

THREE WAYS TO DIVORCE by Hugh Leavell, Ph.D.

Getting divorced...not the cheeriest topic around and I hate to even mention it in times like these but then life isn't always cheery, is it? Still, even in good times people don't really like to talk about divorce or think about it either, at least not until they're contemplating such a move themselves. I've tried to hold seminars just to get the word out about the different ways to go about it because I want people to start getting divorced in more humane ways. Anywhere between three and five people show up at these events and they tend to be people who are getting divorced NOW. Otherwise, people don't want to hear about it. I guess they just don't think it's relevant for them.

It's true that many don't think they're getting a divorce until it's upon them. They may be failing to maintain the integrity of their marriage and not even realize it until it's too late. Many people in the modern era just won't stay once the love is gone. And love can go away if you don't take good care of it. People like to avoid awareness of this reality and they think of divorce as a "bad thing".

It's true that it is a disappointment, usually in some sense a failure and a loss and it can be bad for kids. But it doesn't always have to be bad for the kids. That depends on how you do it, what kind of settlement and what kind of relationship you have after the divorce. And, there are times when divorce is just what is needed to correct a mistake, to respond to changes in life goals, values and expectations, or to simply regain the right to pursue happiness as the U.S. Constitution guarantees us. So, divorce can be a good thing. But it's hardly ever easy. And the truth is, it's usually not equally desired by both parties. It may be the result of long-standing disharmony but it can also cause additional disharmony. Some couples do more damage getting away from each other than they ever did while they were together.

In fact, there's probably no transition more thorny or stressful than getting divorced. Emotional unpreparedness resulting in fear, along with grief over personal loss, account for some of this stress. But the issues that really bog people down are financial and parental. Who's going to have custody of the children and how are they to be provided for? How shall we divide what we've worked so hard to acquire? Now that we're dissolving our team, what will our future as independent operators look like? And what about the continuing issues that don't go away just because we've decided to break up our union? Our parental commitment will go on for a long time. How will we approach that? All this stuff has to be decided somehow. But how?

ADVERSARIAL DIVORCE

The traditional way to resolve marital dissolution has involved a court process. The two parties each retain a family law attorney and then compete to get

their way under the supervision of a judge, who ultimately decides how it's going to be. This is a competition that amounts to a legally sanctioned, more or less "civilized" battle with the opposing attorneys acting as advocates, hired specifically to beat the opposite party and win a trial. Fairness may be a concern but it's usually not the primary one. The object is to win. But is this really a "win"? If someone wins doesn't someone else have to lose? And if you manage to make the parent of your child into a loser, is that really a triumph? And if it costs your family many thousands of dollars to separate, is that money well spent?

MEDIATION

Another method for arriving at a divorce settlement has become more and more popular over the past few decades: mediation. This is a process that is really a negotiation between the parties, usually without legal representation, under the supervision of a neutral professional who's objective is to help the couple arrive at a decision that suits their particular needs. In mediation, the settlement is the result of the couples' own choices and is derived through a process of give and take. Sometimes lawyers are involved (there's no law that says you can't bring your lawyer to mediation) but often, legal consultation is only obtained after the fact, to review the final agreement for fairness and legality. After all, it still has to pass a judge's scrutiny.

Of course, mediation is a lot cheaper than adversarial divorce. Mediators work cheaper than lawyers and you only need one. And it's proven effective enough that mediation is now a required step in obtaining a divorce in our jurisdiction. Every couple has to at least try to resolve their divorce out of court. And it works for many people.

After all, most divorcing people with children realize that the family goes on in some form even after the parents have decided to break up their partnership. In some sense, the partnership must continue just because of the children they have in common whose needs continue to evolve despite marital dissolution. A divorce process that does not make a once-loving couple into implacable enemies is more humane and better for the family in the long run.

COLLABORATIVE DIVORCE

Now there's yet another way to go about divorcing. In collaborative divorce the parties each retain an attorney whose main job is to advocate for his or her client. But collaborative attorneys, although advocates who each represent their respective clients, prioritize settlement over winning. Litigation or a trial process is not an option. In fact, collaborative attorneys must withdraw from the case if a settlement cannot be reached and the parties wish to take the matter to court. This

puts a bit of pressure on everyone to reach a settlement. And it means that the attorneys' only job is to help their clients settle their disputes.

Unlike the adversarial model, the collaborative model involves open communication between the clients and their respective lawyers. This takes place in private, informal discussions and joint meetings held for the sole purpose of settling the issues. Collaborative lawyers are specifically trained in "interest-based negotiation". This focuses on meeting the client's expressed goals, needs and desires. There's none of the posturing, threats and deception common in adversarial divorce.

On the contrary, collaborative law emphasizes an understanding of the interests and concerns of both clients, with the awareness that the couple will need to cooperate with each other in the future, especially if they have children. Collaborative process is particularly useful when divorcing partners wish to remain friendly, cordial and courteous towards each other.

Another appealing aspect of collaborative law is flexibility in scheduling when court is not an option. The couple works out their own settlement in a time frame that suits them, not one dictated by the court docket. This gives them a chance to work out parenting arrangements, sell a house, emotionally deal with the divorce and whatever else they need to do to get ready to be independent from each other.

In addition to avoiding court, collaborative divorce also involves neutral professionals who are brought into the process as part of a team dedicated to settling. Typically, a mental health professional is retained to ensure that the parties communicate well, that their emotional needs are acknowledged and managed, that children's interests are understood and represented and that the process runs smoothly toward resolution. The mental health professional also can help the divorcing parents understand how to achieve a workable "co-parental relationship", a specific way that divorced parents can continue to raise their children in a mentally healthy way. Also, a financial professional is included to assist in deriving tax and investment strategies while advising on budgetary concerns. In an adversarial procedure, if these allied professionals are retained at all, they are retained by each side, are not neutral and usually are not involved in the divorce procedure as such.

Is collaborative divorce a more economical alternative? When you consider how much of what you end up paying your lawyer is generated by the filing of motions, the conduct of depositions and the time it takes to go to court on your behalf, you're likely to come out a winner on this score. It's not as cheap as mediation but at least you have a legal advocate on your side, even if he or she is "settlement oriented" and not trying to kick butt. Generally you will save money by not going to court. But the real savings is in the relative freedom from stress and emotional mayhem, the continuance of vital and necessary relationships into the

future and the absence of a legacy of resentment and retribution that often follows an adversarial divorce down through the years.