

Collaborative Law

Alternative Dispute Strategy Is a Dignified Alternative to Litigation

By MICHELLE M. BEGLEY

Everyone knows that America is the world's most litigious society.

Conflict in family and business is inevitable. Issues such as employee terminations, business partnerships going through breakups, and couples' marriages falling apart are only some of the conflicts that are unavoidable in life. However, collaborative law, an alternative to the courtroom, offers businesses and individuals the opportunity to resolve their disputes with more speed and less emotional and financial cost.

Collaborative Law pursues settlement from the outset. It is a dispute-resolution process wherein the parties focus on creative and cooperative problem solving. It is simply a dignified alternative to litigation.

Collaborative law differs from mediation in that mediation uses a neutral third party in facilitating the negotiation and settlement of a dispute between the parties. Parties can always walk out of mediation and proceed to litigate. In collaborative cases, however, lawyers and clients will negotiate themselves and are committed to continue in the process until a satisfactory solution is reached because it was agreed up front that litigation is not an option.

In the late 1980s, a burned-out family law attorney from Minnesota devised the collaborative process. From there, the practice has been growing, and collaborative law groups of attorneys exist in at least 25 states, Canada, and abroad. In Massachusetts, the first collaborative training took place in Boston in 2000 and now there are approximately 40 attorneys in the

Western Mass. area trained in collaborative law.

Attorneys receive special training in collaborative law and are committed to the method's process. The parties, including the attorneys, commit in writing by signing a contract that they will make good faith efforts to settle the case and refrain from going to court until the final agreement is reached. The details of a collaborative agreement are worked out collectively among the parties and their attorneys at a series of four-way conferences designed to allow for open and honest negotiation. It provides for an atmosphere of cooperation instead of the traditional adversarial model, making it easier for the parties to maintain relationships after the case is over. This is particularly important in the family law areas where children and other family members are involved.

In the event that the collaborative process breaks down, both collaborative lawyers must disqualify themselves from any adversarial process that might ensue. The parties would then be forced to obtain new lawyers. It gives the parties an incentive to follow through with the process and reach a resolution. Before each meeting, the parties develop an agenda with their attorneys and following each meeting, the participants receive meeting minutes that set forth what transpired and what the next steps are in the next meeting. All parties agree to voluntarily exchange all necessary documentation to resolve the disputes. The role of the lawyers in the collaborative process is to facilitate a fair and balanced settlement. Creative

'thinking out of the box' is greatly encouraged in the process.

Approximately 98% of all civil cases are resolved before going to trial. It simply seems illogical to spend so much money for litigation preparing for an event that rarely occurs. Additionally, many settlements occur on the courthouse steps after years of litigation preparation. A party who negotiates a settlement through the collaborative process, however, is more likely to respect the agreement and live by its terms.

Family lawyers have been successful in resolving difficult domestic relation disputes to keep some form of relationship with the parties intact. In many divorce cases, custody of the minor children is at the crux of the argument between the couple. The goal in the collaborative process is not to divide the parents by choosing one custodian, but to allow the children to benefit from both parents. The collaborative process often does away with the term, custody, and focuses on parenting times and arranging a mutually beneficial parenting plan. By creating a plan, the parents can customize a solution that best meets the needs of their family.

Many times child psychologists or child specialists are jointly retained to help the parents understand the needs of their children both during and after a divorce. The specialist meets with each parent alone and jointly, and often attends the collaborative meetings. The role of the specialist is to provide suggestions but does not include providing therapy to either the parents or

the children.

Other experts or specialists are also often jointly retained, including appraisers, financial planners, and divorce coaches. The divorce coach meets with one of the parties with these emotional aspects of divorce. It is not psychotherapy, but a way to provide clients with the necessary skills to deal with the collaborative process and to assist the attorney with how to better communicate with their client.

In business disputes, often times legal fees are expended that exceed the amount of the settlement, and these resources could have been directed towards the growth and development of the company. Additionally, business litigation could result in the company suffering an economic loss in the form of injury to reputation, erosion of customer base and exposure of trade secrets. If a case is not settled, the fate of the parties is left entirely to a judge or jurors who may not fully comprehend the complexities of the problem, or to 'experts' who usually do not have the authority or knowledge to suggest creative business solutions. collaborative law can change all of this.

The collaborative process preserves important relationships, privacy, and confidentiality by leading to practical solutions designed to meet both parties' long-term needs.

Michelle M. Begley, Esquire, is a member of Bacon & Wilson, P.C.'s Litigation Department. Her areas of expertise include family law and employee/employer issues; (413) 781-0560; mbegley@bacon-wilson.com.