

Employment Law Notes

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A Coming Trend in Resolving Employment Disputes

Collaborative law was conceived in 1989 by a Minneapolis divorce lawyer who realized that divorce litigation was inflicting greater injury to families than the divorce itself. He developed settlement protocols that have been fine-tuned over the past 15 years and are now successfully being practiced across the US, Canada and Europe, not only in family law but in employment cases and other areas as well.

The Need for a New Paradigm

At a recent event hosted by the non-profit Washington Collaborative Law, State Supreme Court Justice Bobbe Bridge livened up her keynote address by holding up two shiny ten-cent coins. "Lawyers," she announced, "need a new pair-a-dime." Joking aside, Justice Bridge is dead serious about the need for a new paradigm, and the value of using collaborative law protocols to settle legal disputes.

The problem is not what happens during trial. According to a recent study by the American Bar Association, 98.6% of all civil cases settle. The problem is the time, money, disruption and emotional toll involved in the litigation process before settlement.

What is Collaborative Law?

The CL protocols include a number of elements, but at the heart of the CL approach are:

- The parties promise in writing to try to reach a resolution without court intervention, and to not even threaten to seek court intervention.

- If either party seeks court intervention, the attorneys for both parties (and their firms) are disqualified from any further participation.
- Participants agree to negotiate in good faith, disclose all pertinent information and strive to keep their communications constructive and respectful.
- All communications are inadmissible in any court proceedings without the express written consent of all participants.

The CL protocols dramatically change the dynamics of settlement negotiations. They create new incentives for the lawyers, who can only "win" by reaching a settlement and who "lose" if their clients head to court. The focus shifts from being adversarial to solving problems, and the toxicity of pre-trial discovery and court motions is removed.

The Impact of Collaborative Law

CL cases can often be resolved faster and cheaper than traditional litigation, and with less internal disruption and public disclosure of sensitive information. CL is not suitable for all cases, but it is especially useful when the parties have a continuing relationship to maintain. Interestingly, many lawyers on both the plaintiff and defense sides are embracing CL, even though the prospect of shorter, less acrimonious cases means fewer billable hours for law firms.

Find Out More

To find out more about CL, visit Washington Collaborative Law at www.WashCL.org.

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