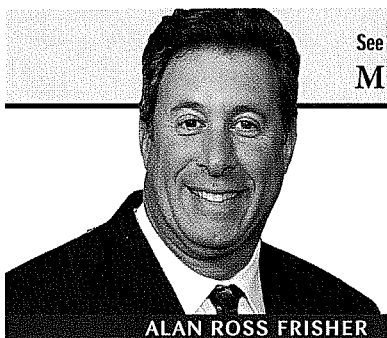


## MENTAL HEALTH



ALAN ROSS FRISHER

**STATISTICALLY, divorce occurs in 50 percent of first marriages and 60 percent of second marriages. What is even more unfortunate is that the emotional, financial, and legal process of divorce that the (once in love) couple can find themselves in, is anything but pleasant or hopeful.**



## Collaborative Divorce: Part II

*Participants treat each other with honesty, respect*

**T**his is the second installment of a two-part series on Collaborative Divorce. In Part I (Jan/Feb 2010 edition), I introduced an exciting and much needed approach to divorce. I discussed how the process of Collaborative Divorce empowers the divorcing couple by allowing them to structure their own divorce with the assistance of trained professionals (financial, mental health, attorneys) whose sole job is to settle the case without having to go to court.

I pointed out that this process is faster, cheaper and much less traumatic on the divorcing couple (and their children) by providing a "safe" environment where everyone maintains respect, honesty and dignity. I also asked the rhetorical question as to why, after learning about Collaborative Divorce, would anyone purposefully choose the litigious and adversarial way to divorce knowing that the ultimate result could devastate them and oftentimes number their children among the casualties?

### Conflicting Emotions

The answer to this question is multi-faceted. First and foremost, divorce, especially after many years of marriage, oftentimes accompanies many dif-

ferent and conflicting emotions. We may experience emotions such as shock, the denial of reality, frustration, sadness, resentment, guilt, hatred, anxiety, self-pity, the sense of failure or rejection, loneliness, and the everything-seems-out-of-control and will-this-divorce-ever-end feelings.

Life-long assets need to be preserved, children may need protection, and the uncertainty of what questions to even ask may leave you feeling incredibly vulnerable. Unfortunately, this situation leaves the average divorcing person open to manipulation by a family law system that is designed, and procedurally structured to be highly complex for the layperson to understand and be able to navigate. Adversarial from the very start, the system condones, and ultimately allows for its own abuse by litigating attorneys who, quite simply put, oftentimes take full advantage of the opportunity afforded to them under the legal obligation of judicial privilege by being a "zealous advocate" for their client.

### Dog-Eat-Dog

It is truly unfortunate, but our family law courts, where divorce is concerned, have structured themselves to become a wasteful, dog-eat-dog, survival of the fittest boxing ring where people's hard-earned wealth is used to the advantage of perpetuating an abusive system of law. The divorcing individual, whose only "crime" was ultimately marrying the wrong person, oftentimes is treated in the same manner as a hardened criminal and/or a potential threat to society by being sentenced with a "permanent" order as if they committed a capital crime. Unfortunately, once forced into this system, it's nearly impossible to escape.

The true irony of this is that lawyers have historically been responsible for preventing battle and peaceably resolving disputes. John W. Allen, in his October 2001 Bar Journal article, notes that in the early 12th century, Henry II systemized earlier experiments of his grandfather, Henry I, by sending his "Court" of traveling justices on regular circuits through his realm in order to substitute the peaceful resolution of disputes for the traditional method of "trial by battle." The advocates who emerged to represent those appearing at the local court were intended to resolve disputes and not fan them.

### Too Costly, Too Painful

Warren Earl Burger, the longest serving Chief Justice of the highest court in the land, was a critic of litigiousness. In addressing the American Bar Association in 1984, Justice Burger declared, "Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people. To rely on the adversary process as the principal means of resolving conflicting claims is a mistake that must be corrected."

Chicago attorney turned Notre Dame Law School Dean, turned Catholic Priest, David T. Link stated that somewhere along the line, lawyers as a group began straying from their original duty as peacemakers. Reverend Link was honored with the American Inns of Court's 2009 Professionalism Award for the Seventh Circuit at the Seventh Circuit Judicial Conference in Indianapolis for his life-long demonstration of character and integrity in the legal profession. In receiving this award, Reverend Link commented: "The ultimate goal of a lawyer is not to "win" but to achieve justice and healing. Just as a doctor can treat or



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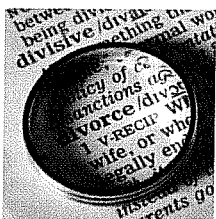
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cure a patient without bringing about healing, so, too, can a lawyer win a lawsuit without healing his or her client. And just as a patient can be healed by a doctor even though his or her disease remains uncured, so, too, can the client of a lawyer be healed even if the client's problem can't be cured."

## Empowering the Divorcing Couple

Let there be no doubt that divorce in the United States is a multi-billion dollar business that seems to provide job security to many professionals of the legal profession. Unfortunately, in the context of adversarial divorce, it oftentimes does not provide the same



security to the spouses or the children involved in the dispute. Second, irrational and emotional clients who cannot see the forest through the trees and who just want revenge and retribution from an aching heart, selfish in their thoughts and deeds, typically hire attorneys

who are more than willing to try to give these clients what they ask for. Unfortunately, the area between what is legally correct, and what is morally and ethically correct remains open to interpretation and therefore allows for manipulation by opportunistic individuals in the field. Third and lastly, representatives who we elect to protect our rights and create laws that are fair

and just, are the same legislators whose campaigns are oftentimes funded by the wealth created by this adversarial process of litigation. This allows for laws to be passed that are not necessarily correct for the individual, but instead for a self-serving, and broken family law system. We, as a civilized society must not allow this to continue because families and the lives of our children and future generations are at stake.

It is this author's humble opinion that now, more than ever, it is time for lawyers to reclaim their original roles as peacemakers, healers and problem-solvers. The collaborative process of divorce allows for this role to occur by empowering the divorcing couple and by not allowing any of the professionals involved to claim control of the process. It allows for information to be shared among the professionals and clients alike. It allows for questions to be asked and answers to be given. It keeps litigation and the financial and emotional wastefulness associated with litigation in abeyance. But most importantly, Collaborative Divorce keeps divorcing decisions where they should be...among those most closely associated with the divorce and certainly out of wasteful destruction of the courts. ■

Alan Ross Frisher is a licensed Financial Advisor who specializes as a Certified Divorce Financial Analyst (CDFA). He is the owner of Sage Financial Management ([www.sage-money.com](http://www.sage-money.com)) and Sage Divorce Planning ([www.sagedivorce.com](http://www.sagedivorce.com)). Alan is the Co-founder of the Collaborative Association of Brevard and a Co-leader of the Collaborative Family Law Group of Central Florida. As an Adjunct Professor at Brevard Community College, Alan has lectured extensively throughout Florida to professional groups of Attorneys, Mental Health, and Financial Professionals. For more information call 321-242-7526.