CONSENSUAL DISPUTE RESOLUTION – MAKING LIFE BETTER FOR JUDICIAL OFFICERS, ATTORNEYS, AND FAMILIES

By

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Division Chief, Mediation and Conciliation Service
Superior Court of Los Angeles (ret.),

and

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Past Chair of Los Angeles County Bar Association Family Law Section

Table of Contents

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> "However, going to court is not the only way to resolve family law disputes. Many families find methods to agree to their own solutions. Some other ways include having attorneys and both spouses meet together to negotiate before going to court; having a neutral mediator help both sides negotiate a solution. You and spouse can work with a mediator without attorneys or have a lawyer come with you. Or you can use collaborative law in which the lawyers may work with financial and mental health professionals to use a team approach to help your family settle out of court. If you come to court, the court may be able to refer you to an expert attorney mediator volunteer."
>
> — From letter to litigants, Judge Thomas Trent Lewis, Supervising Judge for the Los Angeles County Family Law Division

I. INTRODUCTION

Although the economy has improved and the funding for the courts has not been as draconian as feared, the family law courts are still burdened with too many cases, too few resources, and cases that are more demanding.

On top of that, the reforms stemming from the Elkins Task Force have added to the delays and congestion in the courtrooms. Changes in Family Court Services, including reduced services and unprecedented turnover in staff, have caused more delays. Practically all of the most experienced staff have left.

Consensual dispute resolution (CDR) and helping litigants get divorced outside the courtroom is a timely response to the court's problems. (The State Bar has changed the section name from ADR to CDR, as mediation and collaborative law have become increasingly mainstream.)

II. SETTLING CASES ON THE COURTHOUSE STEPS

Many military strategists justify their defense budgets by being prepared for war. The best way to wage peace is to prepare for war, it is argued. When facing an election, some judges build impressive campaign funds and get the word out early. The hope, of course, is to discourage others from even entering the race. It is no accident so many cases settle on the courthouse steps. Many attorneys prepare for trial and are willing to settle the case if the conditions are favorable. This is certainly one of the traditional ways of settling cases, yet considerable resources and time are expended. Trial preparation takes its toll on the attorney and his or her family.

Last year, cases still languished on the back burners while families, especially children, had to wait for court orders for parenting time and child and spousal support. Recently, a child custody evaluator reported a settlement reached on the bench outside the courtroom. He had written his report and was ready to testify when the attorneys, parents, and evaluator started talking about resolving the custody issue. The matter was resolved. Instead of a court reporter recording the session, one of the attorneys wrote a stipulation confirming the details of the agreement. Good outcome with the settlement, but one wonders how it could have happened earlier in the litigation.

The issue of delayed settlement in litigation is similarly illustrated through another story. After a speaker gave a study group presentation about the benefits of mediation, the speaker opened the floor for questions and comments. A prominent litigator, known for her strong advocacy and high fees, boasted, "I settle 95% of my cases." The speaker's response was, "It's good that you settle 95% of your cases. It also matters *when* you settle your cases." Collaborative law and mediation promote more efficient settlement of cases by preparing for settlement from the beginning.

III. RECENT IMPROVEMENTS IN THE FAMILY COURTS

The current supervising judge of the family law departments, Judge Thomas Trent Lewis, is enacting some of the biggest changes the family courts have seen in years.

The courts are placing limitations on continuances, hoping to expedite hearings. Judge Lewis announced a reduction in the number of cases on calendar so that judicial officers have more time to focus on individual cases and litigants have more time to present their cases. Judge Lewis has also announced new family law courtrooms and opened several new long cause family law departments to provide litigants with access to *meaningful* justice.

The LACBA Family Law Executive Committee minutes feature a column called the "View from Two," Judge Lewis's courtroom. In the committee's January 2018 minutes, the committee reported that four new long cause family law departments will be opened in 2018: 1) Judge Shelley Kaufman will be assigned to a long cause department; 2) Bruce Iwasaki, currently in Department 63, will be reassigned to a new long cause department; 3) Judge Lawrence Riff, currently in Department 22, will be assigned to a new long cause department to replace Judge Paul, who has retired; and 4) Another long cause department will be opened in Mosk with a bench officer to be determined. All but 3 long cause courtrooms will be located in Mosk. Judge Goldberg will remain in Santa Monica, Judge Convey in Van Nuys, and Judge Slawson in Pomona. In the February 2018 committee minutes from the "View from Two," the committee reported that E-filing is projected to begin sometime in June 2018, and Judge Colin Leis will be hearing long cause cases in the near future.

Judge Lewis also asks family law attorneys to sign up and get involved in the Judge Pro Tem program to process judgments. Both Judge Lewis and Los Angeles County Bar president have praised the Daily Settlement Officer (DSO) program. Volunteerism is becoming more and more important to help.

The letter from the court that litigants receive when they file their Petition introduces litigants to the concepts of mediation, unbundling, and collaborative law and reassures the litigants that the court system supports these forms of consensual dispute resolution.

In addition, the Judicial Council has provided rules and forms (particularly **FL-950, Notice of Limited Scope Appearance**) that support limited scope representation. This unbundling can include services in a traditional litigation format, or it can involve the lawyer providing collaborative services or services to support a client in mediation. If someone files a collaborative law Petition, the case will not be assigned out to a family law department while the collaborative process is ongoing. Instead, it will be filed in Department 2, and Department 2 will process the judgment as well.

Despite these significant improvements in the family law courts, no change can be a cure-all to the challenges with traditional litigation. Consensual dispute resolution still provides

families with greater autonomy in the decision-making process, often achieves resolution more efficiently and less expensively than litigation, and provides a better quality of life for parties and their attorneys. Further, reducing the burden on the courts to the greatest extent possible will make these positive changes even more effective by preserving available judicial resources for cases that require litigation.

IV. STAYING OUT OF COURT

This article will present ideas and practice tips for the family law attorney who wants to promote settlement, and who seeks to calm the waters of divorce and separation. Family problems are not best addressed in the courtroom, or even outside the courtroom doors. They are best addressed far away from the courthouse. Family problems are not limited to the litigants and often are the result of contentious divorce cases and unpleasant episodes with opposing counsel. These practice tips will be helpful, not only is reducing conflict for the parties, but lessening the adverse effects of litigation on the attorney, and provide some relief for judicial officers and help for children.

V. LAWYERS LEAVING LITIGATION PRACTICES FOR COLLABORATIVE DIVORCE AND MEDIATION

Litigation in family law is tough on attorneys. The *Daily Journal* reported a surprisingly high number, nearly 40%, of attorneys surveyed five years after law school said they would have chosen a different profession had they know what lawyers actually did.

In recent years, a number of attorneys have proudly announced that they no longer litigate cases; their days at the courthouse are over; they will only provide mediation and collaborative divorce. Many veteran attorneys are looking to kinder and gentler ways of helping parties divorce. The badge of honor for family law attorneys is increasingly being given to those who resolve cases, not to those who "only win." Prominent attorneys have left big law firms to focus on collaborative divorce and mediation. Other high profile firms are expanding the range of their services to include collaborative divorce. The harsh realities of the economy may nudge people to seek less expensive means of getting divorced.

VI. ALTERNATE MEANS LESS DESIRABLE; HOW ABOUT CONSENSUAL DISPUTE RESOLUTION (CDR)?

Alternate has a hollow ring to it. Commuters cringe when we hear traffic advisories telling us about "alternate" routes. We prefer being on the main highway. During competitions, those not selected for the team are often listed as "alternates," in case the winners can't participate. In family law, only a small percentage of cases actually require a trial. It may be

more accurate to describe the trials as final alternatives, and elevate other ways of resolving cases as dispute resolution, eliminating the word "alternate."

Under the auspices of Collaborative Practice California (**cpcal.com**), a public service program has been developed called "Divorce Options." The low-cost seminar is being promoted in the entire state. The CP Cal website enables anyone in the state to locate a "Divorce Options" in the local community. This education program is not only a service to the community, but also a source of referrals for divorce professionals.

VII. SYMPOSIUM TOPICS

The Family Law Symposium has grown over the years and has become the premier program for family law practitioners; it wasn't that long ago the program drew over 700 attendees. Veteran family law attorneys remember the years when thousands attended the program at the Los Angeles Convention Center.

For decades, the Symposium panels were focused almost exclusively on litigation and trial topics. With developments in family law occurring outside of its traditional channels, mediation and collaborative law are gaining ground as newer approaches to settling cases. The family law community is catching on. Several years ago, one of the panels, "Effective Settlement Techniques for Family Lawyers," included the perspectives from two mediators alongside a judicial officer, litigator, and mental health professional. Further, this year's Symposium will feature a panel on how litigators and consensual dispute resolution professionals can work together to resolve cases consensually and preserve available judicial resources for cases that require traditional litigation.

VIII. APPROACHES – AVOIDING TRIALS

A. Mediation – Parents Resolving Conflicts Themselves

1. *Mediation – Why a Litigator Would Even Consider Mediation*

Unhappy clients create unhappy attorneys. Family law seems to have more than its fair share of unhappy litigants. And malpractice insurance rates have increased. Mothers and fathers, it doesn't seem to matter, have many reasons to complain about what the courts or their attorneys didn't do for them. They will complain to anyone who will listen, but their dissatisfaction rises to a level of serious concern when the state bar or the Administrative Office of the Courts or the malpractice carriers become involved. When Judge Lori Behar was introduced at bar meetings as the family law commissioner replacing Judge Kenneth Black in Long Beach, she recognized many of the attorneys. When asked how she knew so many family law attorneys, she said she had represented a number of lawyers in legal malpractice cases. She

knew, more quickly than most, some of the hazards of practicing family law. (Judge Behar transferred from family law to criminal law; she remains in the Long Beach Courthouse.)

It is often on the eve of another RFO or trial that the retainer is exhausted and additional funds are requested from the client. Both attorney and litigant become concerned about what the additional funds will produce. It is often at this point that mediation holds promise for relieved attorneys and satisfied clients. Clients can often be encouraged to work out agreements through mediation, agreements that address their needs for fairness and certainty and, especially when children are involved, agreements that meet the best interests of their families. Attorneys sleep better knowing their clients are satisfied; they also don't have to stay up late at night preparing for trial. A number of cases from prominent law firms are being referred to mediation and agreements are being worked out.

2. *Mediators and Qualifications*

Mediation is the process that enables two parties with a dispute to resolve the matter themselves by reaching agreements with the assistance of the third party, the mediator. Child custody mediation was mandated by law in divorce and paternity cases in 1981 in California (**FC §3170**). There are several pilot programs in the central and southwest districts that provide volunteer mediators. Similar to the program in civil mediation, trained attorney mediators provide the initial three hours at no charge and charge their normal hourly fee for additional hours.

In California, there is no legal restriction limiting who can practice as a mediator. There is no requirement for a certification or license to be a mediator and legislative attempts to provide certification for mediators have been unsuccessful. Many family law attorneys have included mediation as one of their services, and a number of them have practices that include mediation only; most mediators working in the California family court services are mental health professionals. Clinicians are uniquely qualified to mediate child custody disputes between divorcing and separating parents because of their understanding of the psychodynamics of loss and conflict and their ability to deal with the underlying feelings. Especially since no-fault divorce was introduced in California over 40 years ago, the story of the divorce comes out in the custody disputes.

Although Los Angeles County provides mediation that is confidential, a number of the adjacent counties allow the mediator to make recommendations. These are the counties that have been targeted by the critics of mediation, and the Elkins reforms address the counties where recommendations can be made. The process will be more like Los Angeles, but the new procedures will be troublesome for many. If an attorney has a case in San Bernardino, Riverside or Ventura, it would wise to inquire about any new procedures for mediation in the family court. There is talk of a statewide system of three-tiered mediation, with the last step, recommending mediation. Los Angeles County has long been opposed to recommending mediation.

3. *Mediation Offers Benefits at Any Stage of the Dissolution – Early Referrals from Therapists*

Mediation can actually occur at virtually any stage of the divorce; post-dissolution issues can be resolved through mediation, helping parents avoid further litigation. Although sooner is better for containing the conflict and costs, for some couples, mediation isn't considered until they finally realize the damaging effects of continued litigation or exhaust their financial resources. By the time some couples seek "meaningful mediation," they are embittered with each other, disillusioned by the process, and scared of an uncertain outcome in court. A mediated agreement can help parties finally put an end to the divorce war. Even if parties only resolve the child custody dispute, parties are often more likely to resolve the other aspects of the conflict.

Of course, referring a case to mediation early is helpful to the parties. The mental health professional is often asked for recommendations for attorneys or mediators, so the family law attorney would be well advised to develop good working relationships with therapists. A father recently interviewed a number of prospective attorneys for his dissolution. The attorney he chose was not the one who offered to vigorously get the best "deal" for him, but rather the one who counseled doing things in a way that would help the children. Ironically, it is often the attorney who promises the most that is not chosen. The reason, of course, is that in family law cases, the "other side" is usually a parent and not a large corporation.

Mediation delayed is mediation denied. In the 1980's, attorneys and litigants gathered in Dept. 2, the Master Calendar Courtroom, and were assigned to courtrooms. When mediation became mandatory in 1981, attorneys usually accompanied the parents to the Conciliation Court for the mediation sessions. The mediators were usually assigned two cases a day and could devote the time necessary to resolve cases. Where there were children to interview, the mediators could even work with one family for an entire day. Families could "walk in" on the day of their hearings; they could get an appointment within two weeks. Those days are over.

On the Los Angeles County Bar Association Family Law List serve, attorneys complain about the long waits for mediation appointments. Attorneys and parents have to wait several months, and the mediators are under tremendous pressure to see four cases a day. Even when they are near reaching agreements, it is rare they have appointment openings to schedule return appointments. Since hearings are delayed because of the long wait times, the status quo trumps "best interests" when children are involved. The supervising judge announced the agreement rate has dropped to below 50%. While it's true that the cases have become more difficult to resolve because of increased substance abuse and domestic violence issues, the resources for mediation have been reduced. The agreement rate used to be as high as two-thirds to three-quarters of cases.

There have been worrisome changes in Family Court Services. Although there are now more family court specialists being hired, the reason for the openings has been the departure and early retirement of practically all of the most seasoned mediators. The Parenting Plan Assessments (PPA) have replaced the Full Evaluations and even the Expedited or Partial Evaluations. The Family Court Staff are under tremendous pressure to perform these quick assessments, especially the one-day PPA-1.

Attorneys are increasingly referring clients to see private mediators because it is so difficult to get an appointment for mediation without long waits. Lawyers are relying on private mediators when the time is short and their parties can afford them. Even when an agreement is not reached, the courts have accepted letters from the mediator that the parties have met for mediation, thus meeting the requirements of **Family Code section 3170**. The use of private mediators will continue to increase.

4. *The Mediation Process Gives People a Chance to Tell Their Stories*

When California passed the first no-fault divorce law in the nation, the reasons for the divorce were no longer relevant. Seasoned practitioners know the importance of telling the "story" of the divorce. It is by listening to the most profound issues in a changing or ending relationship that healing and resolution begin. The deepest feelings of hurt, abandonment, anger, revenge and ambivalence need to be expressed and understood. It is the experienced mental health professional who can do this in the context of mediation of custody and visitation disputes.

The attorney who attempts to dismiss feelings of a parent in order to quickly resolve the legal issues may experience an impasse. An inexperienced attorney once made a serious error in a conference when she said "Don't talk about what happened. The past is not important; we need to talk about the future." It's true that family law orders focus on what will occur in the future, but to dismiss the past as not being important is a disservice to clients and doesn't recognize important parts of their lives. Mental health mediators are often able to help parents express important feelings as a prelude to resolving the parenting plan issues.

B. Collaborative Family Law

1. *A Better Divorce – Divorce Without Court*

Collaborative divorce is an exciting development in family law—divorce without court. (**FC §2013**.) The cornerstone of the approach is the Collaborative Participation Agreement that the parties and attorneys sign, which commits them to (1) participate in good faith to reach a negotiated settlement that addresses both parties' interests and concerns; (2) make full disclosure to his or her attorney and the other party of all facts pertinent to their case; (3) communicate respectfully and constructively with each other to settle their case; and (4) agree that neither the parties nor their attorneys will use the court to resolve disputes during

the collaborative law process, and if a party decides to withdraw from the process, the attorneys will withdraw and help their respective clients make an economical and orderly transfer to new attorneys. With the removal of the threat of "going to court," parties and attorneys hold a series of four-way meetings to work out the dissolution. Of course, parties can't sign away their right to go to court, but it is understood that if the parties elect to go to court, their attorneys will withdraw and are prohibited from representing them.

Collaborative divorce is gaining the public's attention. The movie "Juno" first mentioned it as the "latest way of getting divorced," and more prominent couples are choosing collaborative divorce. Marshall Zolla and Fred Glassman, representing Patricia Disney, and Forrest "Woody" Mosten, representing Roy Disney, settled the entire divorce without the divorce details being mentioned on "ET" (Entertainment Tonight) or TMZ. Robin Williams, represented by Patsy Ostroy, and his wife, represented by Madeleine Simborg—another high profile divorce—were able to work out the terms of their dissolution, privately, respectfully, and fairly. Patsy was even invited to Robin Williams's birthday party and his remarriage. How many attorneys are invited to a client's new marriage after divorce? Contrast that with damage to the family in the case of Alec Baldwin and Kim Basinger. In his book, *A Promise to Ourselves: A Journey Through Fatherhood and Divorce*, Baldwin writes a scathing account of his divorce, including harsh accounts of his lawyers and the court system. He does offer some good advice for persons contemplating divorce.

T. Boone Pickens, for his fourth divorce, chose collaborative divorce. He was so pleased with the process, not only did he work things out without going to court, he told a room filled with lawyers the "collaborative approach saves both money and emotional wear and tear on families." When asked how much the collaborative approach saved him he said "several million." He was so impressed he donated $100,000 to the Collaborative Law Institute of Texas (**https://collaborativedivorcetexas.com/**). A superior court judge going through his own divorce has recently chosen collaborative divorce.

In a recent high conflict parenting group, one of the parents said "I read a really good book." He had just read Alec Baldwin's book. The book confirmed many of his own experiences, and, in a strange way, he felt validated by what he read in *A Promise to Ourselves: A Journey Through Fatherhood and Divorce.* It's a sad commentary when a parent finds solace in a book that is so critical of family law. Collaborative divorce offers a far better way of ending marriages.

Due to the increasing popularity of collaborative law, Los Angeles County Superior Court revised **Local Rules, rule 5.26** to guide attorneys, judges, and litigants in collaborative cases. The original rule, adopted in 2011, provided only a sketchy outline of the definition and procedures for a collaborative matter. On July 1, 2018, the Los Angeles Superior Court adopted a transformed **Local Rules, rule 5.26**, which provides a much-needed, clear definition of what constitutes a collaborative case and establishes up-to-date protocols for such cases in Los Angeles. The rule is educating the bar, the bench, and even the public about how a collaborative matter proceeds. **Local Rules, rule 5.26** provides uniformity in processing and

handling of collaborative cases. It allows parties to make informed decisions regarding the collaborative process and educates them on what to expect when a case becomes collaborative pursuant to a stipulation filed with the court. **Local Rules, rule 5.26** is now the most all-encompassing rule for collaborative practice that has ever been adopted in California.

It is the emotional support aspect of the divorce that seems to drain the energy of family law attorneys. It is the attorney who seems to bear the brunt of the angry client. The attorney hears it all: the court, the judicial system, the unfavorable evaluation, the high costs, and the unfaithful parent. In collaborative divorce, the mental health professional assumes the emotional support role. Many attorneys are attracted to collaborative law and excited about the prospects of practices that don't require trials, hearings and depositions.

2. *Collaborative Divorce – Unique Roles for Mental Health and Financial Professionals – The Coach – The Child Specialist*

A key event in the emergence of collaborative divorce in Los Angeles was held in Dept. 2 in October 2001. Judge Aviva Bobb hosted the program, co-sponsored by the South Bay and Los Angeles County Bar Associations, represented by Joe Spirito and Bruce Cooperman. Over 100 attendees heard Pauline Tesler and Nancy Ross describe the newest way of getting divorced. Attorneys, along with mental health and financial professionals, have continued to form collaborative practice groups. There are currently at least eight member groups in Northern California and one in Central California. In 2010, there were only a few collaborative groups in Southern California, and now there are over a dozen, including:

- A Better Divorce (ABD), a South Bay group, **http://www.abetterdivorce.com/**
- Affordable Collaborative Divorce Solutions (ACDS)
- Alternatives: A Collaborative Divorce Team, **alternative-divorce.com**
- Civil Collaborative Professionals (CCP)
- Coalition for Collaborative Divorce (CCD), **nocourtdivorce.com**
- Collaborative Divorce Advisors of Southern California (CDA), **collaborativedivorceadvisors.com**
- Collaborative Divorce Professionals of the Inland Empire (CDPIE)
- Collaborative Divorce Solutions of Orange County (CDSOC), **cdsoc.com**

- Collaborative Family Law Group of San Diego (CFLGSD), **collaborativefamilylawsandiego.com**
- Family Divorce Solutions of San Fernando Valley (FDSSFV) (formerly known as San Fernando Valley Collaborative Professionals) **familydivorcesolutions.com**
- Los Angeles Collaborative Family Law Association (LACFLA), **lacfla.org**
- Los Angeles Westside Collaborative Divorce Professionals (LAWCDP), **lawcdp.org**
- Pasadena Collaborative Divorce, **Pasadena Collaborative Divorce**
- San Luis Obispo Collaborative Practice Group (SLOCPG)
- Santa Barbara Collaborative Practice Group (SBCPG)

In 2006, the inaugural statewide conference was held in Sonoma and "Collaborative Practice California" (CP Cal) was established. In 2007, in Pasadena, the southern California conference was held at the Westin Hotel. CP Cal has been developing ways to expand the practice of collaborative divorce by coordinating the efforts of the California groups. Past presidents Kimberly Davidson, Kathleen O'Connor, and Fred Glassman have provided important leadership. The most recent CP Cal conference was held last month in San Diego, California. The immediate past president is Dawn Strachan, a Certified Divorce Financial Analyst and Financial Life Planner in Torrance, California. The latest president is Tanya Prioste, a Certified Family Law Specialist, certified by the State Bar of California Board of Legal Specialization.

In 2008, for the very first time, collaborative divorce training was held in Los Angeles by professionals from Southern California. The two-day program for Collaborative Family Law Interdisciplinary Training was taught by members of LACFLA, the Los Angeles Collaborative Family Law Association. Fred Glassman, then-president of LACFLA, was responsible for this exciting program. Most of the practitioners of collaborative divorce have been trained outside the state; many have traveled to Arizona and other states for the training. Trainers had been brought in from other states for the previous programs. Now there are enough experienced and qualified professionals in Los Angeles County; LACFLA sponsored the training with a faculty of local practitioners. Completion of the training qualifies attendees for membership in LACLFA and IACP. See **lacfla.org**.

Warren Sacks was LACFLA's president in 2013, succeeding Fred Glassman. Joe Spirito served as the president in 2014; Steve Garelick in 2015. Leon Bennett is the current

president. Starting in the fall of 2013, the LACFLA Collaborative Conference Project has been providing pro bono divorce professionals for the Loyola Collaborative Conferencing Clinic. This clinic not only provides collaborative divorce at no cost, it provides the opportunity for collaborative professionals to gain experience. In addition to developing the program, Kevin Chroman teaches a class in Collaborative Practice. Loyola Law School hosts the LACFLA 3-day Collaborative Practice Training. It is one of the first law schools to provide instruction in this innovative way of getting divorced. LACFLA also offers monthly Collaborative Divorce Study Groups. These gatherings facilitate family law professionals networking and learning about ideas and practice tips. See **lacfla.org**.

Although many attorneys have taken these trainings, it has been difficult for many to actually get collaborative cases. To address this concern, the current president, Leon Bennett, plans to help direct attorneys to join practice groups, and plans are underway for a new practice group in downtown Los Angeles as well as one in Eastern Los Angeles County. He also plans on making the LACFLA website more accessible and working on advanced trainings.

In an introductory session for the Los Angeles Collaborative Family Law Association several years ago, at a gathering of over 60 members of the family law community, a highly respected psychologist admitted she had almost decided not to perform any more child custody evaluations. Despite the income, it was just too hard. Recommending parenting plans, figuring out how much time children should be with their parents, choosing between two caring parents—these are difficult issues. Many child custody evaluators are providing their services outside of court as child specialists in collaborative divorce.

Collaborative divorce is an enhancement of the collaborative law model. In addition to attorneys, this model includes the participation of financial and mental health professionals. In cases involving children, a child specialist assists the parties in developing a parenting plan. Coaches help with the emotional aspects of a divorce, and the financial professional representing neither party, provides information about the financial aspects of the divorce.

3. *The Child Specialist and the Coach*

There are significant differences between the traditional adversarial system of evaluations and the role of the child specialist and coach.

1. The information from the child specialist is given to the persons who need it the most, the parents. Like a mediation session for child custody, the child specialist interviews the child or children, and shares impressions with the parents first.

2. There are no depositions; there is no cross-examination. The child specialist doesn't have to spend countless hours on tests and interviews in anticipation of being questioned later. It's like the physician who conducts extra tests and procedures, not because the patient needs it, but because not to do so could expose the physician to malpractice lawsuits.

3. There is no written report that can be read years later by the children. Much damage is done when allegations, affairs, and abuses are "reduced to writing"; actually, writing allegations and critical impressions doesn't usually reduce the harm. Many things contribute to a divorce and children seldom benefit when they hear the worse about their parents.

4. Child specialists are able to actually help parents. Unlike the evaluators, who like judges at an Olympic ice skating event don't develop relationships with the skaters, child specialists are seen as consultants, as helpers, to parents.

5. Parents don't sue child specialists or report them to the licensing boards. Private child custody evaluators and even the old Psychiatric Office, formerly based at the Superior Court of Los Angeles, have been sued. Complaints by unhappy litigants are being submitted to the state board that licenses mental health professionals. There have been no lawsuits or complaints to the licensing boards about coaches or child specialists in collaborative law.

4. *Putting Your Best Foot Forward v. Being Honest About One's Limitations*

A father, who may want to hide his ignorance of an infant's needs during an evaluation, presents himself differently in collaborative divorce, and is more likely to be honest and seek the recommendation of a child specialist. It's like being in a classroom and the teacher asking if everyone understands. We're afraid to admit we don't know if the consequences hurt. With the child specialist in collaborative family law, the parents know we're there to help, not to judge. Because there is no report submitted to the court, parents are free to discuss their fears and concerns, without the fear that their admissions will be used against them.

5. *Therapists v. Coaches*

Therapists don't always help in a divorce case. Well, a correction. They help the person, but they may not be helpful in the divorce process. A professional therapist was going through her own divorce. Her husband was strong and assertive; she was considerate and often put his needs ahead of hers. During her therapy, her therapist had been helping her to

become more assertive. Her husband hadn't picked up his clothes as promised, so she decided to act. She told him to come and get his clothes. He didn't respond immediately, so she issued a confident ultimatum: "If you don't come to get your clothes by Saturday, I'm going to dump them on the driveway." Her therapist was proud of her; she was proud of herself. Sure enough, her husband didn't respond to her request, so she dumped his Armani suits and Ferragamo shoes in the driveway. He planned on picking up his clothes Sunday morning, but late Saturday night, it rained. A coach would have given her better advice. Coaches care about personal growth but they care more about a good divorce and happy children.

Coaches in collaborative law help parents work out their differences and promote the behaviors that result in agreements and resolution. They listen to the story of the divorce as background for understanding the dynamics of the relationship, and help parents do the things that are necessary to resolve disputes not exacerbate them. Although our proximity to Hollywood might lead one to think we are a city of happy families and happy endings, there are many unhappy families who end up in divorce. A father who was particularly upset at the prospect of paying child and spousal support to the mother of his children, the same wife who was having an affair, was helped through the process by his coach. Coaches help parents deal with the difficult emotions of divorce. The goal is not insight as much as it is to help the parents get through the divorce while maintaining respect and dignity.

6. *A Coach Helps a Father Learn: Complimenting Instead of Criticizing*

A father desperately wanted joint custody of his young children. The mother had reservations because he had never spent much time with the children. He persisted in pointing out his strengths and her faults. In frustration, he criticized her parenting. She responded by threatening to seek sole custody. The coach suggested a break, and asked him what he really wanted. He said, "I want to be able to take care of my children; I need to spend time with them." A different strategy was suggested. Rather than criticize their mother, he was advised to tell her she was a good mother and highlight the many things she did well. He did. "Mary, you have been a wonderful mother for our children. You have given them so much; you have taught them so much. You are a wonderful mother." Her anger disappeared, and instead there were tears in her eyes. A therapeutic response would have been to recognize his anger and value as a father and address his basic feelings about being good enough. The coaching helps in different ways.

7. *A Coach Asks a Husband To Do the Right Thing*

The coach for a wife in a collaborative divorce related the following: Sally was a smart, confident MBA, CPA. She was loud; she talked fast. She said she was smarter than her husband—her IQ was 20 points higher. She said her husband was cheap, selfish and lazy.

Toward the end of their session, the coach asked her, Sally, what do you really want in this divorce? She said a fair settlement, half the assets, and spousal support. The coach told her that he could help her but she needed to be very different when they meet together. "Sally, you need to be calm, quiet, not talk too fast, and not be critical of Dennis." And for all of the meetings after their talk, she followed this advice.

When it came time to discuss spousal support—lifetime support for a 22-year marriage—the coach met with Sally and her attorney. The coach said, "Suppose we ask Dennis what he thinks the right amount of spousal support that would be fair." The attorney said "That's an excellent idea."

Then, moments before the coach went into the meeting with Dennis, his attorney, and the forensic accountant, the attorney quietly said to the coach, "why don't you ask Dennis about the amount of spousal support."

The coach had never asked anyone for spousal support; he thought that's what the attorneys did, but he agreed. About halfway through the session when the issues of spousal support came up, the coach said, "Dennis, you've been a good father, husband, and have always taken care of your family. What do you think the right amount of spousal support should be?"

He was thoughtful and said "You mean you want me to give a figure?" The coach said, "Yes, if you can." Dennis was quiet for a while (he had already talked to his attorney and the accountant), and then he said, "I think $29,000 a month would be OK."

The room was quiet; the coach had cautioned Sally not to react to whatever he said. Sally, her attorney, and the coach met again, and Sally was so happy. It happened because the coach had appealed to Dennis's higher self.

8. *Mental Health Professionals and Attorneys*

Most mental health professionals don't like working with attorneys. They don't like receiving letters from them; they don't like talking to them. It's because they don't understand the role of the attorney. The attorneys in collaborative law are different. They have become tired of fighting; they don't like having to do whatever it takes to "win." They too feel like casualties of the divorce wars.

Collaborative family law provides a better way for attorneys and mental health professionals to work together. The best of both professions are available to the parents. Phone calls from attorneys are welcomed, and it's rewarding being on the same team.

IX. PROPOSALS FOR HELPING JUDGES AND ATTORNEYS

A. Promote the Greater Use of Resolving Disputes Before Getting to the Courtroom: Mediation, Collaborative Divorce

Judge Scott Gordon, speaking at the Beverly Hills Bar Association's "Meet the Judges Night," cited consensual dispute resolution as an important response to the court's budget problems. Judge Thomas Trent Lewis and Woody Mosten revised the Judge Aviva Bobb letter that goes out to every litigant, explaining the different options for dissolution, including the Consensual Dispute Resolution methods of mediation and Collaborative Divorce, limited scope representation, and of course, litigation. In Judge Lewis's letter to litigants, after he explains the divorce options, he describes the potential benefits of resolving issues through consensual dispute resolution and using self-help resources. "Using these and other tools to answer the questions you have and find solutions that both sides agree to may be better for several reasons: 1) You will directly participate in finding solutions; 2) You may be able to resolve your dispute sooner; 3) It may be much less expensive; 4) You may end the process with a better relationship with the other party; 5) You will likely find it less stressful than court and your children may feel less stress." Judge Lewis further warns that dragging out a dispute does not guarantee that either party will be fully satisfied with the result, and may cause a result that doesn't benefit either party.

As described above in this article, there are many ways dissolutions can be resolved without burdening the court. Further, the attorney who can settle cases early on, without having to prepare for depositions and trials or rely on child custody evaluations, will experience less stress and greater rewards as a family law practitioner.

B. Increase the Collaboration with Professionals in the Community for Parents

When the court suspended offering the Parents Without Conflict Program by the Family Court Services staff, it freed up staff to be more available for the mandated program of custody mediation and evaluations. As important as the programs were, it was a judicious use of staff to provide the services required by statute. The court has also eliminated the PACT classes at the courthouses, and instead directs parents to an online program.

The Family Court Services, known earlier as the Conciliation Court, has always been innovative. The Los Angeles Conciliation Court established one of the first marriage counseling programs in the nation, and was recognized by the Board of Supervisors for "saving" many marriages. As the community counselors became trained and more available, the court discontinued offering the marriage counseling services. All of the 1284 forms for Confidential Counseling used to be tagged and letters written offering counseling as a "last chance" to save the marriage. That is no longer being done and mental health professionals are now providing an important service that was originated in the courts.

Divorce Parenting groups are listed on the court's website, and parents are now able to attend groups in their neighborhoods. Similar programs can be set up to complement the PACT (Parents and Children Together) program. The innovative and award-winning PACT program, originally conceived by Judge David Rothman and Commissioner Jill Robbins for Santa Monica, has been implemented in courthouses throughout the county. Maybe the time has come for the programs to be offered in local communities. The court should still require the education program, but by encouraging mental health professionals to run the programs, even more Family Court Services staff would be available to shorten the wait times for mediation and evaluations.

C. Increase the Collaboration with Professionals and the Los Angeles County Bar Association – Family Court Services Liaison Committee

The Superior Court announced it will no longer co-sponsor the Child Custody Colloquium or Family Law Symposium with the Los Angeles County Bar Association. It was the Conciliation Court and Superior Court that initiated the highly successful Colloquium and later brought in the Los Angeles County Bar Association as a co-sponsor.

Judge Thomas Trent Lewis held an open meeting in Department 2 and invited attorneys to present three problems and three solutions. Some of the complaints were about Family Court Services and their disallowing consultation by parents with their attorneys before signing agreements. One solution would be to bring back the Family Court Services Liaison Committee. This was a collaborative effort that involved Family Court Services Supervisors and selected representatives from the Family Law Executive Committee. The monthly meetings were held to discuss how to improve the collaboration between attorneys and mediators.

X. CONCLUSION

Collaborative law and mediation continue to make life better for judges, attorneys, and families. Consensual dispute resolution promotes settlement, appeals to the parties' higher selves, and allows professionals to play to their strengths and fulfill their duties more effectively. Attorneys can focus on legal issues and mental health professionals can focus on the ways conflicts are inhibiting successful resolution of divorce cases. Consensual dispute resolution also takes pressure off of an overburdened court system, and allows judges and professionals employed through the court system to devote more resources to cases that require the traditional litigation approach. The rapidly increasing popularity of collaborative law and mediation demonstrate that the demand for these services is growing and families want to settle their divorces outside the court system.

ENDNOTES

1 Mr. Kuroda is the former Division Chief, Family Court Services, Superior Court of Los Angeles and directed the Mediation and Conciliation Service, the first and largest court mediation program in the nation. In his 18 years with the Superior Court, in addition to directing the program, he has personally provided mediation services to over 8,000 families, and has made presentations on collaborative divorce, mediation and divorce to numerous groups of attorneys and mental health professionals. He was a member of A Better Divorce, LAWCDP, the LA Collaborative Family Law Association, and CDRC. He served on the Family Law Executive Committee, LA County Bar Association, for over 25 years. He was recognized by the National Association of Social Workers, NASW, California, with the Lifetime Achievement Award in 2003; he was honored for his contributions to help establish Collaborative Divorce by Collaborative Practice California. In 2007, he was given the George Nickel Award, California Social Welfare Archives. In 2016, he was honored with the Judge William MacFaden Award by the South Bay Bar Association, the first time the award was given to someone who wasn't a judge or an attorney, and was inducted into the California Social Work Hall of Distinction. Although he still has golf clubs, he no longer plays in the South Bay Bar Association's golf tournament at the Palos Verdes CC.

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2 Joe Spirito has been practicing family law for over 35 years and is a founding partner of McGaughey & Spirito, which was formed in 1990. He is the immediate past Chair of LACBA's Family Law Section, co-founder and past president of the collaborative divorce group, A Better Divorce, past president of Los Angeles Collaborative Family Law Association, and former president and board member of the South Bay Bar Association. Joe was honored as the South Bay Bar Association's 2018 Lawyer of the Year. Joe currently serves on the Board of LevittQuinn, a nonprofit family law center in Los Angeles. Joe has served as a Judge Pro Tem, minor's counsel, and mediator in the LASC family law departments. He has lectured in collaborative practice and mediation at Loyola Law School, UCLA, and USC. Joe has been selected to the *Southern California Super Lawyers* list (2005 to present) and *The Best Lawyers in America* list (2013 to present) for the practice area of Family Law.

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