

## **An Interview with Connie Kratovil-Lavelle, Esq.**

The Maryland Administrative Office of the Courts (AOC) has launched several initiatives designed to evaluate and expand the use of alternative dispute resolution (ADR) models. One of the most popular of these models is collaborative law. Full Court Press (FCP) has spoken with Connie Kratovil-Lavelle (CK), Executive Director of the Maryland Administrative Office of the Courts Department of Family Administration, about the department's initiatives regarding collaborative law.

**FCP:** Thank you so much for taking the time to sit down with us and share some of your cutting edge family law work.

**CK:** We're doing things in Maryland that are not being done anywhere else. We are working to make collaborative law more accessible to families, while at the same time evaluating how effective it is – we're not afraid to take charge in new arenas.

**FCP:** What are the Department of Family Administration's plans regarding collaborative law?

**CK:** Our approach is two-pronged. First, we are gathering data to learn more about the process and cost/benefits of the practice. Second, we are simultaneously training and recruiting attorneys and other professionals for the practice of collaborative law, especially those willing to practice pro bono or for a reduced fee.

**FCP:** Have you gathered any data yet that suggests to you that collaborative law is an effective process?

**CK:** The practice is so new that there is very little data on effectiveness. There is some anecdotal data we are compiling now that for the most part seems positive and suggests that, like more established forms of Alternative Dispute Resolution (ADR), it is beneficial to families. What we want to do now is to quantify the data on a larger scale.

**FCP:** Now that you have some evidence of the benefits of collaborative law, what are you doing to make collaborative practices more accessible?

**CK:** We are working with collaborative law leaders to recruit attorneys and other professionals (including mental health "coaches" and financial professionals) to provide collaborative law services on a pro-bono basis. We have held two trainings already for attorneys and other professionals who are willing to engage in the practice pro-bono, and we are planning others.

**FCP:** Is it difficult to find attorneys willing to do this kind of work?

**CK:** I was actually surprised by how easy it has been. I'm overwhelmed with the response we've received. It's unbelievable!

**FCP:** Once you have recruited and trained these professionals, do you facilitate access for low-income litigants?

**CK:** That is actually some of the most groundbreaking work we have been doing. We are the first in the country to fund pro bono collaborative law referral processes. We have two projects – one is the Collaborative Practice of Maryland, located in Montgomery County, where we fund a full-time coordinator who matches each set of clients with two attorneys, a mental health “coach,” and a financial professional. We also provide funding for Mid-Shore Pro Bono, which serves five counties on Maryland's Eastern Shore, to similarly pair clients with collaborative attorneys and other professionals.

**FCP:** What has been the reception among the legal and judicial communities to your collaborative law initiative? Have you encountered criticisms of the practice?

**CK:** Overall, the response has been good. We do get some pushback, and it boils down to two basic criticisms: First, people worry that it is a costly practice – at a time when most people can't afford attorneys, how could they afford to retain attorneys plus other professionals? Second, the practice of collaborative law requires an agreement that if the process breaks down, litigants will have to start over with entirely new attorneys – they can no longer use the attorneys that worked with them through the collaborative law process – and there is significant concern that this can harm clients.

**FCP:** Have you gathered or seen any evidence yet as to the general cost of the practice for clients?

**CK:** We are gathering data on attorneys serving clients of moderate means. They use a scaled-down collaborative law process, focusing on providing attorneys but not other professionals. We've sent out surveys to identify the costs of this service. Of course, every case is different, but our estimate is that for an average simple case of litigation, each attorney expends about 25 hours. From our limited survey data of collaborative practice, it appears that collaborative attorneys can help clients reach resolution in only three or four sessions in these simple, scaled-down versions. So the costs don't have to be monumental, especially when attorneys are encouraged to work pro bono or within this more “bare bones” format where appropriate.

**FCP:** Do you have concerns about the ethical issues involved in forcing clients to find another attorney to represent them in court if the process breaks down?

**CK:** This is a difficult one. First, we examined ethical opinions around the country – there are currently a dozen or so – and found that only one was less than positive, and even that one did not condemn the practice entirely. I find that there is a compelling cost-benefit argument in

favor of this process. The harm can be mitigated by the fact that the client can provide all of the information from the collaborative process to the new lawyer – so they will not have to start from scratch. The client is entitled to his/her attorney's work product. Further, many practitioners and experts have stated that a collaborative process simply cannot work properly if the client and attorney can just decide at any point to take the case to court – the parties will not be so open and willing to compromise and explore options with that hanging over them.

**FCP:** Can you tell us a little more about what you see as the benefits of the collaborative law practice?

**CK:** What I like about this format is that it has the benefits of ADR: clients take control of their own lives. Parents are not as polarized. The collaborative process prevents the emotional and financial devastation for families that often results from litigation, and the process maintains relationships – both with children and between adults who are divorcing. Unlike any other form of ADR, however, this process provides *legal counsel* to both parties throughout the process.

**FCP:** Would you encourage parties to utilize collaborative law over other forms of ADR?

**CK:** We are not promoting collaborative law over other forms of ADR, for example, mediation. These are by now established processes with strong evidence supporting their use. However, we do see collaborative law as one important and up-and-coming ADR process with some unique and beneficial aspects.

**FCP:** What are the Department of Family Administration's other priorities for 2012-2013?

**CK:** We have a number of exciting initiatives underway, which fall under two priorities. First – we aim to encourage and make available ADR processes. We see ADR as a generally more civil and humane way to resolve problems. How often do you hear people walk out of litigation and say “that was a great and fair process and I feel heard and understood”? Family law is just different from other areas of the law, and litigation can have many negative effects that ADR processes can avoid. Second – we aim to improve court processes where litigation does occur.

**FCP:** Within those umbrellas, what initiatives are underway or being planned?

**CK:** Under the ADR umbrella, we are working to expand the use of community conferencing, especially in juvenile delinquency cases. We have great data so far. In 98 percent of the cases where we have been involved, agreements were reached – this is between the victim and offender! We hope to start an Eastern Shore project, and we support projects in Baltimore City, Baltimore County, and Prince George's County. We also support community mediation, especially parent-teen mediation.

Under the umbrella of improving court processes, we are working on a custody evaluation rule that would provide standards for custody evaluators. Of all of the decisions judges have to make, they consistently report that custody is the hardest. We need to ensure that the evaluation on

which these decisions are based is a good product. Although it can be a difficult concept to sell, we are making headway: we've already got our rule in the Domestic Subcommittee of the Rules Committee. Finally, we are partnering with the Maryland State Bar Association to provide parent coordinator trainings in order to improve their quality.

**FCP:** Will you be engaging in any data collection processes aside from the collaborative law data?

**CK:** We are interested in finding out whether ADR agreements are sustainable in the long-term, looking at 6 months, 12 months, and 18 months after the agreements were reached. We're also looking at data on waivers and competency hearings in the juvenile justice process. Although our evaluation is not finished, one key finding is that kids who end up in adult court, for the most part, are not convicted of any charges that would have landed them in adult court in the first place. We hope that this kind of data will lead to reconsideration of some of our policies and practices.

**FCP:** Thank you. We at CFCC look forward to collaborating with the Department of Family Administration on these initiatives and evaluations.