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Taking the force out of divorce

Collaborative law aims to help couples split amicably, but some attorneys say it's an unnecessary distinction

BY SHIA KAPOS

It sounds like an ideal way to resolve a difficult situation—a healthy, sane method to divorce, with spouses and lawyers agreeing in advance to forgo threats and theatrics.

But where there are lawyers, there are lawsuits, and the Circuit Court of Cook County is now weighing one that puts a spotlight on collaborative divorce, a fast-track method of ending a marriage that proponents say reduces the costs and mudslinging of traditional cases.

Rather than painfully hashing out terms in open court, couples work with lawyers trained in the collaborative method, using neutral finance experts and life coaches to reach an agreement before presenting it to a judge in a neat little package. Failure to reach an agreement means the spouses will be required to hire new counsel, creating a financial incentive for both the couple and the attorneys to cooperate.

The method seemed like a no-brainer to Mark Schacht and Sari Hart of Evanston. Both physicians in their 50s, they have three children and had just buried Dr. Hart's father. The idea of a drama-free divorce appealed to them both.

But they didn't make it through the process and are now spending even more time in the courtroom.

In his lawsuit, Dr. Schacht accuses Dr. Hart's attorney, James Galvin, and his firm, Schiller DuCanto & Fleck LLP in Chicago, of dragging their feet in order to "add to the cost of billing." This, he says, violates a main tenet of collaborative law, which requires attorneys to operate in good faith and in a timely way.

David Novoselsky, the lawyer representing Dr. Schacht, would not comment on his case but criticized the process in general.

"It's a boondoggle," he says. "Collaborative law is the North Shore trend of the week. If you have two reasonable people and two decent lawyers who are interested in helping clients, you don't need to go through this formal process that's been named 'collaborative law.'"

Mr. Galvin, one of the founders of the Collaborative Law Institute in Illinois, which certifies attorneys to practice the method, says his client was happy with the process. It "allows clients to make deci-



Attorney Leon Finkel has taken on collaborative cases that failed. While it skirts the stress of litigation for the attorney, he says, it "does nothing to serve the client at all."

STEPHEN J. SERIO

sions about their lives instead of lawyers or a judge," he says. "It takes two people to make it work and one to make it not work."

Michele Lowrance, a Cook County Circuit Court judge and author of "The Good Karma Divorce," supports the use of collaboration or mediation.

"Divorce is an emotional process," she says. "It's not regular law, and collaboration addresses that."

SLOW GROWTH

Still, she hasn't yet signed off on a collaborative divorce in court.

"I think people thought it would be catching on more than it is," she says. But as bigger law firms begin to offer it, it may be "turning the corner," she adds. "People think it's in fashion."

The jury is still out on whether collaborative law is a cure-all for ugly divorce. The method, developed 20 years ago in Minnesota, has been used for a decade in Illinois, with incremental increases in the number of cases each year as more lawyers and clients become aware of it. Though it has attracted some privacy-conscious wealthy couples—the late Roy Disney, Robin Williams and Madonna have all used it—less than 5% of the more than 33,000 divorces filed in Illinois last year were done by the process. Attorneys estimate that about 5% of couples who start with collaborative law abandon it for a traditional approach at some point during the process.

The Illinois Bar Assn. hasn't taken a position on the practice. Choosing to go that route limits the couple's selection of lawyers to those who are certified. Though costs can vary widely, a regular

divorce might cost \$78,000, with an attorney working five hours a week at \$300 per hour for a year, the typical length of a case. An ideal collaborative case costs half that by expediting the process. All the necessary financial numbers must be presented at the first meeting, with no return trips to court with motions requesting more documents.

The process self-selects for more agreeable attorneys and couples who are willing to submit to its rules. But with scarring, bank-account-draining, “War of the Roses”-style divorce tactics in mind, its proponents say offering other ways to handle divorce is necessary.

“The success rate far outweighs the failures,” says Sandra Crawford, president of the Collaborative Law Institute of Illinois in Glenview. As of this year, the institute will be able to train Illinois attorneys in the process; until now, Wisconsin was the closest place to become certified.

“If there’s criticism coming from the public, that needs to be tempered with the understanding that (divorcing couples) are in a stressful situation up there with losing a child,” she says. “If it’s criticism from within the profession, it’s from people who aren’t educated about it, so I’m skeptical.”

Clients from successful collaborative divorces appreciate that the process, often resolved within nine months, didn’t do a number on their psyches.

Danielle Engstrom, 55, says her smooth divorce allowed her and her ex-husband to remain friends, even talking on the phone now and then. If there’s a criticism, she says the process moved too quickly for her liking—though she realized she could have slowed it down.

“I felt hurried,” says Ms. Engstrom, a Frankfort aromatherapist and provider of alternative health care. “I had never seen all our assets and lifestyle expenses laid out on paper all together like that. It’s not that it was hidden from me; it just wasn’t presented that way before. It was hard to process it all.”

For Dean Karousos, 36, his six-month divorce could have gone even faster for his taste—and avoided some extra costs.

“It was as peaceful and amicable as divorce can be, I guess,” says Mr. Karousos, a regional sales executive at GM Nameplate in Chicago. “As far as speed and the overall experience, I can’t tout it enough. But sometimes I think the meetings weren’t necessary. There were issues that could have been accomplished on e-mail or by phone without getting all four parties—clients and attorneys—together.”

EASY WAY OUT?

Collaborative divorce law has divided the legal community to some extent, too; not all attorneys who seek training are approved to practice it.

“You have to have a lawyer who can put away the competitive instincts of litigation and go into problem-solving mode,” says Don Schiller, senior partner at Schiller DuCanto & Fleck and an expert on divorce law. “Most lawyers who go into trial work are advocates and tend to want to win for clients.”

His firm has started up a collaborative law arm—Jenner & Block LLP has done the same—in an effort to offer alternatives to litigating a divorce. Mediation is another alternative.

“The only thing you’ll win for a client in the collaborative process is accomplishing a divorce without acrimony that’s evenhanded, and hope for no more than that,” Mr. Schiller says. “The

question mark is what’s evenhanded. Everyone has their own interpretation of what’s fair.”

Leon Finkel, of Chicago-based Berger Schatz, is among divorce attorneys who have taken cases of parties who tried but failed to divorce collaboratively.

He points to a recent case in which the husband, an orthodontist, spent \$35,000 on a collaborative divorce case that went on for a year before he quit and went the litigation route. Mr. Finkel said his client felt meetings were held with his ex-wife and their lawyers simply to rack up costs.

“He felt (collaborative) lawyers had an obligation to tell him it wasn’t working . . . but instead they dragged it on,” Mr. Finkel says.

The method, he says, creates a cottage industry for lawyers who can’t stomach the stress and aggravation of trying a case and “does nothing to serve the client at all.”

Collaborative law experts attempt to weed out failures by screening potential clients to determine if they can dissolve their marriage peaceably.

HAPPIER ENDING

Theresa Beran Kulat, a collaborative-law attorney, speaks from firsthand experience to potential clients in her Downers Grove office. She, her ex-husband and their lawyers sat around the dining room table hashing out the details of a divorce that included two young children.

“It set us up for future communication to be better than if we had been hitting each other over the head with clubs,” she says. “We’ve had a good relationship, and our kids have benefited.”

Ms. Kulat, 48, says she can tell early in the process whether a couple is right for it.

“If I hear either party say, ‘Oh, I’ll make her pay’ or ‘I’ll make him pay,’ that’s a red flag,” she says. “If people have been checking each other’s e-mails or hiring private investigators to stalk the other person, there’s not enough underlying trust.”

Perhaps surprisingly, infidelity isn’t a deal-breaker for collaboration, she says: “If someone has done it once, and they’ve moved on, that’s OK. It’s the continuous lying; they say, ‘Oh no, I’m not seeing anyone,’ but then you learn he is. That’s not going to work.”

A hurdle in evaluating any method of divorce is that even at its most agreeable, it’s still traumatic.

Collaborative law worked for Susan Schwallie, 39, a food market researcher in the Chicago office of NPD Group Inc. who divorced in 2007. Her experience was positive, but she still can’t help but feel she got the short end of the marriage deal.

“No matter how you do it, you feel that way,” she says. “It’s not just financial or material loss. It’s a loss all the way around.”

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[Michele Lowrance,
Cook County judge]