

LEGAL ALERT

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COLLABORATIVE DIVORCE

By Randall L. Velzen, Attorney

Getting a divorce, no matter how simple or complex the situation, puts an emotional strain on everyone. There are many unsettling changes to deal with: a new place to live, new financial responsibilities, new parenting arrangements for the children, and the uncertainty of not knowing what the future will bring.

The thought of going to court often is intimidating. That's why more and more couples are turning to a new approach to divorce – one where the focus is on working together, guided by a Collaborative team of divorce professionals.

How a couple divorces depends largely on their goals. Some couples are committed to divorcing with dignity and respect and will seek options which honor those goals. Others are determined to obtain the maximum personal advantage without regard for the needs of the other spouse or the impact such an approach has on the family. Still others think that the court will vindicate wrongs done to them by the other spouse and seek punishment for that wrong-doer through the court process. Those who seek a mutually effective approach will seek different processes than those who feel they must be adversarial.

What is Collaborative Divorce?

Approximately 95% of divorce cases settle without going to court. However, the “standard” approach to divorce is to handle the case as though it is being prepared for trial. This adversarial approach usually causes more tension

and problems to an already stressful situation. The adversary process creates deeper wounds which may take years to heal.

Collaborative practice is a relatively new, multi-disciplinary approach designed to minimize conflict while enabling divorcing couples to find a way to resolve their differences on all relevant issues.

In the Collaborative Divorce approach, a professional team supports couples through the emotional aspects of divorce as they resolve legal and financial issues. Both husband and wife retain an attorney who has received Collaborative Divorce training. The parties and lawyers all sign a commitment to reach a settlement without going to court.

Depending on the circumstances, other members of the Collaborative team may include divorce coaches, financial professionals, mediators, or a child specialist – all of whom are trained and committed.

A common concern with involving various other professionals in the collaborative divorce is that it will be more expensive. This fear is largely unfounded. While there are more professionals billing their time it is usually at a lower hourly rate than the attorneys and, if everyone is doing what they should be doing, the other professionals should be saving the attorneys time. However, divorce is seldom inexpensive. The biggest factor by far affecting the cost of a divorce is how quickly and easily the divorcing husband and wife can reach an agreement.

How Collaborative Divorce Works

Both spouses and their attorneys begin by signing a written agreement not to go to court. A series of meetings with both parties and their attorneys are then scheduled. During these meetings, the couple works together to reach an honest and equitable settlement.

Although the attorneys are there to advise and assist, the couple negotiates property, parenting time, spousal support and other concerns. The couple agrees to honest and full disclosure of information, and to remain respectful of each other throughout the process. As needed, other collaboratively-trained professionals may attend the meetings, including financial professionals, mediators, and accountants. Neutral experts such as appraisers, CPAs and mortgage lenders may also provide valuable information and expertise to both parties.

Both parties may have a personal advisor – a psychologist or other mental health professional, called a divorce coach – to help them manage the emotional ups and downs of the divorce process. If negotiations break down – or if either party decides to abandon the process or acts in an adversarial way that precludes an amicable settlement – all members of the Collaborative divorce team, including both attorneys, must resign from the case. This provides a powerful incentive to continue with the often challenging job of crafting a settlement which feels fair to all members of the family. It also allows the professionals to focus all their efforts on settlement considerations.

The Collaborative Team approach is successful for couples with minor children because it uniquely lays a solid foundation for a future parenting partnership between the parents, and between parents and their children. It creates an atmosphere of hope for the whole family, that their future together will be trouble-free and secure, even if the family has been restructured into two homes.

Divorcing parties benefit from the skills, advice, and support of attorneys and other helping professionals while striving to work things out in a positive, future-focused manner. Working together, they are able to dissolve the marriage in a way that addresses everyone's legal, financial, and emotional needs within the resources of the family. When a settlement is reached, the Collaborative attorneys file the appropriate paperwork required by the court to complete the divorce.

Everybody Benefits from a Collaborative Approach

The Collaborative approach encourages good-faith problem solving and constructive communication to reach a settlement agreeable to both parties. In the Collaborative approach, new parenting relationships can get off to a positive start when parents actively plan together for their children's restructured family times.

The Advantages of Collaborative Divorce

- Less stress and animosity.
- With a focus on the future, past differences and unproductive patterns are left behind.
- Each spouse feels in control of his or her own future.
- The dignity of the family is preserved.
- Parenting decisions put the interests of children first.
- Compliance with the final settlement is usually greater.

Randall L. Velzen is a family law attorney in the Grand Rapids office of Smith Haughey Rice & Roegge. He is one of seven attorneys in Kent County certified to handle collaborative divorces. Currently about 50% of his divorce cases are collaborative. He can be reached directly at rvelzen@shrr.com or 616.458.5374.

Litigating Your Business Disputes in Federal Court

By Joseph E. Belsito, Attorney

After deciding whether to sue, a business should next consider where to bring the lawsuit. Depending upon the amount at stake, or the type of relief requested, a business may ultimately litigate its claims in state district court, state circuit court, or federal district court. In Michigan, for example, statutes impose jurisdictional requirements that relegate claims involving less than \$25,000 to state district courts, and claims in excess of \$25,000 or claims requesting only equitable relief (i.e., relief other than money damages) to state circuit courts.

Generally, federal courts only entertain cases that fall within the court's "subject matter jurisdiction." The two most common types of subject matter jurisdiction include "federal question" jurisdiction and "diversity" jurisdiction. A federal court exercises federal question jurisdiction in cases involving disputes arising under a federal, as opposed to a state, law. For example, most claims involving employee retirement benefits plans are federal question cases, arising under the federal ERISA statutes. The second type of jurisdiction, diversity jurisdiction, essentially involves disputes between citizens of different states with at least \$75,000 in controversy.

Unlike federal courts, state circuit courts are courts of "general jurisdiction" and typically have the authority to preside over a dispute involving a federal law. This means that when faced with a federal claim, a business has the choice of litigating in either state or federal court.

Many businesses (and their attorneys) instinctively flock to the county courthouse to file lawsuits. However, if the claim involves non-Michigan entities or individuals, these businesses may be overlooking an important and sometimes quicker means of resolving disputes: federal court.

Depending upon the circumstances, litigating in federal court may offer certain advantages over litigating in state court. State court juries consist of local county residents, which can and does result in hometown bias. Also, state court judges tend to avoid getting involved in discovery and often readily adjourn scheduling dates. Generally, life moves a little slower in state court.

Contrastingly, the pace is much faster in federal court. Juries include individuals from the entire federal district, which may include several counties. Federal judges take discovery seriously and may impose harsh sanctions for dilatory tactics. The parties are expected to engage in discovery early and often. Federal courts also tend to adhere to their scheduling orders. However, and as discussed below, a business may take advantage of federal court only if certain jurisdictional requirements are present.

Many businesses litigate their disputes in federal court on the basis of diversity jurisdiction. As discussed above, diversity jurisdiction exists where the citizenship of all parties differs. For individuals, determining citizenship is not terribly problematic. Determining the citizenship of business entities, however, can require a more complex analysis.

The citizenship of business entities depends first upon the type of business entity. Generally, a limited liability company's citizenship mirrors the citizenship of each LLC member. Therefore, in determining diversity jurisdiction in cases involving limited liability companies, the citizenship of each LLC member must be established. A federal judge from the Eastern District of Michigan recently affirmed this rule in the 2007 case of *VeriCorr Packaging, LLC v. Osiris Innovations Group, LLC*. If the citizenship of any LLC member matches the citizenship of an opposing party, the district

court has no subject matter jurisdiction. The analysis for LLCs differs drastically from the analysis applicable to corporations. At the risk of oversimplifying the analysis, corporations are deemed citizens of both the state of incorporation, and the state where the corporation has its principal place of business.

Depending upon a given situation, the rules regarding diversity jurisdiction may either allow a business access to federal court, or offer the business a means to combat an opposing party's efforts to remove a case from state circuit court to federal district court. One should not assume that a Michigan LLC means the lawsuit must be filed in state court. As discussed above, the membership makeup of the LLC may permit you to take advantage of federal court. However, neither should one assume that because the lawsuit involves a foreign LLC that the lawsuit must be litigated in federal court. If even one

member of the LLC shares the same citizenship with an opposing party, complete diversity does not exist and the case belongs in state court.

Having a general understanding of when federal court is available to your business or the other side is powerful information because many businesses eschew the benefits of filing suit in federal court by filing too quickly in state court. Likewise, many businesses happily file in state court to obtain provincial advantages only to unexpectedly find their claims removed to federal court. Knowing when to take advantage of the federal district courts' diversity jurisdiction may decrease litigation costs and help obtain a quicker resolution of the dispute.

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