

Collaborative Law Viewed as Alternative

By Patrick Markey
Editorial Board Member

Collaborative Divorce is a dispute resolution model that uses specially trained lawyers, child specialists and financial specialists to reach an out-of-court agreement. In Collaborative Divorce, both spouses commit to a written pledge not to go to court, an honest exchange of information and a problem-solving approach that addresses the needs of both parties and their children and not just a legal position.

James R. Galvin, a partner with the law firm of Schiller DuCanto and Fleck and co-founder of the Collaborative Law Institute of Illinois' ("CLII"), had the task of convincing attendees at a YLS Family Law Committee that Collaborative Law is a viable alternative to traditional litigation and mediation.

The first issue that needed to be addressed was cost. Most in the crowd wanted to know how they were going to convince a prospective divorce client to not only hire them, but also a host of other professionals such as child and financial specialists and divorce coaches.

Galvin explained that collaborative cases do have a cost, but are often less expensive than a traditional divorce case. By working things out in four-way meeting, multiple "status" court appearances are eliminated, saving the parties money when most status dates do not accomplish more than

obtaining a new date for further "status." It also eliminates the need for depositions, subpoenas, multiple experts and preparing exhibits to be used in court.

The second major issue Galvin addressed was the Collaborative Law Process Agreement, which requires both attorneys and any other professionals involved in the case to withdraw from representation if either party files a court action prior to reaching a full settlement. Many of the audience members believed that the same result could be achieved without having the extreme measure of signing a participation agreement which included this disqualification provision. However, Galvin countered that not having the disqualification agreement hinders the collaborative process in that the attorney is then sending a message to the client that he or she is not confident they can resolve their dispute within the collaborative model and is more concerned about keeping the client in order to continue to earn fees rather than resolving the client's divorce. As to the ethical issues of this type of agreement, the American Bar Association issued a formal opinion on August 9, 2007, finding that Collaborative Participation Agreements do not violate the Model Rules of Professional Conduct.

Judge Pam Loza gave a ringing endorsement of Collaborative Law after having practiced some Collaborative Law prior to joining the judiciary. She related that she had just given out trial dates for Feb-

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ruary 2010 because her calendar is so full with contested cases and that courts in Cook County do not have the resources to deal with so many cases. Loza provided a statistic which summed up the potential of Collaborative Divorce: the practice has taken hold so firmly in Alberta, Canada that the number of family cases on the court docket has been reduced by almost 85 percent. This leaves the court's scarce resources to deal more effectively with the small percentage of cases that cannot be resolved collaboratively. ■

The YLS Family Law Committee meets on the first Wednesday of each month.

DEAR SANTA LETTERS

The YLS will be distributing "Dear Santa" letters from disadvantaged Chicago youth. Simply select a letter, purchase a few items the child has requested, and mail the package. Letters will be available at the CBA in early December. If you would like to distribute letters at your firm, contact Jenni Bertolino at 312/554-2031 or yls@chicagobar.org.

Volunteers interested in preparing letters for distribution in late November should contact Jenni Bertolino at jbortolino@chicagobar.org. Pizza dinner will be served to volunteers.

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