

## **ABA Connection: Practicing Law the Collaborative Way**

Collaborative law, a relatively new practice area just some 15 years old, is a form of alternative dispute resolution in which settlement negotiations are conducted through the free-flow of information that cannot be used in court should the case eventually reach that point. The subject of a free continuing legal education teleconference as well as a companion story in the June issue of the ABA Journal, collaborative law is commonly used in family law and requires special communication and negotiation skills by lawyers.

The concept behind collaborative law, according to the ABA Journal, was developed by Minneapolis lawyer Stu Webb, who wasn't satisfied with the litigation-based model of family law practice. With so many divorce cases settled prior to court, Webb believed there had to be a way to reduce both the expense of preparing for trial as well as the emotional trauma often involved.

An aspect of the practice of this form of mediation that is the topic of much debate is that the lawyer who represents a client in collaborative law must withdraw from the case should it reach trial. Opponents charge that this can increase costs for clients if an agreement is not reached, and places additional pressures on them to settle. Advocates say that it is exactly this proviso that makes the practice of collaborative lawyering so effective.

While used primarily in family law currently, some are exploring using collaborative law in corporate and other forms of law practice. But since there is a

greater likelihood of ongoing client relations with businesses, the required withdrawing from a case if it goes to trial creates a bigger problem.

Another issue of collaborative law is the ethical question of how much a lawyer can advocate for a client in this type of arrangement. In addition, because a lawyer needs to withdraw if the case goes to trial, the opposing side can, in essence, fire the lawyer for the other side by refusing to settle.

As the practice of collaborative law continues, new models are sure to develop to address these and other issues.

**<http://www.abanet.org/media/youraba/200606/article12.html>**