

Collaborative Law

By Pamela Donison

Pamela Donison has a simple mission: to change the world one divorce at a time. And she is proposing to do so by inspiring other attorneys to consider “alternative” dispute resolution (ADR) as “primary” dispute resolution, particularly in family law. The most recent entry into the ADR field of study is Collaborative Law. Here, Donison answers some basic questions about Collaborative Law.

Who is Stu Webb?

Stu Webb is the “Godfather” of Collaborative Law, credited with creating the model, which eschews litigation in favor of settlement. His vision now spans the globe with more than 8,000 practitioners in 24 countries.

Why Collaborative Law?

Stu, like so many of us, attended law school with a head full of lofty ideals but quickly became disenchanted with the life of a litigator. Stu found the inherent conflict in adversarial actions — and the system in general — to be soul-numbing work and he was particularly dismayed at the effect on divorcing families.

Stu was so fed up that he began to research other careers but

then he had an idea: perhaps he could rethink the process and create something new. Stu called a colleague with whom he had a case and asked, “Will you agree to work with me on this case and, no matter what, not take it to trial?” She agreed and an international movement was born. That was 25 years ago.

How has the movement evolved in the past 25 years?

Stu Webb created the Lawyer To Lawyer model, meaning that the lawyers are the “team” and they jointly agree that they will withdraw in the event of litigation.

When that model took off, attorneys wanted to include other professionals, which brought about the Referral Model, where the collaborative team includes attorneys and any outside experts needed, such as a child specialist, divorce financial planner, etc.

Eventually, some practice groups found that they were using the referral model in most cases and so developed the Interdisciplinary Team Model, which commonly includes two attorneys, one or two coaches, financial specialist and child specialist.

Since collaborative law was created, it has sprouted numerous permutations, including the “one coach” model and others. A fundamental tenet to remember is that this is a client-directed dispute resolution process, so clients determine what suits them best. In 25 years, collaborative law has evolved from concept to adoption of the Uniform Collaborative Law Act, which is remarkable when you think about what a short period of time that is in the scheme of the profession.

What is the basic premise?

According to the International Academy of Collaborative Professionals, collaborative practice has three key elements. First, parties engage in a voluntary, free exchange of information. There are no motions to compel or interrogatories, but rather a transparent sharing of material information. Second, parties pledge not to litigate and, if that pledge is broken, the collaborative team withdraws. It is intended as a disincentive to litigation, but also to protect the open communications that have been shared as part of a collaborative team. Finally, the parties and the team members make a commitment to respect both parties’ shared goals and to allow the clients to create the settlement — not the attorneys!

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Are all cases suited for collaborative law?

No, there are bad cases for Collaborative law because, let's face it, there are bad cases! Difficult cases for collaboration may have some of these characteristics: lack of trust and cooperation between parties and/or the team; unrealistic expectations; mental health issues; lack of disclosure or concealing information; verbal abuse; or a lack of respect for privacy. That is not to say that these cases will not succeed in a collaborative model, but the professionals and parties will likely have to avail themselves of the full spectrum of services.

What are some good cases for collaborative law?

Many disputes are perfect for collaborative law and, generally, the parties will have some of these characteristics: early intervention, meaning the parties sought out a collaborative model early in the dispute process; previous experience with therapy or counseling will make the parties more comfortable with the coaches' roles; basic trust and respect for one another; common goals (children, privacy, peaceful outcome); mentally healthy with the ability to communicate clearly. Obviously, there is no one "perfect" case or client for collaborative law.

Isn't Collaborative Law just for divorces?

No! On the contrary, civil collaborative practice is growing and there are several practice areas (in addition to Family Law), that are well-suited to a collaborative approach, including: Probate, Estates & Trusts; Juvenile; Employment Law; Education Law; HOA and Neighborhood Disputes; Commercial & Business Disputes.

Practices suitable for collaboration are those serving parties who want or need to have an ongoing relationship, such as families, employees, contractors and vendors, etc.

Who are the team members?

In the family law context, collaborative team members will include two collaborative attorneys and may include communication coaches, a financial neutral, and a child specialist. All professionals must have training in collaborative law and mediation.

Collaborative attorneys must be admitted to the bar with no record of discipline, and participate in an advisory rather than advocacy capacity.

The communication coaches are licensed mental health professionals (psychologists, social workers, marriage counselors), and they help the parties communicate more effectively. They do not provide therapy.

The financial neutral is a licensed professional (Certified Financial Planner, CPA, Certified Divorce Financial Analyst) acting as a neutral advisor to assist in gathering data and educating the parties about their financial situation. They do not provide financial or investment advice.

The child specialist is a licensed mental health professional with specific education in child development. They advocate for the child but do not act as the child's therapist, providing the child with a voice, while acting as a neutral advisor to the parents.

What's next?

The collaborative movement is growing and if you are interested, you should check it out! Visit the IACP website at www.collaborativepractice.com.

For those anywhere in Arizona (including students), you can get more information, training, and participate in study groups about

collaborative law through Arizona Collaborative Colleagues, a practice group open to professionals state-wide with an open model philosophy: www.azcollaborative.org

For Phoenix folks interested in the full-team-only model, visit: www.collaborativedivorcearizona.com

For those in Tucson, more information is available at: www.divorcewisely.com




Following a 15-year career in journalism and book publishing, Pamela attended the University of Arizona James E. Rogers College of Law, graduating in 1999. After a few too many high conflict litigation cases, Pamela created Donison Law Firm, PLLC in 2005, with an emphasis on out-of-court solutions, including arbitration, mediation, collaborative law, and negotiated settlements. Pamela has an undergraduate degree in Business Management which she uses to assist clients in Double Divorce.

Pamela is a Judge Pro Tem and Court Approved Mediator for Maricopa County Superior Court. She is the founder of Arizona Collaborative Colleagues, president of the Arizona Women Lawyers Association, on the board of directors for the Arizona Chapter of the Association for Conflict Resolution, arbitrator for the State Bar and the State of Arizona Personnel Board, and is an active member of IACP.

When she's not changing the world, Pamela is a wife and mother, an award-winning photographer, active blogger, and mentor to other women entrepreneurs.

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