Easing families' pain

Collaborative divorce good model for Florida

(Daytona Beach News-Journal – OpEd (Dec. 26, 2007)) Divorce can shred a family, leaving wounds that take years to heal -- if they ever do. The pain tends to flare up during the holidays, as former partners battle over where children will spend time and struggle to make ends meet on incomes drastically reduced by the aftermath of a breakup.

Yet some experts say that even the most combative soon-to-be-ex-spouses can, with proper guidance, work their way through a marriage breakup while minimizing conflict, reducing expensive litigation and protecting children.

The concept, known as collaborative divorce, is gaining ground across the nation. Thousands of lawyers, mediators and counselors have been trained in the techniques (though the International Academy of Collaborative Professionals, the trade organization for the practice, doesn't list any in Volusia or Flagler counties).

In collaborative divorce, both sides are represented by trained professionals -- but attorneys involved in negotiations agree that they won't litigate the case if settlement talks break down. (In that situation, both parties would have to obtain new attorneys before going forward.) The settlement "team" usually also includes a financial professional skilled in sorting out difficult issues, including dividing assets like real estate, and possibly a counselor trained to help couples resolve issues that commonly arise during a breakup. Both parties agree not to take advantage of mistakes made by the other side and to be utterly truthful about financial data and other pertinent facts. Attorneys on each side are responsible for holding their own clients to this vow.

Research consistently shows that collaborative divorce is less expensive, quicker and more successful than traditional litigation. The American Bar Association's ethics and professional regulation committee put its seal of approval on the practice. California, North Carolina, Utah and Texas officially recognize the practice and made changes in family courts to support the collaborative model. Local jurisdictions across the country have done the same.

Florida should follow suit. This state has more divorces than any state in the nation, with 87,789 marriages dissolved in 2006. That's not a statistical blip: Florida's led the nation in divorces for years. Shocked by those numbers, state leaders toyed with the idea of abolishing (or severely limiting) no-fault divorce, potentially forcing battling spouses to prove irreconcilable differences, cruelty or infidelity before ending a marriage. That approach would only have heaped more trauma on families already in shock.

But a collaborative model might actually help save some families teetering on the brink of splitting up. And because cooperative divorce would be voluntary, it wouldn't force couples into a process that doesn't suit their needs (most agree that collaborative divorce doesn't work well in marriages where there is significant abuse or fraud).

Working with the Florida Bar, the state could encourage -- or even underwrite -- training for lawyers and other professionals in the collaborative process and make courts more adaptable to non-litigious alternatives.

The Florida Legislature and the courts don't have the power to smooth away differences between spouses or mend marriages that are irretrievably broken. But they should work together to make the process less painful and expensive for divorcing couples -- and more protective of their children.