

Family Forum

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Chair's Comments: *You Are Not A Bus*



Lloyd Smith

One of the few advantages of having practiced law for 39 years other than going bald, having gray hair, and wrinkles, is that you develop a certain amount of perspective. One of the things that I have learned from bitter experience is that you do not have to represent everybody that requests representation. Be selective. Remember the

old adage that "a lawyer is not a bus, you do not have to stop and pick up everyone." There are probably more warning signs as to why you should not take someone on as a client, but I thought that I would share my top eight with you.

First, don't represent someone who screams bloody murder and complains excessively about what you are going to charge. At my first conference with any potential client, I tell the client what my billing structure is and what our fees are. If someone is screaming or complaining about fees before you charge, you can bet that person is going to be trouble when you actually do bill him or her for the work you have done.

Beware of the client that says "I don't care what it costs. It is a matter of principle." Every time I have had a potential client tell me this, and I have accepted representation, I discovered that "principle really does have a price." The price is always a little less than I charge. While I am not making fun of principled clients, usually people who want to litigate for a matter of principle also want to litigate for free, so you should avoid these clients.

Do not represent people who are dishonest. I tell every single client that I have one overriding rule and I think it covers just about every rule in the State Bar's handbook which is "I will not lie to you, I will not lie for you, and I will not let you lie under oath." A potential client who tells me that "we don't need to tell the Court this fact" or "we don't need to tell my spouse that fact,"

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The Benefits of Silencing the 'Hurtin' Words' Through the Collaborative Divorce Process

By Irene King

Tammy Wynette croons about the "hurtin' words" she and her husband spelled out during their divorce to preserve their young son Joe's innocence in the 1968 breakup ballad, D-I-V-O-R-C-E. As family law lawyers, we know that hurtin' words sting and can't be unsaid. They are often recorded, replayed and rehashed in courtrooms during a family war. Tammy put it best, singing, "I can't spell away this hurt that's drippin' down my cheek."

What happens, however, when spouses are able to set aside their anger and hurt, stop lobbing grenades, or playing tiny violins, and commit to settling their issues face-to-face? As Constance Ahrons, Ph.D. opines in *The Good Divorce*, a "good divorce is not an oxymoron" and can help parents establish new roles, rules, and routines and support healthy functioning within a new family structure.

While litigation often imposes a one-size-fits-most result, the collaborative family law process facilitates a customized solution to each divorce. The collaborative approach encourages couples to get in the trenches with their lawyers and dig through the legal, emotional and financial aspects of separation and divorce until they get to the other side. Through a series of candid, informal four-way meetings, spouses step up to the challenge of solving the equation of 2-1 = 2 separate households. Engaging in the collaborative process, spouses turn down the animosity and focus on the future well-being of both individuals, and,

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If you avoid clients who you know are going to be unhappy with you from the very beginning, then you have gone a long ways towards having a better law practice and a better life. Most of us spent a lot of time becoming lawyers. Most of us spend a lot of effort becoming better lawyers, so do not complicate your life and your

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more importantly, their children. They set aside the soundtrack of sappy ballads and angry metal and turn up the volume of Gloria Gaynor's "I Will Survive" as they settle their differences. Here are some of the advantages of the collaborative divorce process:

Self-Responsibility | The collaborative divorce process is a choice. Participants choose to resolve their differences directly and without adversarial legal proceedings. They accept responsibility for the end of the marriage and refrain from blaming the other person (or other persons) for the end of the relationship. With this mindset, parties and counsel focus on needs, interests and priorities and unclench from rights, positions and deep-seated perceptions. Expanding the range of mutually acceptable solutions from those available in litigation allows people to use their own values as a measure of success rather than predictions about the odds of "winning" in the courtroom.

Mutual Problem-Solving | Four-way meetings are marked by honesty and integrity. During the meetings, parties and their counsel relinquish the need to win the argument, to be right, and to pummel the other side into submission and instead work together to navigate complicated issues. We all know there are no winners in divorce. If conflict arises during the meetings, there is an opportunity to creatively solve problems. The process, however, is not all "kumbayah" and has limitations. Choosing the collaborative process doesn't magically eliminate concerns regarding distrust about the "other side" that led to the current circumstances. It doesn't create a large marital pot to divide or replenish depleted accounts. It doesn't erase old scars or create everlasting peace and tranquility. It does, however, free parties from expending energy or money on gamesmanship and opens the door to constructive problem-solving.

Full Disclosure | Practically, all cards must be on the table and documents must be exchanged in good faith. Litigation often encourages staunch positioning and entrenchment. Collaboration prioritizes transparent negotiation of interests to meet realistic goals.

Interdisciplinary Approach | The collaborative process has safety valves to ensure forward movement during negotiations. The collaborative divorce team can include a combination of professionals with defined roles, depending on the clients' needs:

Lawyer (one for each party):

- Evaluates client's needs, interests, priorities and goals;

practice by having clients that are trouble from the very beginning. Just remember that you are not a bus, you don't have to stop and pick up everyone. You should be selective.

Thank you to everyone in attendance at the Family Law Section of the North Carolina Bar Association in Charleston, South Carolina on May 2 and 3, 2014. As always, the location was beautiful and the seminars full of new and useful information.

- Assists each party in gathering and analyzing documentation;
- Evaluates realistic settlement options and the limitations of each option;
- Protects client's interests by negotiating their needs throughout the process;
- Debriefs client after each four-way meeting to clarify priorities and goals;
- With the other lawyer, conducts four-way meetings and helps each party understand the law, manages conflicts and differences during the negotiations and brings other consulting professionals into the process, as necessary;
- With the other lawyer, drafts legal agreements.

Coach (one for each party):

- Assists each party with understanding concerns and managing emotions;
- Teaches effective communication and co-parenting skills;
- Develops coping skills for each party to handle post-divorce adjustment with six- and 12-month follow ups.

Financial Consultant (one neutral):

- Assists in gathering and analyzing financial documentation and data;
- Develops various financial scenarios for clients to evaluate with counsel;
- Projects short- and long-term financial consequences of settlement scenarios and provides guidance to achieve financial needs and goals.

Child Specialist (one neutral):

- Meets with children;
- Provides them a voice during the process, when needed;
- Promotes an effective parenting plan, with follow-ups, if and when they are necessary.

Mediator (one neutral):

- Presents alternative creative ideas to help the parties work through impasse and get back on track to settlement.

Mecklenburg County family law mediator, Mark Riopel, of Hamilton, Stephens, Steele & Martin, PLLC, says: "I view being involved in a collaborative law four-way conference as 'self-mediation.' In other words, it is incumbent upon the lawyers to temporarily put on the mediator hat and truly listen to the other side and validate their point to a certain extent (without alienating one's own client). If

both lawyers are doing this, then each side will feel like they have been heard and coming up with a solution will truly be a joint and collaborative effort. It's a thing of beauty when it works."

Insulates Children | No process can fully shield children from the shockwaves of divorce. During and after divorce, however, parents continue to be responsible for their children's physical, mental and financial needs. Parents' functionality is vital to their children's healthy development. Through the collaborative process, parents strive to reconfigure their relationship into a partnership that allows their children to adjust to their new family structure.

Informal/Private/ Confidential Process | Court dockets are overwhelmed with divorce cases. By committing not to cross the courtroom threshold, the parties can operate on their own timetable rather than waiting their turn on the court's docket.

Avoids Uncertainty | Mecklenburg County District Court Judge, Christy T. Mann, says: "Making custody decisions is like doing surgery with a chainsaw. Judges don't have the necessary precision tools." No one knows a family's needs better than the two people at the conference table. With the support of the collaborative law team, they can hand-craft a durable solution.

Spouses who value a solution to meet their respective needs now and in the future should explore the collaborative divorce process. Prioritizing dignity and respect throughout the negotiations ensures that both spouses hold their heads up high as they move forward after divorce.

Irene King is a partner at James, McElroy & Diehl, P.A. in Charlotte, North Carolina. She earned her undergraduate degree from Miami University of Ohio and her J.D. from the University of North Carolina School of Law in 2004. Irene loves to sing classical music, has performed the National Anthem at the opening of Charlotte Bobcats, Charlotte Knights and Charlotte Roller Girls games and sings for Naturalization ceremonies in the Western District of North Carolina. She has been named a Rising Star in family law by Super Lawyers and Legal Elite by Business North Carolina and currently serves as the Co-President of the Mecklenburg County Collaborative Divorce Group in the Family Law section of the Mecklenburg County Bar.

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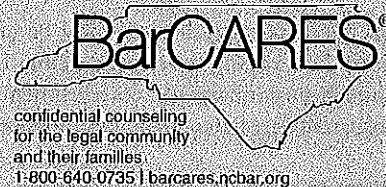
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