

# COLLABORATIVE LAW

by [Joseph Shaub](#)

I learned and confirmed a lot of things this summer. I learned how much a 10-year old matures in just two weeks away at summer camp and that there's hardly anything sweeter than a kid coming off the camp bus, scruffy, tired and confident - saying "bye" to her new pals. I also confirmed how nice it is to have those two weeks alone with her mom. I confirmed the beauty of the Northwest - particularly those places with nearly unpronounceable native names, *Ohanapecosh* in Rainier Park and *Skookmchuck Narrows* on the Sunshine Coast in Canada.

I also re-confirmed how destructive domestic relations litigation can be. I had two semi-benign cases come to trial this summer and one nasty piece of work round the home stretch headed for a Fall trial date. Even the lower key affairs were *brutal* for my clients. Both trials, I believe, could have been avoided and each subjected both parties to public claims and accusations which, while necessary to establish an adversarial position, were terribly painful and destructive on a personal level.

On my own personal level, I found that these experiences also confirmed my propensity to take these sorts of things way too personally. Too easily I indulged in righteous outrage over aggressive litigation strategies that ran up fees for everyone involved and sent my clients around the bend. Experienced practitioners would listen to me carry on, smile sympathetically and indulgently, and remind me that's how litigation works. I remember telling a colleague about one particularly tricky maneuver one opposing counsel tried to run and how I had to work intensely to prevent a misleading record from being created. I recall that I was fussing and fulminating and her response was, "It sounds like you did a great job of advocacy," to which I replied, "So what! Do you realize how much that whole sideshow cost these people?"

Now I understand *that's* naive to a good many practitioners. I recall a *huge* family motion battle I fought last year that I felt was entirely unnecessary and brought by the other counsel simply to run up fees. Yet, I made a lot of money from that effort - and I felt conflicted. On one hand, I was disturbed by the financial and emotional expense incurred by my client and on the other, my family and I both were glad that I had a good month, thanks in part to that effort. I kept thinking, "Imagine the people who don't feel that conflict at all." Well, I can assure you that, while naivety does have its benefits, personalizing counsel's strategies in the course of litigation isn't one of them.

So, with a raw sense of disenchantment, I attended the WSBA Family Law Section Mid-Year in June and heard Bellevue family law attorney, Rachel Felbeck, describe a new type of practice that is taking hold, finally, in the Northwest.

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I recall coming across an article about Collaborative Law by Pauline Tesler, one of its prime exponents, a year or so ago and thinking, "This sounds wonderful, but you need other lawyers to be on board for this to work." In that June WSBA talk, Rachel announced that she, Stefani Quane and Don Desonier had started the NW Collaborative Divorce group. This collection of attorneys and other professionals committed to the evolution of this remarkably novel and effective approach to often vexing problems of dispute resolution is growing within our midst. So, what is Collaborative Law and why the excitement?

Collaborative Law is born from the belief that with the proper assistance and encouragement, people find the optimal resolution of their disputes themselves. The process is *systemically* designed to keep people communicating and out of court. Eschewing conventional litigation remedies is at the heart of Collaborative Law. The parties and their counsel sign a "Collaborative Law Participation Agreement" by which they commit to not bring any dispute before a Court for resolution. This commitment is leveraged by everyone's written agreement that if any party pursues judicial remedies (through motions or trial), then the

collaborative process will terminate and all *counsel will withdraw*. As noted by Pauline Tesler, "The clear commitment by everyone that decisions ordinarily will not be made by any third party alters dramatically how each participant engages in negotiations. Each participant bears full personal responsibility, from the start, for generating creative alternatives that might meet the legitimate needs of both parties."

The parties are not only permitted, but *encouraged* by their counsel to communicate on their own without their lawyers present. The dual engines of the collaborative process, are the development of a comfortable personal as well as professional relationship between counsel and the four-way meeting (in which the parties are expected to participate quite actively).

Such approach will no doubt be anathema to many lawyer trained in the art and science (and satisfactions) of litigation. To be comfortable in their work, litigators feel they must exercise control. They must also feel that resort to judicial decision has to be an arrow in their quiver. Being stripped of these two foundations of their practice will leave many litigators withdrawing from the notion of Collaborative Law and scoffing at its....*naivete*. Well, you can claim that it is unrealistic notion that parties can resolve their dispute without the heavy hand of their attorneys guiding them through a maze of perceived dangers and a result which is not "optimal" or that lawyers heighten their exposure to malpractice claims if they relinquish control - but such claims stand against the growing weight of authority and professional comment which call for us to de-emphasize the "gladiatorial" aspects of legal education and training, in Tesler's words.

Note, for example, the scores of Collaborative Law practice groups springing up throughout California; the statewide training which has been conducted throughout Georgia and the statutes enacted in Texas, sanctioning the collaborative process. Also, readers might be interested in attending the Fourth Annual Meeting of the International Academy of Collaborative Professionals in Vancouver, B.C. on October 17th-19th. It's an idea that is here to stay and interested lawyers are encouraged to get on board.