

Collaborative Corner

By: Susan Hurst

The Power of Positive Thinking

Litigators are trained negative thinkers. Law school prepares lawyers to look for the flaws, to see the downsides, to predict the worst-case scenarios, in order to properly protect clients. The practice of family law thrives on negative thinking. Rejected, angry spouses come into attorneys offices seeking pit bulls to carryout their bloodiest revenge fantasies. They thrive when their advocate exposes their betrothed's hidden agendas and reveals the subversive methods that the "other side" will use to prevail. They marvel when their counsel identifies with their outrage, the injustice in their lives and when they promise to make the client's cause their own.

So they expect discovery, interrogatories, depositions, surveillance, inflammatory correspondence and they believe they are winning so long as their side is the loudest. Equally intense is their shock, when their advocate shifts to language of settlement, conciliation, resolution and peace. Since settlement discussions are inevitable in almost every case, many feel betrayed at this juncture and question the loyalty of their champion attorney.

Clients in Collaborative Practice do not experience this dramatic shift in representation. Since the contractual commitment of the Collaborative process is settlement, Collaborative Practitioners speak the language of settlement from the outset. They are committed to find resolution and conciliation. Thus, they model positive thinking for their clients. Remarkably, the mere practice of positive thinking and belief in settlement facilitates the goal of settlement.

Lawyers and mediators have long known that to settle a case, the players need to believe that they can and will achieve resolution, if they work hard enough through the difficult issues. Therapists and clinicians have long known the psychological and health benefits derived from positive thinking. At the four-way Collaborative meeting (settlement conference), affirmatively stating to all representatives and clients that, "we are here to resolve our issue today and we expect to reach a settlement," goes a long way to making the goal realized. Similarly, negative thinking, along the lines of "we can't settle this case we will never get anywhere with them," dramatically decreases the possibility of success.

Modeling positive behavior and positive thinking for clients during one of the most negative times of their lives, teaches them that they can move forward, beyond and past the anger. It facilitates resolution of the case and resolution of the pain of the divorce. Collaborative Practice sanctions and encourages positive thinking from the outset and throughout the resolution process.