

Balancing Advocacy and Neutrality:
A Touchstone of Collaborative Practice

by Laurie Israel, Esq.

My collaborative cases are generally very satisfying. As I experience each collaborative case, I think about the elements that make it so different from a conventional divorce case. There is a sense that the participants (attorneys, clients, process coach, financial neutral) are working together to solve a puzzle in the most creative way possible. The puzzle is how to get our clients divorced in the most humane, functionally satisfying, and financially sound way as possible. This is what attracts everyone to Collaborative Practice (“CP”). In a sense, it is a “marriage” to the “divorce”.

Many potential clients may fear CP because they think that collaboration means weakness. They think their attorney will not “go to bat” for them and get them what they think or feel they deserve in the divorce. But advocacy for one’s client remains crucial in collaborative practice. It is merely done in a different way.

Much education, listening, and evaluation occurs between the attorney and the client before and after the CP four- or five-way meetings. The attorney may help the client formulate his or her wishes for a reasonable outcome. The attorney will likely have many discussions with the client that will assist the client evaluate options and determine how they fit into a cohesive plan for divorce. In addition, the attorney will educate the client on the “rules of divorce” in the jurisdiction and how the client’s plan fits in with those rules.

During the group meetings, an attorney generally will back off from vocally pressing the client’s wishes and thoughts. The meetings are used for focused but open-ended discussions between the parties with assists from the professionals. There is a culture of “truth saying” in CP that is tremendously helpful in solving problems in a respectful way. This is the diametric opposite of conventional divorces, where the truth is withheld, and parties function totally from positions completely voiced by their lawyers.

One other important feature of a successful CP is the respect shown by an attorney to “Counterpart Counsel” (the other client’s counsel) and to the other spouse. As the process unwinds, one finds that both spouses are worthy of respect. They each have things to say which are extremely important to solving the puzzle of their divorce. Listening openly and respectfully to the “other side” is what I refer to as neutrality in CP. It is the grease that makes CP so successful.

© 2009 Laurie Israel. All rights reserved.

Laurie Israel is founder and managing partner of [Israel, Van Kooy & Days, LLC](#), a law firm located in Brookline, Massachusetts. She combines a family law practice with estate planning, tax, mediation and collaborative law. Laurie is currently on the board of directors of the Massachusetts Council on Family Mediation and former board member of the Massachusetts Collaborative Law Council. Her writings include articles on mediation to stay married (marital mediation), collaborative practice, marriage, divorce, and pre- and post-nuptial agreements. She is a frequent presenter at professional conferences. Her websites are: www.laurieisrael.com, www.mediationtostaymarried.com, and www.yourfamilymatterslawblog.com.



Laurie Israel, Esq.