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COLLABORATIVE LAW REDUCES ANXIETY FOR DIVORCING COUPLES

In its opinion *In Re the Marriage of Kujawinski*, 71 Ill.2d 563, 376 N.E. 2d 1382, the Supreme Court of Illinois stated, “It cannot be over emphasized that a divorce, by its nature, has a major economic and personal impact on the lives of those involved.” That the Illinois State legislature is cognizant of this is evident by the fact that an express purpose of the Illinois Marriage and Dissolution of Marriage Act (the “Act”) is to “...mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.” (750 ILCS 5/101)

However, despite this express statement of purpose, neither case law nor legislation has suggested how to accomplish it. Consequently, divorce proceedings continue to foster a great animosity and hostility between the parties (including lawyers) that seems to feed on itself: Clients blame lawyers, lawyers blame clients, and judges blame both for having caused a scenario reminiscent of that depicted in the film “The War of the Roses.”

The one common observation about divorce seems to be that we see normally decent people acting poorly. Logically, one would ask “Why are they acting this way?” It is at this point that consideration of underlying behavioral issues comes to the fore, and the question becomes: “How do we most effectively deal with poor behavior, and help people be the best they can be at possibly the worst time in their lives?”

We all know divorce is a painful, wrenching experience under the best of circumstances - even for those who initiate the process. What makes the experience so painful, the psychologists tell us, is that the divorce experience is all about loss and change, with everything in one’s life being in a state of uncertainty. Dr. Honey A. Scheff, Ph.D., writes:

“The divorce experience is all about loss. Loss of love. Loss of relationship. Loss of net worth. Loss of dreams. Loss of control. The combined effects of these multiple losses layered one over the other can be overwhelming for an individual. When faced with loss, people can react in a variety of destructive ways in their misguided attempts to cope with the resulting pain and stress. Even clients who are attempting to resolve the ending of their marriage in constructive ways may behave destructively in the process. People will drink too much, abuse

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substances, behave impulsively, act out in anger and frustration, and break rules, not with any evil intentions, but because they are hurt and unable to cope with the pain engendered by the losses they are facing. They simply want the pain to go away, and they may resort to harmful, self-defeating methods to help themselves feel better.” Collaborative Review, Summer 2007, Volume 9, Issue 2 – Journal of the International Academy of Collaborative Professionals.

Dr. Scheff further points out that:

“The divorce process is replete with uncertainty, which allows us to predict that the couple members are likely to be in a continual state of anxiety. Indeed, the only certainty about divorce is that it is a time of uncertainty. . . .The future is unclear and the security of life as it has been is gone. What stretched ahead is a giant unknown; perhaps better, perhaps worse, definitely different. Knowledge is power, and it has been shown that even knowing a poor outcome is, in fact, less anxiety-provoking for some one that an uncertain outcome that might be better, or might not. Anxiety, as a state of being, can often be a precursor to depression, which can ultimately lead to helplessness. These emotional states feed each other in such ways as to interfere with cognitive processing, decision-making and the ability to communicate and negotiate clearly and effectively.” Collaborative Review, Summer 2007, Volume 9, Issue 2 – Journal of the International Academy of Collaborative Professionals.

Psychologists tell us that underlying every behavior there is a reason for it. In the context of divorce proceedings, the degree of loss caused by divorce can induce regressive, even child-like, behavior - - even among the most “normal” of individuals. The physiological changes corresponding to these behavioral changes have been demonstrated in MRI scans, which have shown that under extreme stress the frontal lobes of the human brain (the part of the brain required for cognitive processing and decision making) shut down and the primitive brain (the part of the brain responsible for the “fight or flight” reflex) literally lights up.

Given the foregoing, it is no surprise that divorce is considered by mental health professionals to be the most stressful of life events, second only to death of a loved one. Added to this already stressful situation, it should be kept in mind that somewhere between 14 and 20 percent of the general population is plagued with a demonstrable personality disorder (often undiagnosed) or other maladaptive personality traits that make them high-conflict personalities to begin with. Common personality characteristic issues that affect this portion of the population according to William A. Eddy, J.P. LCSW, author of High Conflict People in Legal Disputes (2006) are:

- (1) Rigid and uncompromising;
- (2) Difficulty accepting and healing loss;
- (3) Emotions dominate thinking;
- (4) An inability to reflect on their own behavior;
- (5) Difficulty empathizing with others;

- (6) Preoccupied with blaming others;
- (7) Avoid responsibility (for problem or solution); and
- (8) Depend on others to solve problems.

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In short, this segment of the population deals with loss and uncertainty in highly conflictive ways that result in enormous cost both emotionally and financially to their family and society.

Lawyers are, in general, ill equipped to effectively deal with and help their clients to process these difficult emotions and lack the training to employ effective strategies for managing the often odd behaviors of their clients. Result: they feel compelled to behave themselves in conflictive, aggressive and adversarial ways towards the opposing party in order to appease their own client. Result: the opposing party feels attacked and responds in kind - and so the vicious cycle begins and continues.

The court system deals with poor behavior by punishing or threatening to punish the offender to force compliance; a “spare the rod, spoil the child” approach to poor behavior. But how effective is that way of parenting with children? If the psychologists are right that these emotional states “...feed each other in such ways as to interfere with cognitive processing, decision-making and the ability to communicate and negotiate clearly and effectively,” (Collaborative Review, Summer 2007, Volume 9, Issue 2 – Journal of the International Academy of Collaborative Professionals), how likely is it that clients under threat will be able to conform behavior and make thoughtful financial decision or wise parenting arrangements?

So, how can we most effectively help people who are in a severely compromised emotional state, cope with and effectively manage the legal process they are going through and the accompanying extreme emotions they are experiencing to help “...mitigate the potential harm to themselves and their children”? A new and growing approach to solving this problem is a form of Alternative Dispute Resolution (“ADR”) called “Collaborative Law.” Collaborative Law is an inter-disciplinary process that utilizes behavioral experts, financial planners and attorneys working as a team that seeks to address the fact that the problem to be solved is not one-dimensional, and the poor behavior we see is driven by tremendous loss, uncertainty and a very human reaction to a very negative experience.

If we are trying to solve or mitigate the causes of poor behavior, the approach of Collaborative Law is to build an interdisciplinary team that is able to effectively address these complex human needs instead of viewing the experience as simply a legal problem.

In addition, since we often find that the poor behavior results from fear due to lack of financial understanding, collaborative divorce teams may also employ financial experts to help address that particular concern. Finally, since we also see that divorcing parents get

lost in separating their own needs from those of their children, child specialists are employed to help divorcing couples focus on how to identify and meet their children's needs in a restructured family.

Experience has shown undeniably that divorce cases processed utilizing Collaborative Law bring about quicker, less painful settlement of issues at far less fees and costs than "traditional" approaches utilizing an adversarial legal framework.

Joe DuCanto, a founding and senior partner at Schiller DuCanto and Fleck LLP writes in his final July, 2008 column for The Chicago Lawyer:

"I never wanted to be a lawyer until I became one. Admittedly, a rather startling statement for one who has clung tenaciously to the practice for more than 50 years; something in the mix mesmerizes the mind to make the initial bond indestructible." "Over many years of practice, I also became aware that most lawyers could easily make a financially better and less tension-filled life in business or other lines of work, as opposed to serving the needs and requirements of individual clients. Instead, we sell our lives in minutes and hours in the hope that we are doing good as we do well. Resolving matters successfully and with minimum harm to families brings a psychic reward far beyond financial compensation." [Emphasis provided.]

If Collaborative Law sounds more like psychology than law, that's because it is. It is the author's belief that, if we can recognize severely compromised human behavior as the source of the acrimony, hostility and conflict behind divorce, we may, through a Collaborative Law approach, be able to resolve that problem, and ultimately give effect to the expressly stated purpose of the Act, and do some good as we do well.