

“Trends in the Profession” Dallas Lawyers Adopt Collaborative Approach

**Texas Bar Journal
March 2000**

Ten lawyers representing eight of Dallas' top family law litigation firms got together recently and decided to make divorce clients a unique promise: If you want to walk away from your marriage without a bloody battle, leaving open the possibility of a cordial relationship, we will put down our litigator's guns and help you do it.

The attorneys formed a practice group which offers a service called "collaborative law," an expansion of mediation which is gaining popularity in California and Minnesota but is new to Texas. Collaborative law is designed to reduce the likelihood that the parties will abandon negotiation for litigation, which often happens when traditional mediation reaches an impasse.

Lawyers using a collaborative approach agree not to litigate the divorce if a settlement is not reached, removing the incentive for a "win at all cost" approach by either side. Discovery is supplanted by an agreement among the parties to disclose all relevant information, and parties pledge to work to resolve the case in a manner acceptable to both spouses. Settlement discussions are held in a series of informal meetings, with the divorcing couple and each of their attorneys present.

"What is unique about this, and attractive to all of us, is that it allows us to help people divide their families like you would a partnership, where they learn to communicate on a different level than they did in their marriage," said **Janet Brumley** of Dallas' Verner & Brumley, who is a member of the collaborative practice group. Other firms represented in the group include Leota H. Alexander; Goranson, Bain & Larsen, L.C.; McShane, Davis & Hance, L.L.P.; Clark, West, Keller, Butler & Ellis, L.L.P.; McCurley, Kinser, McCurley & Nelson, L.L.P.; Raggio and Raggio, P.L.L.C.; and Robertson & Railsback. The lawyers formed the group in January after attending a collaborative law conference in Dallas. The group's first collaborative case was in progress when this article went to press.

Brumley said the group was impressed with the collaborative approach because it is a possible antidote for an increasing number of clients who are dissatisfied, even after successful litigation. "Clients look at [family lawyers] and say 'We won a lot of money, but you cost me more than that in emotions because now my ex-wife and I can't even be in the same room,'" Brumley related. "The whole ideal of collaborative law is to let the parties drive the process."

"Perhaps you have a woman who says, 'I don't have to have standard child support - I make enough money. What I do need is for my husband to agree to more of the child-rearing responsibilities.' That may be more valuable to her than an extra \$150 a month in child support and it might make the husband happier to do it that way too."

The collaborative approach will not work, says Brumley, unless the attorneys involved share a high level of trust, experience, and expertise. The lawyers in the Dallas collaborative practice group have an average of 20 plus years of experience and are all board certified and a/v rated. "We all know that we can trust each other, we all know that the other lawyers know the law just like we do, and we all know the likely outcome of litigation - so we have a level playing field in the negotiations," Brumley said.

The Dallas group adopted a process which begins with each spouse choosing an attorney from among the group. A series of settlement meetings is scheduled in advance, allowing discussions to be interrupted and resumed later if difficulties or tensions arise. All parties are in one room for each meeting (a departure from traditional mediation, which separates the spouses during the negotiations).

According to Brumley, attorneys using collaborative law in other states are finding that it allows

couples to go their separate ways without the tension or anger that accompanies litigation and some mediation. "We are hearing that during the collaborative law process, people learn to work together again in the context of ending their marriage in an orderly fashion," she said. "This allows them to work together in the future. ...If a couple has a huge fight and then parts, the next time they see each other, and probably every time they see each other, it is not going to feel good because the relationship ended on a combative note and not a cooperative one."

Brumley acknowledges that collaborative law is not right for every case or every person, because clients sometimes want their day in court. "But," she explained "when people come in and say 'I don't want to fight, I want everything on the table, I don't want the kids torn up,' that is a case for collaborative law."