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Front Page Story

Easing Divorce's Sting, For the Children's Sake

Mediation Often Can Civilize the Process

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When Dianne Krause saw her 17-year marriage falling apart, she was confused about a lot of things, but absolutely clear on this: if there was a way to go through a divorce without heightening the conflict and making her children suffer even more, she wanted to find it.

"I didn't want the mudslinging," she said. "I just didn't want it ugly."

So Krause and her husband decided to try divorce mediation, offered at Beech Acres, a private social service agency near her home outside Cincinnati. In mediation, a divorcing couple takes their disagreements to a trained third party, who helps them find a compromise. For the Krauses, the mediation was not a painless process, but the two

said they are convinced they avoided a more agonizing experience, a bitter courtroom battle over property and child custody.

"Divorce is never fair, but I walked away feeling this is about as fair as it can get," she said.

Trying to mitigate the sting of divorce has become something of a mission across the country, as state legislatures, judges and counselors push new approaches to make divorce more civilized. They are trying a range of alternatives—from tinkering with terminology to revising the entire process—all of it driven by concern that children are suffering long-term emotional damage when their parents break up in a bitter legal war.

While some experts warn that

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Dealing With Divorce Face to Face Instead of in Courtroom Battles

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the new methods may not be appropriate for all situations and at times may work against women, many couples have found the process helpful.

The efforts are based on a simple theory: when adults can manage their anger and keep talking, not only do their children suffer less psychological trauma, they also are more likely to have regular contact with both parents after the divorce. And in many cases, that means they are more likely to receive child support.

The most extensive example of the new approach is in place in California, where divorcing couples are required by law to use a mediator to try to work out their disagreements over child custody and visitation.

And smaller efforts are now common. In Itasca County, Minn.; Cobb County, Ga.; and scores of other jurisdictions, judges are ordering divorcing couples to attend educational seminars on child psychology and divorce. They learn basic tips—for example, no bad-mouthing the ex-spouse in front of the children and no interrogation about a parent's new partner.

The state of Washington has focused on the symbolic importance of language, removing from its laws the words "custody" and "visitation" and replacing them with references to a "parenting plan." The goal is to stop equating children to property that must be divvied up, and to recognize that both parents should continue to play a role in raising the children.

These changes are chipping away at a system that "really is barbaric," said Richard A. Warshak, a clinical psychologist and author of "The Custody Revolution." "We put two people in an arena to slug it out," he said. "It results in casualties."

The traditional legal process, he argues, encourages the two sides to paint the worst possible picture of each other. Although spouses may leave the courtroom feeling angry and bruised, Warshak and other

specialists argue that the real casualties are the children.

"Children can be remarkably resilient, but I've never seen a case with this sort of antagonism and battle between the parents where the children didn't feel some effects of that," said Jay Lebow, a therapist at the Chicago Center for Family Health at the University of Chicago. He said children caught in the middle of these fights often show symptoms of depression and anxiety, or begin lying or otherwise getting into trouble.

The effort to "demilitarize" divorce began after the creation in the 1970s of no-fault divorce laws, which permit marriages to be dissolved without any public airing of grievances. But the movement has gained momentum in the past three

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years with the rapid increase in the use of mediation.

A study conducted several years ago by the Center for Policy Research in Denver found nearly 170 mediation programs in 38 states, including Maryland and Virginia, and in the District.

Proponents of mediation point to several benefits: It is cheaper than hiring two lawyers and going to court; it cuts down on the backlog of cases waiting to be processed by the courts; and, unlike litigation, mediation is not a win-or-lose proposition, but a process meant to resolve complicated, emotional problems.

"What we're talking about is problem-solving," said Hugh McIsaac, head of family court services in Portland, Ore. "We're not pitting them against each other."

Marie Hill, who coordinates mediation programs at the Aring Institute in Cincinnati, said couples ordered into education and mediation sessions are often resistant when they arrive. But, she said, they are surprised to find themselves working out their own disputes and leaving with their dignity in place.

"They have no idea they are capable of handling things in a businesslike manner," she said.

Hill conducts her mediation sessions in a casual conference room, with the participants sitting around a coffee table. She begins by laying out the ground rules: She must stay neutral; the two parties must be completely honest about financial issues; the tone must be respectful and cooperative.

Then they set to work on the problems: Who will move out of the house? How much time will the children spend with each parent? Will the parents agree to live near each other?

Taking one issue at a time, Hill writes down all the options on a flip chart. Then she encourages the couple to discuss the benefits and drawbacks of the various arrangements. Sometimes they eliminate one option, or decide to go home and do homework to determine whether another choice is feasible.

The process can get tense or end in a standstill. But Hill said she has learned to keep things moving, change the subject when discussion hits a dead end, or take the participants out of the room individually for a moment to see if they will be more honest about their thinking.

"You keep trying to suggest possibilities even if it's off the wall," she said.

Ultimately, the two people leave with a written agreement, summarizing their decisions. Each takes the agreement to a lawyer, who examines it before it is submitted as a legal document to a court.

Krause, whose marriage broke up three years ago, remembers being "scared, real scared" when she

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Purpose of Mediation Is to Strengthen the Family Even After It's Broken Up

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and her ex-husband entered mediation. "When communication is your major problem for twenty years, it's really hard to imagine how you're going to make [mediation] work," she said.

She and her ex-husband went through four sessions with a mediator, for less than \$1,000. She said she expects it would have cost about \$10,000 to go to court.

"If I could have hired the greatest divorce lawyer . . . maybe I would have a lot more money, I would be in the house," Krause said. "But those things were not as important to me as the harm that would be done to my kids."

"You have to put your own interests aside," said her ex-husband, Fred Krause. "Maybe I could have gotten away with pay-

ing a lot less" support if the couple had gone through court, he said. "But I wouldn't have joint custody or have children who are as well-adjusted as our kids are."

Krause and her ex-husband decided to sell their house but remain in the same neighborhood, so they could share custody of their three children, who range in age from 9 to 14. Now, the children go between the two houses, spending about equal time with each parent. Their father lives on one side of their school, their mother on the other; the children alter their bus route depending on where they are staying.

"I learned ways to help my kids so they didn't feel so victimized by this," Krause said. And the children "learned they don't have to be victims. . . . They're making it through; I'm going to make it through this. We can strengthen our family even though we're not living in the same house."

The statistics suggest that mediation allows most couples to avoid court trials. In California, about 80 percent of couples who use mediation end up with a settlement outside of litigation.

The movement away from contentious divorce has found strong support from divorced fathers, many of whom have felt unfairly shut out of their children's lives after their former wives had won custody.

"There are a lot of fathers without access," said David L. Levy, president of the Children's Rights Council, a Washington-based advocacy group. Levy argues that a primary benefit of more civil divorce is continuing contact with both parents. And that, he said, leads to more child support collection.

A Census Bureau study in 1991 found that more than 90 percent of fathers with joint custody pay child support that is due, compared with about 79 percent of those

with only visitation rights. About 45 percent of fathers with neither visitation nor joint custody pay the support they owe.

There has been opposition to the move toward mediation, however, including some from lawyers.

Robert Liotta, a lawyer in the District, said mediation is most successful when the couple chooses it and they have straightforward financial issues. But when one party is determined not to compromise, when an unwilling couple is forced into mediation, or when there are highly complex disputes, the process often fails, he said.

Also, some in California have argued that families with a history of domestic violence should not be sent to mediation, where a fair outcome relies on the absence of intimidation.

Carol Bruch, a professor of family law at the University of California at Davis, ar-

gued that mediation sometimes works against women because it tends to push the two sides to compromise. And if one party is unreasonable, "you're just not going to end up where you want to be," she said.

In those cases, women may have fared better had they had an attorney advocating their position, Bruch said.

While proponents of mediation do not dispute that it is inappropriate in some cases, they argue that its increasing use is filling a void created by no-fault divorce laws.

"There is a part to divorce of a need to say, 'You did this to me,' and having somebody hear that. That has been taken away with no-fault," said Zena Zumea, a mediator and president of the Academy of Family Mediators in Eugene, Ore. The process of mediation allows the parting spouses to voice their hurt publicly, she said. "Just to put that on the record sometimes is very helpful."