

New way of splitting turns combatants to collaborators



In the evolution of divorce, we could be seeing the emergence of the missing link.

In the bad old days, your only practical option was to get a lawyer and come out swinging. It was often ugly, almost always demoralizing and certainly expensive.

Then came a kinder, gentler way: Don't litigate, mediate. This method certainly can help splitting couples and their children to avoid the venom that often results from conventional divorce.

But keeping the lawyers out of the room entirely can be scary. A mediator can't give advice to either party, and the agreement you end up with has to be taken to an attorney anyway so that the proper paperwork can be dispatched.

Now a middle ground is emerging, and an active group in Howard County is tilling that soil.

It's called collaborative divorce, and it involves not just lawyers, but financial advisors and even mental health practitioners, working in concert toward a fair settlement in a way meant to minimize emotional scarring and keep legal expenses reasonable.

Financial planner John Faggio and attorney Jolie Weinberg are among the 40 in Howard County trained in the process. Weinberg, in practice since 1990, had been working divorce cases in the conventional way. "I was at a point where I felt I wasn't being very productive. I wanted to do something more positive with my career," she says.

But don't think Weinberg's a fragile flower who couldn't take the heat, Faggio remarks. "She's one of the toughest lawyers out there," he says. "Now she uses her lawyering skills in a different way."

"Collaborative divorce still allowed me to advocate for my client," Weinberg says, but without the rancor that burns out litigators as it embitters clients.

The key to making it work is the required agreement between the couple and the collaborative team: If the couple can't settle and decide to go to court after all, the lawyers and other professionals back away from the case.

That essential condition presents something of a gamble, and that's the potential drawback to collaborative divorce, says Marc Noren, chairman of the family and juvenile law section of the Maryland State Bar Association.

"If the case doesn't settle, you have to start all over," Noren says. "You end up paying a lawyer to go over stuff that's already been done." That can get expensive.

But that prospect, Weinberg says, provides another incentive for couples in the collaborative divorce process to reach a settlement.

It's not for every divorcing couple, she says. In some cases there's too much bitterness to do it without litigation. The parties have to have enough respect for each other to make a good-faith effort at a win-win conclusion.

"If the openness and honesty isn't there, it's gonna fail," Weinberg says, adding that she's inclined to refer clients to another attorney "if it's a 'Jerry Springer' case."

Noren says the court of opinion among the legal community is still weighing the evidence for and against the collaborative process, created by Minnesota attorney Stu Webb in the early 1990s.

"Many who have been practicing a while are tired of the traditional way. On the other hand, there are still some ardent believers in the trial process."

But Weinberg says that, given time, collaborative divorce will become commonplace. "I think it'll be a household word. Look at mediation just a few years ago. People, especially lawyers, pooh-pooed it. Now they *make* you do it."

There's clearly a yearning on the part of clients for a better way, Noren says, and if only from a business perspective, lawyers have to take notice. His Baltimore firm, he notes, already has two people trained in collaborative divorce, and is considering sending more.

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