

# Chicago Daily Law Bulletin®

Volume 160, No. 27

## Collaborative law team helps foster trust in divorce meetings

**T**rust is in short supply when it comes to divorce. We all know intuitively divorce brings numerous unwanted changes to the family as the couple is unsure how and when their matter will get resolved.

Most couples have high hopes and great expectations that their soon-to-be "ex" will be fair, honest and caring. Often their new reality is revealed as they engage in the divorce dance.

Alona Aspach, managing director of Sheridan Road Financial, shared this observation. "What is most fascinating about the dance to me as a professional participating in the collaborative process is that the husband's and wife's way of being in the marriage is re-enacted in every meeting, e-mail and phone call.

"The domineering spouse is still dominating every conversation and wielding all the power. The victim spouse is still aggrieved and remains powerless throughout the process.

"The furtive one is still hiding anything and everything. The uninformed is still searching for answers.

"Each has his or her recurring theme or mantra that contributed to the marriage breaking down. This will often color the divorce conversation as well as the negotiation."

Alona relates the many "stories" couples tell of the "wrongs" meted out by the other.

"He made all the financial decisions and didn't consult me."

"She spent without an end."

"She never acknowledged how hard I worked and all the financial pressures I was under."

"He forged my signature on the tax return so I never knew what we owed the IRS."

"She never wanted to go over the tax return and told me just to sign her name."

"We didn't save for college because he said we would take out a home equity line on the house.

Now our house isn't worth much and we are burdened with debt."

"How could we save anything when she wanted to vacation and have a fancy house?"

All of these stories that people tell amount to nothing but finger-pointing, which avoids each person taking responsibility and shutting out the other spouse's voice.

Experienced attorneys expect this noise level from clients and can navigate these waters fairly deftly. But watch out when the tide changes with some of these revelations:

- An affair with a co-worker, close family friend or the nanny
- Racking up debt on credit cards
- Drawing down the home equity line of credit
- Surreptitiously removing the spouse from an account
- Liquidating funds from joint and kids' accounts
- Hiding assets offshore or with a colluding relative
- Shutting down sources of money for the non-earning spouse
- Turbocharging on credit cards to exaggerate lifestyle for higher maintenance.

Now the victim feels the need for retribution. The offender must pay for the emotional and psychological pain inflicted.

No matter the reason, the already shallow level of trust is decimated. The spirit of compromise is sucked out of the process. The effect is a difficult, contentious and protracted divorce process that has a long-lasting effect on the family.

How can we tamp down this distrust and marshal the couple toward resolutions needed to end the marriage and avoid a "War of the Roses"?

Collaborative law has several unique features contributing to these objectives.

The attorneys have a dual role in collaborative law. They advocate for their respective clients as any attorney is hired to do, seeking the best resolution for their client and work to that end.

### COLLABORATIVE CONCEPTS



**BETH FAWVER MCCORMACK**

*Beth Fawver McCormack is a partner at Beermann, Pritikin, Mirabelli, Sverdlow LLP. She practices exclusively in family law matters and is a collaborative law fellow, mediator and child representative.*

Yet, the winner-take-all mentality is absent from the discussion. The uniqueness is in the promotion of the interests of both parties and the drive to workable solutions for the entire family. It is such a pleasure to watch a colleague support the position of the "other" spouse in a meeting with all parties present. That requires a measure of diplomacy and skill.

Our efforts are augmented by the other professionals on the team — a financial neutral, one or two coaches and a child specialist. The coaches are key to working with the clients in their most vulnerable and emotional states. Clients tend not to mask their resentment, anger, frustration or fears during the divorce.

They accuse, rant, dig in their heels and display all the other behaviors expressed in traditional litigated cases. The coaches' skills as mental health professionals are utilized to reframe a deteriorating

**“The coaches are key to working with the clients in their most vulnerable and emotional states.”**

discussion.

They keep the couple engaged in the negotiation and provide reality testing when needed, giving the husband and wife a different "lens" to interpret the conversation so they can keep moving forward toward settlement.

Attorneys are neither trained to do this nor do they choose to act in this capacity.

They may even fuel the discord by pushing an unpopular agenda or position. Sometimes, the coaches are called upon to mediate between the attorneys who have taken their client's position and forsaken any ability to compromise.

The financial neutral plays a key role in building a level of trust in the collaborative process. It is common for financial inequality in marriage.

Sometimes due to delegation of duties — one manages the financial aspects and the other family and household.

One is comfortable with business and financial matters and the other is not. One works while the other raises the family.

The financial neutral helps gather and verify information used by all parties to negotiate the final settlement. This helps level the playing field.

The neutral must garner the trust of both parties to help them bridge their distrust of the other. The financial neutral may contribute strategies and solutions that are "outside the box" yet workable to achieve the objectives of both parties.

Clients are usually more open to financial outcomes when they are suggested by a neutral.

They are perceived as having no hidden agenda and not taking sides.

We add a neutral to the team when we use a one-coach model. Alona shared this experience: "The neutrals make a significant difference in how the clients treat each other, act in the process and willingness to reach workable solutions.

"Having a full collaborative team truly makes a difference."