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WORKING DIVORCE: USING COLLABORATIVE LAW CAN MAKE FOR A WIN-WIN DIVORCE FOR ALL

BY CICILY CORBETT

“For years, it’s been just the lawyers dealing with divorces,” says Orange County Attorney Terri Breer. “But divorce is more than simply a legal issue. In fact, there are seven levels of separation involved: physical, financial, spiritual, social, legal, emotional, and parenting. In a divorce, you’re transitioning on all these levels. And a lawyer isn’t skilled in all these areas.”

That’s why Breer has been using the interdisciplinary or “team” model in her divorce practice. She engages other experts, including financial planners, family and couples therapists, divorce coaches, and co-parenting specialists to assist her clients in making wise decisions for their families as they work towards settling their marital disputes.

The team approach grew out of the practice of collaborative law, which has been around since the 1990s, explains Breer. Collaborative law is a method whereby the parties agree to resolve their disputes without court intervention. The lawyers, as well as other experts brought in, are trained in the use of the Collaborative Dispute Resolution Process. Everyone signs a contract that, if the issues are not resolved and the case goes to litigation, all professionals must withdraw and new experts be hired. It’s therefore in the best interest of everyone involved to come to a mutual agreement.

“With no fear of litigation, ethically I can [with the client’s permission] share information without fear it’ll come back to bite me in court,” says J. Kim Wright, managing attorney of North Carolina-based Healers of Conflicts Law & Conflict Resolution Center. “Without the threat of court, everyone is able to ‘think outside the box’ and create solutions that are unique to their situation, not necessarily what a judge will do but what will work for the highest good of all involved.” Collaborative law teams provide a framework for solving even bitter and complicated disputes.

San Francisco-area lawyer Pauline H. Tesler wrote the book on collaborative law—literally. She also helped to found the International Academy of Collaborative Professionals. Tesler recently represented a well-known songwriter and record producer in a divorce case. The couple had one child together, and the wife was already expecting another man’s baby.

“It was not pretty the way they separated,” Tesler says. “The wife went to a very contentious, very difficult lawyer. I gave my client a copy of my book *Collaborative Divorce*, and he gave it to his wife. She had been frightened initially. After reading the book, she talked to one of my colleagues—she liked him better than her original lawyer.

We formed a team of experts. My client is a very generous man, and this gave him a context in which he could express his generosity.”

A typical team in the collaborative law model, explains Tesler, consists of two lawyers, two divorce coaches, a financial professional, and a child specialist. Each spouse retains his or her own lawyer to advise on all matters of law, and to review and draft settlement agreements. The divorce coaches—highly experienced mental health professionals with additional collaborative divorce coaching—assist in reducing the conflict between the parties, help manage highly charged emotions, and facilitate communication between often-angry couples. The financial professional provides post-separation and longer-term divorce budgeting, economic analysis of proposed spousal and child support agreements, tools for analyzing the impact of alternative property division scenarios, and tax planning associated with the settlement. The child specialist, where needed, is the voice of the children, making sure their needs are addressed while keeping them out of the divorce process directly.

In some practices, a mediator is brought in as a part of the team to act as a guide to the whole process, especially if the couple presents more challenging issues or temperaments than usual. Although a mediator is usually a licensed attorney (and in some states, is required to be), he or she doesn't take the place of the collaborative lawyers who represent each spouse.

“A mediator is someone who helps another with a difficult conversation,” says Marian Kromkowski, herself an attorney and mediator in the Traverse City, Michigan area. This team member can make the whole process smoother and faster, saving tempers as well as money.

How much will the collaborative approach cost? Each case is unique, says Breer, but typically, the collaborative approach will cost one-third to one-half as much as if the same case had gone to court. This is because there are no court motions to prepare, no court hearings to be conducted, and because discovery is provided voluntarily and fully instead of being extracted through expensive legal processes. Lawyers and other team members all bill separately for their services, and are brought in only as needed.

“As a lawyer, my rate is higher than a therapist's rate, so if you are spending all your time with me talking about emotional issues, you are wasting your money,” says Wright. “Our business evaluator, moreover, charges less than one-quarter of what he would charge for a litigated case. Sometimes, for people with limited resources, I recommend the kitchen-table approach. For example, people might be able to use insurance to see a therapist. Also, we have legal aid lawyers trained in collaborative law.”

The team approach works most smoothly when all professionals involved have been trained in the collaborative process, says Kromkowski. In large urban areas, these experts can network in professional associations. It's harder in more rural areas like hers, so she and her associates at DivorceConnections of Northern Michigan have evolved a different approach. No contracts prohibiting litigation are signed, but teams of experts are still formed, information is still shared and everyone works together to find the best solution.

In collaborative divorces, there is always a core team of specially trained collaborative lawyers and mental health professionals who are barred from ever going to court on behalf of either spouse. In addition, the exact makeup of the divorce team can be customized depending on the needs of the divorcing couple. If a family business is involved, for example, a business evaluator would be called in. If it's a unique, niche-type business, the clients might be the ones to supply a knowledgeable expert. A spouse who doesn't want a divorce might need emotional counseling.

"We're in the Bible belt here in North Carolina," says Wright. "Spiritual issues often come up because people don't want to divorce. We are kind of new-agey, too. We might have a minister or a healer work with a client. People find their own experts, or we bring them in." While these experts are not part of the trained collaborative divorce team, their special contributions can be brought into the process whenever appropriate for the particular couple.

The team approach really shines when children are at issue in the divorce. Because of the emphasis on peaceful resolution, kids are subjected to less stress, are given a voice in what happens to them, and are provided with reliable, reassuring information from a wise counselor who never puts them in uncomfortable positions about divorce related issues.

"When parents fight, the kids are the immediate catastrophe," says Tesler. "It's the end of the known universe for them. Anything that reduces the stress in parents is good for them."

"The thing I think is most interesting," concludes Tesler, "is that when people work this way, they don't just get an agreement. Because of the emphasis that's placed on authentic conversations, the resolutions are very lasting. The parties involved are not always highly civilized people. The process, however, recognizes this. It helps them to go with highest interests rather than fears, so that people can get to the 'good divorce.'"