



More couples seeking kinder, gentler divorces

Lawyers, clients collaborate to craft a fair outcome for everyone involved

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NEW YORK - Collaborative divorce. The term sounds like an oxymoron in a culture steeped in high-cost, high-conflict breakups.

Yet many couples are embracing the approach, recently endorsed by the American Bar Association, as part of a broader quest to find more civilized, efficient ways to end a marriage. Do-it-yourself divorces and mediation also are popular options.

Lawyers by the thousands want to be part of the trend.

"Most of us had that moment where we realize the adversarial process is so damaging for our clients — and there's a recognition that we can do better," said Talia Katz, a former divorce lawyer who is executive director of the International Academy of Collaborative Professionals.

Katz said the academy, just eight years old, now has 3,000 members, mostly lawyers but also financial planners and other professionals. She estimates that 20,000 attorneys have received training in collaborative law, and groups promoting the practice are active nationwide.

Mediation vs. collaborative divorce

In contrast to mediation, in which divorcing couples entrust a resolution to a single neutral mediator, collaborative divorce involves the use of attorneys for each party, often joined by other expert consultants. But the lawyers, instead of sparring, pledge from the outset to work together in crafting an outcome that is fair to all.

"Most clients in a dispute are looking for an honorable peace, not war," Boston lawyer David Hoffman wrote in recent op-ed for The Christian Science Monitor. "Collaborative lawyers can be just as zealous about seeking such a peace as litigators are about victory in the courtroom."

Hoffman works at the Boston Law Collaborative, where the staff includes a psychologist and a financial planner. It offers divorcing couples a range of options, including mediation and collaborative divorce as well as conventional litigation.

The firm analyzed 199 of its recent divorce cases, and found that mediation, collaborative divorce and litigation all produced high rates of successful settlement. Mediation was by far the least expensive option, with a median cost of \$6,600, compared to \$19,723 for a collaborative divorce, \$26,830 for settlements negotiated by rival lawyers, and \$77,746 for full-scale litigation.

Sarah Smith, 47, of Sudbury, Mass., said she and her ex-husband, David Boyle, were able to complete a swift collaborative divorce two years ago for roughly \$5,000.

Keeping kids' needs in mind

"It was definitely the way to go in our situation — we didn't have piles of anger about each other, and we also didn't have piles of money," said Smith. "Our main concern was the welfare of the kids."

Smith, Boyle and their two lawyers arranged for the two children, now 11 and 7, to split time with their parents, who live in neighboring Boston suburbs.

"We both liked both lawyers," Smith said. "As a group, we had some laughs together, and that made it nicer."

Boyle shares her appreciation.

"Because this process went so smoothly and we didn't have a lot of baggage as a result, now the tone is set for raising the kids," he said. "We get along. We work together to make it happen."

Another appeal of collaborative divorce is confidentiality. While some high-profile divorces play out in court, billionaire Roy E. Disney, nephew of Walt Disney and a major shareholder of The Walt Disney Co., embarked last January on a collaborative law divorce with his wife of 52 years, Patricia, that has avoided the limelight.

Supporters of collaborative law were dismayed last February, when the Colorado Bar Association declared such arrangements unethical on grounds that they prevented a lawyer from exercising undivided loyalty to a client. But in August, the American Bar Association's Ethics Committee weighed in, endorsing the collaborative process as long as clients were fully informed about its provisions.

The growth of collaborative law is part of a broader trend away from courtroom divorce proceedings. Even members of the American Academy of Matrimonial Lawyers, who serve a relatively affluent clientele, reported in a recent survey that increasing numbers of cases are being settled before trial.

"As cases get more expensive, a lot of people don't want to spend the time, the hiring of experts that a trial entails," said Gaetano Ferro of New Canaan, Conn., who just completed a term as the academy's president.

'Explosion' in pro se divorces

Though his own business remains brisk, Ferro says he has observed an "explosion" of pro se divorces, in which one or both parties represent themselves.

There are no national statistics on pro se divorces, but recent surveys indicate that well over half the divorce cases in many jurisdictions now involve at least one pro se party.

To accommodate these non-lawyers and minimize procedural disruptions, many courts have established self-help centers and clinics. Easy-to-read instructions and legal forms are posted online. Sometimes case managers are available to guide people through the process.

In another trend called unbundling, several states now allow attorneys to offer limited help to people who can't afford a full-service divorce. This coaching — for example, outlining options and helping draft a final agreement — might cost \$1,000 or so, many times less than the fee for full legal service.

Mediation is another popular option for divorces, although statistics on its use are scarce. Private mediation services abound, and many courts encourage or require an attempt at mediation in divorces involving disputes over children.

"At the heart of mediation is the belief that people can solve their own problems," said Carl Schneider, a psychologist whose firm, Mediation Matters, serves divorcing couples in the Washington, D.C., area.

Schneider skeptically views collaborative divorce as an effort by lawyers to feel better about divorce work.

"There may be cases that need to be litigated — but often you're doing major damage to families, and attorneys know it," Schneider said. "Collaborative law lets them think they're doing something more useful."

He depicted the collaborative approach as "a model for upper-middle-class divorce" because its price tag generally would be higher than mediation.

Rita Pollak, the Boston lawyer who represented David Boyle in his divorce, said mediation might be a good option for some couples, but there are reasons to try the collaborative approach.

"At mediation, each partner has to come to the table and speak for himself or herself at a really emotional time, and sometimes there's an imbalance in knowledge or power," she said. "If you don't have your attorney at the table to protect you, the mediation can be pretty tricky."

Among Schneider's recent mediation clients is Bill Sanjoy, 45, of Bethesda, Md., a budget manager for a

federal agency. He says he spent less than \$5,000 on his divorce — a third of what he had projected using an adversarial process.

Sanjoy emerged on good terms with his ex-wife and satisfied with a co-parenting arrangement for their two children.

"It's nice to have someone who's not antagonistic, who's not trying to start a war, who wants you to be able to conclude a very difficult time in your life," Sanjoy said.

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