

Collaboration allows for a kind divorce | Jacksonville.com

Attorney Nickolas Alexander remembers returning to his Orange Park office seven years ago excited about a new, less confrontational way to resolve divorces he'd learned about at a family law seminar.

Weary of the acrimonious game-playing that characterizes traditional divorce, he said he was drawn to the "collaborative process," bringing legal, financial and mental health professionals together with divorcing couples in a roundtable setting designed to encourage cooperation over conflict.

He immediately hosted a training session at his office. Three people showed up.

Attendance wasn't much better at subsequent attempts two years later.

"The collaborative process has just been kind of limping along since that time without enough support," Alexander said.

Now the tide may be turning. For the second straight year, the Florida Bar is drafting legislation designed to codify collaborative divorces in state law. A similar bill died in a House committee last year.

Three judicial circuits in Florida - none in North Florida - already have administrative orders in place, establishing frameworks for collaborative divorce.

This month about two dozen people showed up for a collaborative law seminar sponsored by the Jacksonville Bar Association. More than half were mental health professionals, whom Alexander and other participants believe are key to giving the idea traction.

"I said to myself, 'There's got to be a better way for people to get divorced because they get set up to fight forever, and the kids are the ones who suffer,' " said Ross McDonough, a licensed clinical social worker in Neptune Beach. "People who go through divorce are at the worst emotional place in their lives. They can benefit by having somebody ... help separate emotions from judgment."

'A growing phenomenon'

Collaborative divorce is a voluntary process that begins with a contract signed by the couple and their lawyers stating they won't go to court and instead will try to dissolve their marriage together.

Financial and mental health professionals become part of the team to advise the couple, taking into account the family's unique financial and emotional situation. Marriages marred by violence, abuse, mental illness or coercion generally aren't candidates for the collaborative approach, McDonough said.

If the process doesn't work and the couple decides to go before a judge, the contract specifies neither side can use anything in court that they learned during negotiations, and the lawyers and other professionals are required to step down.

"It really changes the tone of negotiations," said Talia Katz, executive director of the International

Academy of Collaborative Professionals in Phoenix. "Clients make their own decisions about their own lives. No judge, no attorneys, no outside force can understand the dynamics and needs of a family better than that family."

She said the process can be less financially and emotionally devastating for couples because of its emphasis on cooperation. And it can lower family court case loads.

Though the concept has been around nearly 30 years, it is still in its infancy in the United States, said Andrew Schepard, who teaches family and collaborative law at Hofstra University School of Law in New York.

"It is clearly a growing phenomenon," Schepard said. "It's a very attractive idea because it returns the lawyer to the role of counselor."

Schepard said studies by Canada's Justice Department found high satisfaction with the process in that country, but no mechanism exists to keep track of collaborative settlements in the United States. He is working with the Uniform Law Commission to develop a national standardized policy.

Efforts by The Florida Bar Family Law Section to pass a state law have been under way about two years. Last year the House Civil Justice and the Courts Policy Committee shelved the proposal for future consideration, said Longwood attorney Matthew Capstraw, a leader of the Bar effort.

"There was a lot of interest, but there were some different ideas and concerns with the bill," he said.

Listening instead of leading

Circuit Judge McCarthy Crenshaw of Clay County said he's long supported the collaborative concept.

"Anything that can help people in divorce cases be a little less antagonistic to each other and be a little more sensitive to the children involved I'm all for," Crenshaw said.

But he said the provision that disqualifies the lawyers if the process doesn't work is the biggest hindrance to acceptance in the legal community. He said he doesn't know of any other situation where lawyers have to get off a case they can't settle.

Jacksonville divorce attorney Barry Zisser said he fears that provision could actually make the process more expensive because couples would then have to find new lawyers. He said about three-fourths of divorces in Northeast Florida work out in mediation, which is required before a trial.

But Atlantic Beach attorney Nicole Habl said the disqualification requirement provides incentive for everyone to come to an agreement.

"It's an amazing process because the attorneys have to listen rather than lead," she said.

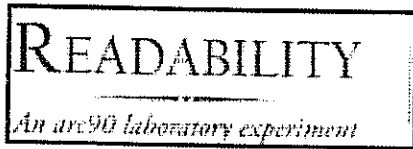
Habl and Michelle Ash, a certified divorce financial analyst in Jacksonville, said collaboration generally costs far less than litigation. In the long term, it enables families to structure financial settlements that can benefit both sides with less rigidity than traditional divorce proceedings allow.

Ash said her role in the process is to meet with both sides together and separately to help them understand what their new household will look like financially.

"It's not so much about the asset division. It's about the cash flow, meaning is each of these households

going to have enough money to live a certain lifestyle," she said.

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