



THE RISE OF COLLABORATIVE PROCESS IN ISRAEL & MD: A COMPARATIVE VIEW

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In 2014 the legislatures of Maryland and Israel considered legislation to formally make Collaborative Process part of the dispute resolution options available to their citizens. In October of 2014 the Maryland Uniform Collaborative Law Act (“MUCLA”) went into effect.¹ In 2015 the MD Court of Appeals passed rules 17-501 through 17-507 to help implement MUCLA. Israel’s law identifying Collaborative Process as a process option available to citizens went into effect in July of 2016.² A comparison of the rise and development of Collaborative Process in MD and Israel may help us think about how to make the process more widely available to Marylanders.

The Basics of Collaborative Process

Originated in 1990 by Stuart G. Webb, a Minneapolis, MN family law attorney, Collaborative Process, is “a voluntary dispute resolution process in which clients resolve disputes without resort to any process in which a third party makes a decision that legally binds a client.”³ There are Collaborative Process practice groups in most if not all U.S. states as well as several locally including in Montgomery County, Prince George’s County, Anne Arundel County, Howard County, Baltimore City and Baltimore County. As of 2009 there were more than 22,000 lawyers worldwide trained in Collaborative Process in addition to mental health and financial professionals. The International Academy of Collaborative Professionals (IACP), an umbrella networking association, has members in 24 countries. Several features, embodied in the written participation agreement that initiates the process, differentiates Collaborative Process from other alternative dispute resolution methods:

1. The parties and professionals agree that they will resolve the issues in a way that makes sense for all parties;

2. The parties and professionals agree to timely, full, candid and informal disclosure of information related to the matter;⁴
3. The parties and professionals agree not to take advantage of omissions, misunderstandings, inaccurate assertions of fact, law or expert opinion and instead participate in good faith;⁵
4. The attorneys, since each party must have separate counsel, are prohibited from representing the parties if the matter results in contested litigation. The other professionals are similarly disqualified. The disqualification provision helps focus counsel, and the other professionals involved, on being as cooperative and creative in their problem solving as possible.

Additionally, parties can engage other professionals such as child specialists, financial professionals and mental health professionals (usually referred to as “coaches”) under the terms of the participation agreement and thereby form an interdisciplinary team. The financial professionals and child specialists are hired jointly as neutrals. The coaches can be neutral or there may be two who work together although each one is assigned to one party. Finally, because Collaborative Process requires a unique set of skills, it is a norm that the attorneys and other professionals be collaboratively trained before taking on a Collaborative Process case and that, where practicable, any inexperienced professional be paired with an experienced counterpart.

Collaborative Process cases proceed by way of a series of meetings, some involving just the professionals and others involving the parties and counsel as well as other professionals, as needed. Through an interest-based approach the professionals, working as a team with one another and the clients, consider, analyze and evaluate all aspects of the matter whether legal, financial or emotional and then, if the discussions are fruitful, help craft an agreement that makes sense to and works for the clients. According to a 2010 survey conducted by the IACP of 933 collaborative matters: 86% of matters settled, 58% took fewer than 9 months to complete and the average cost of cases, with the fees of all professionals involved, was \$23,000.

Formal Acceptance of Collaborative Process in the U.S.A.

It took about two decades from conception for Collaborative Process to become a formal option in American jurisdictions but its geographically dispersed acceptance by legislatures in the past eight years has been marked. In 2009 the Uniform Law Commission, a non-profit association comprised of state commissions on uniform laws from each state as well as D.C., Puerto Rico and the U.S. Virgin islands, unanimously adopted the Uniform Collaborative Law Act (UCLA). The purpose of the

¹ MD Code, Courts and Judicial Proceedings Article Section 3-2001 to 3-2015.

² Source: Israeli attorney Idith Schaham’s presentation in Rockville, MD on October 10, 2017. She translated the title of the law, passed by the Knesset, as follows: “Regulating Legal Proceedings in Family Conflicts.”

³ This is the definition provided by the IACP as of June 2017, not Maryland statute or rules.

⁴ Md Code, Courts & Judc. Proc. 3-2006.

⁵ This is not codified in the MUCLA but it is a norm reflected in multiple model collaborative participation agreements and in the International Association of Collaborative Professionals’ Minimum Ethical Standards for Collaborative Professionals §3.3.

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UCLA is “to support the continued development and growth of collaborative law by making it a more uniform, accessible dispute resolution option for parties.” In 2010 the Commission adopted the Uniform Collaborative Law Rules (UCLR) that mirror the Act and give states the option to enact the statute, or adopt court rules, or a combination thereof. In subsequent years, the following jurisdictions passed either some version of the UCLA or UCLR or both as follows: Utah (2010), Texas (2011), Washington D.C. and Hawaii (2012), Nevada, Ohio and Washington (2013), Maryland, Alabama, Michigan and New Jersey (2014), Montana (2015), Florida, North Dakota and Arizona (2016) and Illinois (2017). The UCAs and / or UCLRs of some states reference the use of Collaborative Process only in domestic actions while others do not specify the types of actions to which those laws or rules can be applied. Maryland’s UCLA and rules do not reference any particular practice area. For example, Rule 17-504 allows for the filing of a joint motion to stay a case in favor of Collaborative Process regardless of the type of case. The formal acceptance of Collaborative Process in the US continues to grow. As of this writing, collaborative law acts or court rules have been proposed in Massachusetts, Pennsylvania and Tennessee.

Collaborative Process in Israel and Maryland

The first Collaborative Process training in Israel was offered in 2010 as part of a joint initiative of that country’s Ministry of Justice, the mediation center of the Israeli Bar Association and also of the U.S. Embassy in Israel. The training was led by Pauline Tessler, a California domestic relations lawyer and one of the leading, longtime proponents of Collaborative Process both nationally and internationally and Yuval Berger a collaborative divorce coach and child specialist from Canada. “At that time we [lawyers and mediators] did not know anything about the collaborative divorce process. We thought it was like mediation,” said Idith Schaham an Israeli attorney and collaborative practitioner following a presentation of hers entitled “Multidisciplinary Models of Public

Collaborative Divorce Services in Israel” given in Rockville, MD on October 17, 2017.⁶ Along with Schaham, among the participants in that first Collaborative Process training in Israel was a mental health professional named Rachel Vladomirsky who was an employee of the Department of Social Welfare of Ramat Gan, a large municipality in central Israel adjoining Tel Aviv. At that time Vladomirsky and Schaham already had a close working relationship from having co-mediated family law matters for fifteen years. “Once Rachel and I graduated from that first training we wanted to help make the collaborative process available to low income and indigent families and we thought it should be part of the services that the municipality provides to its citizens,” Schaham said. Consequently, Vladomirsky approached the Mayor of Ramat Gan to advocate for the inclusion of Collaborative Process in the dispute resolution options provided by the department. The Mayor initially refused to approve the proposal but after being educated about the prevalence of divorce in the city, he later relented. “It took us one- and-a-half years to finally get approval of the city of the Ramat Gan city council to offer Collaborative Process among the services of the department of social welfare. In order to make this work there was a special basic collaborative divorce training involving private legal, mental health and financial professionals as well as social workers employed by the municipality,” she said.

Schaham and Vladomirsky worked with other professionals as a team for a full year providing Collaborative Process to low-income families and families with a range of challenges involving drug abuse, domestic violence, false allegations etc. After multiple successful settlements, the duo gave a presentation on the Collaborative Process work they had been doing in Ramat Gan at

⁶ This event was co-hosted by the Collaborative Project of Maryland and the Collaborative Law Section of the Bar Association of Montgomery County.

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a conference of all the department of social welfare employees of the city. They also gave Collaborative Process trainings at which they provided useful documents such as model participation agreements and practice protocols. In 2015 they attended a conference of Judges in an effort to share their experiences with Collaborative Process. At the conference, a Judge in charge of the family courts in the southern region of the country approached the duo and told them she wanted a Collaborative Process center in every city in her region. "With the Judge's help I provided collaborative trainings and established 3 collaborative divorce centers in the southern region," she said.

In Israel today there are six community centers that offer Collaborative Process. These services are offered to families who are low income, immigrants, have young children, have people with disabilities, are affected by domestic violence and/or are heavily in debt as well as to middle class families who would not otherwise be able to afford a "full" interdisciplinary collaborative team (i.e. two attorneys, one or two mental health professionals and a financial neutral and/or a child specialist). The various Collaborative Process programs are run by the family courts in conjunction with their local departments of social welfare, a therapy institute (i.e. Adler Institute), a law school faculty (i.e. Bar Ilan University Law Faculty through the Rackman Center for the Advancement of Women's Status) and a non-profit organization (i.e. Modi'in conflict resolution center).

When a divorce matter is initiated through the family courts in Israel, the parties are educated about their process options - mediation, therapy and Collaborative Process - by a court employee. If a party selects Collaborative Process, that person files a petition for dispute resolution that states no facts and makes no demands. "Timing is important in Collaborative Process," said Schacham, "it is best to start the process before the parties petition the court with pleadings containing harmful allegations that cannot be taken back. The earlier the legal and therapeutic intervention the earlier we can prevent the conflict from escalating and causing harm to parties and children. Early intervention also helps to reduce costs." After the initial petition, the court summonses the parties to a meeting at the local department of social welfare. At that meeting, which the parties attend without counsel, they are informed of their process options. If the parties choose Collaborative Process, they are given a list of collaborative professionals to choose from; some parties are referred to municipality community divorce centers. The municipal community divorce centers are a public-private partnerships that help reduce the cost of the process. These centers assemble an interdisciplinary team comprised of one or two mental health professionals, who are department of social welfare employees, two reduced-fee private lawyers and, if needed, child specialists and/or financial professionals who are employees of the municipal department of education.

This early-intervention manner of initiating collaborative cases differs starkly from the nevertheless groundbreaking model of the pilot programs underway in the Circuit Courts of Prince George's County and Baltimore City where parties are informed of Collaborative Process only after one or both have filed pleadings alleging facts and seeking specific types of relief. This appears to be at least partly because there is currently no procedure available to families in transition in Maryland to petition the courts simply to assist them in seeking professional dispute resolution services without filing a pleading.

The Rackman Center program, which is run by the law faculty of Bar Ilan University, provides representation only to women. Collaboratively-trained lawyers who are university employees, represent the wife without charge. The husband must be represented by a private collaborative divorce lawyer unaffiliated with the university who will charge a reduced fee. Both of Maryland's public law schools have Collaborative Process programs. The University of Maryland's law school offers a course entitled "Collaborative Law and Practice" that introduces law students to Collaborative Process both conceptually and through simulations / role plays. The University of Baltimore Law School runs a clinical program that gives students real case experience in conjunction with the Circuit Court of Baltimore City and the non-profit Collaborative Project of Maryland ("CPM").

At the Adler Institute, which provides therapeutic services including family therapy, couples are educated about Collaborative Process and if they elect that process are referred to the website of the local practice group to select private lawyers. The institute will provide them with one or two mental health professionals, employees of Adler, who will serve as coaches and/or child specialists in the matter. In Maryland CPM, which was first funded in 2012 through a grant by the judiciary, runs the pilot programs in Prince George's County and Baltimore City, to provide Collaborative Process to pro se litigants of modest means with pending domestic cases. CPM also provides assistance to families outside of the court pilot projects primarily through a network of volunteer professionals.

In Israel the parties eligible for Collaborative Process services through the various venues almost always pay a fee but it is usually a reduced flat fee based on their financial status. "The greatest advantage of the collaborative divorce community centers is that families frequently benefit from the full team model without incurring high costs," said Schacham. "The higher the level of conflict in a case the more it would benefit from a full interdisciplinary team," she said. In Maryland CPM assesses

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whether parties are income-and-asset eligible to receive free Collaborative Process services and if they are not eligible for free services they are referred to professionals who agree to discount their hourly rates. If the parties are eligible for free or reduced fee services, CPM assembles an interdisciplinary collaborative team for them from a volunteer panel of collaboratively-trained, private-sector professionals. If the parties do not qualify for a discount then they generally pay the normal rates of the professionals in the team. In Maryland charging flat fees in Collaborative Process matters is exceedingly rare.

In Maryland the judiciary has taken a leading role in making Collaborative Process available to people of modest means. Starting in 2011 the judiciary's Department of Family Administration began offering free Collaborative Process trainings to attorneys and other professionals sometimes in exchange for a pledge to accept Collaborative Process cases on a pro bono basis. Since July of 2016 CPM has been running a pilot program in the Circuit Court for Prince George's County, in cooperation with the Prince George's County Collaborative Professionals, to offer pro bono Collaborative Process in domestic cases where both parties are pro se and either indigent or of modest means.

In June of 2016, due to an initiative led by attorneys Kathy Brissette-Minus and Suzy Eckstein, the judiciary's Mediation and Conflict Resolution Office (MACRO) awarded the Orphans' Court for Prince George's County a grant to develop an alternative dispute resolution (ADR) program that offers Collaborative Process in contested probate cases, in addition to mediation and settlement conferences. That ADR program began offering Collaborative Process in 2017 and held its first open house event on February 23, 2018 from 10:00am to 2:00pm at the Upper Marlboro courthouse. In June of 2017 the Orphans' Court for Prince George's County brought experienced Collaborative Process trainers from California and Arizona to teach a groundbreaking course on using Collaborative Process to resolve contested probate cases thereby helping to expand the utilization of Collaborative Process outside of its beginnings i.e. domestic relations.

The judiciary-led developments are a relatively new feature of a Collaborative Process landscape that had heretofore been dominated by private practitioners and private practice groups such as Collaborative Dispute Resolution Professionals (CDRP), Howard County Collaborative Professionals (HCCP), Baltimore County Collaborative Professionals (BCCP), Anne Arundel Collaborative Professionals and the Collaborative Council of Western Maryland. The practice groups provide their members with ongoing training in Collaborative Process and opportunities to network and build Collaborative Process skills including by

working as part of a tight-knit interdisciplinary team on matters. These local practice groups are brought together by the Maryland umbrella organization, the Maryland Collaborative Practice Council (MCPC). CPM and the circuit court pilot programs are broadening the availability of Collaborative Process beyond the more affluent population historically serviced by private practice groups by spurring private Collaborative Process professionals to partake in providing free and reduced fee services to self-represented litigants.

What's the Path Forward for Collaborative Process in Maryland?

While the rise of Collaborative Process both in this country and this state has been, at least since 2010, seemingly rapid, few non-lawyer Marylanders have heard of the process and only a small fraction of the domestic relations bar has had formal Collaborative Process training. Additionally, Collaborative Process is not well known to many mental health and financial professionals. To make Collaborative Process a more widely available, understood and accepted dispute resolution method will take not only every circuit court offering Collaborative Process but also initiatives by bar associations, practice groups, law schools and various other institutions to educate lawyers, other professionals and members of the general public about this option. It will take more lawyers, mental health professionals and financial professionals getting trained in Collaborative Process through local training organizations such as the Maryland Collaborative Practice Council (MCPC) which is having an introductory collaborative practice training on March 23 – 24, 2018 in Columbia, MD.⁷ It will take more lawyers informing potential clients about this ADR option in their initial consultations in accordance with MD Rule of Professional Conduct 19-302.1[5] which provides, in relevant part: "when a matter is likely to involve litigation and, in the opinion of the attorney, one or more forms of alternative dispute resolution are reasonable alternatives to litigation, the attorney should advise the client about those reasonable alternatives." It will take more mental health professionals speaking to their clients, in the appropriate cases, about Collaborative Process as a less traumatic way of handling, amongst other things, divorce and custody disputes.

The example of Israel points to new ways we might try to expand access to and provide Collaborative Process services in Maryland. Given the increase in the percentage of self-represented parties in our state's courts - 80% of litigants in domestic cases in 2017 were unrepresented at the time the answer was filed⁸ - and the unique advantages that Collaborative Process offers, the future of this process in Maryland appears both vast and largely uncharted.

⁷ To find out more about this opportunity, contact: Annamaria Walsh, Esq. (awalsh@awalshlegal.com or 410-494-4921) or Kathleen Wobber, Esq. (k.wobber@parlierwobber.com or 410-832-1800, ext 102).

⁸ "Resources for Self-Represented Litigants in the Maryland Courts." <http://www.mdcourts.gov/accesstojustice/pdfs/fy17srreport.pdf>

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