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Split divorce

'Collaborative divorce' helps people avoid judges, confrontation and drama

By Alison apRoberts - Bee Staff Writer

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Collaborative divorce" sounds a little like "tea-party rumble," "peaceful war," "polite battle" -- pick your own contradictory pair.

But it is an up-and-coming way for couples to work together on taking apart their marriages.

When Lori and Bob Tricarico decided to divorce in 2004 after 16 years of marriage, they wanted to spare their daughters, then 12 and 10, from the fallout.

"They were very much our main concern; we wanted to go through the whole divorce process in a way that would be the least damaging for them," says Lori Tricarico, 40, talking by phone from her home in the Atlanta area.

The Tricaricos say they found the solution for their dissolution in a collaborative divorce. At the heart of the procedure is the belief that the old-school adversarial legal split leaves both spouses at a loss, in pocketbook and in spirit.

It works on the idea that though it takes two to tangle, it takes a team to split up. The team is built around one attorney for each client, and the divorce settlement is reached through four-way sessions. Typically, each spouse also has a divorce coach (a mental-health professional) and the couple may share a financial specialist and child specialist.

"What we're finding is when clients hear about the collaborative process, they tend to choose it," says Hal Bartholomew, an attorney who co-founded the Sacramento Collaborative Practice Group in 1998. "I think in five to 10 years people will see collaborative divorce as the No. 1 way to go."

The divorce is then negotiated by the couple, with assistance from the team.

"What I like about collaborative is that it's the clients' process. In the legal system, it's not their process; it's the court and legal process,"

Bartholomew says. "When you settle on the courthouse steps, it's under pressure; in collaborative, you have time to think about it."

The collaborative approach requires a commitment to staying out of court until an agreement is negotiated, whether it's divorce or some other dispute. Attorneys and other team members promise to not represent either spouse should the effort fail and the couple moves on to a litigated divorce.

Leaving battle plans behind

Three years after the Tricaricos initiated their divorce, they are still glad they went the collaborative route.

"I had heard so many horror stories about divorce," says Bob Tricarico, 40, speaking from his home in the Atlanta area.

"We were looking for a way where we could end up not hating each other," he says. "If Lori and I had gone through a traditional divorce, it would have gotten ugly. Now there's not that anger."

Lori Tricarico agrees.

"You hardly want to use the word 'wonderful' in the context of divorce, but it really was as smooth as it could have been," she says. "It was therapeutic as far as everyone got their concerns aired, and everybody left feeling like they didn't get taken to the cleaners."

They both say they felt supported by all members of the divorce team.

"I felt like I had an advocate with my lawyer and with her lawyer," Bob Tricarico says. His attorney would go so far as to remind him to consider what his wife was feeling.

The entire process took perhaps a half-dozen meetings, cost less than \$10,000 and was completed within four months.

The Tricaricos recommend the process not just for the divorce but for a longer-term reward: learning how to forge a healthy ongoing relationship as co-parents.

"I think the process being amiable set the stage for us to move forward in a positive direction," Lori Tricarico says. "He and I don't bash each other."

Less conflict, happier kids

Among the supporters of collaborative divorce is Constance Ahron, a psychologist and sociology professor who wrote the oft-cited books "The Good Divorce" and "We're Still Family."

"I'm very much in support of the entire concept; it works toward parents moving away from being adversarial," Ahron says in a telephone interview from her home office in San Diego.

Ahron says the children of divorce suffer the most when they are exposed to the most parental conflict. Traditional divorce often deepens such conflict.

"In the great majority of cases, it escalates the anger," Ahron says. "It's not about reducing conflict, where mediation and collaboration are about getting the skills to reduce conflict."

Deni Deutsch Marshall, a clinical social worker in Laguna who works as a divorce coach and child specialist in Bartholomew's practice group, believes the collaborative process can help kids weather the storm by defusing tension.

"When they see the parents working together and just being polite to each other, it helps," she says.

Peggy Thompson, a child psychologist based in Orinda, says she was burned out by years of working as a custody evaluator for families divorcing in the traditional manner.

"What got me into the field (of collaborative divorce) was seeing the damage litigated divorce was doing to children," she says.

Thompson was a pioneer in getting mental-health professionals to join collaborative divorce practices. She co-wrote a book published in May about the practice with Bay Area attorney Pauline Tesler ("Collaborative Divorce: The Revolutionary New Way To Restructure Your Family, Resolve Legal Issues, and Move on With Your Life," Regan Books, \$25.95, 288 pages). She has worked on about 50 collaborative divorce teams.

Collaborative practice can be so effective at reducing conflict that occasionally couples who initiate it actually reconcile, according to Thompson.

An emerging practice

Collaborative divorces are still fairly rare.

Bartholomew, who has been in family law since the 1970s, has worked on only about 30 collaborative divorces, compared with somewhere in the neighborhood of 2,000 litigated divorces and an equal number of mediated divorces.

Tesler has estimated that 80,000 individuals have used collaborative divorce since it started in 1990.

The newness of the practice means it's too soon for scholarly assessment, according to sociologist Ahron.

"It's too new for research telling us who it will work for," she says. But there are some promising studies that show that fathers are more likely to remain involved with their children if they go through a mediated or "some sort of respectful divorce," Ahron says.

Not for every couple

Collaborative divorce is not for everyone.

"It takes a measure of maturity and a measure of good will, and it takes a measure of understanding," says Bill J. Blazek, a marriage and family therapist who is also a collaborative divorce coach in Sacramento.

Experts also say collaborative divorce (and mediated divorce) may not work for those dealing with mental illness, substance abuse or violence. But couples don't have to be walking in the door holding hands for it to work, either.

Blazek, in his coaching job, often helps warring spouses learn to communicate differently to take the sting out of their words.

"It's not therapy, but it is therapeutic," Blazek says. Much of what clients learn may be familiar to those who have experienced couples therapy: speaking in "I statements" and keeping the tone of voice respectful.

Not for every attorney, either

Gaetano Ferro, an attorney in Connecticut and president of the American Academy of Matrimonial Lawyers, understands the desire to find another approach to divorce.

"I can't blame people for looking for another way," Ferro says. But he has reservations about collaborative divorce, and says he doesn't worry about it putting litigators like himself out of business.

"I suspect it is useful for a small number of cases, but you're assuming an awful lot of people in the process," he says. "You almost have to know if people going in are going to be reasonable."

Ferro also remains skeptical about collaborative law and the usual legal outlook.

"Lawyers don't necessarily have the right mind-set for collaborative law; you're representing your client, but you're also supposed to work collaboratively; I don't have that kind of training," he says.

Yet, it was one disheartened attorney who brought collaborative law into practice.

"I was getting really burned out; it was so stressful I was ready to quit the practice of law," says Stuart Webb, a longtime family law attorney in Minneapolis. He said it was hard to feel satisfied professionally or personally when his divorcing clients were obviously miserable, even when they had legally won.

"I thought maybe there's some way to do it outrageously," he says. In the world of attorneys, where adversarial relationships are the norm, a collaborative approach qualified as outrageous.

In developing a collaborative law practice, Webb revived his hope that law can help people feel better.

"I knew it was a good thing for me," he says. "It changes people's lives, and it changes the ways lawyers behave."

Adding up the costs

The cost of collaborative divorces -- like all types -- can range widely, but Webb says it usually runs about one-third of the cost of the litigated version for comparable cases.

Steven Rutlen, a CPA and a certified divorce financial analyst in Sacramento, advises couples going through collaborative divorce.

"I was embroiled in an adversarial divorce; once I got through that, I decided if I can help anybody avoid that kind of a path, I would," Rutlen says.

"The damage it causes may not surface until there's high blood pressure, strokes, heart attacks. I'm convinced it's one of the most life-threatening experiences," Rutlen says. "There's more than one way of measuring costs."

The road to splitsville

Litigated divorce

- What happens: Each spouse hires an attorney who zealously advocates for his or her client's positions.
- What it costs: The most expensive option. May run around \$20,000 but can easily top \$100,000, especially if it ends up in court. (The vast majority of divorce cases are settled outside of court.)

Ways of avoiding litigated divorce

Uncontested divorce

- What happens: The simplest and least expensive route. (For those married less than five years, without children and with little debt or property, there is a summary dissolution procedure that's especially simple.)
- What it costs: An attorney may typically charge about \$2,000 to handle paperwork.

Mediated divorce

- What happens: A couple works with a mediator to arrive at agreement.
- What it costs: The costs of mediation followed by divorce filings depend on the number of sessions, and runs generally \$5,000 to \$10,000.

Collaborative divorce

- What happens: Like mediation, the process requires a good-faith effort and commitment. If it fails, the attorneys and all team members shall not represent the clients in litigation.
- What it costs: Generally between \$5,000 and \$15,000.

Educate yourself about collaborative divorce

If you want to learn more about collaborative divorce, here are some places to start.

Web sites

- International Academy of Collaborative Professionals: www.collaborativepractice.com
- Collaborative Divorce Network of Northern California: www.collabdivorcenetwork.com
- Sacramento Collaborative Practice Group: www.divorceoption.com
- Collaborative Practice California: www.cpcal.com

Classes

Hal Bartholomew, a collaborative law attorney in Sacramento, teaches courses about divorce through the Learning Exchange. For more info, go to www.learningexchange.com or call (916) 929-9200.

Books

- "Collaborative Divorce: The Revolutionary New Way To Restructure Your Family, Resolve Legal Issues, and Move on With Your Life" by Pauline H. Tesler and Peggy Thompson (Regan Books, \$25.95, 288 pages). Go to www.collaborativedivorcebook.com to learn more.
- "The Collaborative Way To Divorce: The Revolutionary Method That Results in Less Stress, Lower Costs, and Happier Kids -- Without Going to Court" by Ron Ousky and Stuart Webb (Hudson Street Press, \$23.95, 256 pages).

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