

Collaborative Practice: Resolving Disputes Respectfully

Kevin is very anxious as we start our initial meeting. He wasn't expecting the conflict to escalate to the point where he would be meeting with an attorney. He hasn't been sleeping well, he is worried about the financial and tax implications of the dispute, and their communication has become hostile. As he tells me his story, the legally trained part of my brain automatically starts spotting issues and filtering facts that might support or compromise his legal position. At the same time, the collaboratively trained part of my brain starts contemplating the dynamics of their conflict, the resources they might need, and what professionals can help them reach a satisfactory resolution.

As lawyers, we learn to assist people with their conflicts by applying the law to their facts. We often spend a considerable amount of time gathering information and documents about their situation in order to properly advise our clients about the probable outcome if they end up in court. We then negotiate with the opposing attorney based upon our differing views of that probable outcome. Occasionally, an agreement cannot be reached and a court makes a decision. For some people, and some cases, this is the most efficient process. The societal view of fairness as expressed in the law provides a useful framework for resolving a conflict. People can settle or try their case and move on with their lives.

However, for many conflicts, narrowing the focus to the parties' legal rights and planning for a trial as the end of the process, may not result in the best possible outcome. Using this focus, creative solutions to the dispute may be missed. In some cases, the process of traditional litigation can result in substantial emotional and financial costs to the parties beyond that directly associated with the dispute.

This is true not only in divorce situations; extended families, neighbors or business associates can become so polarized that their continuing relationships are jeopardized.

Collaborative Practice grew out of the belief that a process that addresses the legal, financial and emotional

aspects of a conflict, while seeking an out of court resolution that takes into account the interests of the parties, will lead to a better long term solution. In Collaborative Practice, the parties utilize the skills of a customized team which may include attorneys, mental health professionals, financial professionals, and specialized consultants such as vocational counselors.

In a series of meetings, the parties and the team consider each person's needs, create a safe environment for difficult conversations, and plan and implement the open and complete gathering of information. Through teaching the skills necessary to negotiate and problem-solve difficult issues, and using a creative, respectful approach, the parties reach a mutually acceptable agreement.

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The parties and professionals agree that the sole focus of their efforts during the Collaborative Process will be reaching an agreement that they can both accept. Although the parties retain their ability to go to court if an agreement is not reached, planning and preparing for that possibility is not part of the Collaborative Process. If the parties are not able to reach an agreement, the professionals' work with the parties terminates, and the parties retain new professionals for litigation. In addition,

just as in mediation, the communications during the collaborative process are confidential and cannot later be used in court. These provisions change the way the parties and professionals work together. Without the prospect of a court battle in the foreground, the parties can be more open about what is truly important to them. And the professionals can be more open and honest with each other about the complexities of the situation. This can create the ground for a more durable solution that takes into a broader view of the conflict and their circumstances.

Kevin decided to use the Collaborative Process for his conflict. He retained a mental health professional who coached him on communication skills to listen better and be more direct in his requests. The coach also helped Kevin with the anxiety that was affecting his sleep. With this intervention, Kevin was able to make better decisions. A joint financial professional helped the parties to

gather and understand the financial information. The financial professional also brainstormed some possible solutions and provided information about the financial ramifications of different options. The lawyers educated the parties about the legal aspects of their conflict and helped them to negotiate. The parties, and their professional team of lawyers, mental health professionals, and financial professionals, all worked together to reach a mutually acceptable agreement which allowed them to maintain a working relationship.

If you are interested in learning more about Collaborative Practice, meetings of the Collaborative Council of the Redwood Empire are open to guests. More information and the meeting schedule can be found at www.collaborativecouncil.org. ☞

by Catherine Conner

Catherine Conner is a family law attorney in Santa Rosa. She was the founding President of the Collaborative Council of the Redwood Empire and is now on the Board of Directors of the International Academy of Collaborative Professionals.

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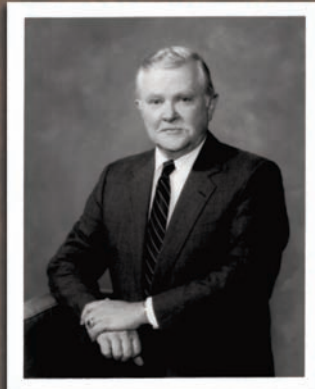
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