborative process is needed to facilitate its growth and use within California and provide needed guidelines and consistency to protect the parties using it.

FISCAL IMPACT: None.

GERMANENESS: The Family Law Section of the State Bar of California is made up of family law practitioners representing both parents and children. Issues relating to the protection of children, as well as the impact on parents, are within the specialized expertise and training of the members of the Family Law Section.

TEXT OF LEGISLATION

SECTION 1. Chapter 4 (commencing with Section 1700) is added to Part 5 of Division 4 of the Family Code, to read:

1700. This chapter shall be known and may be cited as The Collaborative Family Law Act.

1701. (a) If a written agreement is entered into by the parties and their attorneys, the parties may utilize a collaborative law process to resolve any matter governed by this code over which the court is granted jurisdiction pursuant to Section 2000.

(b) "Collaborative law process" means the process in which the parties and their attorneys agree in writing to use their best efforts and to make a good faith attempt to resolve disputes related to family law matters as referenced in subdivision (a) on an agreed basis without resorting to adversary judicial intervention, except to file the initial petition and response, stipulated orders or judgments, and accompanying documents as may be required under this code, or to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties' attorneys may not serve as litigation counsel, except to ask the court to approve the settlement agreement.

(c) If neither party files an initial petition for proceedings pursuant to one of the issues listed in subdivision (a), at any time during the collaborative law process the parties may agree in writing to set jurisdiction over all issues to be heard by a court of competent jurisdiction retroactive to any date as far back as the date the parties entered into the collaborative law agreement.

(d) Section 703.5 of the Evidence Code regarding competency of witnesses shall include and apply to collaborative law attorneys and any other professional involved in the collaborative law process.

(e) Sections 1118 to 1124 , inclusive, of the Evidence Code, regarding confidentiality protections on information exchanged in mediation, shall also apply to collaborative law proceedings , including, but not limited to, the following:

(1) All statements, communications, and work product arising from or made in the course of a collaborative family law case are confidential and are inadmissible in any arbitration, administrative adjudication, civil action, other collaborative law process, or other noncriminal proceeding in which testimony can be compelled , except by written agreement to the contrary by the parties .

(2) Work product includes, but is not limited to, any written or oral communication between the parties and their attorneys, and written or oral communication, reports, or analysis of any third party professional or expert used in the collaborative law process.

(3) Notwithstanding this subdivision and the confidential nature of the collaborative law process, all written agreements entered into by the parties during the collaborative law process are deemed admissible in court.

(4) Anything said, any admission made, or any writing that is inadmissible, protected from disclosure, and confidential under this section before the collaborative law process terminates, shall remain inadmissible, protected from disclosure, and confidential to the same extent after the collaborative process terminates.

(f) For purposes of this section, a collaborative law process terminates when one of the following conditions is satisfied:

(1) The parties execute a written settlement agreement that fully resolves the dispute.

(2) Any party provides all other parties and their attorneys with a writing stating that the collaborative law process is terminated or words to that effect. If an initial petition has been filed, a written notice shall also be filed with the court and served on all parties appearing in the action.

(3) Any party initiates an adversary judicial intervention.

(g) If the collaborative law process terminates without settlement, each party shall seek new counsel or represent himself or herself in order to proceed in litigation. Neither attorney in the collaborative law process may act as litigation counsel for either party.

(h) Pursuant to paragraph (3) of subdivision e), all written agreements entered into by the parties during the collaborative law process are deemed admissible in court, notwithstanding the termination of the process or the confidential nature of the collaborative law process.

(i) The collaborative law agreement shall include, but not be limited to, provisions for all of the following:

(1) The parties' full compliance with disclosure requirements under Chapter 9 (commencing with Section 2100) and candid exchange of all information between the parties and their attorneys as necessary to make a proper evaluation of the case, including, but not limited to, each party's preliminary declaration of disclosure, income and expense declaration, and schedule of assets and debts, all under penalty of perjury, pursuant to Section 2104.

(2) Suspending court intervention in the dispute while the parties and their attorneys are using collaborative law procedures requiring court appearances pursuant to local court rules.

(3) Provisions for jointly hiring mental health, financial, or other professionals to serve as joint experts to assist the parties in the investigation, evaluation, or resolution of issues, as well as assisting the parties in making informed decisions.

(4) Withdrawal of all attorneys and all other professionals involved in the collaborative law process if the process does not result in settlement of the dispute.

(5) Expectation that the parties and attorneys shall use their best efforts and good faith to resolve the dissolution of marriage through the collaborative law process.

(j) Except for good cause, a court that is notified 30 days before trial that the parties are using the collaborative law process to attempt to settle a dispute may not, until a party notifies the court that the collaborative law process did not result in a settlement, do any of the following:

(1) Set a hearing or trial in the case.

(2) Impose discovery deadlines.

(3) Require compliance with trial preparation orders.

(4) Dismiss the case.

(k) The parties shall notify the court if the collaborative law process results in a settlement.

(l) The court shall refrain from requiring court appearances inconsistent with the parties' agreement pursuant to paragraph (2) of subdivision (i) unless it finds good cause for doing so. Nothing in this section shall be construed to restrict the jurisdiction of the court, including any local rules of court over the matter.

(m) The court may impose sanctions under any applicable law if any party or any attorney has done any of the following:

(1) Used the collaborative law process in bad faith for the purpose of unilateral delay.

(2) Engaged in any concealment, misrepresentation, or perpetuation of the collaborative law process in any way that materially and adversely affected the rights of the other party.

(3) Engaged in conduct that comes within the provisions of any law providing for the imposition of sanctions.