

The Collaborative Family Law Process

By Carolyn S. Zisser, Esq.

As a veteran Family Law litigator for over four decades, I have handled hundreds of Family Law cases. Understanding and achieving my clients' goals require assessing probable outcomes, as well as anticipating and responding to the psychodynamics in the marriage. Such typical behaviors and attitudes include how the parties relate to one another, use control or intimidation, or exhibit other dysfunctional behaviors to gain an advantage in their case. These behaviors may have precipitated the marital breakup and influenced the dissolution pathway, which can make for a difficult and lengthy divorce.

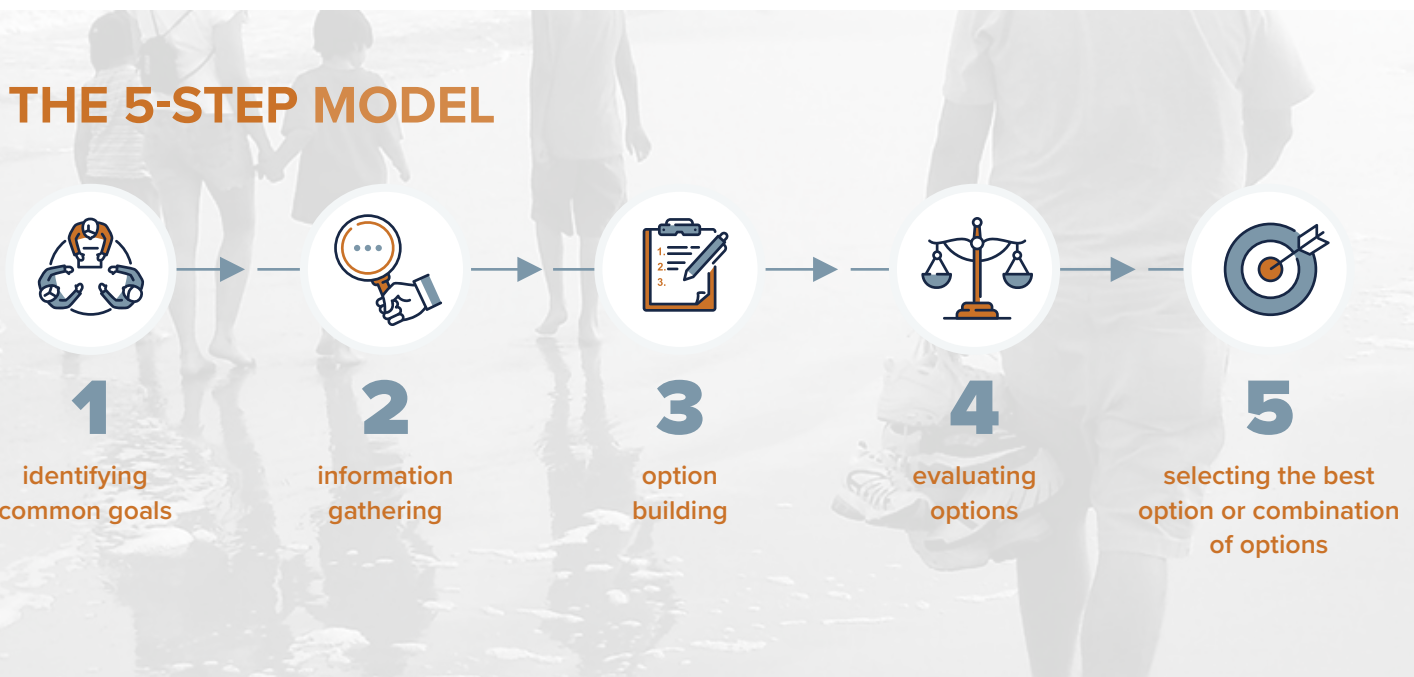
For example, it is challenging to sort through issues of parental responsibility, property distribution, and support when one spouse feels abandoned, angry, hurt, controlled, and/or suffers from emotional, psychological and/or physical abuse. If unchecked, these behaviors can continue throughout the Family Law proceeding, absent of intervention by a mental health professional.

How the Collaborative Family Law Process Can Mitigate Challenges

This relatively new process offers the best viable option for working through legal and emotional issues. It recognizes psychodynamics, retains respect for both parties and reduces expense often lost in traditional litigation.

The goal of the Collaborative Family Law process is to find solutions by addressing interpersonal problems through neutral mental health facilitators and financial consultants as agreed to and as needed. Full financial transparency and disclosure are advocated from the beginning. There are no delays for objections or traditional statutory timelines. With the Collaborative Family Law model, all requests for information are fully adhered to, complete from the beginning of the process through settlement.

The neutral mental health facilitator (usually a psychologist) trained in the Collaborative Family Law process is present to support and to guide the parties from the start. A shared, impartial financial consultant computes alternative property distributions and support calculations from each spouse's perspective, so the attorneys and their clients can achieve the goals most important to their respective clients, rather than waiting months for mediation. The entire process is built upon a five-step model: (1) identifying common goals; (2) information gathering; (3) option building; (4) evaluating options; and (5) selecting the best option or combination of options.



What is the difference between the Collaborative Law Model and Mediation?

Mediation is a mandatory, established alternative dispute resolution procedure within the traditional judicial system. It is typically the last step toward settlement along the path to a trial. A trained mediator facilitates a settlement between the parties and their counsel, using shuttle diplomacy between different rooms. In these rooms, the spouses and their “opposing” attorneys are in separate caucuses. They each have their “positions” in the case, often starting at odds with one another. The mediator helps them achieve settlement.

By contrast, in a collaborative case, all parties, counsel and neutral mental health and financial consultants work together as a team to problem solve cooperatively. The mental health facilitator helps deflect emotions so the participants can concentrate on the legal and financial issues affecting the children and their marital finances. The Collaborative Family Law model can include mediation if the assistance of a licensed mediator is necessary and agreed upon. If the case settles through the collaborative process, the agreement made is then ratified by the court.

2018 Florida Statute

Although collaborative divorce has been practiced for many years in different areas of the United States, only within the past several years has Florida established a Collaborative Family Law statute, rules of procedure and an ethical code governing the Collaborative Family Law process. In 2018, a new provision was added to the Dissolution of Marriage Statute in Florida Statutes 61.55. The collaborative rules of procedure at Rule 12.745 were created to address the collaborative process. On October 15, 2020, the Florida Supreme Court promulgated forms to be used for this process. If the parties choose to end the collaborative process, the parties’ counsel and the joint experts must also withdraw. This is not a disincentive to the process as it ensures the parties’ and counsels’ commitment to the process before it begins.

Beginning the Collaborative Law Process

The collaborative process begins once the couple and their attorneys sign a Collaborative Law Participation Agreement. The Participation Agreement declares their choice to use the Collaborative Family Law principles to handle their case in a non-adversarial manner, with each spouse having retained collaboratively-trained lawyers and neutrals to assist in reaching their goals. It further details the method of communication, use of neutral experts for purpose of valuation, cash flow analysis, parenting issues and other matters which require skilled advice and recommendations. Provisions for payment of expert witness fees and attorney fees, information sharing, certification of providing complete and accurate information, and withdrawal from the process are also included in the Participation Agreement.

The Florida Supreme Court has also stated that all Florida attorneys have an ethical obligation to explain the types of dispute resolution—the traditional judicial process and the Collaborative Family Law process—to their clients at the beginning, so the parties can make an informed consent and choice as to how they wish to handle their Family Law matter.

Advantages

There are significant advantages to the Collaborative Family Law model, including lower legal fees and costs, as well as the time required to complete the case. A Collaborative Family Law case often proceeds more quickly than a litigated case because it is not subject to the court’s crowded docket. Another benefit is that the entire process is confidential, and this is especially attractive to high-net worth and high-profile individuals for whom privacy may be paramount.

The Bottom Line

The Collaborative Family Law process offers the best opportunity to resolve a Family Law matter. Avoiding the adversarial system ensures that each spouse is both respected and legally protected. Collaborative Family Law also enables the family to avoid what otherwise is often found in a litigated case—harmful psychological fallout for both parents and their children.



Carolyn Zisser established Jacksonville’s first woman-owned Family Law private practice in 1975, which merged with Zisser Law in 2020. A graduate of the George Washington University School of Law with Honors, Carolyn’s passionate vision for her clients also extends to her commitment to professional leadership and community involvement. Today, Zisser Family Law has offices in Neptune Beach and Downtown Jacksonville, with a focus on Family Law cases and related Criminal Law cases. She can be reached at CZisser@Zisserfamilylaw.com.