

COLLABORATIVE LAW AND DIVORCE

BY DIANA L. SKAGGS

The writer is an attorney in Louisville who specializes in divorce mediation.

WE HAVE KNOWN for years that conflict during the process of divorce is devastating to children. Locally, we have embraced mediation. A majority of divorce cases are now settled in this manner.



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It is bothersome, however, that even in the negotiated settlement scenario, we have been unable to quiet the conflict to a tolerable level. The model of mediation, as we are using it today, is employed too late in the process of a divorce case, and it occurs after much battling may have already occurred and huge fees spent. As advocates, divorce lawyers must prepare for mediation just as thoroughly as for trial so our clients "win" as much as possible.

It is true that clients who have settled their cases through mediation are generally more pleased with the outcome and cost than litigants who avail themselves of all the litigation possible through trial. This is no slight to our trial judges; we are fortunate to have an excellent Family Court in this community. The caseload is staggering, however, and there are not enough hours in any judge's day to give any case the amount of time the judge may desire. (Chief Justice Joseph Lambert, please, please advocate for more Jefferson County Family Court judges.)

An article was recently reprinted by *The Courier-Journal* which concerned divorced spouses co-parenting children without conflict. While the extent to which these parents cooperated may have been extraordinary, there is nothing new about parents ultimately wanting to stop the fighting for the sake of their children. Our Families in Transition Program (divorce education) is excellent and certainly helpful, but during the heat of the war about "winning," we can certain-

ly, and in short order, undo the lessons taught.

The real news is that nearly 30 Jefferson County attorneys who practice in the area of family law have recently invested time and money to be trained in a collaborative law approach. The Kentucky Collaborative Family Law Network has been formed, and we have begun to use the collaborative model in selected cases. Further, all of the psychologists who now perform court-ordered custody evaluations volunteered an evening of their time to investigate the collaborative law process. We look forward to exploring alliances with the mental health community.

Collaborative divorce is sometimes called divorce without bloodshed. Cornerstones are a written commitment for informal discovery, complete honesty in disclosure, respectful and constructive communication, retention of joint experts or consultants, and negotiation in good faith. The *pièce de résistance* is that both attorneys and all neutral experts will be disqualified if either party initiates any court in-

volvement whatsoever before settlement.

The collaborative divorce process will not be an appropriate model for families with domestic violence issues or serious psychopathology. Nor will every lawyer trained in the collaborative process agree to this model regardless of the identity of opposing counsel. Some lawyers against whom we have litigated may need to rehabilitate reputations before gaining the trust necessary to proceed collaboratively.

What is so phenomenal about this process, however, is the number of outstanding litigators within the profession who are embracing this paradigm shift. One of our members calls himself a recovering litigator. Most of us are tiptoeing into the collaborative divorce model and view it as a promising tool in our toolbox.

The news is that the Family Court Bar is working hard to help children of divorce. We are embracing a change. It is old news that divorcing spouses want the animosity eliminated.

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