

## Collaborative Divorce<sup>SM</sup> A Better Way to End a Marriage

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THERE is growing movement across the country among professionals working in the field of divorce. Called "Collaborative Divorce<sup>SM</sup>", this new approach aims to change the way we end marriage in America.

Collaborative Divorce<sup>SM</sup> stems from the belief that the current method is broken, and that it is hurting families. Divorcing couples - the consumers of this defective system - are voting with their feet... but we are getting ahead of ourselves.

Before the 1970s, you had to establish "grounds for divorce" to end your marriage in California (where I live). Although this was a boom for private detectives (evidence of adultery was once one of the criteria used), the legislature decided that if one of you wanted out, it made no sense to establish blame. Hello to "no-fault divorce".

The problem is that our courts still deal with divorce using a system that made more sense when Perry Mason was first run on TV. You get your lawyer, I'll get mine; whoever gets more than 51% wins. But the public hates it! They are giving it up in droves. The situation has become so bad locally that in San Diego County, more than half of couples that file do not even use lawyers.

A prominent attorney I know tells his feuding clients when things get out of hand that they need to make a choice whose kids they want to put through college - theirs or the attorney's. Yes, we have all heard the jokes, but it is not just the money that is stopping people; estimates are that over half the couples that opt for do-it-yourself divorces can afford to hire attorneys. It is not the attorneys' fault, but people see the lawyers as a part of the problem. The adversarial system does not work when it comes to divorce.

The law has developed a relatively fair system regarding the splitting of property and providing for some post-divorce redistribution of income through spousal support - especially in longer-term marriages. But the rules are very complicated, both legally and from the tax standpoint and can have significant long-term financial consequences.

So it is no surprise that despite the best efforts of an over-burdened court system, divorcing couples are making mistakes in their settlements. And some problems that they are creating - such as errors with pension benefits - will not show up for years to come when the baby boomers start retiring in huge numbers.

The problem of adversarial divorce is not news to the majority of Americans, and attempts have been made to improve the situation. Mediation, which saw divorce as a problem to be solved rather than a battle to be fought, was a step in the right direction. But mediators are neutral facilitators; they do not give advice or educate their clients. Divorce is a truly multi-dimensional process having legal, emotional, and financial consequences. Few mediators can be experts in all three fields, and the obvious failures we see in the current system highlight the challenges that any one profession faces.

Collaborative Divorce<sup>SM</sup> has been developed to provide a more efficient and effective solution. Growing out of the collaborative law movement, in which attorneys work cooperatively to resolve clients' issues, it is being seen by experts as the best chance to fix what is wrong with the status quo. Collaborative law, developed more than 10 years ago by Minneapolis attorney Stu Webb, has proven very successful in civil litigation, but there are some particular problems when it is applied to divorce.

Without exception, every divorce lawyer I have spoken to has told me privately that most of his or her time is not spent working on the legal aspects of divorce; it is spent dealing with their clients' emotional issues. And who better to help people with the range of emotions that so often get played out in the divorce courts than the mental health community? In a Collaborative Divorce<sup>SM</sup>, each spouse has his/her own attorney, and they could also have a qualified therapist - called a "coach" - on their team to help them through the emotional process. If there are children involved, a qualified child specialist might be added to the team to provide the kids with a voice in the divorce.

The most difficult issues for divorcing couples usually revolve around either children or money. Many American families live paycheck-to-paycheck, and two households cost more to run than one, so the first thought was to hire a bookkeeper to help with budgets. However, as more and more cases were started, it became clear that no one on the team really understood the tax or long-term financial consequences of the settlements being created. This led to the addition of the financial specialist, usually a Certified Financial Planner<sup>TM</sup> or Certified Public Accountant. The emergence in recent years of the Certified Divorce Planner designation has added to the pool of qualified professionals in this area.

Clients are required to sign an agreement that promises that they will not go to court. If they change their mind later, the whole team must withdraw and the clients will be forced to start the process anew. That can prove a powerful motivator for compromise when the going gets tough.

When it comes to cost, the immediate reaction of most people is to assume that with more professionals involved Collaborative Divorce<sup>SM</sup> must cost more than a "traditional" divorce. Surprisingly, experience in communities with many settled cases has been just the opposite. The average appears to be in the range 60-80% of the cost of normal contested divorce that is settled without a trial. If the couple can not agree on their differences and end up in court letting a judge decide, all bets are off and the costs can skyrocket!

Clients should not choose this approach just to save money. Both spouses need to look in the mirror and ask themselves if they are truly ready and able to be a constructive member of the team that will arrange for the peaceful dissolution of their marriage, (Yes, remarkably, the clients are seen as a part of the team too!). Those who are trying to use the divorce to punish or exact revenge against their spouse should probably not apply. Collaborative Divorce<sup>SM</sup> is not a panacea, and the end of a marriage will almost always be difficult and involve some pain, but it can lessen or even eliminate the hostility that often remains after the divorce is final. As one woman who successfully went through the process put it: "Despite it all, one day I will be able to dance with my ex at my daughter's wedding". The way most families feel after the traditional American divorce, both spouses might even be lucky to be invited in the first place.

Mark C. Hill, CFP<sup>TM</sup>, CDP, has been involved in the financial services industry in an advisory capacity since 1983. He has served on the Board of the San Diego Financial Planning Association for the past three years and is a Regional Director for the Institute for Certified Divorce Planners. Mr. Hill is a member of the International Academy of Collaborative Professionals and is the lone financial professional on the Collaborative Divorce<sup>SM</sup> Training team responsible for interdisciplinary trainings throughout the country. Formerly a Portfolio Manager with a major Wall Street firm, he is a founder and Co-Managing Partner of Pacific Wealth Management, LLC, a San Diego-based investment management consulting and financial planning company. As a financial planner, Mr. Hill's business routinely involves assisting clients with issues related to budgeting, risk evaluation, investments, taxes, retirement planning and estate planning. In recent years, experience with clients has resulted in an increased focus within the practice on how these issues are dealt with in divorce.

Mark C. Hill can be reached at:

858-509-9797, toll-free: 888-495-9797 or e-mail [mhill@pacwealth.com](mailto:mhill@pacwealth.com)

Web site: [pacwealth.com](http://pacwealth.com)