

“A KINDER DIVORCE: A CALMER APPROACH”

by Claire Sanderson Hanna

Claire Sanderson Hanna is a board recognized family law specialist whose practice has been limited exclusively to family law since 1994. Ms. Hanna is a board member of the Family Law Section of the State Bar of New Mexico and is a founding member and board member of New Mexico Collaborative Practice Group as well as a member of the International Academy of Collaborative Professionals. She is also a trained family law mediator and settlement facilitator.

We all know the toll a divorce or family law dispute has on the nuclear and extended families in New Mexico. There is no magic cure to fix a failed marriage and there is no miraculous emotional painkiller to eradicate the disappointment and sadness surrounding a divorce. There is; however, a kinder and calmer legal process available to divorcing families in New Mexico which often is more appropriate for a family than the more commonly known adversarial method of litigation. This kinder calmer legal process is known as “Collaborative Law” and it is my pleasure to launch this four-part installment article to welcome you all to this topic. If the concept is new to you, or if you have already heard of Collaborative Law but you are interested in finding out more about it, then I encourage you to read this article and to call me or any of the members of the New Mexico Collaborative Practice Group so we can discuss this with you in more detail. Come to one of our meetings or attend one of our seminars.

WHAT IS COLLABORATIVE LAW?

One answer to this question is an explanation of the process itself. Collaborative Law is an out-of-court process in which both parties have agreed to participate. Each party has his or her own collaborative attorney who has undergone specific training in

the Collaborative Law process to help resolve family law related matters via negotiation and settlement techniques without court intervention. The crux of this conflict resolution process is that the parties and their collaborative counsel sign a contract not to go to court. They are promising to resolve their dispute out of court.

Another answer to this question is to tell you what it is NOT. It is not mediation. The mediator's role is neutral and the mediator does not advise the parties. The collaborative attorney's role is advocate and representative for the client. Although Collaborative Law is advocacy it is NOT the same type of advocacy as in litigation. The litigation model is an adversarial model where the rules of civil procedure and evidence apply and where the decisions are made by a third party; the judge. In Collaborative Law, the decision-making power is shared by the parties and is NOT delegated to a third party. As the client's advocate, the collaborative attorney advises the client, negotiates on behalf of the client and focuses on the values and the goals of the client without the adversarial interactions inherent to the litigation model.

One of California's collaborative attorney gurus, Pauline H. Tesler, in describing Collaborative Law states it is "two clients and two attorneys, working together toward the sole goal of reaching an efficient, fair, comprehensive settlement of all issues. Each party selects independent collaborative counsel. Each lawyer's retainer agreement specifies that the lawyer is retained solely to assist the client in reaching a fair agreement and that under no circumstances will the lawyer represent the client if the matter goes to court. ... Experts are brought into the Collaborative process as needed, but only as neutrals, jointly retained by both parties. They, too, are disqualified from continuing work and cannot assist either party in the matter goes to court. The process

involves binding commitments to disclose voluntarily all relevant information, to proceed respectfully and in good faith, and to refrain from any threat of litigation during the collaborative process. “ Pauline H. Tesler, *Collaborative Law: What It Is and Why Family Law Attorneys Need to Know About It?*, 13 American Journal of Family Law, 219 (1999). Collaborative Attorney Tesler further notes that “an important element of Collaborative representation is the lawyers’ commitment to manage conflict creatively.” *Id.* at 220.

Albuquerque Children’s Court Judge John J. Romero, Jr. has committed his energy and talents as an attorney and as a Children’s Court Judge to helping families resolve tough issues. When asked to comment on Collaborative Law, Judge Romero’s thoughtfully responded: “The divorcing family routinely navigates a legal and emotional minefield calculated to destroy relationships and to unnecessarily consume limited resources. Collaborative Law provides the divorcing family with an out-of-court problem solving alternative that allows husband and wife to restructure the family relationship and to minimize unwarranted wasting of resources. Family courts and the community benefit from Collaborative Law. Divorce-related problems are resolved in the Collaborative process and do not take up judicial resources. Finally, since the divorcing family is more invested in agreements crafted through the collaborative process, non-compliance with the terms of an agreement is less likely.”

HISTORY OF COLLABORATIVE LAW

The collaborative model is a far cry from the gladiator scorched earth litigation model so many attorneys have been trained to do and so much of our media focuses upon in our daily lives. Historically Collaborative Law is of recent vintage and dates

back to the 1990s. It's origins are traced to the original family law litigation Stu Webb of Minneapolis who became disheartened with the flawed litigation model.

Founding Father of the Collaborative Law movement, Collaborative Attorney Stu Webb has described his inspiration simply. He came to a crossroads in his legal practice where he was so fed up with family law and its inconsistency with his personal ethics that he decided he would just have to stop practicing law entirely. Then it struck him that if he was willing to give up law altogether, there was no reason why he could not first try to reshape what was wrong about it and see if he could devise a mode of family law practice that made more sense to him. See Pauline H. Tesler, *Collaborative Law: Where Did It Come From, Where Is It Now, Where Is It Going?* 1 The Collaborative Q. 1 (1999). Stu Webb, Pauline H. Tesler and subsequent practitioners in family law have been instrumental in spreading the collaborative legal model and variations on this model on the national and international levels.

WHAT IS "COLLABORATIVE DIVORCE" AND HOW DOES IT RELATE TO THE COLLABORATIVE LAW MODEL IN NEW MEXICO?

"Collaborative divorce" is a term of art which refers to a multi-disciplinary approach developed in California. This model appears to be well suited to the financial, philosophical and cultural environment of California and has been applied in other areas as well..

New Mexico is developing its own theoretical and practical model which is very much a work in progress and which is evolving to suit the needs of our own unique

communities in New Mexico. When the New Mexico Collaborative Law Group was initially founded in 2000, it consisted of just ten Albuquerque family lawyers. Four years later, and a name change later, the membership has more than quadrupled with branches in Albuquerque, Santa Fe and Las Cruces. The organization's name was changed in 2004 to the New Mexico Collaborative Practice Group to reflect the multi-disciplinary membership as well as the multi-disciplinary approach followed in many of our collaborative divorce cases.

Unlike the "collaborative divorce" model, there is no pre-set pre-determined cast of team members applicable to every case in the developing New Mexico model. Our approach is individualistic and specifically tailored to the emotional and financial needs and budgets of each case. Under certain circumstances: complicated financial, emotional issues and complex parenting matters, financial feasibility, and the parties are in agreement that a full support team is necessary, then the team would include a child specialist, a divorce coach for the Husband and Wife and a financial consultant. However, it is not necessary to assemble such an extensive team in every collaborative divorce situation. In fact, this scenario is the exception not the rule in terms of the cases we have had locally. More often, a divorce needs some expert involvement or it needs coaches, but it does not need the full support team. For example, a divorce may require a child consultant to assist the parties in reaching a parenting plan, but the finances are straightforward enough that a financial consultant is not needed. In another scenario, the parents may be able to resolve the issues pertaining to the children between themselves and assistance from their collaborative attorneys, but desperately need the input from a neutral financial consultant to address

some especially complicated tax and valuation issues. Or, there are no children, the financial issues can be dealt with by the parties and their attorneys, but the emotional trauma of the divorce itself is the most challenging aspect of that particular divorce in which case involvement of divorce coaches is essential.

The child specialist is typically a licensed psychologist and the scope of the role of the child specialist will depend on the facts of each case. Peggy Thompson, Ph.D. and founder and co-director of Collaborative Divorce and Family Psychological Services in Orinda and Santa Rosa California describes the role of the child specialist as, "...assessing the child's needs, vulnerabilities, and areas of resilience, and reports on these to the rest of the team and the divorcing couple." A. Rodney Nurse, Peggy Thompson, *Collaborative Divorce: A New, Interdisciplinary Approach*, 13 *American Journal of Family Law*, 226 (1999).

The divorce coach is a licensed mental health professional. Typically each party would have his and her own divorce coach to assist that party navigate emotionally and psychologically through the divorce. The role is short term for the duration of the divorce and is not to be confused with the role of a therapist.

The financial specialist may be a certified public accountant, a tax attorney or a financial planner depending on the assistance required in a particular case. The role of the financial planner is neutral, to assist both parties in the divorce.

Further discussion of the roles of the child specialist, divorce coach and financial specialist will be included in subsequent installments of this article with contributions from New Mexico practitioners in these fields.

The more collaborative cases that many of the collaboratively trained attorneys

have been involved with, the more we are finding that the most common scenario is the need for the divorce coach in the collaborative process. The lawyers need to be able to channel our analytical skills to assist the parties reach workable practical solutions tailored to their individual needs. Often in order for us to be able to do our job and to avoid being put in the position of being an emotional sounding board for our client, one or both of the parties will need a divorce coach. As much as the collaborative attorneys may wish to be kind to their clients and to listen to their emotional concerns, our training and our intellectual and professional strengths are not best suited to that role nor is it financially prudent for our clients to spend their limited financial resources talking to their attorneys about matters that would be more productively addressed by the appropriate mental health professional.

WHAT IS THE PURPOSE OF THE NEW MEXICO COLLABORATIVE PRACTICE GROUP?

As fellow board member and collaborative attorney family law specialist Kimberly A. Schavey reports, “The state-wide non-profit arm of the New Mexico Collaborative Practice Group was created for the purpose of sharing the concept of collaborative practice with the members of the public and those who serve adults and children dealing with family law matters. In May 2002 the corporation was formed and its tax-exempt status was granted by the IRS shortly thereafter. There are currently eight board members for the state-wide group and the projects accomplished to date have been the development of an initial brochure, web sites (www.nmcollaborativelaw.com) or (www.nmcollaborativedivorce.com) as well as sponsoring and organizing

collaborative training seminars.” The mission statement of the New Mexico Collaborative Practice Group is “an out-of-court alternative offering family law representation tailored to each family’s legal financial, emotional, and long-term needs.”

HOW TO GET MORE INFORMATION ON COLLABORATIVE LAW

On the international level, you may wish to contact the International Academy of Collaborative Professionals whose web sites are www.collaborativepractice.com and www.collabgroup.com .

Membership in the New Mexico Collaborative Practice Group is open to all interested attorneys, mental health professionals and financial professionals who obtain collaborative training and pay the organization’s administrative fee. The current board members of the state-level organization are: Claire Sanderson Hanna, Judith Ferrell-Holbrook, Mila Allen Maturan, Muriel McClelland, District Judge John J. Romero, Jr, Kimberly A. Schavey, Richard D. Stoops, Gretchen M. Walther and Julie A Wittenberger-Wagner.

A collaborative training was completed recently in Santa Fe and there is an extensive two-day collaborative training session scheduled for May 6 and 7, 2005 sponsored by New Mexico Collaborative Practice Group and the University of New Mexico Law School. The course content of the May 2005 collaborative training session focuses on utilizing a team of professionals to transform family law disputes into a collaborative process. Participants will be given an overview of the development of collaborative law and the requisite paradigm shifts necessary to ensure successful resolution of family conflict. Because the underpinning of a multi-disciplinary model is “team building,” everyone will be trained together. The focus will be on the clients and

how they navigate the process with the assistance of team members. This is a “how to” course which concentrates on the “process.” Lectures focus on understanding how each professional employs their knowledge and skill to support the client’s participation in the process. Demonstrations illustrate step by step progress through the process based on real cases examples.

The training team for the May 2005 seminar consists of Robert R. Bordett and Nora Kalb Bushfield.

ROBERT D. BORDETT, CFP, CDP, is a Senior Vice President, with Consolidated Planning Corporation; a firm providing comprehensive financial planning, asset management and financial analysis in divorce, and domestic mediation. Bob is a CFP, Certified Financial Planner Designation, Certified Financial Planners Board of Standards, Denver, Colorado; a Registered Mediator, Georgia Office of Dispute Resolution, a Divorce Mediator, Divorce Mediation Institute, Atlanta, Georgia, a CDP, Certified Divorce Planner Designation, Institute of Certified Divorce Planners, Boulder, Colorado and an Advanced Divorce Planning, Institute of Certified Divorce Planners, Boulder, Colorado. Bob received his A.A.S., in Business Management, at Virginia Western College, Roanoke, VA.

As a Senior Vice-President at Consolidated Planning, Bob is responsible for management of financial planning practice, including analysis of data, preparation of written financial plan, presentation of final recommendation to clients, and assisting clients in the implementation of plan recommendations. Bob is an advisor to asset management clients, responsible for portfolio analysis, asset allocation, investment recommendations and monitoring, and on the teaching staff of Institute of Certified Divorce Planners, Boulder, Colorado.

Bob is a Member of FPA, Treasurer of Family Mediation Association of Georgia, Board Member of Georgia Council for Dispute Resolution, General Member of the Academy of Family Mediators; National Association of Tax Practitioners; Registered Representative, Series 7 and 63; Raymond James Financial Services; Member of the Steering Committee of the Collaborative Law Institute of Georgia, and Board of the Collaborative Law Center of Atlanta.

Bob has maintained an active private mediation practice since 1995 and has provided Court ordered mediation services in DeKalb County since 1996. Bob has been a speaker at the Institute of Certified Divorce Planner, Boulder, Colorado, Divorce Planning and at the Family Mediation Association of Georgia, 1996 Annual Conference, Financial Issues in Mediation, Georgia Trial Lawyers, Atlanta, Georgia, Financial Issues in Divorce; Women's Resource Center Marietta, Georgia, Financial Issues in Divorce; Atlanta Divorce Mediators, Atlanta Georgia, Tax Aspects in Mediation. Bob has contributed articles to Atlanta Journal Constitution, Finance Column; Journal of Financial Planning; Georgia Family Mediation Newsletter; Fidelity Advisors 401k Magazine and Family Mediation Association Newsletter.

NORA KALB BUSHFIELD, ESQ., Nora Kalb Bushfield, P.C. is a sole practitioner in Atlanta, Georgia. Nora has specialized in the area of family law since 1986. Nora is a member of the Collaborative Law Institute of Georgia and serves on the steering committee for the Institute. She has assisted with training for the Collaborative Law Institute. In addition to her law practice, she is a trained divorce and child custody mediator registered with the state ADR office and a member of the Georgia Association of Family Mediators. Bar memberships include the State Bar of Georgia, Family Law Section and Alternate Dispute Resolution Section; and the DeKalb and Atlanta Bar Associations. Relevant training includes Divorce & Child Custody Mediation and Collaborative Divorce.

Nora received her under graduate degree from Georgia State University with a major in psychology; a Master of Social Work (M.S.W.) from Atlanta University and her Juris Doctor from Antioch School of Law.

Prior to attending law school, Nora was a family and individual therapist at Family's First in Atlanta, Georgia. While in Washington, D.C., Nora was National Project Director for several action, research and demonstration programs in the area of juvenile justice, child welfare and

child abuse and neglect, as well as assisting in the writing of National Standards in Foster Care and Child Abuse and Neglect.

Nora is committed to the exclusive practice of Collaborative law and to promoting the collaborative law process throughout Georgia and North America. Nora has presented on collaborative law at the 2002 and 2003 International Academy of Collaborative Professionals Forum and at the Canadian National Collaborative Law and Lawyering Conference in Toronto in 2002. Nora is a member of the Steering Committee of the Collaborative Law Center of Georgia, Board of the Directors of the Collaborative Law Center of Atlanta, President of the International Alliance of Holistic Lawyers, and President of the Collaborative Law Training Associates, Inc.

For more information on this seminar please contact Connie DeFoe, Administrative Assistant PO BOX 21743, Albuquerque, NM 87154-1743 (505) 350-6256, Email: cdefoe@flash.net. For more information about the local chapter meetings, you may wish to contact the President of the Albuquerque Chapter Twila B. Larkin, the President of the Las Cruces Chapter Mila Allen Maturan, and the President of the Santa Fe Chapter Catherine Downing. On behalf of all the members of the New Mexico Collaborative Practice Group, we hope to hear from you and we welcome you to contact us for more information or just to chat.