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One last time

Divorcing couples can work together to avoid a nasty fight

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When Ken and Abbe Hitchcock decided to end their 18-year marriage, their priority was to spare their three children the nastiness and recriminations that often fly back and forth between a divorcing couple. "We did not want to get into a standard her-side vs. my-side argument," said Mr. Hitchcock of McKinney, a vice president for an apartment development and construction company. "We did not want to be unusually cruel or draw any more pain and suffering to the situation than it already had."

The emotionally wrenching experience associated with divorce has led some couples and their lawyers to adopt a relatively new legal model to make divorce negotiations fairer and more beneficial to couples. It's known as "collaborative family law" or collaborative divorce.

Collaborative law is a process aimed at making divorce less acrimonious and more cooperative among the parties.

Lawyers who practice collaborative law say it's a refreshing alternative for an American legal system that's based on adversaries battling it out in court.

"People are much happier with their results," said Janet Brumley, a partner at Verner & Brumley in Dallas. "It's the sense of control that is so much better in collaborative law. Instead of lawyers and judges being in control, the control still remains very firmly with the husband and wife."

How it works

In a collaborative divorce, a couple and their lawyers sign a contract, agreeing to dissolve the marriage and settle all issues without litigation and in a nonadversarial manner. If they fail to do so, and if either party wants litigation, both attorneys withdraw from the case, and the parties must then hire new lawyers to represent them.

The aim is to give all parties an incentive to settle.

Collaborative divorce also uses a team approach, bringing in professionals such as certified divorce financial planners and child specialists to help the couple reach as fair a settlement as possible for them and their children.

"The whole idea is if there is a way to achieve a fair settlement for the parties and minimize damage to both the financial estate and the relational estate, that's worth pursuing," said John McShane, a family law attorney and co-founder of the Dallas-based Collaborative Law Institute of Texas, which trains lawyers on the legal model. "It is a valuable tool in the lawyer's toolbox, and it should be at least offered to the clients."

Texas has been in the vanguard of the collaborative law movement, becoming the first state - and remaining the only state - to enact a collaborative law statute, which took effect last September.

The law requires that all parties, including the attorneys, sign an agreement that they will do their best to come to an agreement without judicial involvement - except to approve the settlement.

Lawyers who practice collaborative law attribute its birth to Stuart Webb, a family law attorney in Minneapolis, who started practicing collaborative law in 1990.

Mr. Webb says he conceived the collaborative law model after burning out on the traditional method of handling divorces.

"A lot of family law lawyers who have been practicing for a long time get to the point of burnout - all the negativity, all the constant pressure cooker of people in crisis, having to take positions you don't always believe in," he said.

So he declared himself a collaborative law attorney in 1990.

"There were no other ones, so I had to start recruiting," Mr. Webb says.

He says the lawyers' agreement to withdraw from the case if the clients decide to go to court is a key element in a collaborative divorce.

"Everything flows from that," Mr. Webb said. "That one rule just shifts the whole game."

It's a good approach, says Ms. Brumley, who with lawyer Shannon Lynch finalized the first collaborative divorce case in Texas in 2000.

"We're going to make it an absolute disincentive for the lawyers, for the people to fight," she said. "If they're going to fight, you're going to lose them as clients and somebody else is going to get to go to the courthouse and make the money and fight."

Ninety-five percent of collaborative divorces end up settling, says Ms. Brumley, who represented Mr. Hitchcock.

It can also cost less to go the collaborative route. Ms. Brumley says that nationwide the cost of collaborative law cases is about one-third the cost of litigated cases.

"That has held pretty true in our collaborative law group [in Dallas]," she said.

But not everyone agrees.

"The average cost of a collaborative law case on the average is the same generally as if you had handled it in the traditional method," said Ike Vanden Eykel, a partner at Koons, Fuller, Vanden Eykel & Robertson in Dallas. "The lawyers are still spending the same kind of effort. They're just doing it in a different way and in a more noncombative way."

Mr. Vanden Eykel says the practice "has evolved to where that has become more of a norm than it was 10 years ago."

Financial aspects

Whether divorcing couples make out better in financial settlements struck using collaborative law depends on each individual situation, experts say.

"It certainly cuts down on the legal costs," said Maggie Tolbert, a certified financial planner and certified divorce planner in Dallas, who helps determine how much money a divorced person will need after the breakup and creates financial projections on how best to split up existing and future assets.

Collaborative law works best in a case where a couple is willing to "look at the financial situation squarely and openly," she says.

"Where it doesn't work is where one party is hell-bent on extracting justice," Ms. Tolbert said. "One of the parties feels that they've put up with too much during the marriage, and they ought to be compensated for the pain and suffering they put up with. Winning becomes important, regardless of the cost."

People who commit to a collaborative divorce have already decided that they want to be fair, she says.

"They have something in mind of what they want to settle for before they go into the process," Ms. Tolbert said.

The idea is that they reach a fair settlement, says George Parker, Abbe Hitchcock's attorney.

"Generally speaking, both sides are going to be more satisfied long term if it's an agreement they reached and if they feel it's fair for them," said Mr. Parker, a partner at Parker and Montgomery.

Before a collaborative divorce can succeed, couples have to decide whether they're suited to such a setting.

"It's really about whether the clients can get themselves into an emotional position to deal with the issues in a friendlier way," Mr. Parker said.

Ms. Hitchcock says she "wanted the least painful venue.

"We truly wanted to have some closure on this, with as little damage as possible. We needed to get our children moving forward and not get them caught up with what their father and I were going through."

Using collaborative law was less stressful because it didn't take place in a hostile setting, says Ms.

Hitchcock of Allen, an account executive with a community newspaper.

"It was more open," she said. "There wasn't a third party making the decisions about your personal future."

Collaborative law doesn't work if one party is negotiating in bad faith or if the balance of power is tilted, lawyers say.

"The thing that can be wrong with it is if the parties are on unequal footing in the relationship," said Michael McCurley, senior partner at McCurley, Kinser, McCurley & Nelson in Dallas and past president of the American Academy of Matrimonial Lawyers.

Another disadvantage to collaborative law is that if the parties can't reach a settlement, they have to start over with new lawyers, Mr. McCurley says.

"There are new retainers to pay, new lawyers to get to know, new trust to develop," he said.

A serious caveat

Abusive relationships also don't lend themselves to collaborative law, experts say.

"If you have one person who is so afraid of the other person and is so used to trying to do anything to keep the abuser happy, it's very difficult for me to imagine that you can ever sit all four of you in the same room and make a deal that is actually a good deal for that abused person," Ms. Brumley said.

Despite the advantages of collaborative law, couples need to be realistic, says lawyer Larry Hance, a principal at Hance & Associates in Dallas.

"Just because you choose to do a collaborative doesn't mean that everything falls together," said Mr. Hance, who co-founded the Collaborative Law Institute of Texas with Mr. McShane. "These are people who have disputes, some of them are serious disputes. The point is, those disputes do have to be resolved."

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