



## **A Better Way to Divorce**

### **Collaborative Law: Integrity and Honesty Instead of Combat.**

**By Daniel P. Bestul**

It is a sad fact that almost half of all marriages end in divorce. Most divorces, however, do not go to a disputed trial. Many couples will do anything to avoid going to court. Adversarial litigation can be a poor way to resolve the difficult issue of family restructuring. I have spent over fifteen years helping people through the adversarial process, and recently I joined a small group of Wisconsin lawyers to bring a more peaceful way to end a marriage: through collaborative law.

The basic guidelines for the practice of divorce collaborative law call for an agreement between the parties to be honest, to cooperate, to have integrity, and to work towards a resolution that will benefit everyone involved. They work towards resolution without going to court. Collaborative law avoids slugging it out in court, opening emotional wounds and dragging children or relatives into vicious battles. Collaborative attorneys facilitate a voluntary settlement without the threat or use of power.

Under the collaborative approach, divorcing spouses each have lawyers to help them through the process, but commit in writing not to go to court to resolve disputes. The couple and their attorneys hold regularly scheduled meetings, with planned agendas, to negotiate custody and placement, child and spousal support, and property division. They can file their agreement with the court for approval.

This is revolutionary. Instead of “fighting and winning,” people focus on problem solving and working together. Instead of trial skills, the lawyers utilize their skill, training and expertise to forge an agreement that maximizes rewards for both parties-and especially for their children. And while divorce litigation can take years to complete, with agreements often reached on the courthouse steps the day of trial, collaborative law divorces may take only a few months to hammer out agreements between couples, with the pace and timetable set by the parties themselves.

Many good lawyers work to resolve their client’s divorce out of court, but unless the parties have committed to staying out of court any effort at settlement is always going to be evaluated against what the parties think the judge will do with the case. If the parties aren’t thinking about going to court, they focus on resolving issues, rather than the positions they intend to take in court.

I see many benefits for the couple by engaging the collaborative approach - especially for the children. Children always seem to take the brunt of it in a divorce. This process gets away from that. All participants agree to insulate the children from the proceeding and to act to minimize the impact of the divorce. Mom and Dad aren’t fighting it out in court. This lets everyone walk away with dignity and shows the kids that people can work through their problems without being nasty to each other.

The collaborative process keeps the parties in control, and makes them responsible and accountable for the end result. When you litigate, the judge is totally in charge, and has broad discretion to decide the case in a wide variety. But the judge has limitations - time, the rules of evidence, the divorce laws and the adversarial litigation





process itself - that may keep the judge from learning all the facts, considering all the possibilities and crafting a resolution that does the best job of filling the parties' needs. In the collaborative process, the judge has to approve the end result, but it is the parties, not the judge, who craft the rules that will guide the process and who find the best solution to the problems they face.

The approach is new, but I believe that as more people realize that this is an alternative to the litigation approach, more will choose this route. A large percentage of divorces can be resolved without all the ugliness that often accompanies a split.

When a couple decides to choose a collaborative divorce, they each have their own attorneys. Both attorneys must be trained in and committed to the collaborative law process. Both parties and their lawyers sign a contract called the principles and guidelines for the practice of collaborative law, and refer to those principles frequently during the process.

Either party can withdraw from the collaborative law process at any time simply by giving the other party written notice. However, if that happens, both individuals need to get new lawyers. The ability to withdraw is a key principle in the collaborative approach.

The collaborative approach won't work for everyone. Some people have difficulty trusting their spouse and in that case, collaborative law may not be the best route. And where abuse is an issue - physical abuse, child abuse, chemical abuse - it is very difficult to establish the cooperation and mutual confidence needed from the collaborative approach.

The Collaborative Family Law Council of Wisconsin, Inc is dedicated to informing the public about this new approach to family law cases, to training lawyers in the process, and to providing a forum for collaborative lawyers to exchange information about and improve the process. More information is available by visiting their web site at [www.collabdivorce.com](http://www.collabdivorce.com).

