

Collaboration: Do You Really Want A Knight in Shining Armor As Your Attorney?

by Trish Nugent, Attorney, and Moss Henry, Family Therapist

Hired guns, knights in shining armor, "Winning isn't everything, it's the only thing." These words conjure up images of combat and often frame our way of approaching conflicts or disagreements. And this mind set has long been an element of our legal system, a system in which attorneys are trained to litigate and advocate, to go to war for their clients. As the high cost of this approach has become clear there has been increasing interest in Alternative Dispute Resolution.

Mediation, by now a well known ADR technique, has become accepted in our court systems as a way to resolve disputes in many legal areas. More recently another approach has been gaining in popularity, Collaborative Practice. While still used largely in the divorce and domestic partner dissolution arena, it is rapidly expanding to areas of civil law such as probate and medical malpractice.

As the Saying Goes: More Light, Less Heat.

A typical case might look like this: Henry and Louise, together sixteen years and married for 10 years, are splitting up. They have a 13 year old daughter. Henry is a successful stock broker who commutes to San Francisco and Louise has a part time therapy practice in Santa Rosa. They own a home in Sebastopol which Louise's family helped them purchase. Financially they appear to be doing well, but two years ago Henry made a real estate investment against Louise's strong objections that looks like its going to lose a lot of money in the current real estate market. Henry has built up a large retirement in the years both before and after they married. Henry and Louise have conflicts over parenting issues with their young teenage daughter and disagree strongly on such things as private school, co-ed overnights and curfews.

This case clearly has some issues that will could use the help of a coach for each of them. Louise will likely have strong feelings about the money losing investment which might include anger and anxiety. She may question whether she should share in the investment loss and she may feel that all of the accumulated retirement is "theirs". Henry would probably feel embarrassed about the investment and anxious about money and "his" retirement as well. They will each get help in the emotions stirred up by their break-up and in talking to each other and setting realistic goals. This is not therapy. The focus is on moving the process forward through the process.

Henry is a powerful presence, used to being in charge in the courtroom. His style is to attack and his coaches' job is to help him find words that won't provoke Louise. Louise might be more reluctant to speak in the meetings and her coach will work with her to say what she needs to say without resorting to blame.

Henry, who initially felt overwhelmed by the seeming complexity and front-loaded expense of dealing with a team, began to appreciate the process when he and Louise spoke about the investment and about Henry's relationship with their daughter. Louise clearly appreciated the safety the team provided and spoke up more readily, knowing that Henry was listening. It wasn't easy but it didn't blow up either. Both could see it was going to help them settle their differences faster and with less expense than repeated court hearings, tactical maneuvering and legal procedures. Henry and Mary will be co-parenting for years, so a good working relationship helps everyone.

The Team "Container".

Finally, it is useful to think about what is called containment. When parties try to resolve disagreements on their own, they are likely to maintain the same way of dealing with each other that has led to the conflict. If each has a collaborative attorney, the attorney provides structure and support that can de-escalate the struggle. If each has a coach who can address the emotional aspects and help clients communicate effectively, then the level of intensity is reduced further. The CDFA (Certified Divorce Financial Planner), other financial specialists and Child Specialist add their expertise and information, addressing critical issues that can lower anxiety and stress. This is containment. The team provides greater containment than any one professional can accomplish alone.

For the Person Who Wants An Advocate, Not a Warrior.

In the Collaborative Practice model, attorneys are not warriors out to win for their clients, but advocates supporting the clients in expressing what is important to them. They help their clients sort out the differences with the other party using a shared problem solving approach. The clients, rather than a judge, with the creative help of the Collaborative practice team, develop solutions. Collaborative Practice is a welcome and much-needed dispute resolution model.

Article by Trish Nugent, JD and Moss Henry, MFT. Trish has practiced family law in Santa Rosa for 30 years. Moss and Trish are Board members of the Collaborative Council of the Redwood Empire, a multi disciplinary group of Collaborative Law professionals.