

Cathie Anderson: Many experts support couple in collaborative divorce

HIGHLIGHTS

Couple receives education, coaching to keep communication working

Support team offers counsel, but spouses make the decisions

BY CATHIE ANDERSON

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After going through a divorce, certified public accountant **Steve Rutlen** viewed the process as secretive, broken and destructive. He felt there had to be a better way, but he didn't find it until years later.

Rutlen now works with local attorneys and mental health experts to introduce couples in the Sacramento region and around the state to the concept of collaborative divorce, a team approach that helps people make informed decisions about a divorce plan.

"We're focusing on the educational and emotional aspects of divorce," Rutlen said. "We know that there's a lot of emotion in divorce. ... It was really designed to empower people to make better choices. They shouldn't feel like they have to rush out and hire a litigating attorney."

Two attorneys skilled in the collaborative process work alongside two coaches – one for each spouse – and one financial expert. If children are involved, a child specialist will also join the team. The coaches, trained as mental health experts, help each spouse identify and deal with emotions that are sabotaging the lines of communication. Rutlen or another finance expert will act as a neutral party who reviews and shares information on the couple's assets and liabilities.

None of these experts can continue working with the couple after the collaborative process is over or if the couple decide to take their battle to court, said Sacramento family-law attorney **Hal Bartholomew**.

“The financial person can’t be their financial adviser if they have a \$2 million IRA or whatnot,” Bartholomew said. “The whole team is focused solely on helping the couple resolve their disputes through the divorce process, so there’s no conflict of interest. Clients appreciate that fact. They say, ‘My God, there are attorneys who won’t go to court.’”

The collaborative divorce concept actually was the brainchild of Minneapolis attorney **Stuart Webb** in 1990, Bartholomew said, and family-law practitioners began using it around 1996.

“Webb said, ‘I became an attorney to be a counselor and to help people, and I’m going to court and clients come out unhappy no matter what the result,’” Bartholomew said. “‘I don’t want to be part of a process that destroys things,’ so he came up with a unilateral disarmament process.”

In Webb’s first two years trying a collaborative practice, he had 98 cases, and all but two resolved, Bartholomew said, so he felt the marketplace liked the idea. Collaborative divorces won’t work if spouses truly hate each other or if one partner is abusive or manipulative, attorneys say, but it can and has worked in many cases.

Family-law attorneys generally come up through the litigation process, Rutlen said, so they have to really make a paradigm shift to embrace collaborative.

“They are the warriors with the shields,” Rutlen said, “and in collaborative, they have to kind of give that role up. They’re still there as advocates for their clients. But ... the attorneys are there to collaboratively educate the clients on what the law is.”

Bartholomew said he tells clients: “It took two of you to get into a divorce. Why are you handing it over to two strangers? Why aren’t you actively involved in it? Why don’t you get the knowledge level to make a decision?”

The **Sacramento Collaborative Practice Group**, a network of attorneys, coaches and financial experts, offer a workshop that educates people about the various kinds of divorce – do-it-yourself, mediation, collaborative and litigation. Attendees learn, for instance, that a judge’s decisions are constrained by the law, but that couples can come up with creative options to their unique problems in the collaborative or mediated processes.

The class, held in different locations around Sacramento on the second Saturday of every month, has been so well-received that the state collaborative practice group has implemented it all around California. And collaborative practice groups in other parts of the country have modeled workshops after it.

Also, while a do-it-yourself divorce might sound like a quick, cheap option, it actually can be costly if the couple doesn’t time the divorce filing just right and ends up increasing their tax obligation. A judge, attorneys said, expects the couples to know the legal rules.

Ethically, Bartholomew said, attorneys are required to explain all the divorce processes to clients, but many family-law practitioners still aren’t familiar with collaborative divorce or they write it off as touchy-feely.

Bartholomew did divorce litigation for 38 years before switching to doing only mediation and collaborative divorce in the last five years. He’s found, he said, that the process is much more efficient and healthy. There are times, he said, when clients don’t need the

attorneys involved at all – say when they’re working out a co-parenting plan – and it’s much less expensive for them to meet with only their coaches. The spouses also learn how to conduct a productive dialogue with one another.

For Rutlen, the beauty of the collaborative interaction lies in the ability to suss out the emotions that are holding clients back.

“We may have one spouse who hasn’t been the financial manager, and he or she is saying, ‘I absolutely want to stay in the house,’” Rutlen said. “I look at the numbers, and there’s no way that this pencils out, but they still feel that strong desire to have that house.”

It’s then that he or the attorneys call in coaches like Nancy Laughlin. She works with clients to figure out what’s driving their needs, and once the team figures that out, they then can help the person see why their position won’t fulfill their need. The underlying interest might be security, Laughlin said, but hanging onto the house actually sacrifices security. One session with Laughlin and the financial expert will bring this home.

Does everyone come out of the collaborative divorce process singing “Kumbaya” and sending roses to each other on birthdays?

Absolutely not, say Bartholomew, Laughlin and Rutlen, but they do see a significant difference in how couples who go through the process relate to one another after the divorce.

“I had a collaborative case where the husband, at the end of the process, looked at his wife and said, ‘Thank you. You’ve done a great job with the kids,’” Bartholomew said. “It was the first time he’d ever said anything like that to his wife. ... We create the opportunity for them to be good people rather than the opportunity to be bad people.”

***To learn more, visit Bartholomew & Wasznicky LLP
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