



Family Law

Collaborative Law In Dissolution Cases Negotiating Settlements In A Non-Adversarial Manner

By MARTA J. PAPA

I was at a social gathering recently when a woman, upon learning that I was a family law attorney, said, "I could never do what you do, don't you get tired of all the fighting?"

At first, I was tempted to give her my stock answer: "That's what I get paid for." But the answer is far more complex than that. In family law, especially divorce, fighting it out in the courts is, of course, a common occurrence. I believe that some cases cannot be resolved outside of the courtroom due to the complexity of the issues or the comportment of the parties.

However, I also feel that in some instances a different approach can be used. This is why several years ago I became trained as a mediator and now have a thriving mediation practice in addition to my regular family law practice.

I firmly believe that people should have several different options made available to them when making their legal decisions. Just as no two people are alike, one option does not fit every situation and a lot of "overlitigating" takes place simply because people are not aware that there are alternatives to be used.

Accordingly, I have recently become very interested in the area of collaborative law.

The collaborative law concept was created in 1990 by Stuart Webb, a prominent Minnesota divorce attorney.

Collaborative law is a method of practicing law wherein attorneys agree to assist clients in resolving their issues without litigation. The attorneys and parties negotiate a settlement in a cooperative, non-adversarial manner.

This is usually accomplished by four-way meetings where the parties meet face-

to-face and attempt to hammer out a mutually agreeable settlement. Collaborative law differs from mediation in that each party hires his or her own advocate, who is an attorney, rather than sharing one mediator who may or may not be an attorney. For some couples, this scenario would be preferable to mediation.

To ensure that all parties are working productively toward settlement, each party must sign a contract with his or her respective attorney which provides, in part, that he or she will furnish full and honest disclosure of all pertinent information, be it financial or otherwise.

If a party is found to be withholding information or stonewalling, he or she is guilty of breaking the collaborative law contract and the process is halted.

For their part, the attorneys agree to work in a spirit of cooperation toward the common goal of obtaining a settlement that is fair and practical for all parties. By pairing their legal knowledge with the problem-solving abilities that are inherent in most attorneys, the clients benefit in that two talented professionals are work-

ing vigorously together to bring about a settlement.

If the collaborative law process is unsuccessful, the parties are free to seek representation elsewhere and both attorneys must withdraw from the case. The collaborative law attorneys are disqualified from representing either party any further. Any experts, such as business evaluators or real estate appraisers, that were used in the collaborative law process are also disqualified from further involvement in the parties' legal action.

The advantages to collaborative law are many. The process is generally more cost effective and less time consuming than traditional legal battles. The clients themselves are in control of the process, the pace and the outcome of the negotia-

tions. As a result, the fear and anxiety that accompany most court appearances is greatly reduced.

As a family law attorney and mediator, I feel adding collaborative law to the alternatives now available to people would make for a more well-rounded approach to the divorce process. Potential clients

would then have the opportunity to review their options and decide which approach would be the best in his or her particular set of circumstances.

In the current climate, where attorneys are almost vilified, I believe that non-adversarial techniques to resolving legal issues would be a welcome and encouraging change.

In order for collaborative law to work, there must be a network of attorneys for people to choose from who offer the service. While many cities have welcomed collaborative law, Kansas City is the only city in Missouri which has fully embraced the idea. There, a network of well-respected attorneys stand ready to use the collaborative process to resolve family law disputes.

Unfortunately, the concept of collaborative law has not yet taken root in St. Louis. Although St. Louis has hosted meetings where attorneys and judges have discussed the concepts of collaborative law, no group has emerged ready to specifically designate themselves as attorneys who will use the process.

I encourage lawyers interested in this concept to come together and form an organization of professionals who cooperate with one another outside the confines of the courtroom. I believe the time has come for collaborative law to be added to the options available to divorcing couples in the St. Louis area and would welcome feedback from colleagues who may be interested in forming just such an organization.

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Ms. Papa is a family law attorney in St. Louis. She currently conducts mediation training seminars for area lawyers and psychologists.



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