

SPRING 2012



Divorce with an eye to the future and a focus on solutions, not on blame.

By Marian Kromkowski

I cannot count the number of times that I have read on the Family Law Section list serve the request “client seeks aggressive attorney”. I often wonder what exactly is the client’s goal. Is it something different than finding an ethical, honest, hard-working attorney who has skill and competence in the relevant area of law? What do attorneys actually mean when they advertise as “aggressive”?

Ironically the 2nd example for the word *aggressive* in the Merriam-Webster Dictionary is

- an *aggressive* lawyer whose tactics have made people angry ▪

Synonyms listed are “ambitious, assertive, enterprising, fierce, go-getting, high-pressure, in-your-face, militant, pushy, self-asserting.”

I do not think any of us would advertise as having the proven ability to “make people angry” or nor would I hope that any of us employ tactics solely to achieve anger.

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Yet, the landscape for family law attorneys is often overgrown with anger, resentment and one-upmanship. And that plot of land is not reserved for confused, grief stricken and betrayed clients. If we were frank, how many of us would admit we still carry some anger toward colleagues with whom we have interacted in a divorce proceeding.

There are no easy answers for divorcing clients' conflicts or for the stress that creeps into our personal lives due to our profession. But there may be paths that lead to greater peace for clients and for us in our careers. Yes, I said the word peace.

Peace comes from understanding, addressing concerns, and building a more secure tomorrow. History tells us that an armistice imposed from above is rarely permanent. Converted to legalese: Judgments crafted by lawyers without adequate input from clients or Orders entered by a Court after a formal hearing framed within the parameters of existing law are less likely to be followed by litigants and often prompt future court action.

I wish to share another model of conflict resolution that I have seen work for some divorcing families. It is called Collaborative Divorce. Collaborative Divorce came to Michigan in 2003. There are now over 350 Michigan professionals trained in the collaborative model. Collaborative divorce practice groups exist in Grand Rapids, Oakland/Wayne Counties, Lansing, Washtenaw County, St. Joseph/Niles, Kalamazoo, Cadillac and Traverse City. Here in Traverse City we started with 6 attorneys completing the training in 2007. Five years later we now have 19 attorneys, 3 financial specialists and 7 mental health professionals trained in the collaborative model and engaged in a practice group to improve our skills and better our working relationships.

In Collaborative Divorce couples work together, guided by a team of professionals, to reach a divorce settlement in a fair way without going to court. Divorce is primarily an emotional and financial matter with legal ramifications. Many times lawyers attempt to wear all three hats: hand-holder, financial planner and legal guide. Often different professionals are involved or each spouse has their own set of experts. In Collaborative Divorce rather than lawyers in one corner addressing legal issues, mental health professionals in another corner addressing emotional issues and financial specialists in still another corner addressing money matters, all may become part of the team sharing information to assist the family achieve integrated resolutions.

Collaborative Divorce does NOT mean that your clients already agree upon everything or that they are still best of friends. It is a process by which clients commit up front to use their very best efforts, with the guidance of a collaborative team, to restructure their lives and family in a way that minimizes the collateral damage and fallout from the divorce. Both husband and wife retain attorneys who have had Collaborative Divorce training. All sign a commitment to reach a settlement without going to court. A team is then assembled by the couple and their lawyers. Mental health professionals manage the emotional ups and downs of divorce. Neutral financial specialists provide valuable information and expertise. Child specialists focus on the family's future and put children first. Lawyers guide the settlement discussion. Couples make the final decisions on all matters relevant to the family.

Clients have various options available to them for transitioning their family through a divorce: Just as the adversarial litigation process or mediation is not right for every family, neither is the collaborative process. Clients are told that more will be required of them in the collaborative model. Not all clients or all lawyers will be able to sustain the difficult work necessary to stay on the "high road" even with the support of a multi-disciplinary team. As in any case we must inform our clients of the limitations and benefits of all the processes available. To better evaluate whether Collaborative Divorce is a settlement service you wish to provide I have provided additional resources below:

Websites. The governing organization for Collaborative Practice is the International Academy of Collaborative Professionals at www.CollaborativePractice.com. The Collaborative Practice Institute of Michigan (CPIM) is the state organization at www.CollaborativePracticeMI.org. Our local practice group is Up North Collaborative Divorce Professionals at www.UpNorthCollaborativeDivorce.com.

Books. *Collaborative Divorce* by Pauline Tesler and Peggy Thompson is an easy read and now available in paperback. *The Collaborative Way to Divorce* by Stuart Webb and Ron Ousky is also an outstanding reference.

Training. CPIM sponsors an annual two-day basic training. The next available training opportunity will be May 10-12, 2012 at the Okemos Conference Center.

State Bar Invitation for Committees

State Bar President-Elect Bruce A. Courtade invites Michigan lawyers to apply now for appointment to committees for the 2012-2013 bar year. Service on the committees is voluntary and occurs through an appointment process that begins with an application that must be filed by May 11.

"Committee service is an excellent way for State Bar members to make a difference in our profession and the justice system," Courtade said. "From personal experience, I can tell you that my committee service not only gave me great insight into what the State Bar does on a daily basis to help its members and serve the public, but it also introduced me to lawyers from around the state who became great sources of inspiration, friendship and support."

Nearly 30 standing and special committees work to implement the State Bar's Strategic Plan, build effective programs that benefit Michigan lawyers and the public, and improve the administration of justice in Michigan. Appointments for the 2012-2013 bar year are expected to be finalized before September 1.

Applications can be submitted electronically on the [Committee Application Page](#). More information about the committees can be found on the [Committee Information Page](#). For more information about committees or the application process, contact Candace Crowley, SBM Director of External Development, at ccrowley@mail.michbar.org or [517-346-6319](tel:517-346-6319).

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Enforcement of Mediation Agreements in Domestic Cases

The court and the friend of the court both deal with issues of **child custody**, **child support** and **parenting time** in domestic relations cases involving minor children. MCL 722.27a(8) provides the authority for including **some** additional terms in a court order which terms “facilitate the orderly and meaningful exercise of parenting time”. Examples are provided:

- “(a) Division of the responsibility to transport the child.
- (b) Division of the cost of transporting the child.
- (c) Restrictions on the presence of third persons during parenting time.
- (d) Requirements that the child be ready for parenting time at a specific time.
- (e) Requirements that the parent arrive for parenting time and return the child from parenting time at specific times.
- (f) Requirements that parenting time occur in the presence of a third person or agency.
- (g) Requirements that a party post a bond to assure compliance with a parenting time order.
- (h) Requirements of reasonable notice when parenting time will not occur.” MCL 722.27a(8)

Mediation agreements often contain things that the parties have agreed upon, which, while important to them, cannot be enforced by the court. Here are some examples:

“If [NCP] feels angry or anxious during the visit he will call CP.”

“Plaintiff/Defendant will not disparage the other.”

“NCP will provide diapers, food and car seat”

“CP/NCP will not have drugs in the house.”

“CP/NCP will get the children to bed by 9 pm.”

“The children must maintain a GPA of 2.0 while in CP’s custody.”

“NCP shall attend all school conferences.”

While there is nothing **wrong** with such agreements, they are not capable of enforcement by the court. The court enforces custody, parenting time and child support. What a parent does or doesn’t do, what they say or don’t say, what they allow or don’t allow the children to do during their respective parenting time is not custody, parenting time or child support – it is behavior. The court cannot make anyone behave or not behave in a specified way. When parties reach these sorts of agreements, the proper remedy should either of them do or fail to do what they have agreed to is for the other to pursue a motion to modify the order. For example, if the children are not going to bed at an agreed upon time, the remedy is not for the parent to be held “in contempt”; the remedy is a change to the parenting time schedule, perhaps having the children returned to the other parent earlier. If a child has “too many” school absences or is not maintaining certain grades, again, the remedy is not holding one of the parents “in contempt”, but a change in the parenting time or custodial arrangement.

Some suggested order language (which friend of the court will be using) when attempting to craft a court order based on a mediated agreement containing such items, would be:

“The parties also agreed upon the following: [list them]. If these conditions/restrictions are not being followed, the Plaintiff/Defendant may pursue a motion to modify parenting time.” An additional enhancement to such language might be: “and the parties agree that failure to.... shall constitute a change of circumstances for purpose of order modification.”

Some agreements have no place in a court order whatsoever, because they have no connection to parenting time or custody, or, they are too subjective to be meaningful. For example,

“NCP will go to the gym to work out 3 times each week.”

“NCP will mow CP’s lawn every Saturday.”

“Parenting time will change from Schedule A to Schedule B if NCP does not maintain full-time employment.”

“Parenting time will change from Schedule B to Schedule C if NCP does not have ‘mutually acceptable housing’.”

Finally, agreements that purport to result in an immediate modification of parenting time upon the occurrence or omission of a certain event or condition are also highly problematic. An example of such an agreement would be:

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"If Plaintiff/Defendant loses his/her job, parenting time will change from alternate weeks to alternate weekends."

"If the children's grades after the first semester drop below 2.0, custody will revert to the [other parent]."

How are these changes to be effectuated? Who will present the order to the court? Are they intended to be *ex parte* orders? What if the judge doesn't sign the *ex parte* order? Should there be a hearing to determine whether or not the agreed upon event has occurred or not? Who will be responsible for bringing the issue before the court and obtaining a hearing? Rarely do the agreements address how the change is to be made.

When litigants leave mediation and have expectations that are not met, they are disappointed and frustrated with the mediation process, their attorneys and with the court. When working with litigants, mediators and attorneys should keep in mind what a court can enforce and what it can't; what conditions or provisions relate to parenting time and thus could serve as a basis for modification and what do not and be sure to engage in a reality check with the litigants as to their expectations of what will happen if their agreed upon conditions are not followed.

While this discussion has involved domestic cases, the issues are not unique to domestic cases. In general civil matters parties might agree to "not disparage each other in the community" or "only give favorable references in the future". Again, while such agreements are perfectly fine, they do not belong as a behavior "ordered by the court" and they have no court remedy if they are not followed.

Dawn Rogers, FOC

March 20, 2012

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Bar Association Newsletter

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 by **Friday June 1st** for publication in the **Summer 2012** issue. Questions or comments should be directed to Aaron Bowron at abowron@zbwlaw.com or Christopher Carol at CCarol@oneupweb.com



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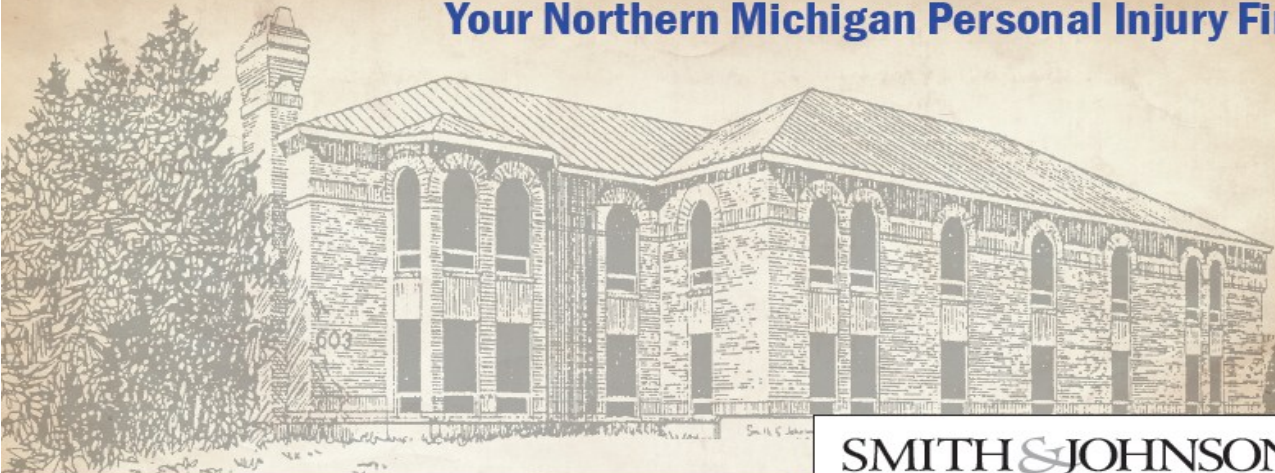
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HEARD IN THE HALLS

- Local attorneys **William C. Bowron, Michael J. Swogger and Heather S.G. Bruce** are pleased to announce the opening of their new law firm. The **Swogger & Bruce law firm, P.C.** officially opened its doors January 23rd 2012 and is very pleased to announce that William C. Bowron has joined the firm *Of Counsel*. Focusing its practice in the areas of Estate Planning, including Wills and Trusts, Probate Administration, Trust Administration and Probate Litigation. The firm also employs two top-notch legal assistants, **Loretta Bush and Laura E. Graham**. Mr. Bowron, under the firm name **William C. Bowron, P.C.**, will also continue his work in the areas of family law, including adoption, divorce and custody matters. **The Swogger & Bruce law Firm** is located on the first floor of the beautiful Westport Building on West Grand Traverse Bay. The office address is 10691 East Carter Road, Suite 103, Traverse City, Michigan 49684. Office telephone numbers are (231) 947-6800 or (231) 929-0765.
- Smith Haughey Rice & Roegge** is pleased to announce that **John R. Blakeslee** has joined the firm's Traverse City office as an of counsel attorney. John focuses his practice on the areas of estate planning, business law, real estate law, and mediation. For 45 years, John has been serving clients in Traverse City. Notably, John holds an AV Peer Review Rating by Martindale-Hubbell and is also a Michigan Super Lawyer in the areas of estate planning, probate and mediation. John is very active in the legal profession and the Traverse City community, having held numerous leadership positions at both the local and state levels of community and professional organizations. John holds a B.A. from Western Michigan University and a J.D., *magna cum laude*, from the University of Detroit.
- Richard Edmonds** has joined **Bethany C. Warner & Associates**. Mr. Edmonds practices in the area of Municipal Law, Land use & Zoning, Real Estate law, Business Planning and Corporate Governance, Personal Finance, Estate Planning and Wills. He has been a member of the State Bar of Michigan since 1993 working as a private practitioner. He is a graduate of Ferris State University and of Chicago Kent College of Law. Mr. Edmonds served over 20 Years in the U.S. Marine Corps on Active Duty and in the Marine Corps Reserve, retiring in 1999 as Lieutenant Colonel. He is a veteran of Operation Desert Storm. Mr. Edmonds is active in Veterans Outreach Programs and volunteers to programs that provide assistance to current National Guard Reservists. Mr. Edmonds is a volunteer with Goodwill Industries providing legal assistance to veterans. Mr. Edmonds is a member of the American Legion, The Reserve Officer Association of America and Military officers Association of America. He is accepting new clients at (231) 922-8028 or redmonds@warnerlaw.com.
- Melanie Stanton** of **Kronk & Stanton PLLC**, will be joining the Grand Traverse County Probate Judge race.
- Tom Seger** is opening a new office with **Roy Mortimer** of **Mortimer Law**, who has offices in Alpena and Petoskey. The two will specialize in Bankruptcy, Social Security and Criminal Law.
- Christopher Carol** has joined **Oneupweb** as the company's in-house legal counsel.
- Lee Hornberger's** article on the Supreme Court's Ministerial Exception decision was recently published in the March/April 2012 edition of the State Bar of Michigan's *The General Practitioner* newsletter.
- Aaron K Bowron's** article, "Reviewing Oil and Gas Leases: An Introduction", was published in the May/June 2012 edition of the State Bar of Michigan's *The General Practitioner* newsletter.

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