

## FAMILY STRATEGIES

### **Collaborative Divorce a Way to Avoid Family Feud**

By Donna Olmstead

*For the Journal*

Breaking up a marriage is hard to do, and the prospect of meeting your former best buddy in divorce court is enough to break even the strongest heart.

That's why several Albuquerque lawyers say collaborative divorce is a kinder and gentler way to call it quits, especially for people in their 40s and 50s who have joint assets and children to consider.

"In a collaborative (divorce) we understand the couple may be divorcing, but if they have children they are still going to be related. So they might as well develop the skills they need to be successful at that," says Brian Shoemaker, 41, a family practice and personal injury lawyer.

Despite pledges of undying devotion, all kinds of difficulties split couples apart. About half of all first marriages and 75 percent of all second marriages end in divorce. Shoemaker says substance abuse, domestic violence, extramarital affairs, money matters and extended family interference are some for the common reasons couples seek divorce.

A traditional divorce pits spouse against spouse. Often their lawyers advise them not to talk to each other. Although 90 percent of divorce cases settle before going to court, the threat of litigation is a big stick of negotiation.

But New Mexico has no-fault divorce laws. No judge is going to give an angry spouse that, "I'm good, she's bad" confirmation he or she seeks, Shoemaker points out. "Courts aren't set up to handle the emotional side of divorce." And letting a judge, a stranger, decide the future "is not in the best interest of anyone involved, especially the children."

Shoemaker belongs to the Collaborative Practice of New Mexico, a group of about 60 professionals that includes lawyers, mental health professionals, financial experts, and child specialists. Each expert provides advice to a divorcing couple to help the pair arrive at a solution best for them and their children, he says.

The process is fairly new. It was started in 1990 in Minnesota; the collaborative practice organization began in New Mexico about four years ago (in 2002).

#### **Agreeing to Cooperate**

In a collaborative Divorce, both husband and wife and their attorneys sign a contract and agree not to take the divorce to court or use the threat of litigation as a bargaining tool. If the collaboration fails and the divorce heads to court, each spouse must find a new lawyer and start the process anew.

“That’s one of the most important elements,” Shoemaker says of the contract, because it commits everyone to cooperation.

Divorce coaches, usually licensed therapists, meet with the couple to evaluate their communication styles and help them learn effective ways to talk without escalating into arguing.

Child specialists interview the children and offer professional advice for custody arrangements. Neutral financial advisors review all of the couple’s finances and help them maximize their assets.

And, instead of increasing the costs of a divorce, the process saves attorney time and fees, says family practice attorney Claire Sanderson Hanna, one of the founding members of the Collaborative Practice of New Mexico. Having one financial expert, one child specialist and one counselor eliminates duplication of services and is better than having attorneys analyze and make recommendations about issues outside their realms of expertise.

Hanna, 50, says that by midlife, her clients “are financially savvy and they’re fiscally conservative. They want to protect their assets. I think this makes them potentially perfect for collaborative law.”

Financial planning can help both parties’ standards of living. For example, if one spouse makes \$100,000 a year and the other spouse makes \$20,000 a year and they have minor children, spousal support or alimony could reduce child support and save taxes, she says.

The higher earner, often the husband, could give his wife alimony, which raises her income. With a higher income she isn’t due as much child support. Alimony is tax deductible and child support isn’t, so the higher earner has a tax benefit, she says.

“That’s financial planning,” she says. “It’s legal and it’s intelligent.” Divorcing baby boomers often need advice about how to divide their retirement portfolios to keep their investments balanced, she adds. Making difficult decisions is easier when the parties and their lawyers are cooperating and acting as a team, she adds.

Family practice lawyer Maria Montoya Chavez, who sits on the family practice board of directors for the State Bar of New Mexico, says she thinks “collaborative law is the way all divorces should move forward.

“Divorce is bad stuff. It’s so much better if a couple can say, We’ve been married for 15 years and instead of fighting for the next year or two, we’re going to sit down at the table and decide to better the outcome and work through this together.”

She says collaborative divorce gives splitting couples some hope. “People see a light at the end of the tunnel. Otherwise, divorce can be so extremely painful. Best friends become bitter enemies.”

The team concept provides support for the entire family during a difficult time. We’re a team. On the outset we may be a dysfunctional team, but we’re still a team. We learn to work together.”

For more information on collaborative divorce, go to [www.newmexicocollaborativedivorce.com](http://www.newmexicocollaborativedivorce.com) or [www.nmdivorce.com](http://www.nmdivorce.com)