

COLLABORATIVE LAW: A NEW CONCEPT IN ALTERNATIVE DISPUTE RESOLUTION*

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In 1990, after practicing family law for more than 20 years, Minnesota attorney, Stuart Webb, became disenchanted with the traditional adversarial model as a method of resolving disputes in family law cases. He was struck by the negative impact that litigation had on separating families. In a ground-breaking move, he sent out a letter to his colleagues announcing his intention to handle cases in a new way. He would no longer go to court, but would instead represent clients in a process focused solely on creative settlements. If the process broke down and no settlement was reached, he would withdraw and refer the case to litigation counsel. He invited other attorneys in his area to join him in this endeavor. From that inception, the collaborative law model has grown in popularity and acceptance. Today, the Minneapolis based Collaborative Law Institute founded by Stuart Webb boasts more than 40 family law attorneys as members. The collaborative law model has also sparked interest in other areas of the country and is a favorite topic for CLE programs both at the state level and through the ABA.

The primary feature of the collaborative law process is the involvement of attorneys on both sides of the dispute who have committed to handle the case within the guidelines of the collaborative law model. A critical component of the collaborative law model is the limitation that the attorney will represent the client only in the negotiation process and will be disqualified from representing the client should the process break down and either side choose to litigate the dispute. Attorneys practicing collaborative law have found that this process allows the participants to approach negotiations without the litigation-based posturing which many times interferes with the settlement process. Creative solutions are often the result when the collective problem solving skills of both attorneys and both clients are focused on reaching an agreement rather than on preparing or building their case for court.

Another important component of the practice of collaborative law is the agreement between

all participants to provide full and open disclosure of all relevant information and documents. This approach helps minimize the game playing and delay that sometimes accompanies the discovery process. It also enables the focus to quickly move toward negotiating an appropriate and realistic settlement based on a common understanding of the underlying facts.

In California, the collaborative law model was expanded to include the contribution of other professionals in the process, such as mental health practitioners, child experts and financial counselors. The California group chose the term “Collaborative Divorce” to refer to this coordinated team approach to resolving domestic disputes. Through this refinement of the collaborative law model, collaborative law attorneys look to a team of other professionals for assistance in guiding their clients through the negotiation process with the goal of reaching a satisfactory legal resolution that also takes into account the emotional needs and practical considerations of the participants.

Each party in the collaborative law “team approach” is assigned a same gender “coach,” a mental health professional who works with the parties to understand and deal with the emotional and psychological issues that generally accompany separation and divorce. The coach also assists the parties with developing and using effective communication throughout the problem-solving process. Where the parties are parents, this component is especially useful in helping them learn how to communicate effectively as parents, although they may not have been able to do so as spouses.

A neutral financial counselor is also part of the team. He or she works with both parties to aid them in gathering, organizing and sharing the necessary financial information, working out realistic budgets and dealing with other financial issues that may arise. The financial counselor also facilitates the involvement of other experts as needed, such as business or pension valuers, tax experts, appraisers, etc.

In cases where children are involved, an important member of the team is the child specialist. This professional meets with the children to provide them with an outlet for expressing their feelings and concerns relating to their changing family structure and to be a voice for the children. The child specialist also lends his or her expertise to the parents as they develop a realistic parenting plan.

Collaborative law, whether practiced in the traditional model developed by Stuart Webb or the California team approach, addresses a complaint that many attorneys have voiced about other

alternative dispute resolution methods like mediation. Collaborative law involves attorneys as advocates for their clients early in the process and does not limit their role to scribes. Arbitration, another growing trend in ADR, is compatible with the collaborative law process. It offers participants a method of resolving genuine disputes over issues in the collaborative law process without resorting to time consuming and expensive litigation.

Not every client is a good candidate for the collaborative law process, nor is every attorney temperamentally suited to this model. Some clients just need to have their day in court and have an opportunity to tell a judge “their story.” Others are driven by the need to use the legal system to punish the other party regardless of the cost both financially and emotionally to both parties. Pauline Tessler, a longtime practitioner of Collaborative Divorce in California notes that “a person has to be able to see that compromise isn’t something you do for the other person, it’s something you do for yourself.”

Collaborative law is an outgrowth of the ever increasing disillusionment felt by many participants-- client and attorney alike-- with the adversarial model of resolving domestic disputes. This dissatisfaction with the litigation process is confirmed by a recent study of the perceptions of parents, their young children and attorneys regarding the lawyer’s role during the divorce process. The results, reported in a recent issue of *Family Law Quarterly*, indicate that the overwhelming majority of responses pertaining to the court process and the attorney’s role in it were negative. (*Family Law Quarterly*, “The Lawyer’s Role During the Divorce Process: Perceptions of Parents, Their Young Children and Their Attorneys,” Volume 33, Number 2, Summer 1999) Researchers concluded that there is a strong desire for attorneys to “facilitate the development of a system that is: simpler, shorter and cheaper; more collaborative and less adversarial between parties; and attentive to children’s concerns and understanding about events surrounding the divorce.” Collaborative law is an attempt to address these important concerns about the legal process and to offer both clients and attorneys a more satisfactory way of resolving family law issues.