

Collaborative Corner

By: Susan Hurst

Practice Without a Strategy Net

Client: “She just won’t back off. I work my tail off and she keeps spending and spending. This is why I’m getting divorced. She has never had any respect for how hard I work. I want this spending stopped, and I want it NOW! We need to put some pressure on her.”

Lawyer: “Well unfortunately the Judge didn’t give her enough restraints at the temporary hearing so there isn’t much we can do except keep track and use it later.”

Client: “That’s not good enough. We need her to feel some pain. What about this deposition thing going on next week? You are going to ask her about the money she spent on breast implants?”

Lawyer: “Of course. You did say you opposed her decision when she got them, correct.”

Client: “She never asked. She just did it on her own. Say...when you depose her, how about I just sit there with the pictures of her breasts on the table in front of me. That’ll really irritate her and make her want to settle.”

Lawyer: “You can have whatever you want in front of you at the deposition.”

In one of Michael Crichton’s books a character comments that the law is not devoted to justice, it is a method of dispute resolution. But many clients come into our office seeking affirmation that justice will be served and their spouse will get their “just desserts”. They become enamored with the thought that harsh litigation tactics will gain them advantages in their battle. They seek warriors and champions for their plights. It is all too easy to play the expected part in their circus and to rely on strategies that give momentary client satisfaction, but result in deepening emotional wounds.

Of course the above client-lawyer interaction is an extreme example of harsh litigation tactics. And while Court remedies are available for limiting extreme tactics, Collaborative Practice does it best by avoiding litigation altogether.

We know that individual and family healing is necessary for complete conflict resolution. But that healing cannot occur in processes filled with anger and distrust. Those of us in Collaborative Practice recognize that it is the lawyer’s challenge to disabuse the notion that perpetuating the conflict results in a more satisfying resolution.

Without pending litigation there is no time, energy, emotional effort or money spent on litigation tactics and strategies to obtain illusory advantages. In Collaborative Practice those hurtful mechanisms disappear, along with the temptation to resort to them, thus fueling conflict. Practice within this new paradigm requires that we redefine conflict resolution as not just as the outcome of the case; conflict resolution must be the outcome of the case *plus the entire process leading up to it*. Collaborative Practice is conflict resolution at the outset. Its mastery allows for reconciliation that goes beyond resolution of legal differences alone.