

What Does Advocacy Look Like in Collaborative Divorce?

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As collaborative attorneys, our clients sometimes want to know if we can be zealous advocates. Clients may voice concerns about whether or not we can “fight” for them, or whether our commitment to resolution will somehow overshadow our commitment to achieving our client’s goals.

Collaborative Divorce is a private, respectful, non-adversarial process used to resolve all of the legal issues that arise when couples separate. Collaborative attorneys and their clients work together to reach a resolution that meets the needs and interests of the whole family.

Clients might be wary of the Collaborative Divorce Process because they are not used to non-adversarial dispute resolution. It does not resemble the legal process that we have all seen on television. As a society, we have grown accustomed to the image of attorneys pounding their fists and striving to make the “other side” look bad. We expect to see one side win, and the other lose, with often dramatic and catastrophic outcomes.

But what exactly is zealous representation? Over time, the word zealous has acquired a negative connotation of being fiercely partisan or uncompromising. Referring to someone as a zealot is not usually intended (or received) as a compliment. The definition does not have that connotation. According to Merriam –Webster, “zealous,” is defined as “ardently active, devoted, or diligent; enthusiastic, eager, intense, passionate, warm... .”

As lawyers, we are all charged with the responsibility to zealously advocate for our clients. Collaborative attorneys are no different. The rules of professional responsibility describe a lawyer’s obligation this way: “*[to work] zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.*” We couldn’t agree more.

In the arena of litigation, the word zealous has come to mean something that we, as collaborative attorneys, think is destructive. A zealous litigator of a certain type heightens hostility, polarizes spouses, and strains families. Such litigators extend and exacerbate conflict, rather than looking for ways to defuse it. Everyone knows someone who has struggled through an adversarial (read *nightmare*) divorce; this kind of divorce is expensive, stressful, and devastating to children.

So, what does zealous advocacy look like in collaborative cases? It looks different from court and from adversarial processes. First, collaborative attorneys do not act as though the opposing party is their enemy. While each attorney’s primary responsibility is to their own client, they work in a collegial, problem-solving environment with the other attorney and spouse. Especially in cases where the clients are also parents, collaborative attorneys want to be enable parents to have productive, ongoing conversations that are

critical to raising children through separation and beyond. That's hard to do with an ex-spouse who has vilified you in a public arena.

The actual work of the negotiations in the Collaborative Process takes place in a series of meetings with both spouses and their attorneys, or "4-way meetings". Before meeting together in collaborative sessions, the attorneys work with their own clients to identify and articulate their clients' interests and goals. They work with their clients to define what is important to them and how to articulate those interests in the collaborative meetings.

Second, the collaborative attorney does a number of things during the collaborative sessions that will advance the needs and interests of the client. For example, the attorney works to ensure that the client's interest is being articulated and heard by the other spouse (and the other attorney). The attorneys also help by generating and evaluating options with the goal of finding solutions that meet the needs and interests of both parties.

The collaborative attorney is a zealous back-up for the client who may be reluctant or unable to assert themselves. The collaborative attorney is also educating and questioning the other spouse so that (s)he can hear, understand, and respect the needs of his or her client.

It is unlikely that any divorcing spouse will get everything exactly as they had envisioned or hoped for, regardless of what process they choose. Judges can be unpredictable; family law is, by design, subject to interpretation and discretion. The Collaborative Process allows spouses to work together to create solutions that make sense for them, for their unique situation and for their family. The outcome of the Collaborative Process is a dynamic one that takes shape with the input of all of the parties, including your own zealous advocate.

Want to know more? Contact Separating Together.