

Collaborative practices ease divorce pangs

New field less lucrative, more rewarding

BY JOANNE LEGOMSKY

Hunched over her desk at a large Pittsburgh law firm, attorney Rachel F. Green made a back-of-the-envelope calculation. Her firm's legal fees in the divorce case she was litigating would roughly equal the assets at stake in the dispute.

That discomfiting realization five years ago led Ms. Green in a new professional direction. She abandoned her career as a litigator and hung out her shingle at a collaborative law practice in Brooklyn.

Collaborative lawyers seek to avoid the high costs and emotional damage associated with traditional divorces by resolving legal disputes without litigation or the threat of litigation. Each party retains a specially trained attorney, and the lawyers and clients sign a binding agreement disqualifying the lawyers from representing the clients if collaboration breaks down. In New York, as in most states, collaborative law is confined to matrimonial law.

"I wanted to help people who were mired in conflict work through—and past—the conflict," Ms. Green recalls. "It's thrilling. I sleep better at night, and my clients actually thank me profusely."

Though still in its infancy, collaborative law is rapidly gaining favor. Collaborative attorneys say the method is both more effective and more professionally fulfilling, though somewhat less lucrative. And separating couples find it to be an attractive alternative.

Attorney Adam Berner, who sits on the Alternative Dispute Resolution committee of the Association of the Bar of the City of New York, places collaboration in the middle of the continuum of choices available to resolve legal conflicts.

At one end, he says, "there's the Starbucks option: Two people sit down over coffee and work out their differences. Litigation, the most adversarial method, is at the opposite end of the spectrum."

Seeing both sides

Mr. Berner also practices mediation, which differs from collaboration in that participants negotiate for themselves under the guidance of a neutral third party—usually a trained professional who is not a lawyer.

"I knew I'd never be happy representing just one side," says Mr. Berner, who attended Cardozo School of Law because it has a strong ADR curriculum.

Marc Fleisher, a former criminal prosecutor who now has a private collaborative law and mediation practice, says the atmosphere of collaborative law is entirely different from that of traditional litigation.

"You go from being a zealous advocate whose job is to demonize the

other side to helping clients resolve conflicts," says Mr. Fleisher. "There's enormous satisfaction in helping them find common ground. That's the part of myself I'd rather cultivate."

While collaborative divorce yields a better economic return per hour than traditional divorce suits, lawyers earn fewer dollars per case, because they spend less time on each case. The members of The New York Collaborative Law Group—which includes Messrs. Berner and Fleisher and Ms. Green—usually charge between \$250 and \$400 per hour. The typical collaborative divorce takes between 10 and 20 hours.

A different monetary scale

Legal fees for such cases are further reduced because the proceedings make use of professional coaches and other licensed specialists, such as social workers and financial advisers, who bill separately.

Mr. Fleisher says his overhead is now much lower and his hours more reasonable, and his schedule is no longer hostage to court dates. But, he concedes, "you definitely can make more money litigating."

Because collaborative law is still so new and accounts for just a fraction of divorce cases, it's difficult to offset lower fees with volume. But attorneys like Mr. Fleisher see substantial opportunity. Matrimonial disputes account for some 50% of civil litigation in the city, and he expects collaborative law to make notable inroads into this market because it's so appealing to clients.

Not everyone is convinced that collaborative lawyers bring much to the table. Ken Neumann, a mediator with the Center for Family and Divorce Mediation in Manhattan, thinks collaboration retains many of the negative trappings of conventional law without the flexibility that mediation offers.

"Collaborative lawyers can spend lots of time and client money," he says. "Then the clients may have to start again, because the lawyers must withdraw if the case goes to court."

Although the near-term growth prospects lie within matrimonial law, insiders believe that collaborative law, like mediation, will make the transition from family law into other civil disputes. In Texas, for example, collaborative law is being applied to intellectual property suits, and in Boston, it has migrated into the treatment of environmental, labor and malpractice disputes.

Still, practitioners say it will take some time before collaboration moves beyond family law here.

"Lawyers have a vested interest in litigation because it's more expensive," says Ms. Green. "And if clients think they can get \$200, why settle for \$60?" ■