Adding civility to one's divorce

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Start Page: A.1
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"I wanted things to be as amicable as possible with my ex-wife, for our children. I didn't want my life or my business in shambles." MATT MAX

It sounds like a contradiction in terms: collaborative divorce.

But in a process invented in 1990 by a Minneapolis divorce lawyer burned out on cutthroat litigation, both spouses pledge to be honest and respectful. Meeting out of court with only their lawyers, both sides reveal their assets and debts and jointly retain neutral experts, rather than hired guns, to appraise a family business or evaluate their children's needs.

And to encourage everyone to stay at the bargaining table, they agree in advance that if the process fails and they have to go to court, lawyers for both sides must withdraw -- meaning both husband and wife must hire new ones, an expensive proposition.

Only about 25 collaborative divorces a year are done in Jefferson County, said Bill Hoge, one of 12 Louisville lawyers in the Kentucky Collaborative Family Network, but he and other attorneys say they expect that number to grow as word spreads. It is more prevalent in Northern Kentucky, where nearly twice as many lawyers are trained in collaborative law.

Lawyers who do collaborative breakups -- marketed as "divorce with dignity" -- say it's usually cheaper and often takes less time. And because financial records aren't filed in court, it is more private, which is especially appealing for business owners.

"You don't have to put your business on the street," Hoge said.

But critics say it dilutes the undivided loyalty a lawyer usually owes his client, because the attorneys must pledge to support what's best for the whole family. Skeptics also say that if spouses can live by the ideals of a collaborative divorce, they probably could have remained married.

"Most clients say they want a fair divorce, but they may have a very self-absorbed definition of fair," Louisville divorce lawyer Diana Skaggs warns clients in a consent form. "Sometimes they need the 'reality therapy' of court orders and deadlines."

Collaboratively trained lawyers, though, say the process allows spouses, working with "financial neutrals" and "divorce coaches," to custom-tailor their split in a way that can't be done in court, which can be especially important with custody divisions.

Louisville attorney Mark Dobbins cited a recent case in which the parents agreed to rotate in and out of the family home so their children don't have to go back and forth from house to house.

Money saved

Ryan Rawe, a corporate pilot who lives in Fort Wright and was divorced from his wife, Katherine, last year in a collaborative effort, said it "couldn't have gone better."

It took only three months and cost him $1,500 in attorney fees, he said, adding, "It saved us a ton on money."

Matt Max, who owns a 28-employee construction company in Cincinnati, also chose a collaborative approach for his divorce, which was finalized Oct. 3.

"I wanted things to be as amicable as possible with my ex-wife, for our children," he said. "I didn't want my life or my business in shambles."

He said the process worked -- in part because an independent financial analyst did a thorough analysis of the value of his fledgling business, allowing a fair division of assets.
"It wasn't what I wanted, but it was palatable," he said. "And we avoided a battle of the experts."

He said he paid his lawyer, Mike Bouldin, $5,500 for the divorce.

Rawe and Max both warn that collaborative divorce isn't for everyone.

"If you are out for revenge, this isn't for you," Max said.

Neither of their ex-wives responded to requests for comment.

'Power in a promise'

The collaborative divorce process is allowed in at least 35 states, and the Phoenix-based International Academy of Collaborative Professionals has trained more than 6,000 professionals in 24 countries.

Talia Katz, its executive director, said there is no count on how many collaborative divorces are performed annually in the United States. But a worldwide study of 933 collaborative cases performed from 2006 to 2010, most of them in the United States, found that 86 percent ended in settlements and 2 percent in reconciliations. Twelve percent failed and the parties went to court.

Billionaire Texas financier T. Boone Pickens told the Dallas Business Journal in March that his collaborative divorce from his fourth wife saved him several million dollars, making him so happy that he contributed $100,000 to the state Collaborative Law Institute.

In 2008, actor and comedian Robin Williams and his wife of 19 years, Marcia Garces Williams, divorced collaboratively, disappointing tabloids hoping for a juicy celebrity battle.

The collaborative divorce starts off with each spouse pledging to work with dignity in the best interests of both sides and the family.

"There's a lot of power in a promise," Hoge said.

A petition for dissolution of the marriage is filed in court, with a notice that the divorce will be settled collaboratively.

There is no mediator, no depositions and no formal discovery -- the often contentious, time-consuming and expensive process in which the parties are forced to divulge information in court.

If a settlement is struck, it is reviewed by a judge, who signs the divorce decree unless the deal is "unconscionably" unfair to either side.

Civility required

Chief Jefferson Family Court Judge Stephen George said collaborative divorces are not likely to reduce the court's annual docket of 6,000 divorces.

But by keeping cases out of court and avoiding the adversarial process, he said, "It is more likely that the children won't become casualties of their parents' conflict."

Collaborative divorces were briefly banned in Colorado, where the bar association ruled in 2007 that they violated lawyers' undivided duty to their client. But the American Bar Association quickly repudiated that finding.

The Kentucky Bar Association in 2005 gave lawyers its blessing to do them, saying nothing prohibits an attorney from representing a client in a non-adversarial situation as long as they do so "diligently."

Lawyers such as Louisville's Bonnie Brown concede that collaborative divorce is not for every divorcing couple.

"It requires a measure of civility," she said. "But you don't have to walk in holding hands for it to work."

Dobbins, who has done more than 10 such divorces, only one of which failed to produce a settlement, said: "Most people walk out not detesting their ex-spouse. And that's the best thing about it."

Reporter Andrew Wolfson can be reached at (502) 582-7189

HELPFUL LINKS

To learn more about collaborative divorce, visit:

Kentucky Collaborative Family Network Inc. at
www.ky
collaborative.
com
International Academy of Collaborative Professionals at
collaborative
practice.com/
Kentucky Bar Association Ethics Opinion at kybar.org/documents/ethics_
opinions/kba_e-425.pdf
"I wanted things to be as amicable as possible with my ex-wife, for our children. I didn't want my life or my business in shambles." MATT MAX

COLLABORATIVE DIVORCE

HOW IT WORKS

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Abstract (Document Summary)

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