

Using Collaborative Law in Business Disputes

By Michael Zeytoonian
and Ted Hess-Mahan

Each month, the Newton-Needham Chamber of Commerce asks one of its attorney members to answer a timely legal question. This month, the law firm of Hutchings, Barsamian, Mandelcorn & Zeytoonian, LLP tackles collaborative law in business disputes.

Many of us are also familiar with the statistical data that 98 percent of the cases that are filed in courts end up settling. Further, in most of those instances, by the time they get to settling the matter (often just before trial), most of the money has been spent, the years have passed, the damage to relationships, business, reputation and workplace is already done. The facts beg the question: If there's an overwhelming likelihood that the case will settle, then why not pursue settlement by intention from the outset of the dispute and utilize processes designed to resolve the matter through negotiated settlement?

Collaborative Law is a practical combination of the advocacy, legal analysis and representation of litigation and the creative problem-solving, efficiency and negotiation of the business mindset. It can be used to settle disputes in business, employment, construction,

municipal, medical error, probate, environmental and divorce cases, just to name some. It is time and cost efficiency, making it well-suited for closely-held or family businesses and non-profit organizations. It uses a non-adversarial negotiation model that focuses on satisfying the interests of the parties rather than staking out positions, so it is an excellent choice when preserving relationships is important. It is also a confidential process, beneficial in disputes with sensitive, personal or proprietary matters.

Collaborative Law is a structured process utilizing "four-way" meetings for negotiation. It also places the control over the process, the timing and the decision making in the hands of the parties. For this reason along with its collaborative nature, it is an ideal choice for entrepreneurs accustomed to making their own decisions, working collaboratively with others, sharing information to come up with creative solutions. Collaborative Law opts to stay out of court and requires a commitment by the parties and the lawyers not to litigate. The parties are free to work at the pace they need to work at, at times that are convenient to their schedules and take on issues in the order that is most efficient and logical.

Parties are always represented by their res-

spective collaborative lawyers and benefit from their advocacy and counsel. They begin with a process agreement that sets forth the "rules of engagement" for the collaborative process. These rules include agreements that the parties will voluntarily exchange all relevant information, that they will not litigate, file any complaints in court and will not threaten litigation during the collaborative process.

Once the process agreement is signed, the parties and lawyers meet in a series of four-way meetings, in which all substantive negotiations take place. Typically, the first order of business is to determine the respective interests and goals of the parties. That determination sets up the parameters of what information needs to be exchanged.

The next step is to develop options for resolving the dispute. The collaborative process features creative and out-of-the-box solutions tailored to the needs of the parties. Here are some examples: setting up a means for apologies and discussions between patients and physicians; introducing changes in the workplace culture to provide more prevention; drafting creative licensing agreements and contracts between the parties; setting up coaching for communications in non-profit or religious organizations; bringing in mental health professionals to work with families in divorce cases.

The possibilities for solutions are enhanced by the collaboration of the parties, their lawyers and the experts they utilize. Another distinct feature of the collaborative process is the use of neutral, independent experts. Instead of the typical plaintiff's expert vs. defendant's expert wars of litigation, parties in Collaborative Law jointly hire neutral experts needed to provide both the expertise to help them solve the problems and develop options. They

use CPAs, business valuation experts or economists, diversity coaches, business consultants, mental health professionals and financial advisors. The costs are shared, the talents are used by both parties and the experts are freed to give their advice independently and openly.

Once options have been developed and agreed upon, the resolution is reduced to a written settlement agreement and the collaborative process is concluded. The resolution remains confidential and the parties go forward guided by the terms of their settlement agreement.

Consider the efficiency: these cases usually end up costing about 20 percent of the cost of litigation and typically are resolved within 3 to 6 months. Important business, organizational or personal relationships are preserved and often improved. The polarizing of the workplace, the draining of human resources and damage to reputation are all avoided. The options for resolution are more creative, tailored to fit the needs of the parties.

Finally, there is great peace of mind in knowing that the process and the decision-making are in the hands of the parties, advised, assisted and facilitated by their respective lawyers and neutral experts. **Z**

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