

## **COLLABORATIVE LAW - THE NEW WAY**

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When Lynn and Eric divorced, it really didn't have to end badly. Twenty years of marriage and two great children (one starting college, the other in high school) - pretty good mental health all the way around - enough money so that desperate financial security wouldn't spike the anxiety level...actually the only thing standing in the way of a good divorce was the lawyers.

Now don't get me wrong. I like lawyers. I've been a lawyer for over 30 years and some of my dearest friends are lawyers. Lynn's lawyer was me, and I *like* me. Eric's lawyer was a fellow I knew by reputation (good) and he bore that out. He was a man of great integrity and equanimity.

So what happened? How did these two good people end up despising each other? Why did they come out of the legal process (which settled, by the way) deeply embittered toward one another? It's because of an adage I've repeated for years in my *Family Law for the Mental Health Professional* seminars: Lawyers are trained and educated - indeed they feel ethically obligated - to make a bad situation worse. The reason is the adversarial system of dispute resolution that lawyers are acculturated into. The idea has always been that if I represent my client "zealously" and the other lawyer does the same, then the independent decision maker (judge or jury) will be able to make a fair decision. Now on one level, it can't be any other way. (Imagine if suddenly you were slapped with a malpractice suit from a client. You'd probably want someone who you knew was 100% in your corner. The legal process, after all, is a scary place for all but the lawyers who live there.) Yet on a deeper level, it is a method of dispute resolution that cannot help but lead to polarization - and that's what lawyers have been trained to do. Lawyers tell a client what they are legally "entitled to," so from the start we contribute to a rigidity borne of fear and self-protection. We learn to argue both sides of a case, not so we can develop empathy for the other party, but so we can undermine and defeat them.

Anyway, Lynn and Eric settled their divorce after a "mediation" session in which the mediator shuttled from one conference room to the other, delivering offers, helping fashion responses, cajoling the recalcitrant parties and absorbing their hurt and anger. Each person's real interests and concerns were not given vent so that in some way, amidst this terribly difficult time, these former lovers and current parents could in some manner come together. More's the pity, as the process ended with each person feeling they had lost.

It didn't have to be that way and a growing community of lawyers are standing up to the dominant culture of the adversarial system, pursuing a revolutionary and (dare I say it) healing brand of legal representation and counsel known as Collaborative Law.

Collaborative Law sprang initially from the mind of a Minnesota family lawyer, Stu Webb,

who simply refused to drag his clients into court on divorce cases - and he let his opposing counsel know it. He strove to construct an environment in which the lawyers could work *together* in fashioning a workable solution to their clients' joint problem, rather than against each other. The prevailing assumption of the "zero sum game" in which one person's gain always came at the expense of the other was re-thought. Lawyers, who were stressed and soul-weary from the hammer and tong of divorce litigation and the avoidable bitterness of countless Lynn's and Eric's, were drawn to this process. It took root in such diverse environments as Texas, Saskatchewan and Northern California.

In a collaborative divorce, both parties *and* their lawyers sign an agreement that neither side will go to court, but will, instead commit to resolving all disputes through agreement. In fact, if either side does go to court, then both lawyers must withdraw and the parties have to retain (and pay for) new counsel. The expense and difficulty of this transition, tends to "leverage" people into remaining in the collaborative process, rather than reflexively running into court if there is a disagreement. The "engine" which runs the collaborative process is the "four-way meeting," in which the parties and the lawyers sit *together* in a room and discuss each person's needs and concerns and explicitly agree to work in *good faith* to achieve mutually beneficial goals. While in litigation, parties and their lawyers play the game of withholding information unless it is specifically asked for, in the collaborative process, each side commits to provide all relevant information freely.

Another defining character of the collaborative process are what we lawyers call the "allied professionals." These are therapists, parenting experts, financial planners, business or real estate appraisers, and mediators join in the process, at any stage, and render their assistance to *both* parties. They become trained in the collaborative process, each learning about that segment of the process which is beyond their professional experience. Mental health professionals gain familiarity with the legal process; financial people are schooled in the communication skills of the "neutral."

In the Summer of 2003, Bellevue attorney Rachel Felbeck spoke for one hour at the annual State Bar Conference of family lawyers on this approach and the reaction was electric. She was peppered with questions and surrounded by fascinated attorneys at the break. Collaborative Law had found a home in Washington.

Washington Collaborative Law ([www.washcl.org](http://www.washcl.org)) was founded in 2004 to promote the collaborative law process in Seattle. Other groups have sprung up in Olympia, Spokane and other communities. The washcl.org website contains information about meetings and trainings for both lawyers and mental health professionals. If you work with people struggling with the pain of dissolving an intimate relationship, particularly when children are involved, you will likely find this a vibrant and supportive professional home.