

Keeping divorce out of the courtroom

By Monica Wright

He was used to the ex-spouses of clients avoiding him; now they come up to Ousky in the grocery store and shake his hand or move in for a hug. And signing the final papers? The tears and resentment were replaced with clients sharing small gifts, or turning the signing into a small ceremony to honor the end of the marriage. “The idea that you can advocate for your client without becoming the enemy of the other person — and in fact you can advocate more effectively if you’re not the enemy of the other person — is really refreshing,” says Ousky.

Hugs? Gifts? And ... divorce? These aren’t words we often see together. In fact, this sounds more like a family gathering than the dissolution of a marriage. Which is what inspired Minneapolis lawyer Stu Webb to create collaborative divorce in 1990 after 18 years of working with families who spent months (or even years) fighting it out in a bitter battle that left everyone, including the lawyers, drained and depressed. Webb had applied to college and was all set to switch careers in order to escape the animosity when a thought struck him: What if divorcing couples could each bring a lawyer to the table who promised to work outside the courts system to achieve a thoughtful, cooperative settlement?

A team approach

With that epiphany, Webb became the first collaborative divorce lawyer, and Ousky, an Edina-based attorney, was quick to join him. “I was going through the same things that Stu was: I was drawn to family law because I liked working with families and I thought I could make a difference for children, yet I was finding that wasn’t happening in my practice,” explains Ousky. “No matter how well I did my job, I couldn’t help but feel like I left the family a little more damaged than when they started the divorce because of the animosity.”

Collaborative divorce minimizes the typical conflict by having spouses and their attorneys sit down together for a series of meetings to sort out the terms of the divorce as a group. The issues are the same as in a typical divorce — finances, custody, vacation schedules, etc. — but the process is different. All of the participants (attorneys included) sign a participation agreement that lays out the ground rules and stipulates that the lawyers have to withdraw from the case should the collaborative process fail. This provides incentive for the lawyers to keep working toward a settlement instead of going to trial. “We thought if we put a soft lock on the courthouse door, maybe we’d all get better at this whole negotiation thing,” says Ousky.

This team approach can also include outside professionals to address finances, parenting, and the emotional impact of separating from a spouse. To that end, Ousky founded Collaborative Alliance, Inc., which houses his legal practice along with child specialists, financial services, and mental health resources. If a couple gets stuck on a particular issue, or if more work is needed on a specific topic, Ousky can suggest the couple meet with a professional to hash out the issue. “Getting a divorce is not just a legal problem; it’s a child-development problem, it’s an emotional problem, and it’s a financial problem,” explains Ousky. “Couples need a team not, not just a lawyer.”

Working with so many team members might suggest a higher price tag, but a study last year by the Boston Law Collaborative indicates that collaborative divorces are often cheaper than traditional divorces by around \$6,000. Ousky adds that collaborative divorces are also typically quicker, with couples reaching a settlement after three to six two-hour meetings.

Even with such encouraging averages, Ousky stresses that the process does not work for everyone. “The good news is control of the case stays within the family more, but the bad news is they need to take some

responsibility. They have to do the hard work and can't hide behind the lawyers," says Ousky. "It's not always easy to negotiate with your spouse, but when all the lawyers have gone home, you are the ones who have to make this work. Especially if kids are involved."

'Respectful of our family'

Even though collaborative divorce was born in Minnesota, it's still not as well known as Ousky would like. "If this were a new drug created by a drug company, they'd spend millions of dollars to advertise it, but this is just a method used by practitioners," says Ousky. "The only way we get clients is through word of mouth, so it's amazing collaborative divorce has grown as much as it has just through that." Ousky was pleasantly surprised to see the process get a mention in the popular film *Juno*, but he relies more on his speaking engagements at "D"aisy Camp (a series of workshops for women going through the divorce process) than the multiplex to spread the word.

Word of mouth is exactly how Mary Potter, who asked that her real name not be used, learned about the collaborative process when she separated from her husband in 2005. A financial planner mentioned the idea to Potter, who then interviewed Webb to see if it would be a good fit for her family. "I didn't want harm to come from this to the extent that I could mitigate that at all," says Potter. "Collaborative divorce uses language that talks about the reformulation of relationships rather than the language of brokenness or failure."

Jennifer Morris, who founded "D"aisy Camp in 2006 and invited Ousky to present a "Legal 101" class to explain the choices available to divorcing couples, says that even after almost 20 years on the legal scene, collaborative divorce is still relatively unknown to the camp attendees. "The majority of women coming to camp don't know there are options. They think divorce has to be ugly," says Morris. "They are pleasantly surprised that there is an alternative for their family."

Potter and her husband hired Webb and Ousky, respectively, and had their three children visit with the child specialist to air their feelings surrounding the divorce. "It was helpful for the kids and included them in the process in a way that was not threatening," says Potter. "I felt like it was part of the whole reformulation, that everyone got to have their voice heard." Potter even appreciated the setting for the four-way meetings, which included a round table that let the lawyers and spouses work through the divorce as equals. "I really felt that I got as much support from my husband's lawyer as I did from my own, and it was good to see my lawyer engaging in a supportive way with my husband," says Potter.

After her divorce was finalized last October (on her 22nd wedding anniversary, ironically enough) Potter became an advocate for the collaborative divorce process by sharing her personal story through readings at "D"aisy Camp and with anyone considering the method for their own divorce. "I think eventually all divorces will be handled collaboratively. That would be the idea," says Potter. "Because I don't think family issues like this belong in a courtroom."

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