

## COLLABORATIVE CORNER

By: Susan Hurst

### The Monster in the Courtroom

I have found many family law attorneys unable to appreciate the Collaborative Practice wisdom that requires the parties and counsel to contract to settle the case, without filing litigation. Why can't a case be collaborative if litigation has been filed? Isn't behaving "collaboratively" good enough?

A recent article in the Fulton County Daily Report quoted Judge William Bedsworth of California as follows:

"Family law is the Creature from the Planet Zantar. It has twelve eyes, six tentacles, four arms, a beak, a stinger, poison glands and a gaping maw that can't get enough puppies to eat. It is immune to fire, radiation and electric shock, eats guided missiles for breakfast, and it has come to earth to enslave us all. ...I'm pretty typical of most judges. We'd rather go six rounds covered in barbecue sauce against Mike Tyson than handle a family law case."

Ok, not all judges feel the same way about family law as does Judge Bedsworth. At least, we hope not. But if even a minority of judges share these sentiments, do you really want to recommend litigation as a method to settle a family dispute?

The reticence, or perhaps outright revulsion, felt by Judge Bedsworth and his followers comes not just from the distaste of dealing with family issues, but from, as he notes the "nature of the system." After all, people aren't monsters, they're simply people. But the process of getting them divorced or their custody arrangements rearranged is often a monster.

The litigation process turns the most intimate and fundamental decisions between family members over to a Court, with all its particularities, its biases and prejudices, in hopes of its wisdom. It is this request for wisdom that Bedsworth decries, opining, "You not only have to be a saint to do family law, you have to be willing to accept martyrdom."

Collaborative Practice recognizes that the real wisdom to be tapped, the wisdom necessary to *solve* their problems, lies within the family members themselves. If they need assistance in locating that wisdom, they can get it, so long all are working toward the same goal, with trained coaches, financial advisors, and lawyers.

In order to facilitate the birth of that wisdom, the participants have to abandon the idea that solutions can be found in the courtroom. And to solidify and support that decision, they must commit to finding the solutions at the settlement table, in a problem-solving, collaborative manner.

Even the most "civilly" litigated family law case can't help but be dominated by the litigation monster. That monster distorts the discussions of the parties and of counsel, even in settlement negotiations, by the constant reference to the predicted wisdom of the trier of fact. The wisdom that lies within each party to find solutions to their crises is taken from the family and given to that monster.

Collaborative Practice takes it back.