

Divorces That Work

New Yorkers Opting for Friendly Separation Proceedings With Help of Lawyers' Group

By Michael Y. Park

The end of a marriage is seldom a happy occasion. When mediation isn't going to work, soon-to-be-ex spouses often head into a downward spiral of legal motions and adversarial meetings that leave both former partners bitter and angry. But it needn't be devastating or even uncivil.

More New Yorkers are rejecting conventional wisdom that these are the only two options, seeking instead to end their relationship with collaborative divorces. This recent trend has lawyers helping couples come to an amicable, fair divorce rather than fighting tooth and nail for a single spouse to get the most he or she possibly can.

"Clients won't wake up one morning and find out they've been served by their spouse because the spouse's lawyer advised it," mediator and collaborative lawyer Marc Fleisher says.

Collaborative divorce began in Minneapolis in 1990 with an attorney named Stu Webb and has spread to California, Florida, Minnesota, Ohio, Pennsylvania, Texas and the western Canadian provinces. It has been late to New York, which does not allow for no-fault divorces.

The keystone of the process is a pledge by the lawyers that they will never take the matter to court and that, if litigation becomes inevitable, the

the expertise of an attorney for each side. The hallmark of the process is the four-way conference, in which most of the "lawyering" is done in front of the clients.

"This fills a void that has existed for a long time," Fleisher says. "I don't know how much of this represents a cultural shift or a release from the 'War of the Roses' fear people associate with divorce, but this shows people that that scenario is not an inevitability."

Fleisher is now only one of dozens of lawyers in New York City who have gotten on board the collaborative-divorce train. Though small groups of lawyers followed Webb's example as early as 1999, the concept really gathered steam in 2001, when Fleisher and colleagues founded the New York Collaborative Law Group.

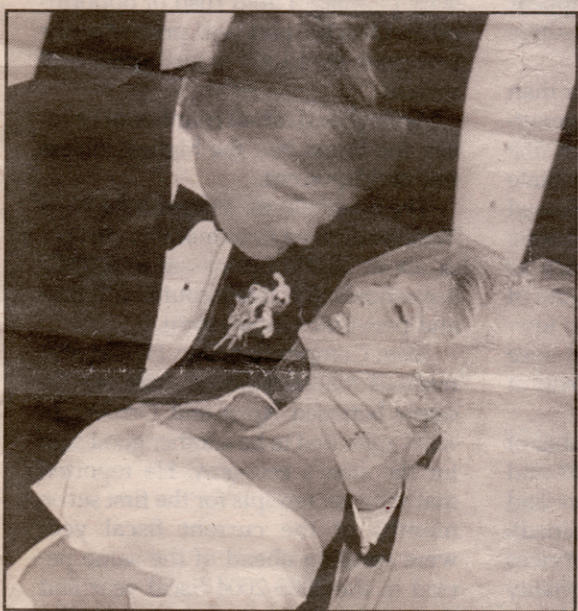
"It seemed that a lot of clients wanted the security that this matter was not going to end up in a court, whether for privacy reasons, financial reasons or to protect their children from the process of litigation," says mediator and collaborative lawyer Elizabeth A. Reingold, a co-founder. "While some family matters do need to be settled through the courts, it's a much smaller percentage than are presently there. A large percentage of matters can be settled out of court with agreements that make sense to the client, their spouses and children;

take less money and often less time; and offer a smoother transition to post-marriage life."

Critics, especially other lawyers, wonder whether the collaborative divorce really is good for the profession or the clients. As an advocate for a client's interests, a lawyer is often expected to do whatever he or she can to win the largest settlement possible and force as many concessions as feasible from the other side. By ruling out one of the lawyer's most powerful weapons, the ability to go to court, a collaborative attorney is going into a gunfight holding a switchblade, they say.

But for Reingold and Fleisher, that mind-set is exactly what they're trying to defeat.

"I think that the people who had lawyers who felt they had to get everything they could get, those people are still recovering from their 'great deal' and don't think as highly of the consequences as their lawyer did," Reingold says.



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collaborative lawyers won't be the ones to represent them. The theory is that it removes the incentive lawyers have to make the dissolution of the marriage more adversarial in hopes of getting more for their clients and themselves. Instead of the spouses bearing the burden of working out a solution as in mediation, a collaborative divorce offers

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