Expanding the Collaborative Process Beyond Family Law

By Lawrence R. Maxwell, Jr.

The collaborative dispute resolution process is not just for family law matters. After seeing the benefits that the collaborative process brings to resolving family law matters quickly and economically, creative lawyers around the country are using the collaborative approach to resolve disputes arising in many areas of civil law.

The process is ideally suited for resolving disputes where maintaining relationships is important. This article will show the advantages and successful use of the collaborative process for resolving a dispute arising after an adverse medical event, in a probate matter, in employment situations, construction disputes, and in an elder law and guardianship situation.

Adverse medical events: Several years ago, the brother of a prominent actor died in the emergency room of a hospital in Rhode Island. An acrimonious medical malpractice suit was in the third week of trial and the hospital’s CEO intervened. She was distraught about the shift of focus among the care providers at the hospital from concentrating on healing patients to defending their hospital against malpractice allegations.

The hospital’s CEO felt that the health care providers had lost their understanding and empathy and she decided to take a different approach to resolving the bitter, unproductive situation. Ignoring the hospital’s attorneys, she met for dinner with the family of the patient who had died, acknowledged the medical error and apologized. The meeting resulted in a confidential financial settlement and the hospital committed to create new approaches to hospital and emergency room care.

While this is not technically a collaborative case, it does illustrate the benefits of transparency, and honesty in resolving disputes.

Probate, trust and estate matters: A Texas probate lawyer recently used the collaborative process to resolve a dispute involving four siblings who began fighting after the deaths of their parents.

The parents’ wills left their estates to the children equally and named a son as executor. Lack of communication, which is not an issue in face to face meetings in the collaborative process, was the problem among the siblings. All were interested in saving time and money and wanted to heal the strained relationship in the family. Within ninety days all issues were satisfactorily resolved in the collaborative process.

Employment disputes: The speed of the process, lower cost, voluntary discovery, confidentiality and the ability to create solutions tailored to the needs and interests of the parties make the collaborative process particularly useful in resolving employment disputes.

A Massachusetts colleague believes the process offers options for resolution not available in litigation or arbitration. In discrimination and sexual harassment matters the employee is often
still working for the company, and there is a need to preserve and improve relationships while constructively and creatively addressing the problem. By incorporating preventive training, counseling, diversity training, reassigning employees, the collaborative process can transform a toxic workplace into one where employees feel safe and take pride in their jobs.

**Business and construction disputes:** Transparency and cooperation, which are the cornerstone of the collaborative process, make the process well suited for resolving business and construction disputes where repeat business and continuing relations are important.

In construction projects nationwide, disputes frequently arise over delayed payments and construction defects. Reviewing contracts, invoices, receipts, plans, work records, and knowledge of verbal exchanges are important. With the voluntary production of relevant documents and total transparency in face to face meetings, the parties are not mired in discovery fights over documents or involved in “he said - she said” arguments as in litigation.

**Elder Law and Guardianship Matters:** Elder law addresses intensely personal rights and issues where family members cannot agree on what help is needed. Disputes can be painful and damage long-term family relationships. A recent case in the state of Washington illustrates how difficult issues can be resolved using the collaborative process.

Friends of an incapacitated person received reports that the guardian was late with payments and bouncing checks. The friends suspected financial exploitation. The guardian and the family agreed to a collaborative solution. The problem was not malfeasance of the guardian, rather a lack of funds to pay court ordered bills. The parties reduced costs to get the guardianship estate on a solid financial footing.

These stories illustrate a special advantage of the collaborative process. It can provide unusual relief not possible in an adversarial proceeding. A judge or arbitrator cannot order a party to make an apology, or order medical providers, businesses, or service providers to change their procedures. These remedies are sometimes more important than a monetary judgment and they often play a significant role in settling disputes collaboratively.

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