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The new way to divorce: splitting up without a judge

By Liz Halloran

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The divorce wars had pretty much done in Stuart Webb. After 20 years as a family law litigator in Minneapolis, he was burned out, demoralized by the siege mentality of his job, and searching for an escape from the ugliness of divorce and the damage he saw being done to families—especially children—as bitter courtroom battles played out.

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"I had to get out to save myself," Webb says. But instead of abandoning divorce law, he decided to transform it, and in 1990 he came up with a new way for lawyers to help couples split without destroying each other and their children.

Webb called his creation "collaborative law," and in recent years it has become one of the fastest-growing methods by which disputes are settled outside the courtroom. His formula is deceptively simple. Divorcing couples and their lawyers committed to the method sit down together to negotiate terms of the split with one overriding understanding: If talks break down, the couple will have to find new lawyers to take their dispute to court or any other venue.

The idea of a lawyer withdrawing his or her counsel if settlement talks fail is foreign to most litigators, says Ronald Ousky, a Minneapolis lawyer who has written a book with Webb about the strategy they both embrace.

"At first, it didn't sink in even with me—is withdrawal really necessary?" Ousky said. "But that is the radical shift—it's what puts meat on the bone."

"When you take court out of the picture, people start to behave differently," he said. "It's the difference between sitting in a room and settling with a gun, or sitting in a room and settling while the guns are blocks away." The method has been so successful it is being adapted for use in situations ranging from civil conflicts to medical malpractice claims and has spread to Europe and Australia. There are now an estimated 10,000 collaborative divorce lawyers around the world, including about 150 in Minnesota.

Webb and Ousky sat down with *U.S. News* this week in Washington to talk about their method. They were in town to lead collaborative-law training sessions and sign their recently published book, *The Collaborative Way to Divorce: The Revolutionary Method That Results in Less Stress, Lower Costs and Happier Kids—Without Going to Court*.

On how the collaborative method with lawyers trained in the process differs from straight-up mediation.

Webb: Mediation is neutral. The mediator, the person working for the client, is a neutral. In collaboration, the client has a lawyer supporting him or her in the room. Mediation decisions are often made in a vacuum, and some mediators say the hardest thing for them is when one of the parties has made a decision that isn't a good one, and the only thing [the mediator] can do is suggest that the party check with his or her lawyer.


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On how collaborative divorce lawyers get clients to move beyond anger and into negotiation.

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Ousky: Our principle is to get people to focus on deeper interests and higher goals, even if they're angry about what the spouse did or didn't do. When you get them talking about their big-picture goals, invariably they will come around to "I want my children to be healthy." "I want to have some dignity in the process." "I want to have some financial stability." As they define broader goals—and common goals—it allows room for problem solving. So when you get down to compromises, they become easier because we preserve the really important things. We honor the anger they may feel, but our job is to help them act in their own best interest.

Webb: We're not buying in the anger or becoming a mouthpiece for it.

Ousky: That's one of the big differences in this process. In the past, if someone would say something bad about my client, I'd have to jump in. But now that we're not going to court, I don't have to worry about what's going to happen in court. We're not writing up affidavits left and right.

On how the sessions typically unfold.

Webb: We start with all four of us signing a participation agreement—how we're going to operate, what happens if they back out. And then we generally first go to any temporary issues. Maybe the husband moved out, and there hasn't been any child support. We have to get these things stabilized before we can move on.

Ousky: Part of the trick is to slow them down. People want to jump ahead to the hard issues because that's what's gnawing at them. If you slow them down, take care of temporary things, have them focus on goals and gather information, you build from the ground up. By the time you get to the hard issues, sometimes they answer themselves. In the right circumstances, people do more out of nobility and honor than they ever would if forced.

Webb: We want the clients to be having the conversation, not lawyers talking back and forth like a tennis match.

On what happens if the lawyers in collaborative process disagree.

Ousky: We'll pick someone in the legal community to give us a neutral answer.

Webb: In our four-way meetings, if a question of law comes up, we try to get a consensus. In regular litigation, we'd each be doing briefs.

On how the collaborative process has evolved.

Ousky: What's been a natural progression is that it's become multidisciplinary. We sit in the room and realize this isn't just a legal problem. There are psychological issues. There are child development issues. There are financial issues. We increasingly use others in our cases [coaches, psychologists, child development experts, financial


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On how long the process typically takes and costs.

Ousky: The average is four to eight months and about six or seven meetings.

Webb: By the fourth meeting, they're usually saying, "We can work on this."

Ousky: We bill the same way other lawyers do but with a lower retainer—trial lawyers might charge a \$5,000 to \$10,000 retainer; we might charge \$1,200 to \$1,500.

On who may not be suited to the method and whether they've ever had a reconciliation at the table.

Webb: If you get a CEO-Type-A person, they might get about a quarter into the process and say, "This is ridiculous. I'll make her an offer sometime, and she'll accept it or not—I'm out." You can't do anything about that. And in some cases, you get to the end, and you're stuck with one issue—usually spousal maintenance. Then we're faced with having to help them find some way so they don't have to start all over.

Ousky: We've had about six reconciliations in the last 12 to 18 months. Sometimes when they sit down and communicate, stabilize the finances, they think, "Boy, we can do this," and maybe go back and work on stuff.

On why the method, which seems so logical and humane, has taken so long to emerge as a popular alternative.

Webb: Isn't that interesting? When I made the decision to do it, the little voice in my head said, "What kind of a wimp are you?" There's that thing in our culture of win-lose. Lots of trial lawyers have pretty high egos. I call this a paradigm shift. When I do training, the most important thing is to have the lawyer make the shift from litigation. They have to drop everything they've learned in litigation and come back to who they are.

Ousky: Most family law attorneys are frustrated with the system, the inability to get the results they want, and the damage that is caused to the children. Lawyers have been looking for a different way, and mediation didn't quite get us there. In many ways, this is harder than trial work—it takes a higher level of skill, but it's ultimately more rewarding.

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