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Collaborative practice provides peaceful progress in divorce cases

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be enough business. — Abraham Lincoln

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Divorce. The word itself triggers a range of emotions. One person typically initiates the divorce while the other remains in shock. Those divergent perspectives often make the divorce process an arduous and expensive one. Cutting-edge family law firms are now offering an alternative to litigation, known as "collaborative practice" to better serve their client's needs. Using this model, clients are empowered to take control of the outcome, which will affect them and their children for years to come.

In the late 1980s, Minnesota lawyer Stu Webb started developing the concept of "collaborative law." This offers a more peaceful, comprehensive and economical divorce process. The goal is for the parties to resolve all issues without a public court battle. It is widely acknowledged that litigation can be destructive and leave not only the couple, but also any children with emotional scars and financial hardship.

Webb's premise in developing this model was our society is filled with people struggling with an inability to communicate, often because they never had role models to teach them. Through collaboration, the integrity, dignity and privacy of the family is preserved, while the couple learns the art of peaceful resolution. This concept has now developed into a dispute resolution model known as collaborative practice.

Collaborative practice begins

with both parties agreeing to use specially trained collaborative professionals to resolve their dispute. By working together in team meetings, they discuss their individual and common goals and interests. Face-to-face meetings allow the parties to instantly address any misunderstandings. Meeting agendas are circulated in advance and scheduling is at the discretion of everyone involved. No one is bound by a court's calendar.

Recognizing the need for a holistic resolution, a professional team may be assembled to support the client throughout the process. Mental health professionals act as divorce coaches and collaborative child specialists assist the couple with the emotional aspects of their divorce. The coaches do not act as therapists and rehash the past, but rather, keep the focus on the future.

The professionals assist clients in learning new relationship and communication skills by helping manage anxiety and conflict, thus opening the door to effective problem-solving. Child specialists address the children's needs and help the team hear the "voice of the children."

Neutral financial professionals contribute their expertise by discussing the monthly cash flow and asset distribution with the parties. A financial professional can also help the team determine whether any financial anomalies exist so both people rest assured their interests are protected. They not only discuss current challenges, but also create a financial road map for the future, so that decisions are not made out of fear.

Ground rules are set forth in a formal document, called a participation agreement. The document commits the parties to resolve their matter without litigation. Should the parties not reach an agreement, the professionals' representation terminates. This commitment sets an atmosphere of cooperation. The goal is to resolve

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the matter as efficiently and economically as possible.

Working under a participation agreement creates a safe environment for open communication as very little client information is ever found in a court file. The parties agree to full disclosure of all relevant information and to use good faith to reach a mutually acceptable settlement.

The mission of collaborative practice is to facilitate a deeper resolution for the family. This allows the family to grow from their experience in a much healthier way. The collaborative attorneys share the legal framework should the parties want insight into what might happen in litigation; however, their greater task is to facilitate productive conversation between the couple. Collaborative professionals not only guide each client to identify their own perspectives and beliefs, but to also hear the needs of their spouse.

Learning the skills to practice

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collaborative law is imperative to the success of each case. The professional team is trained to stay away from positional bargaining and to engage in a needs-based negotiation. To become a fellow in the Collaborative Law Institute of Illinois (CLII), collablawil.org, applicants must complete a two-day basic interdisciplinary collaborative practice training, complete mediation skills training, be licensed in their field and carry malpractice insurance.

In order to better understand collaborative practice, Cook County Judge Grace G. Dickler, presiding judge in the circuit court's Domestic Relations Division, took the basic training in September.

She stated, “The training underscored my belief that ADR (alternative dispute resolution) is the most effective manner of resolving family law cases and that collaborative practice is a critical component of the ADR arsenal.”

The Uniform Collaborative Law Act (UCLA) sets standards and supports the expansion of this growing field. It creates uniformity in collaborative practice and provides a statutory framework. It was initially drafted and approved by the Uniform Law Commission in 2009 and has since been enacted in the District of Columbia, Utah, Nevada, Texas, Hawaii, North Carolina and California. It has been introduced in Maryland, Ohio and Alabama. The Collaborative Law Institute of Illinois is working hard to have it adopted in Illinois next year.

For the practitioners who assume that collaborative practice is not as financially lucrative as litigation, remember that “happy” clients who have control over their outcome are much more likely to refer their friends and colleagues to you.

More importantly, there is tremendous satisfaction in empowering clients, watching them grow and knowing that they hold the key to their family's future.