

## **Collaborative Corner**

**By: Susan A. Hurst**

### **Shhhhhh.....**

Since 1992, I have been involved in the mediation of hundreds of family law cases, both as the neutral and as a client's representative. Almost without exception, the primary mode for settlement discussions have been serial caucus sessions, where the parties are separated and the mediator shuffles back and forth between them, sort of like a matchmaker in reverse. Sometimes the entire mediation is caucused and the parties never even see each other

I confess, with hardly any qualm, that as a mediator I often prefer caucus sessions, because the participants feel freer to discuss sensitive issues and potential settlement offers with the mediator, prior to presenting an actual offer to the other side. Through caucus, the heat of the conflict is effectively taken out of the room. After a tension filled joint session, a caucus session can bring a welcome breather from the cloud of anger and pain.

Collaborative Practice brings that heat of conflict, and the parties, back into the room. Instead of sequestering the clients, four-way settlement meetings are the primary forums, with the clients and their lawyers together, discussing the issues and feeling the heat at the same time. Clients are not only free to discuss, they are expected to discuss matters in person, back and forth across the room. Although prior meetings with the clients and their lawyers prepare for the four-way sessions, discussions in those meetings are spontaneous and without prior editing by the lawyers.

The heat of these sessions can be a little unnerving at first. Thoughts like "ouch," "I'm not sure she should have said that," or "maybe he shouldn't have put it that way" cross my mind periodically when hearing my client speak openly, even angrily, about issues and feelings. But so long as I resist my panicky temptation to slap a hand over my client's mouth, it becomes clear after a few moments that my client's words hold no surprise for their soon-to-be ex-spouse.

Let's get real. By a time a marriage has bitterly and sadly matured into a divorce, especially a divorce suited for dissolution through Collaborative Practice, the clients rarely have real secrets from each other. These parties have already discussed or intuited everything we will hear in any four-way session; by the time they come to us, they've been spitting their "secrets" at each other across dinner tables and connubial bedrooms for months, if not years.

Sure, it may be frustrating for one party to hear that the other wants a particular outcome, or is feeling cheated by that party's actions, but the greater and deeper conflict has been present between the two for a long time. Their sad intimacies aren't secrets kept from each other, but are kept from us, the outsiders

Allowing the parties' conflict into the room allows them full participation in the process of their dissolution. So long as we lawyers are willing to listen actively to both parties, summarizing and mirroring back emotions and thoughts, and to support, not muzzle, the parties' free disclosure of concerns and issues, they will feel heard and understood by both sides, not just by the side that's hiding in the caucus room.