

Toward a more CIVIL SPLIT

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Rick Nathanson Journal Staff Writer

Tami Vaughn had been married for 22 years when it became apparent that she and her husband, who was frequently out of town on business, had grown so far apart that divorce was imminent. "It was a hard decision to come to," says Vaughn, 49. "We'd gone through family and personal counseling and eventually I reached the point where I knew it wasn't working and neither of us was happy."

Her personal counselor suggested Vaughn learn more about collaborative divorce, a kinder and gentler alternative to the more traditional and adversarial divorce process. That's how she found attorney Gretchen Walther at Walther Family Law, which has been a leading proponent of collaborative law since 2001.

Divorce isn't something couples like to contemplate, but it is an all-too-common slice of American culture.

According to the Centers for Disease Control and Prevention's National Center for Health Statistics, the divorce rate among people married for the first time is 41 percent to 50 percent; second marriages end in divorce 60 percent to 67 percent of the time; and about threequarters of third marriages crash and burn.

Among baby boomers, the divorce rate is triple that of their parents' generation, according to Ken Gronbach, author of "Common Census: The Counter-Intuitive Guide to Generational Marketing."

Now ages 44 to 62, boomers often have a lot at stake in a divorce, making collaborative divorce "ideal" for them, says Walther.

"They've spent a lifetime acquiring assets, creating businesses and accumulating in retirement plans," says Walther. Throw children into the equation and divorces can get even more emotionally charged.

The role of the collaborative divorce attorney is to help clients identify, understand and clarify the issues and to understand the emotional impact the divorce has on the family. "It's a new definition of advocacy," and it's based on the cold, hard realities of state law, Walther says.

There are a number of advantages to a collaborative divorce, says Walther. It is generally about a third less expensive than a litigated case, where legal and related fees could run from \$25,000 to more than \$50,000. In addition, there is less animosity between divorcing couples so co-parenting is easier when children are involved.

Collaborative divorce also results in both people feeling they actively participated in making decisions, leading to a fair resolution of issues surrounding the division of assets and debts.

To make collaborative divorce work, commitment is key. Each of the divorcing parties must retain his and her own attorney trained in collaborative law, and all four of them sign an agreement that they won't go to court. Then, using a team approach, neutral experts such as accountants, mental health counselors, appraisers and others are brought in for joint consultations as needed.

Striving for balance

At the time of Vaughn's divorce the couple had two homes, one a rental. Her husband had also accrued a large retirement fund through his job and assembled a large stock portfolio.

"I didn't have any retirement funds myself, not a lot to fall back on," Vaughn says. "We had agreed when we got married that I'd be a stay-at-home mom. He couldn't have done his career if I hadn't been at home taking care of the family."

At the time of the divorce the couple's two children were no longer minors, though one still lived at home.

Her husband, she says, "had a harder time accepting that I was entitled to half his retirement and assets." Nevertheless, each of their attorneys "met together and made sure that neither of us got more than the other, and that neither of us was taken advantage of."

Her ex-husband, Hank Chang, says he was "OK in the beginning" with the collaborative divorce process because he felt it would be "the least emotional proceeding" and a "better approach."

The entire collaborative divorce process took about six months. "When people don't cooperate, it's hard to get things done. Collaborative divorce is easier on everybody and there is no doubt it was fair, even though my ex-husband thinks I got more than I should have."

That accurately reflects Chang's opinion. "I felt she did get more than half due to the circumstances," he says. "I have let it go and don't have anything against her. We both were responsible for a failed marriage."

While the ex-spouses may have differences about who was entitled to what, from a legal point of view Vaughn says she's confident things balanced out in the end, "and that's important to me."

Both Chang and Vaughn have since remarried and Vaughn works as a licensed massage therapist and massage therapy instructor.

While their collaborative divorce was even-handed and relatively quick, it wasn't inexpensive. It cost each of them about \$10,000 for the dissolution of an estate determined to be worth about \$3.5 million.

Divorce lawyers, conventional and collaborative, often get retainers ranging from \$1,500 to \$10,000, and then bill against that. The hourly breakdown ranges from \$150 at the low end to \$300 or \$400 at the high end. Collaborative lawyers, however, spend less time on a case and use that time more efficiently.

For example, Walther notes, conventional divorce proceedings often include a hearing for interim support. "This is a temporary order to get the parties through to the divorce. I can spend \$2,500 getting ready and going to the hearing for a temporary order that expires in four or five months; or, in the collaborative process, those issues can be resolved in one three-hour meeting with a neutral financial person."

For all the benefits of collaborative divorce, the downside is it doesn't make financial sense for couples with few assets.

"If there are no children involved, no property involved, and if the divorce is uncontested you can just go through the court system, file the paperwork and be done, or you go through mediation," says Walther.

New Mexico is a community property state, which means assets and debt acquired during a marriage are split equally. "As far as the courts are concerned this is a business decision and we're dividing a business," Walther explains.

New Mexico is also a no-fault state, which means the court isn't interested in assigning blame for behavior or actions that led to the marriage's dissolution.

That doesn't preclude people from going to court. "They do it all the time," says Walther. "But the stuff they're fighting about is custody, property or child support. With the collaborative process, rather than go to court and fight about these issues, the parties instead hire two good lawyers who understand that the litigation system can harm families, and it's better for everyone to help the parties negotiate a fair deal." Roles as advocates

Collaborative divorce began to evolve in the early 1990s when a group of Minnesota lawyers decided that divorcing couples needed to negotiate a fair resolution in a way that resembled mediation, but still provided the parties with a guide and an advocate to support them.

In traditional mediation, a couple meets outside the presence of lawyers with a neutral mediator who helps them identify issues. "But what a mediator can't do is correct the power balances that inherently exist," attorney Gretchen Walther says. "They're not allowed to lean toward one side or the other because then they wouldn't be neutral."

Collaborative divorce lawyers have much broader roles as advocates, Walther says. "We help clients distinguish between short-term quantifiable gains and longterm interests and goals."

For example, if a client wants an additional \$5,000, a conventional divorce lawyer would likely fight to get it. "The collaborative lawyer might say 'you have the right to the money and the court will give it to you, but your spouse is proposing that the \$5,000 be put into an educational fund for your kids. I can get you the money, but what kind of impact will that have on you, your spouse and your children 10 years from now?'"

Collaborative divorce lawyers help clients "look down the road at a daughter's wedding, a son's graduation, a grandkid's baptism," Walther says. "Do you want to attend those with your ex-spouse and for those events to be dignified? Is it worth the \$5,000 now if it compromises a future relationship with family members?"

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