

Initial Consultation-Louise

Of course no two consultations are exactly the same but this is a general idea of how a consultation flows for me:

After the individual or couple settles in, I ask them to fill out a one page questionnaire. 3-5 minutes to fill out. If struggling to answer, I let them know that they may have more than one answer as well. I review and thank them for filling out the form. Quick overview of answers.

If meeting with one spouse, I may ask a follow up about the questions:

- I see you answered (i.e., that you have mixed feelings), can you tell me about that?
- How do you think your spouse would answer these questions.
- Tell me about _____(power imbalance, other topic that raises question).
- Does your spouse know that you are wanting to move forward with the divorce?
- (If not this spouses desire to divorce) When did your spouse talk to you about them wanting to get a divorce? Acknowledge how difficult this may be.

If meeting with a couple, I may ask follow up questions:

- I noticed that you are both in the same place in terms of readiness and/or wanting to move forward. Is this a joint decision?
- I noticed that you answered the questions very differently, is that a surprise to you? Maybe touch on the idea of divorce ambivalence if that seems like where they are.
- I may have some resources for you, if you are interested to help you gain clarity around this. Does that seem like it may be helpful?
- If in different places of readiness, I usually touch on readiness being an important thing to know because readiness often plays a role in the pacing of the process. Acknowledge difficulty of being here if this is not what they want. Talk about pacing.

Follow up questions for either:

- Are you living separately or still together? (ask some follow up questions if opening)
- How are your kids doing? Do they know?
- What are you hoping to get from meeting with me today? What questions do you need answered before you leave our meeting?
 - If they are asking for things that are about legal advice, I indicate that I likely do not have enough information to provide legal advice at this point, but I can talk to them about their process options. (Set out scope of our meeting)
 - Help them make a mutually informed decision about HOW they can move forward.

- How you decide to move forward will have a direct impact on how your children experience the divorce and you two are in charge of how they experience it based on how you choose to move forward. I am glad you are here today.
- What has led them to this point, making an appointment with me? (If they have not shared some of their story with me yet, this question helps get at it. This is often where information about mental health, affairs, addictions, etc. come out, although not always). If it is not offered, you can ask directly. i.e., Are there any mental health/alcohol/substance issues/concerns? Are you or your spouse involved with a new partner?, etc.
- Ask them what is important to them as they think about the process.

I spend a little time talking about me as a practitioner and how I work (why I do Collaborative and Mediation and only out of court process). If I did court and out-of-court, if they were leaning towards out of court, I would stress that Collaborative is a wonderful option for people that want to be in charge of their decisions, but want to work with professionals that focus on them as a family system and helping them make a healthy transition to living in two homes by focusing on problem solving and reaching an agreement that works for both of them (and keeping the needs and interests of their children central to the decision making). Watch for body language and responses to that language.

- I am going to talk about your process options so please let me know if you have any questions while I am sharing this with you.
- Note that they have a whole continuum of process options that range from them being in full control of process and outcome (like do it yourself) all the way to giving up control over process and outcome by having a judge decide. Gauge whether the court option is something they are wanting specific info on. I say I am not going to spend a lot of time talking about the traditional court process, but I may compare how it differs from the other processes. I can if you want more specific info.
- Talk about do it yourself: In my opinion, this option works well if things are really rather simple. Few assets, maybe not married long, no children. Otherwise you are getting into decisions that have long-term impact and the challenge with this is you don't know what you don't know. While it can be in inexpensive version, many people don't realize that if decisions were not done well, they may end up back in court after the divorce is done. There are many people that try to do it themselves. (In MN we have a very long court provided form that is cumbersome and confusing as it tries to capture all possible options and ends up being more challenging). People often comment about how much assistance they are looking for. Any questions about that option?

- Talk about Mediation: Mediation is where both of you retain a mediator to help them gather the documents, determine the issues and facilitate the negotiation process to help you reach agreement. A mediator can not give either of you legal advice, however. So when I am retained as a mediator, I can not say, "John or Mary, I am concerned about this options for you because....". I can talk in general terms about what the law is, such as "Minnesota is an equitable division state, which tends to mean 50/50 but equitable also means that if the decision maker (and in mediation that is you two) can do something other than 50/50 if that makes sense to you." Stress neutrality. Many people do mediation with out attorneys, but they can participate as well.
 - I find that mediation works well when there are not significant power imbalances and both people feel they can freely speak for themselves. And if you are doing it without attorneys, both people feel that they do not need someone advising them along the way.
 - Mention that they are always free to consult with attorneys outside of mediation as needed or have attorneys attend mediation.
 - Discuss limitations:
 - MN mediators should not be doing the drafting of legal documents as that is part of the advocacy role and mediators are not advocates.
 - If children are involved, if they do not want to make an appearance in court, they will each need to have attorneys signing off on the documents in order to avoid a default hearing. If one person does not have an attorney and they have children, you will need to attend a default hearing even if you have reached full agreements and submit a stipulated judgment and decree. You can have attorneys involved in the drafting and I can also refer you to attorneys that I know will be supportive of your work in mediation and not look for things to fight about.
 - If I find that you have reached a point that you should seek legal advice, I will let you know.
 - Any questions about that option?
- Talk about Collaborative:
 - I start by talking about how this is my favorite option because I find that it provides the best of all options. It puts you in charge of the outcome and provides a structure that focuses on reaching a resolution that works for both of you and keeps your children in the center, not in the middle. And, I believe

that most people, given the right resources are able to reach agreements out of court. (Look for acknowledgement)

- CP involves each of you retaining an attorney who has been trained in this process. You sign an agreement that lays out the framework for the process. You two agree:
 - You will fully disclose information that is relevant to making decisions...whether or not it is asked for. If it is relevant to a decision, you have a duty to disclose it. In the traditional process, discovery (gathering of information) is one place where it can be expensive and if you don't ask for things, you don't get it. Here, we are taking that out of the picture and simply requiring you to provide information.
 - We take a balanced approach to meeting both of your needs and interests as much as possible. We spend time understanding what is important to each of you and what are your concerns. In the end, we need to reach an agreement that both of you can sign off on, that you say, "I can live with this agreement." Does it mean I got everything I wanted, maybe not. There does need to be give and take. But in the end, you both have an agreement where you gave something to get something and you can live with it.
 - We keep the needs and interests of the children central to making decisions. You indicated that you (i.e., want your kids to _____). That is what we will work with you to achieve and we will not be working in a way together that is counter to that.
 - We use neutrals whenever needed to avoid the "battle of the experts."
 - We can use professionals based on the skill set that relates best to the issue you need help resolving. I don't believe for a moment that just because I am an attorney, I am the best person to address issues relating to your children, for example. So we will discuss whether there are any other professionals that may be helpful to use based on specific skill sets.
 - And the most important component is what we call the disqualification clause. It says that if either of you decide to leave the process and go the court route, your attorneys can not represent you in court. Now you may ask yourself, why would I want to do that? But this is where the magic of the process happens. By saying that your attorneys can not go to court, that means that everyone, including your attorneys, are invested in resolving all issues out of the court. I don't stand to gain

anything by going to court. This means that the attorneys are focused on problem solving on behalf of both clients. This is where there is a paradigm shift in thinking about how we represent clients. By taking off the option of going to court, even when we hit road bumps, we are encouraged to work through issues. We have a whole bunch of tools in our tool belt to help you reach an agreement. And the reality is, in my experience, maybe 5% of cases end up leaving the process. In the courts, maybe 10% of cases end up needing a judge to decide things. Guarantees, no. But most people, given the right resources, can resolve things out of court.

- I can talk about red flags. (lack of flexible thinking, my way or the highway thinking, lack of empathy)
 - You have an attorney with you to talk through options, help you make informed decisions and direct you to the right resources.
 - By using other professionals in the process, we can be cost-effective in how we spend your money. Attorneys do not do everything if we use other professionals so that can lead to more cost effective use of your dollars. (Talk about professionals as applicable and stress how they are beneficial)
 - Any questions?
- Talk about court process: This is sometimes cut short because people like what they have heard in the other options and do not want the court process.
 - People always ask about time and money. How long and how much?
 - 3 months is rather quick, most cases take 4-6 months, give or take. Some take longer because life happens. Or people want to make decisions based on firm data rather than hypothetical data. Every divorce takes the amount of time it needs to take. That is the only real answer I can give.
 - 75% of my Collaborative cases have total fees \$XXX-\$XXX (This depends on where you practice and is worth getting a sense from colleagues). Some are more, some are less. Be clear if you are talking only your fees or total cost. I always give a comparison to something else: (i.e., cost of filing a motion in court can cost \$5-\$10k in the traditional process, if people have a complete settlement and I am asked to draft the agreement in legal form without much back and forth, with filing fee is around \$1500-\$2500, depending on the complexity). Conflict is what is expensive. The CP is focused on minimizing conflict.