

Collaborative Law

Advocates push for a less messy divorce

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By: Bud Newman

Advocates of a less combative, less expensive divorce system known as collaborative law want more Floridians to use their little-known, little-used mediation-style method.

But they concede it will not work for people who want to fight it out in court.

“Some people just need that scorched earth,” said attorney Rosemarie Roth of Miami, a solo practitioner and top advocate of the collaborative system, which is geared toward cooperation and reaching agreement before going to court. “It’s not for everybody.”

Roth heads the Collaborative Family Law Institute, a group of Miami lawyers and other professionals, including mental health specialists, who support collaborative resolutions.



Her fellow family law attorneys committed to advancing collaborative law acknowledge most of their organizational efforts and successes so far are at the county level.

They are in the early stages of trying to put together a statewide group to spread the word about the less-messy divorce alternative.

“There are clusters of people as opposed to a statewide group,” said solo practitioner Iris Bass of Fort Lauderdale, immediate past co-chair of a collaborative law committee of The Florida Bar’s family law group. “We’re definitely not in communication with each other on a regular basis.”

West Palm Beach solo practitioner Charles Jamieson, who heads the nonprofit Collaborative Divorce Team in Palm Beach County, said, “There’s been no unifying umbrella group to create standards of practice to market this” statewide. That has kept more couples from learning that the practice exists.

The advocates also say there is no way to estimate how many couples avail themselves of the process.

“The public is not as widely aware of it as we would desire,” he said, noting Tampa attorney Joe Hood has been trying to organize a statewide group.

Miami-Dade, Broward and Palm Beach counties have at least one group each advocating collaborative divorce and each operates independently, Jamieson said. The Broward group is called Collaborative Family Lawyers of South Florida.

While the lack of a statewide organization has been one impediment to spreading the word, resistance from traditional divorce lawyers, some of whom see the collaborative process as a threat to their fees, is another, advocates say.

“There’s no other motivation for a lawyer who does family law to reject collaborative

law other than money,” family law attorney Steven Berzner, a Fort Lauderdale solo practitioner said after attending a Florida Bar committee meeting on collaborative law at The Bar’s annual conference last month in Boca Raton. “It’s almost a sign of weakness for them [divorce lawyers] to agree.”

Using collaborative law, “the cases will be over faster with less stress for the attorneys and the clients,” Berzner said. “The result of that is lower fees for the attorneys.”

Roth said a financial factor is involved in the slow embrace of the collaborative process by Florida divorce attorneys because “they’re afraid they’re going to lose money.”

The collaborative process began in 1990 with Minneapolis divorce attorney Stuart Webb, who was frustrated with the combative stance in many divorces. He tried to get couples to reach agreement in a civil setting free of accusations, threats and name-calling.

Each side selects its own attorney, and the group agrees on neutral financial, psychological or other experts to examine marital assets and debts, child custody and spousal support. The confidential process is aimed at reaching a quicker, cheaper, mutually agreeable settlement.

Once that happens, a divorce petition is filed and submitted for a judge’s approval.

If the two sides reach an impasse during negotiations and decide to litigate, the attorneys used in the collaborative process cannot be used for the court fight. That means the couple has to start over with new attorneys and different experts, which can make the process more expensive than litigation alone.

Advocates of collaborative law say the extra cost factor can be an incentive for couples to agree on divisive issues.

Bass said the biggest impediment to the widespread use of the collaborative process is “an initial knee-jerk fear” that if the process breaks down, couples will have to change lawyers.

He sees resistance from divorce lawyers, in part because collaborative law is seen by some as a “touchy-feely, namby-pamby approach” rather than the bolder, battling image of traditional divorce litigation.

“There is more money to be made litigating than there is to be mediating or collaborating,” Bass said.

West Palm Beach attorney Tom Sasser, managing partner of the family law firm Sasser Cestero & Sasser, said he supports the use of collaborative law for the right cases but said “it’s not right for every case.”

Cases with high conflict most likely will not be settled beforehand because “one party refuses to see their risk” of going to court and getting an unsatisfactory outcome, he said. The collaborative process “hasn’t changed the process for the hard-core litigators.”

Veteran divorce attorneys know the best outcome is settlement instead of litigation in virtually every case, Sasser said.

Jamieson said divorce lawyers “are slowly losing market share” because about two-thirds of Floridians file divorces pro se.

Using collaborative law could cost a couple from \$6,000 to \$20,000 depending on the complexity of the issues, while going to court in the same case would cost at least

\$20,000, he said.

Roth said one goal of the collaborative law movement is to let divorce lawyers know how it works.

“What we’re trying to do is get as many attorneys in the state trained as possible,” she said. Roth estimated 300 to 500 lawyers have been trained in the process statewide.

In much the same way, attorneys and judges were slow to embrace mediation when it was introduced about 30 years ago, collaborative law will need time to gain a foothold, Roth, Bass and other advocates say. Jamieson said “attorneys are conservative by nature” about embracing new methods.

Collaborative law advocates say they have two goals for expanding public knowledge and using the divorce alternative. They want the Legislature to pass a statute recognizing the process. They also hope to persuade more of the state’s 20 judicial circuits to pass rules acknowledging the system.

So far, only the circuits covering Miami-Dade, Orange and Brevard counties have passed such rules.

Judges seem interested in the process because “they are totally overwhelmed” with cases and would like fewer and less complicated cases on their dockets, Bass said.

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Rosemarie Roth photo by Richard M. Brooks