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LIFE GUIDE

An alternative to the traditional him v. her

Jennifer Tull and Carrie Helmcamp are fans of collaborative law. The Austin lawyers include this alternative to traditional litigation as part of their practices because they've seen it defuse divorce battles and help families come up with solutions to other disputes that are tailored to their own situations.

The collaborative law movement, which started in 1990, was the subject of a conference last month in Fort Worth that drew about 200 lawyers and other participants, including Tull and Helmcamp. They told us more about the basics of the process.

How is collaborative law different from traditional litigation?

First, you don't go to court. "What collaborative law does is take the court system out of the picture for the most part," Helmcamp says. "It establishes a framework where people can get the help they need to resolve their disputes largely by themselves."

A divorce case, for instance, starts with both spouses and their attorneys meeting about the issues in their divorce, Tull says. After a divorce petition is filed, the couple and their team gather information (about finances and the best ways to meet their children's needs, for example), come up with options and negotiate a settlement. They don't return to court until they have a resolution. Collaborative law, like mediation, is protected under Texas law as a confidential method for resolving disputes.

"I never try to oversell collaborative law, because you are giving up some important rights you get in other traditional family law cases," Helmcamp says. For example, you can't go to court for a

protective order without opting out of the collaborative law system.

Another key feature is that collaborative law emphasizes openness. "Everybody agrees in advance they're going to be completely forthcoming with all information that is important to resolving their case," Tull says. "That includes information that you're not asked for." For example, if a client knows she's getting a bonus in a few months, she has to share that, even if she hasn't been asked about it.

This is more stringent than the rules of discovery in traditional litigation, Tull and Helmcamp says. Under discovery rules, you have to answer the question you are asked under oath, but you don't have to volunteer additional information.

If the lawyer finds out her client is hiding information that would be useful to the other side, she has to terminate the collaborative process, Tull says.

Finally, collaborative law can be less confrontational. In litigation, painful questions have to be answered under oath, such as "State every reason why your spouse should not be granted custody of the children and why you should be," Tull says.

"That just backs people into their corners," Tull says. "Things get said that can't be unsaid." And those things make it harder to get along and work together in the future.

Who should — and shouldn't — use collaborative law?

This approach can work in many situations, but not all. "Victims of ongoing family violence are not on a level playing field with their abusers," Tull says, citing one situation where collaborative law would probably not be the most appropriate way to resolve a family dispute.

There also has to be a certain level of trust or assurances that must be put in place, Tull says. If one spouse thinks the other might try to hide assets, she would have to be reassured that there will be plenty of safeguards (such as the lawyer's obligation to terminate the process if information is hidden).

On the other hand, some amiable divorces don't really require the collab-

To learn more

'Austin has a very active collaborative community,' Helmcamp says. Most lawyers who practice collaborative law in Texas are members of the Collaborative Law Institute of Texas. You can find a list of Austin members at the group's Web site: collablawtexas.org.

orative process, Helmcamp says. Consider a case where spouses have known for a while that they'll be divorcing and custody and asset allocation aren't really issues or have already been worked out.

"They probably don't need collaborative," Helmcamp says. "It's probably overkill for that sort of situation."

How much money and time does the process take?

"In my practice, I've found that the collaborative cases, in general, are probably 20 to 30 percent less expensive than the litigated cases," Helmcamp says. She adds that collaborative cases usually are "a little quicker than our litigated cases," noting that, on average, they require four months and three to four meetings.

Costs and time commitment vary according to what clients need, Tull and Helmcamp said. For example, if both spouses have a lot of knowledge about their finances, the process can go quickly, but a spouse who's never participated in money decisions before might need more time to feel comfortable. The clients also can make neutral financial and mental-health professionals part of their team, which may affect the cost and duration of the case.

What kind of solutions have families worked out through collaborative law?

Tull likes the individualized custody arrangements that can come from the collaborative process. Standard arrangements might not work if one parent has a job that requires working weekends or has a schedule that varies month to month. She's seen parents work together to craft arrangements that fit their own situations.

That isn't to say that these kinds of solutions can't come from litigation, Helmcamp

says. "But the great thing in collaborative is that it's usually the clients' idea," Helmcamp says. "When somebody has to live by something that they've thought of themselves, it just seems to work better."

The arrangements also can help restore trust between ex-spouses, Tull says. In one case she remembers, a mother was having trouble, based on the father's past behavior, trusting that he would keep their kids safe when they were with him. So they decided that she would come up with a list of requirements he would have to meet for her to feel secure when the children were with him.

"So then he knew," Tull said. "He had a road map."

Because it's less confrontational and encourages working together, collaborative law can help begin the post-divorce relationship in a productive way. Though the divorcing spouses are no longer husband and wife, they respect each other because of the children they share, Tull and Helmcamp say. "They start to make that shift," Helmcamp says. "You start to see them building this new relationship."



Jennifer Tull



Carrie Helmcamp