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Same split with a lot less spat

Howard teams guide collaborative divorce

By Melissa Harris

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After a three-year separation, Frank and Stephanie Ellis decided to formally end their marriage.

The couple had worked out a shared custody agreement for their 6-year-old daughter during counseling, but there were some difficult financial issues to resolve that they hoped would not ruin the good will they had built.

Instead of litigating their split in a traditional court proceeding, in which each side is represented by attorneys who are sworn adversaries, they turned to a growing but not universally welcomed strategy: "collaborative divorce."

In collaborative divorce, the couple meets together with their attorneys - who typically know each other and have a good working relationship - and sometimes with a joint financial expert, child specialist and separate "divorce coaches," who help manage the hurt feelings and anger. Over a series of sessions, the support team will help the couple reach a peaceful dissolution of their financial and familial relationship.

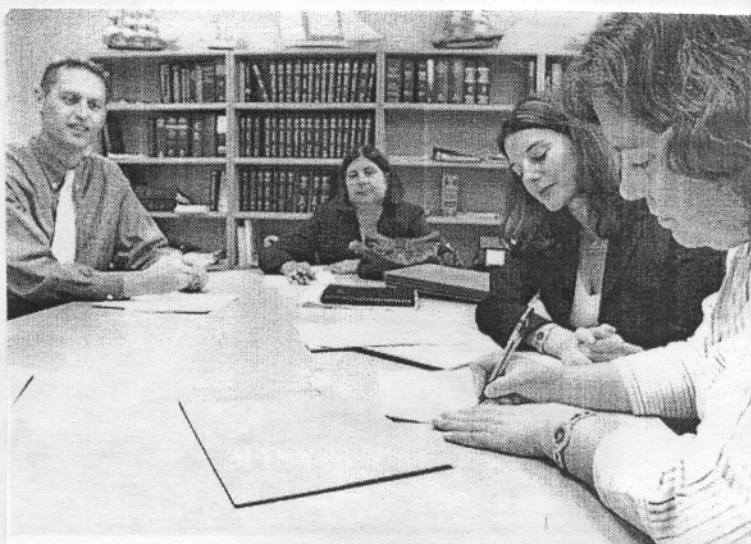
The Ellises' counselors recommended it as a way to keep the couple out of court and dissolve the marriage with professionalism and grace.

Their lawyers, Elizabeth J. Case and Jolie Gelman Weinberg, are part of Howard County's collaborative practice group, one of a number of networks involving about 10,000 lawyers, therapists and financial planners nationwide trying to reduce the bitterness, length and cost of divorces.

After four collaborative sessions, the Ellises finalized their divorce last week during a polite 15-minute hearing in a Columbia law office. Cost? About \$14,000.

The approach has saved them thousands of dollars, but what the Ellises value more is that neither left the proceeding feeling that the other had won an edge. They also believe that their daughter was spared some grief.

"There was no crying or yelling, but we're not yellers," said Stephanie Ellis, 40, who lives in Columbia



and works as an independent contractor for a medical library. "I think that the child [custody] issues, which we handled earlier, felt more like a divorce than the financial issues. The process felt more like a business meeting."

Legislatures in California, North Carolina and Texas have authorized collaborative law. Bar association panels in five states have issued opinions in favor of it. Maryland's judiciary has embraced it.

But not all lawyers are sold on what's billed as "a kinder, gentler divorce."

Earlier this year, the Colorado Bar Association declared collaborative law agreements unethical, an abandonment of every attorney's obligation to fight zealously for a client's interests.

The agreements prohibit collaborative attorneys from representing their clients should the more harmonious method fail.

This prevents attorneys from cashing in on disputes and gives them an incentive to make the process work. But it also could lead attorneys to avoid aggressive tactics when they are necessary, the Colorado committee said.

"There's this fiction in collaborative law that everyone's always telling the truth," said Harry Siegel, founder of the Maryland Trial Lawyers Association's Family Law Section. "If someone's lying, they could actually more successfully get away with it in a collaborative model than in the court system, where there are checks and balances."

Maryland does not track which divorces are settled collaboratively, but lawyers say the number is small. Most couples learn about it on the Internet and then seek out lawyers trained in it.

Attorneys say collaborative divorce isn't for everyone. Weinberg jokingly uses the "Jerry Springer" test. If the couple has any issues worthy of an appearance on the TV show - alcoholism, drug abuse, domestic violence - they're probably not good candidates for a collaborative divorce.

"If someone comes into my office and says, 'I'd rather pay you than pay my spouse,' that's a good clue that the person is not a good candidate," Case said.

The process differs from mediation in that lawyers for each side are present and communication occurs among all parties - attorneys, clients, divorce coaches, a child specialist and financial planner.

Case says the presence of attorneys in the collaborative process ensures that the more strong-willed and financially savvy spouse doesn't get an unfair advantage.

"A mediator isn't allowed to give legal advice, and sometimes I'm in these sessions and thinking, 'What are you doing? Is it your intention to work until 90?'" she said. "I've had people come to me with a signed mediation agreement years later because they're having trouble making ends meet."

A collaborative divorce, however, is still a divorce. It can get heated at moments and is still emotionally draining, said Tom Berg, 37, of Westminster, who is awaiting the finalization of his divorce after an eight-year marriage.

Berg described the process as a business meeting with each party arriving at the first session with an agenda of items to resolve and discuss. At the next meeting, each party submits positions on each issue.

"But then, it's like, 'Well, what about summer camp' and this and that. 'I think you should pay for the whole thing,'" he said. "I never went to summer camp when I was younger, so that was something new for me. 'Why should I pay for the whole thing?' 'Because you wanted the divorce.'"

Frank Ellis, 43, got so frustrated over a minor issue - how the couple would split their 2006 tax refund - that he left the room.

"It got to the point where we both had sort of drawn lines in the sand and weren't going to bend," said Ellis, who moved from Columbia to Rockville after the separation. "We took our attorneys and went into separate rooms and had venting sessions. ... It's amazing the things you choose to argue about."

The four-way agreement, signed by attorneys and their clients, is critical to minimizing the conflict. The attorneys and spouses agree to try to reduce the negative consequences of the split and to focus on everyone's "future well-being."

The attorneys also promise to withdraw from the case if either learns that a spouse has taken unfair advantage of the other by dumping property or withholding or misrepresenting information, such as the value of retirement accounts, insurance policies or income.

Paul S. Warshowsky, an Ellicott City attorney who takes collaborative cases, described the process as "a complete paradigm shift" from the way attorneys operate.

Baltimore attorney James W. Motsay, who serves on the board of the Maryland Collaborative Law Association, said one reason the strategy hasn't taken off is because it's less lucrative for attorneys.

Attorneys realize they "can only earn 'X' number of dollars on a collaborative case, as opposed to going to litigation," he said. "They ask themselves: Is this going to be enough money? Is it worth my effort?"

But Siegel says that an amicable divorce can be achieved by other methods. The only thing a collaborative divorce guarantees that other options don't is lawyers who are courteous to each other, he said.

"The only real difference between what I do and what formal collaborative lawyers do is that if they can't reach settlement, then they pass it on to someone like me to try the case," he said. "I'm certainly not going to compromise my ability to represent clients at any point."

Howard County Circuit Court Judge Diane O. Leasure, however, described a collaborative divorce as "a wonderful option short of litigation" that ensures that parents, rather than a stranger, decide what's best for their children.

This year, the judiciary began allowing Maryland couples who are litigating to put the case on hold to try collaborative divorce, Leasure said.

"The thing with domestic law is that there is so much discretion vested in a trial judge, especially when it comes to child custody and access issues," she said. "We often only see the parties in court and don't meet the children ... so it's difficult to determine what's best for the children."

The flexibility of collaborative law has led to some creative arrangements.

Weinberg said that several of her clients leave the children in the home while they move in and out on weekends and weekdays.

"The parents are truly the ones who are making the sacrifices for the kids," Weinberg said.

Frank Ellis, who works for the Environmental Protection Agency, agreed to increase the alimony he is paying his ex-wife in exchange for limiting it to a certain number of years - an option he hadn't thought of until the attorneys suggested it.

Berg, a general contractor, was surprised that his wife gave him the couple's two dachshunds during the first session. They agreed to share custody of their son, 5.

The couple talk to each other every other day about their son's schooling, activities and who's going to pick him up at the bus stop. He credits the collaborative process for his son's well-being.

"If you have a better relationship, the kids do much better," Berg said. "But collaborative divorce doesn't work for people who can't have a civil relationship."

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