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Keeping The Negotiations 'Centered'

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DAILY RECORD COLUMNIST

COLLABORATIVE LAW

Collaborative Law offers couples going through separation and divorce an alternative method of resolving their disputes regarding children, support and equitable distribution.

In Collaborative Law, the responsibility for decision making rests at the center of the table, between the husband, wife and their two collaborative attorneys. In litigation, this center is shifted to a third party judge who has less understanding, involvement and experience with the family.

The focus of decision-making rest squarely between the two parties and their attorneys sitting together at a table. As one attorney stated in a recent case: "The answer is right in front of us and I am convinced that if we look hard enough we will be able to see it. The answer is not somewhere else. We have all the information we need to find the resolution."

This contrasts with the traditional mode of adversarial negotiation and litigation where we try to present matters in an all-or-nothing manner to prove that our position is right and the other position is wrong. Traditional negotiation includes exaggeration of claims with the plan of "bargaining" down to a reasonable level. Early offers are rarely thought to be serious settlement proposals, but rather "opening bids" in a dance toward some later compromise.

In Collaborative Law we are careful not to take positions. The collaborative agenda is to first exchange all of the information so that it is equally available to both sides. Where there is a difficulty obtaining the information we rely on objective data in the form of bank statements or pension reports.

In the case of subjective opinions, the parties employ neutral experts that are working for the process rather than for one party. We may employ real estate appraisers to get the proper value of the marital residence. We may hire a child psychologist or counselor to give us information about the best interests of the children. We may ask for a financial planner or accountant to assist us with budgets or tax questions.

After we get all the information we ask the parties to offer various options for settlement. The options may or may not be to the benefit of the party suggesting it, but is put on the table to get as many ideas as possible. Only after we have all of the information and options do we start to look at the benefits of the various options and decide how they meet the needs and inter-



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ests of the individuals and the entire family.

This process is a stark contrast to traditional negotiation where we start with a position and then try to control the information and options of the other party to reach the conclusion that we started with. Once a position is stated, it becomes a matter of pride and strength to maintain that position. In Collaborative Law, if we don't allow positions to be

taken, the intellectual process is kept open to have meaningful discussions and reach settlements that are more creative and beneficial for all parties concerned.

The responsibility rests with the participants and their attorneys working together rather than working against each other and then presenting an exaggerated and polarized question to a third party. As a judge in Rochester once told us, "If you give me a really stupid question, I guarantee that you'll get a stupid answer."

It is the desire to avoid the "stupid answer" that keeps us focused at the table. No one else has the information and background to settle the matters relating to the lives of the parties. We are talking

about their children, their house and their future. The parties should retain the power to make their decisions. It is a failure in everyone's life when an absolute decision is left to a third party.

The courts offer us a valuable option as dispute resolution of last resort. Any court will encourage people to settle their cases rather than to allow it to be left to a decision by a judge. One of the differences in Collaborative Law is that the process starts with dispute resolution rather than with polarization and litigation.

A fundamental question that brings people to Collaborative Family Law is the issue of how much of a voice they will have in their own lives. Our clients have lost enough of their expectations and control long before they came to us. In a respectful process, they can regain some control, working together with assistance of their attorneys and other professionals, to make plans for their future and the future of their children.

The responsibility of decision making properly rests at the center of a collaborative table rather than being shifted away from the parties to a third party.

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