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## **Collaborative Law: A Kinder, Gentler Divorce**

*by Scott Morgan*

Until 1990, when a Minneapolis family lawyer decided he had had enough, ending a marriage often involved a bitter, soul-rending bloodbath known as divorce by trial. There were alternatives — settlement, mediation — but litigated divorce cases far outweighed them, and even these alternatives did not preclude a divorce from going to trial.

The birth of collaborative law and dispute resolution offered a chance for couples to close out their union without leaving anyone — including their children and their attorneys — buried under a pile of smoking rubble.

In March the collaborative model came to Mercer, Middlesex, and Somerset counties in the guise of the Mid-Jersey Collaborative Law Alliance. With no formal address, the alliance is a collection of lawyers, financial professionals, and mental health practitioners who hope to provide a better way to conduct divorce.

It was founded by Lawrenceville attorney Frances Merritt and five other legal pros who, like their Minneapolis forefather, decided they had had enough of divorce by trial.

The original six are Merritt, attorneys Risa Kleiner, Kleiner Law, 116 Village Boulevard; Cheryl Spilka, Ramatowski, Spilka & Schwartz, of East Brunswick; and Mia Cahill of Dennigan Cahill, 116 Village Boulevard; and financial professionals Barbara Clarke of Morgan Stanley Smith Barney, 997 Lenox Drive; and Jeffrey Urbach of Highland Park. Seven months after forming the alliance there are more than 30 professionals in the MJCLA.

The approach of collaborative law is simple — the two parties agree to settle their situation out of court, with full cooperation and disclosure, in good faith. There are still attorneys, of course, but these are not of the toothy, bottom-feeding kind. They are rather attorneys who, while representing their own clients, confer with the other party and seek to make the end of a marriage a transition, rather than a bomb blast.

Unlike traditional divorce, the husband and wife using the collaborative process actually get in the same room, attorneys present, and work through the details in a civilized way. Traditionally, divorcing parties speak through their attorneys who, in vigorous defense of their clients, create demands that foster adversarial relationships. In collaborative divorce, attorneys and clients set goals and discuss ways to achieve them.

One of the major tenets of collaborative law is that once you hire its practitioners you are not allowed to move to trial with them. If you want to move out of collaboration, you can, you will just need to hire a new lawyer and a new set of professionals.

This aspect of the process was made possible by a 2005 opinion by the state Supreme Court Committee on Attorney Ethics.

Attorneys are barred from "forming partnerships with non-lawyers if the activities of the partnership consist of the practice of law," says Merritt. Therefore, there needed to be an opinion as to whether the collaborative groups, which are multi-disciplinary by definition, could be seen as "reasonable" under the rules of professional conduct."

The opinion found that the limitation of the lawyer's representation of a client to out-of-court settlement was acceptable, so long as up front there is full disclosure to the client that should the collaborative process fail, all collaborative professionals, including the attorneys, must withdraw and the client must seek litigation counsel who would represent them in court, Merritt says.

The committee also determined that, because each professional has a separate agreement with the clients to any collaborative divorce matter, the membership of different professions in the same association "did not constitute the unacceptable practice of law with non-lawyers."

If the process of collaborative divorce sounds like divorce mediation, that's because it is a similar animal.

Mediation, however, does not require an attorney at all. Hanan Isaacs, a 30-year veteran of civil and family law, including mediation, based at Princeton Professional Park, explains that the job of a mediator is to guide two parties through a situation. Should the mediator assess that the two parties are not capable of settling without the help of an attorney or other professional, then a professional will be called in.

Collaborative law maintains the two-attorney system, which Isaacs says does not break the adversarial model of the legal system as much as it wants people to think it does. Isaacs does a lot of mediation and says that his issue with collaborative law itself is that, given its directive to drop the case should a divorce turn to litigation, a collaborative divorce essentially becomes mediated if the attorneys hit an impasse and have to call in a financial or mental health expert.

Isaacs says he considers himself collaborative but is not a collaborative attorney proper. He does not like the idea that attorneys must bail out of a case if it goes to trial. He tells of a case he had in which all things were mediated until it was time to sign the deal. The other side's party said no and wanted more, and the case had to be moved to litigation. Had it been in a collaborative arrangement, he says, he would have to have abandoned his client, who would not be happy starting over again with a new lawyer.