

JUDGE SEES HIGH TOLL TRADITIONAL ROUTE TAKES ON FAMILIES

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Family Court Judge Deborah Davis Walker has several divorce cases before her now in which legal fees exceed \$300,000 "and the cases aren't anywhere close to trial," she says. Not surprisingly, she is an advocate of what she calls "alternative dispute resolution," which in the context of divorce includes mediation, settlement facilitation and collaborative law.

"I think it's much better if people take ownership of their own problems and their own issues and work together toward resolution," Walker says. "It's better financially and emotionally, and they get to the end in a much better place than if they go through the litigation process in court.

"They're much more satisfied with the outcome. And if they do have children they haven't completely destroyed their relationships and can go on to co-parent these children."

When people participate in alternative dispute resolution they also benefit by becoming skilled at resolving their own problems, "so we don't see these people back in court over and over," she says. "These people don't measure the outcome in terms of who won or who lost, and there's no sense that somebody has to get even the next time they appear in court."

Family court isn't involved in collaborative divorce until the end of the process when documents are filed and a judge signs them. "I never see the people, just their paperwork. That's one of the benefits of the collaborative divorce process. The parties are never in court."

Hard and fast

In conventionally litigated divorces, "the court is going to divide their assets and debts equally," Walker says. "The court may or may not award spousal support. The judge is deciding very complicated issues on a limited amount of information. The parties know their own situation better than anybody, so what is best for them is to resolve their own issues without court intervention."

For those couples who look to the courts for a divorce resolution, they would be wise to avoid protracted litigation, which can have enormous emotional as well as financial costs.

"The courts are overcrowded and it takes a long time for people to get their cases completed," she says. "In Family Court we make every effort to get people into court early to determine what the issues are and whether they need appraisals of houses and businesses, custody evaluations and to generally make a plan for their litigation."

The involvement of financial planners, appraisers, accountants, child psychologists and other experts further increases the cost of litigation.

New Mexico state law mandates that parties attempt to mediate those issues involving children, including custody and time sharing. A special Family Court clinic works with parents to develop a plan and to educate them about the effects of conflict on children.

"Children can get through divorce successfully, what they can't get through is continued conflict," Walker says. After one or two free mediation sessions, most issues are resolved. If not, a brief custody evaluation is done and presented to the judge at trial.

A facilitation

For issues that don't involve children, most family court judges require that settlement facilitation be conducted before the case is tried. A neutral facilitator, often a family law attorney, helps couples resolve their issues and provides a reality check.

"If someone has unrealistic expectations, they find that out at the facilitation," Walker says. "The facilitator is going to assist the parties much like the court would, but in an informal setting that is conducive to the exchange of information."

Facilitation can avoid running up expensive attorney fees. The standard fee for facilitation is \$500 for four hours, though in cases of financial need some family law attorneys will waive that expense.

"If parties can't settle outright, the idea is to get them to a neutral third party, whether a mediator or settlement facilitator, or to get them involved in the collaborative law process," Walker says. "In all three of those situations the parties are sitting down with a neutral third party and discussing the issues and trying to reach resolution. The amount of third party assistance they need depends on the value of the estate."

The easiest and least expensive divorce is available to people with few assets or debts and where the divorce is uncontested. In those cases the clerks in the court's Self Help Center are prohibited from offering legal advice, but can provide the necessary paperwork and explain the procedure. That costs less than \$150.

Between mediation and facilitation, Walker says, about 80 percent of cases are resolved before the parties come before the court for final disposition.

Depending on the source consulted, from 40 percent to 50 percent of all marriages eventually end in divorce, rather than death of a spouse. Consequently, Walker notes, "it's extremely important that people are aware of their options as they begin the divorce process because they should want to minimize the damage to children and the emotional and financial cost to themselves."