

Trial Style

A Big News Supplement on Litigation, Dispute Resolution, Arbitration and Mediation

December 2009/
January 2010



Ad Madness

Harmeet K. Dhillon wins
agency ownership interest
for advertising executive.
page TS-3

- 3 **Featured Matter**
Harmeet K. Dhillon Leads
Team Fighting Ad Agency
Dispute
Staff Reports
- 5 **Style Star: Harmeet K. Dhillon**
Northern California Attorney
Works for Civil Rights and
Corporate Clients
Staff Reports
- 8 **'Cooperative Divorce' Is
Not an Oxymoron**
Stacy D. Phillips and
Jeffrey P. Bollinger
- 11 **Court Reporter**
Robert F. Brennan Helps
Win Credit Reporting
Victory for Consumers
Staff Reports
- 15 **ADR Briefs**
Ramp-Up to Success
Judge Michael D.
Marcus (Ret.)
- 16 **ADR Practitioner**
What Are the Parties' Real
Goals in Medical Injury
Lawsuits?
Steven G. Mehta
- 18 **ADR Profile: Ernie Long**
Forsaking Safety
Staff Reports





Stacy D. Phillips



Jeffrey P. Bollinger

Stacy D. Phillips is a name partner and Jeffrey P. Bollinger is an associate with Los Angeles' Phillips, Lerner, Lauzon & Jamra. They can be reached at (310) 277-7117.

Practitioner

'Cooperative Divorce' Is Not an Oxymoron

Parties Have More Options Than They Realize

By Stacy D. Phillips and Jeffrey P. Bollinger

In the best of economic times, people facing divorce must make numerous decisions, some immediate and others over a period of time, but all must be made with careful consideration of the consequences - personal, legal and financial (including tax implications). These decisions are often further complicated when children are involved. In difficult economic times, these decisions are made all the more stressful because of the impact of finances on every aspect of divorce.



However, there are alternative methods of dissolving a marriage that may manage the acrimony between the parties, and, as a result, the impact of the divorce on the children. Litigation is the right choice for some parties, while mediation is better suited for others. In some circumstances, collaborative practice is the best available option. And collaborative practice and mediation are not necessarily mutually exclusive.

It is up to the attorney to analyze each client who walks through the door, allow clients to unburden themselves, often in snippets, interrupted by tirades about the other spouse's misdeeds, or flowing out in a stream of consciousness. Sensitive practitioners make an effort to identify the right approach for the individual, considering the facts that are uncovered.

In the collaborative law process, each party and counsel are able, and encouraged, to participate in an open discussion of all issues with the goal of reaching a mutually beneficial resolution - without the added pressure of having to sway a judge or mediator.

Some attorneys know only one approach - they identify with their reputations as bulls in china shops, always putting the pedal to the metal, while others are known to be soft and comforting, and never litigate a case. The more proactive approach is to determine whether a case is right for a cooperative dissolution method, such as mediation, or one of the forms of collaborative practice that are presently being practiced in the United States and around the world (a Uniform Collaborative Law Act is being drafted, which is expected to take effect next year), or whether litigation is the best course to take.

The alternatives to litigation are premised on the concept of cooperation. This is a key component of mediation and collaborative practice, and could be the factor that determines whether a case is right for one of the alternative resolution methods, or must go the litigation route. Where the parties are able to cooperate, despite their differences, whether through mediation or collaborative practice, they will ultimately maintain greater control over the outcomes of their cases (and their futures). This is not always easy to do; In fact, in a divorce, it is rarely easy to do.

However, with the assistance of sophisticated and trained lawyers and mental health professionals, as well

as family and friends, it is possible for divorcing spouses to come to the table to reach agreement on the issues in the dissolution of their marriages. Those who are willing and able to commit the time and energy to finding common ground (or at least a pasture of compromise in the wild terrain of divorce) more often will continue to return to the land of compromise after their divorce is finalized, than those who battle it out in court. On the flip side, if mediation or settlement is not handled properly, the goals and parameters are not properly understood by all parties, or is not sufficiently comprehensive, and one spouse feels cheated after an agreement is reached, future disagreements are more likely to end up in court.

One of the alternatives to litigation that has been long available to divorcing couples is mediation. Mediation has become so widely accepted in our society as a method of resolving disputes that it is often required by courts for every litigated family law case involving custody issues, prior to the parties being able to argue over custody before a judicial officer (the Los Angeles Superior Court was the first court to begin sending custody disputes to mediation, called

Conciliation Court in California, in the late 1970's. Legislation was passed in 1980 making Conciliation Court a requirement in all California courts, and the law went into effect in 1981).

The mediation process provides clients with a level of flexibility that litigation cannot. During mediation, parties can make agreements tailored to their family's needs, which a court would otherwise not have the jurisdiction to order. As long as the parties fully understand their rights, they are not required to adhere to the family law statutes or case law (the lawyer's job is to ensure that clients are educated about their rights prior to making decisions). No court is better-equipped to make decisions about a family than the family members themselves.

Collaborative practice is a less-well-known litigation alternative than mediation - both to the public and attorneys. The California Family Code Section 2013 and the Los Angeles Superior Court Rules (Rule 14.26) reference collaborative law, so the concept should be gaining visibility and momentum. Once a Uniform Act is in place, attorneys may have an ethical duty to inform clients of the availability of collaborative practice to resolve their disputes, so family law attorneys must be knowledgeable about this emerging area.

Collaborative practice allows both parties to have lawyers present during the negotiation to keep settlement as the top priority. The lawyers, who have training similar to (but different from) mediators, as well as accountants and mental health professionals, who may all be a part of the "collaborative team," work with their clients and one another to assure a balanced process that is positive and productive. When there is agreement, a document is drafted by the lawyers, and reviewed and edited by the parties and potentially the other experts until everyone is satisfied.

In the collaborative law process, each party and counsel are able, and encouraged, to participate in an open discussion of all issues with the goal of reaching a mutually beneficial resolution - without the added pressure of having to sway a judge or mediator. However, if issues arise that would benefit from the mediation process, the parties, their counsel and their consultant or experts may agree to submit the issue to a mediator for resolution, to keep the collaborative process on track and to avoid litigation.

In the majority of collaborative law cases, the parties are able to reach a resolution of all issues in their cases, including child and spousal support, custody, visitation, and asset valuation and division. When necessary, joint financial and mental health professionals are brought in as part of the collaborative team to facilitate resolution of property division and custody issues. In California, the parties may retain their own experts, within the context of the collaborative process.

Mediation and collaborative practice are more likely to provide a safe environment for parties who are concerned about protecting their private information from public scrutiny. These alternative resolution methods foster client confidentiality by avoiding the airing of clients' dirty laundry in public courts. Court records are public records and declarations filed by the parties and their experts are available to the media. Courts are reluctant to seal files, but cooperative clients can agree to engineer judgments that would not be made part of the court's file unless contested at some point in the future or if enforcement is needed.

Both collaborative practice and mediation rely on the voluntary, free exchange of information, though formal discovery is available to either party, and a commitment by parties and their counsel to resolutions respecting everyone's shared goals.

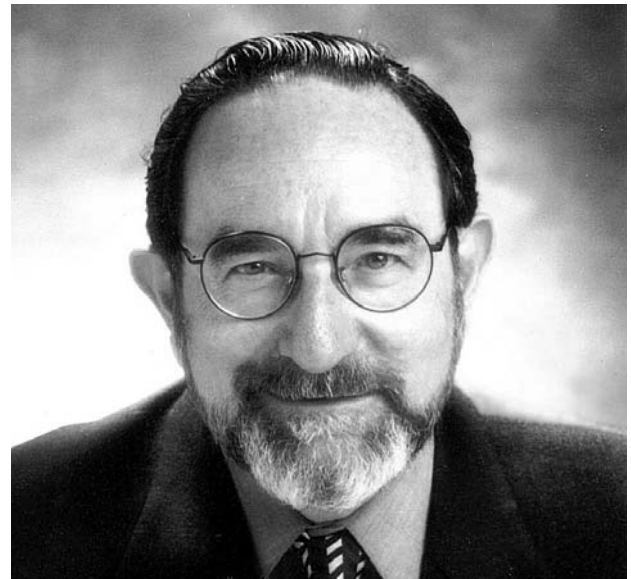
So, what is the difference between mediation and collaborative practice? If mediation does not result in settlement, clients may choose to use their counsel in litigation. In collaborative practice, at the outset, the law-

yers and parties sign an agreement aligning everyone's interests in resolution. It specifically states that the collaborative attorneys and other professional team members are disqualified from participating in litigation if the collaborative process ends without agreement.

Mediation includes a leader, the mediator guiding the process. In collaborative practice, the team, made up of the lawyers, and financial and mental health professionals, guide the process.

It may seem baffling to some clients that their lawyers should encourage them toward cooperation in the moment when the partnership of their marriage has irrevocably broken down. However, for those who can participate in one of the cooperative practice options in their divorces, the results for the divided family, especially the children, are worth the struggle.

HONORABLE
LAWRENCE W. CRISPO
(RETIRED)



Mediator

Arbitrator

Referee

213-926-6665
www.judgecrispo.com