

Collaborative Law - A New Way to Divorce

If you read the *New York Times* or *Christian Science Monitor* in the last few months, you may have happened upon articles about something called collaborative law, characterized by the *Monitor* as “friendly” divorce. Both articles focused in on couples who were determined that their divorces be amicable and spared their children from the acrimony of a bitter battle. Their prayers were answered when they found lawyers trained in what is a very new movement in family law.

Collaborative law is part of a wider movement in the legal system generally, a movement that includes approaches with names like Transformational Law, Holistic Law, and Renaissance Law. What collaborative law has in common with all of these movements is a determination to focus on the needs and interests of the clients and avoid the polarizing processes of litigation.

Collaborative law is a unique process in which both parties retain separate lawyers whose only job is to help the parties settle their disputes. It involves open communication between the parties and their lawyers in four-way meetings held in the privacy of the lawyer’s offices. The parties and their lawyers sign a collaborative law participation agreement, in which they agree to communicate respectfully and be totally cooperative in providing information needed for settlement. If the parties are unable to reach settlement within the collaborative process, a rare occurrence, the lawyers must withdraw and send the client on to other lawyers, and are completely disqualified from ever representing their client against the other in an adversarial matter.

Collaborative law approaches negotiations as problem-solving challenges, not adversarial confrontations. Posturing and threatening to go to court are not allowed. The lawyers have received special training in interest-based negotiation, a technique that they teach to their clients, hopefully giving them the tools not only to settle the matter in the collaborative process, but to settle future disputes without having to resolve to lawyers or the courts.

Practicing in this area involves a major retooling of skills and a attitudinal paradigm shift for many lawyers. Whereas the traditional litigation model is based upon the attorney’s advocating his client’s position as forcefully as possible, the collaborative law model encourages both parties to understand the other party’s interests and concerns and focus on terms of settlement that will consider both parties goals. Lawyers who work in this area have found that when parties are committed to settlement and litigation is removed as an option, creativity and flexibility in problem-solving becomes the norm.

Another unique aspect of collaborative law is the utilization of neutral professionals to assist in the process. Communication coaches, child specialists and financial practitioners are often brought in to provide objective, neutral advice and analysis, sometimes sitting in on the four-way meetings, and sometimes working with clients outside of the settlement meetings to assist them in preparing for negotiation.

Lawyers who work regularly in collaborative law find that their lives are less stressful, their clients are more satisfied, and their bills are happily paid.

Collaborative law, began as an idea first outlined in 1991 by Stuart Webb, a “burnt out” Minnesota attorney, in a letter sent to a Justice of his state’s Supreme Court in which he described his idea for the process generally, and sought the justices’ opinion about its merits. Word about the idea spread quickly across the country, and in years since then, collaborative law has captured the imagination of family lawyers across the U.S., not only for its success as a dispute resolution tool but also for its promise of extending their own meaningful professional life. It has crossed our northern borders into Canada, where entire communities of family lawyers all practice collaboratively, and has enthusiastic adherents in England, Ireland, Austria, Switzerland, Australia and New Zealand. Practice groups exist in most major metropolitan areas in this country, and new groups are being added constantly.

In 2001 a group of collaborative lawyers in Houston perceived that Texas could benefit from a statute both recognizing the efficacy of this new process, and creating an environment in which it could have its best opportunity to grow and flourish. Their efforts resulted in the passage of the first statute in the United States officially describing and sanctioning collaborative law.

The Collaborative Law Institute of Texas, a statewide non-profit organization, has committed enormous resources to supplying the leadership, energy and expertise needed to make available effective and affordable collaborative law training at convenient locations throughout the state, not only for attorneys but for allied professionals as well. The Institute also works to promote and coordinate communications among collaborative professionals, provide education, and establish and maintain the highest professional standards for collaborative practice. Membership in the Collaborative Law Institute of Texas, and participation in its work is an absolute must for every Texas family lawyer, mental health and financial professional who see the vision that collaborative family law holds for the future. For more information about the Institute, visit its website at www.collablawtexas.com.