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“Collaborative Prenuptial and Postnuptial Agreements”
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July 2011

Two exploding areas in matrimonial law are converging: collaborative law and prenuptial/postnuptial agreements.

Most people agree that when problems arise with the prenuptial/postnuptial agreement, the culprit usually is not the agreement itself, but the manner in which it was handled. In this regard, the collaborative process provides a positive alternative to traditional methods because it provides an opportunity for couples to share their goals and expectations regarding money as well as other critical issues. It can help set the tone for successful communication and create a precedent for constructive dispute resolution throughout the marriage.

Creating a Structure for Good Communication

It is axiomatic that a couple in love and about to get married (or who are already married) should exercise some dominion over a process that will govern their personal and financial lives. And good communication is the best predictor of a good marriage. In a traditional setting, however, an attorney working on a prenuptial agreement may well advise a client not to speak to his or her partner at all, leaving the lawyers to do all of the talking. This can cause myriad problems from the outset.

Often, a client will worry about the relationship his/her partner will have with his/her lawyer. Will she divulge confidences to her lawyer? Will he have “secrets” with his lawyer? Will her attorney cast him in a negative light?

The collaborative process provides a structure for negotiation of prenuptial/postnuptial agreements that may be reassuring to the couple and may alleviate anxiety about what lies ahead. In a collaborative process, negotiations are conducted in open and transparent meetings in which the clients and their advisers actively participate. These professional advisers can be particularly helpful to any party who is unsophisticated financially, or who may feel intimidated about talking to the other party and his or her advisers.

Adopting Non-adversarial Approaches

The hallmarks of collaborative practice are receptivity and mutuality. The parties and their advisers work together toward the same end of identifying the parties’ interests and developing options and solutions that address such interests. Threats are not made. Courtroom-type jargon is avoided in order not to fan the flames of conflict; words such as “golddigger” and “Scrooge” are not used.

The collaborative process sets the appropriate tone and tenor from the start. The parties and their advisors pledge to be civil, respectful and reasonable in their discourse, a commitment that minimizes the possibility that negativity created during the prenuptial process will spill over into the marriage, causing irreparable damage.

Prenups/postnups are at the epicenter of a cauldron of money, power, love, sex and control. Money is often an explosive topic, eliciting strong passions that may go back to early childhood experiences. In many cases, if these underlying issues are not addressed at the start of the prenuptial/postnuptial process, they can overpower the negotiations, distract the parties from the issues at hand, and cause the process to spiral out of control.

In the collaborative process, an interdisciplinary team can be assembled at the outset to confront directly any emotional and financial conflicts that may arise. Optimally, a team would consist of a neutral mental health professional and a neutral financial adviser, in addition to lawyers for both parties. The financial and mental health professionals have the expertise to confront head-on the psychological and financial underpinnings of prenuptial/postnuptial agreements.

In the long run, because parties are efficiently served by professionals in their respective areas of expertise from the beginning, the interdisciplinary team method often provides the greatest overall value and satisfaction to clients.

The Role of the Mental Health Professional

The one-coach model is generally considered for the majority of couples. In this model, the neutral coach, who is a Mental Health Professional (MHP), meets with the couple together to facilitate dialogue regarding money issues as a preliminary to their interest-based negotiation. The neutral MHP assesses the couple's level of productive communication regarding money issues, starts the discussion at a place where they are comfortable, and then begins to deepen the inquiry.

If the couple does not have a functional way of discussing money, the neutral MHP can facilitate the discussion using such tools as questionnaires about money style and understanding of finances; graphs illustrating money history and future expectations; and money memory questionnaires, which help to elicit the parties' early memories about money. In reviewing the results with the couple, the MHP can begin to shape and model productive dialogue about their expectations and money life together. In doing this, the MHP creates a safe space for the couple to explore the differences in their money styles and expectations and helps them put in place an infrastructure to bridge their differences.

Following the initial work with the clients, the MHP shares his or her insights with the team concerning couple dynamics, communication skills and expectations and money styles. The MHP also strategizes with the other professionals on the team to develop a plan for the prenuptial/postnuptial process. The necessity for a neutral MHP can be determined on a case-by-case basis. Certainly, in cases where there is a power imbalance, or a party has difficulty negotiating on his or her own behalf or experiences intense emotions that threaten to derail the process, the neutral MHP can work together with the attorneys to overcome these roadblocks. If it appears that more in-depth and ongoing counseling is necessary, the MHP can refer the couple to a marriage and family counselor.

What the Financial Professional Brings to the Process

As professionals who deal with divorce know all too well, financial issues are among the principal reasons for divorce. Financial disclosure and discussions with a financial neutral will help start the marriage on a strong foundation or reaffirm the goals and commitments of an existing marriage. The collaborative process affords the partner who has limited financial expertise an opportunity to learn about these important matters from a neutral financial professional. This can help create a balance of knowledge and power that might otherwise be absent in the marriage.

The financial plans developed in a pre- or postnuptial collaborative meeting are intended to be forward-looking and tailored to meet the specific present and future needs of the couple, no matter what happens in their relationship.

Conclusion

In order for a lawyer to work in the collaborative mode in negotiating and drafting prenuptial/postnuptial agreements, it is desirable that he or she be trained in collaborative law and join a collaborative association in the attorney's area. This will ensure that attorneys working in the collaborative model are familiar with appropriate techniques and protocols and that they have had experience in making the shift from the adversarial to the collaborative method. In addition, participation in an association will ensure that they are current with recent developments as well as provide the advantage of acquaintance with like-minded colleagues.

By using the services of legal, financial and mental health professionals and adhering to collaborative principles, couples about to marry who seek assistance through the collaborative process obtain the support they need to start out on the right foot. The collaborative process provides an opportunity for couples to think through the ramifications of their economic partnership and learn skills for ongoing communication and problem-solving.

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