



## The Republican.

### Collaborative law can reduce rancor in divorce cases

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If you were to create a legal process to end your marriage, would you want the judge to make the decisions for you or would you want to retain control?

When the judge is in charge, all your energies are focused on promoting yourself. You want the judge to know the best things about you and the worst things about your spouse. If you want custody of your children, for example, you will position yourself as the better parent by giving examples of your spouse's bad parenting decisions.

Your lawyer will help you build the most effective arguments. Your spouse, of course, will be doing the same against you. The judge may appoint an investigator to gather additional information in order to decide where your children will live, and when and how often each of you will see them.

Once the judge has made a decision, you and your spouse will be expected to work together to raise your children by following the schedule imposed on you by the court. Clearly, this is not a recipe for peace and cooperation.

In 1990, an experienced family lawyer ended a long, hotly contested divorce trial swearing he would never do it again. Stuart Webb believed that the existing system was failing families. He felt there had to be a better way to end a marriage - one where the divorcing couple could retain control of the decisions.

He enlisted other like-minded family lawyers in Minneapolis to move away from the blame game and encourage clients to focus on the future. Recognizing that we live in a society where 50 percent of marriages end, divorce would be treated as a normal, predictable life passage.

The lawyers would act as legal counselors, not adversaries, to help their clients build a new relationship, one that would be different and less intimate, but no less valuable. This would allow divorcing couples to retain their dignity and self-respect as they built their separate lives.

The process of getting a divorce would be less stressful for everyone. After the divorce, the children would be allowed to grow up with two parents who respected each other and encouraged their children to love both of them. This was the birth of collaborative divorce law.

Collaborative practitioners reject the adversarial model. They work with clients in a series of negotiating sessions where each party is represented by a collaborative lawyer. Other collaborative professionals in the fields of mental health, parent education and finance are brought in as part of the team as they are needed.

Experts are jointly retained, which eliminates duplication of resources and fees. Information and documents are freely and openly exchanged. Negotiations are open and transparent and focus on the needs and legitimate interests of both parties. The needs of the children are kept at the forefront.

Collaborative practice uses many of the tools developed by mediators. The difference is that each party in a collaborative divorce has a lawyer.

In mediation, one neutral mediator works with both parties. Mediation clients go to court on their own since

mediators cannot appear in court with their clients.

Collaborative lawyers, on the other hand, are advocates for their clients. At every four-way meeting, both spouses have their own advocates sitting by their side focusing on their needs and interests. When it is time to go to court, the collaborative lawyers are there with their clients.

Even the best-intentioned couples hit roadblocks in the collaborative process. To help them avoid the temptation of giving up and turning to litigation, Webb added a provision to the collaborative law process.

It requires divorcing couples, their lawyers and the other professionals on the collaborative team to sign an agreement not to go to court until they have a final agreement to present to the court. The parties are free to withdraw at any time, but their team of collaborative professionals must withdraw as well if one of the parties goes to court. In order to litigate, the parties have to retain new lawyers and experts. This is the most controversial part of collaborative practice.

Such an extreme remedy can only be justified if it works, and the best spokespeople for collaborative practice are the clients who have experienced it. Most couples talk about reaching a point when they are ready to quit, but if they stay with it, the results are often astonishing and delightful to lawyers and clients alike.

One couple continues to meet weekly for coffee for the sole purpose of sharing information, schedules and problems involving their three teenage children. A child of another couple announced that she thought she had the "best of both worlds" after the divorce, clearly enjoying the best qualities of each of her parents without being forced to choose one over the other.

Another couple, divorcing after a 40-year marriage, continues to enjoy holidays and major family events with their children and grandchildren. It is not unusual to hear clients remark that they communicate better after the divorce than they did when they were married.

More than 300 Massachusetts lawyers are trained in collaborative law. The Western Massachusetts Collaborative Practice Group, which consists of more than 40 professionals committed to the collaborative law process, meets monthly to build practice skills, share problems and successes, and discuss how to spread the word about collaborative practice.

This is an idea whose time has come. To learn more, visit the Web site of the Massachusetts Collaborative Law Council at [www.MassCLC.org](http://www.MassCLC.org) Written for the Western Massachusetts Collaborative Practice Group by attorney Eileen Z. Sorrentino of Chicopee.

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