

*An important aspect of changing the way the world gets divorced® is the ability to appeal to the personal interests of your potential client and to be able to explain complex concepts in a way that he will understand. Before you begin to pitch collaborative to a potential client or colleague, take a moment to really see who your audience is. What is his nationality? How is he dressed? Does he have any interests that are immediately obvious? What are his passions? You can often learn a lot about what is really important to a person just by taking a moment to look and listen. Once you have accomplished that, you can stress the aspects of your pitch that will appeal to that listener, in particular. You can also use analogies that he will understand better than others, as in the tale below.*

### **THE AIKIDO DIVORCE (PITCH THE PERSON)**

Have you ever watched a martial arts movie and thought, “There is no way this small dude could ever beat that mountain of a guy?” Well, you’re not alone. But due to precise and well-practiced technique, David is able to topple Goliath with intelligence and anticipation that more than adequately counters power and brute force. In this way, the collaborative divorce process is superior to the conventional courtroom divorce process in knocking down the frightening monster we all know as “divorce.”

Collaborative divorce is similar to Aikido, a Japanese martial art. ‘Aiki’ refers to the principle of blending with a partner’s movements for the purpose of minimizing harm to all: ‘ai’ means ‘joining, unifying, or combining’; ‘ki’ refers to ‘spirit or energy’; and ‘do’ denotes ‘path.’ Thus, Aikido translates as the ‘Way of Combining Forces’ or the ‘Way of Harmony.’

In Aikido, one applies aiki by, first, understanding the rhythm and intent of others to, and second, finding the optimal position and timing to connect and diffuse the conflict. It was developed in the early 20th century by Morihei Uyeshiba, is based on harmony and love, and is rooted firmly in the eastern philosophical notions of dualism and polarity.

I had a client whose story illustrated how closely Aikido resembles the collaborative divorce process. I remember the sun pushing through the blinds, illuminating the brown leather couch in my office, and casting a diagonal shadow on the cushions. It was a hot summer afternoon when my consult walked through the door, with a hint of anxiety playing in his eyes.

“My name’s Joryn. It’s a pleasure to meet you.” I greeted him, as I rose from my seat, looked him in those eyes, and reached for his hand.

“I’m pleased to make your acquaintance. My name’s Jung Shin.” He inclined his torso slightly, over our clasped hands. I realized that he was bowing. Compared to American

standards, he was a short man, but amongst his Korean counterparts, at 5'8", he was fairly average.

He was slender, as well, but, by the way his clothing hung on him, I could tell that he had recently lost a significant amount of weight. I later learned that over the prior six months, due to the stress of the breakup of his relationship, he had lost 35 pounds. He was terrified that he might be seriously ill, but his physician assured him that, beyond the stress, there was nothing medically wrong with him.

Having been diagnosed with juvenile diabetes in my thirties (go figure!) during an especially stressful time in my life, I discussed with him my concerns that, even though his weight loss was just caused by stress, that stress could lead to other major health issues if he was not careful. Divorce is one of the most stressful life experiences one will endure, but there are ways to reduce the stress significantly.

My assistant had already offered him something to drink, so I gestured invitingly toward the couch. "Please have a seat and tell me about your situation," I said, while settling on the armchair facing him.

"Yes." He sat, with a quick, single nod.

"My name's Shin," he repeated. "My wife and I have been married for nine years, but lately, it hasn't been working out. And now she's told me that she wants a divorce."

He continued, "I came from Korea at 15 with nothing but a suitcase, \$96, a lot of determination, and a black belt in Aikido."

I nodded my head approvingly and continued to listen.

He went on, looking down at his clasped hands. "When I was 35, I married a Korean woman who was ten years younger than I am. We've never had children. Now my wife tells me she wants a divorce. We have a house with a mortgage. We each have a business with quite a bit of debt associated with them, especially hers. We each have a car, some bank and retirement accounts, and some personal loans. I really don't know what to do," he added in a subdued voice. He heaved a sigh, and then concluded by saying, "Also, I don't understand divorce. Can you explain what happens next?" He finally looked up, waiting for my response.

"Of course." I proceeded to explain the traditional courtroom process, as well as the various courtless options that my office recommends. When I arrived at the collaborative practice alternative, I continued, "My husband is a black belt in Aikido, as well, so here's an analogy that may help explain the collaborative divorce option." I smiled, hopeful that I could explain it in terms he would appreciate.

"Collaborative divorce is like aikido where conventional courtroom divorce is like karate," I continued passionately, "Aikido is more reciprocal and unifying, rather than karate, which is more forceful and adversarial."

Although he looked at me with a slight frown, puzzled, he nodded, clearly interested in hearing more.

I continued, "In keeping with the tenets of aikido, collaborative divorce is a far more unifying form of peaceful negotiations, whereas courtroom divorce is a more singular form of combat designed to defeat one's opponent thoroughly."

After another hour of exploring the benefits of collaborative divorce, Shin suddenly rose from the couch, leaving only a slight imprint where he had been sitting. I rose, as well.

He smiled, somewhat shyly, I thought.

“Let’s go collaborative!” He decided. “I hope that my wife will agree.”

I was pleased that Shin wished to proceed collaboratively because I truly felt that it was the best divorce option for him, especially considering his stress-induced medical concerns. The decision would now rest with his wife. It takes two to collaborate, and she had already retained counsel who I knew to be a well-respected trial lawyer, and who had already filed a petition for divorce.

Nevertheless, I had recently seen her attorney, Pam Gold, at a collaborative training and had later noticed her at a couple of collaborative practice group meetings. I passed this information along to Mr. Shin. He shared with me that the Korean community in town is extremely tightly knit, and that he planned to talk to a few of the “movers and shakers” (my words, not his) that his wife was liable to listen to for advice, to seek their support in getting her on board.

I called Pam, and unsurprisingly, was unable to get further than her receptionist. I left a detailed message, explaining that I had been retained by Mr. Shin in his divorce, and that, although his wife had already filed, I wanted to speak with Pam about the possibility of proceeding collaboratively.

When Pam did not return my call for several days, I began to lose hope that she and her client would agree to the collaborative process option. However, she finally did call. I was pleasantly surprised by her out-of-the-box contrition. She apologized profusely, “I am so sorry to just now be returning your call, but I have been out of town helping my mother. She’s very sick,” she explained.

I replied without thinking, “Oh, I understand. My father-in-law has been having his own health issues recently, and, thank goodness, he lives nearby, so I can jump on the interstate and be there in 20 minutes to help.” I proceeded quickly to business. “Have you had an opportunity to consider the possibility of proceeding collaboratively in the Shin divorce?”

She responded, “To be honest, I hadn’t really until you suggested it. I guess I’m still thinking like a trial lawyer. But, I recently completed the collaborative training and, although I realize that I am known as a bit of a bulldog, as I get older, and see what my mother is going through, I am looking for ways to eliminate stress in my life. Collaborative practice may be the answer I’m looking for,” she concluded.

I asked, “Have you had a chance yet to work on a case collaboratively?”

“I have not,” she was quick to respond, “but I am excited by the opportunity, and I hope that you can teach an old dog new tricks. But, now that my client has already petitioned for divorce, is collaborative even a possibility for this couple?”

“Oh yes,” I hastened to explain, “We just file the fully executed participation agreement and notify the clerk that the case should be transferred from the litigation track to the collaborative track. Of course, we could also file a stipulation to abate the proceedings.” I realized that she had not been around for long, so I clarified, “Chief Judge Ramirez has been very supportive of our practice group’s efforts to spread the word. Once the Court is aware that we are proceeding collaboratively, the clerk will cancel the case management conference that was set when the petition was filed and will not schedule any more hearings

until we advise it otherwise.”

Pam chewed on that. “Well, I will certainly discuss this possibility with Kikyo Shin, and I’ll let you know what she says as soon as I can.”

This was good news. “Great!” I replied and figured I’d have a few days to wait. I emailed Mr. Shin, and went back to work.

Less than a day later, Pam called to let me know that her client was a go, and we discussed which neutrals to use and when to schedule the first meetings. I was grateful that Pam agreed to use two neutrals that had had plenty of collaborative experience. I hoped that they would be able to offset her own inexperience and tendency to be overly aggressive.

The first team meeting was fairly typical, with the team reviewing the participation agreement with the clients, and the participants signing it, until we moved on to temporary relief matters. It was at this point that Pam allowed the litigator in her take over. She was adamant that her client needed \$1,000 monthly alimony despite that Kikyo herself didn’t seem to feel the need for it, and had earned more than my client in the years leading up to the divorce.

It wasn’t long before the facilitator jumped in, calling for a break. She made a point to speak with both attorneys privately so that the clients would not realize that anything was amiss, but when we all returned, Pam’s behavior was markedly changed. I couldn’t tell if her client noticed her transformation, but she was no longer taking positions and grandstanding. Instead, she was actively listening, asking appropriate questions, and, when the meeting concluded, the participants had agreed to waive alimony altogether.

During the professionals’ debrief, Pam apologized for how she had acted initially. She explained that she was having a hard time with the paradigm shift from trial lawyer to collaborative lawyer, and she thanked our facilitator for pulling her aside to remind her of her role. I complimented her on listening to the facilitator’s advice and modifying her approach so quickly and appropriately. Because of it, we made good progress during the first meeting.

The second full team meeting ran more smoothly as Pam appeared to be getting the hang of the process. The clients had more debt than assets; that was the major issue in their divorce. As is the Korean way, they had taken out several private loans to start their businesses, primarily for Kikyo’s spa and salon. They had also defaulted on the mortgage for the real property where her business was located, and several non-Korean creditors had obtained final judgments against them. Some of these debts were in Kikyo’s name alone, but Jung had also signed for some of them. In Florida, because the clients had incurred these debts during their marriage, a judge would likely have split them equally between the two of them. But because we were proceeding collaboratively, we were not bound by that legality.

Nevertheless, Kikyo wanted Jung to take on most of the debt. It was our financial neutral who was finally able to get her to see the inequity in this. “Kikyo,” she asked, “what were these loans used for?”

Kikyo begrudgingly responded, “To set up my spa.”

“And,” Kendra continued reasonably, “are you still running your spa?”

“Yes.”

“Are you receiving income from your spa?”

“Yes.”

“Do you feel it’s unfair to have to share any of that income with Mr. Shin after the divorce?”

“Yes.”

“Then,” Kendra reasoned, “is it fair for Mr. Shin to take on a majority of these debts?”

Kikyo thought for a few moments before unhappily concluding, “I guess not.”

Jung did agree to take a few of the debts, mainly because they were owed to members of his church, he did not believe that Kikyo would actually ever repay them, and he wanted to ensure that they were paid.

With the debt issues resolved, the participants were able to quickly resolve the other minor issues in their divorce in just the two meetings. If the clients had litigated the case, they would have spent tens of thousands of dollars litigating alimony and debt distribution, and likely would have arrived at a similar result.

Instead, Shin and his wife were able to amicably split up their assets and debts. By divorcing collaboratively, they avoided the emotional and financial maelstrom that a traditional courtroom divorce causes, along with the unfulfilled expectations that protracted litigation sets up.

Pam and I met for a glass of wine after the entire collaborative team attended the final evidentiary hearing with the Shins. She shared with me then that Kikyo had been visited by the elders in her church, who had explained the collaborative process to her and why it was so much better for the divorcing couple, even when there were no children, and why it was better for their entire community. That was why she had accepted the collaborative proposal when we had offered it.

“Were you sorry that she agreed to go collaborative?” I asked Pam.

“Absolutely not,” she didn’t hesitate. “I’ve been in practice 30 years and it was the best divorce experience I’ve had to date. I’m looking forward to the next one!”

I didn’t tell Pam that I had met with the elders in the Shins’ Korean church last year, when I had presented *What is Collaborative Divorce and Why Should You Care?* in my efforts to spread the word to the communities’ first responders when it comes to divorce.

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Keep in mind that you must ensure you speak a language that your consult understands in order to properly pitch the choice of process. And it’s not always a question of French or English, Korean or Japanese. Pitch the person, not just the benefits offered by the process.

Don’t litigate; collaborate! ®