

ABOUT THE AUTHOR



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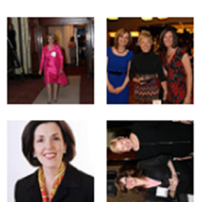
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KIM CIESINSKI: Collaborative divorce is a 'client-driven process – completely private.' || Photo by Judy Walker

Avoiding divorce wars

By: Adina Genn March 31, 2017 Comments Off on Avoiding divorce wars

Divorce on Long Island conjures all kinds of images, including extended battles that involve taking a spouse for everything he or she is worth.

But experts say a breakup needn't be acrimonious and efforts, both recent and longer term, may help bring alternatives to bitter litigation to light.

Take Kim Ciesinski. As a partner of the Garden City-based law firm Schwartz & Ciesinski, she is one of a limited number of attorneys who specializes in collaborative divorce.

It's a process where couples in transition agree to work together with trained lawyers, family specialists and financial planners to put together an out-of-court settlement that's best for the couple, and their children. This method is designed to be less expensive and less time-consuming than a litigated divorce. And because there are trained experts available to work through financial arrangements and family specialists to help navigate parenting issues, the process is also thought to be less emotionally draining than a litigated divorce.

"It's a client-driven process – completely private," Ciesinski said. "Clients are encouraged to come up with their own ideas for settlement. There is no winner or loser. Both parties come out winning, saying it's a good enough agreement, and I can live with it."

"I view the issue of divorce resolution as existing along a spectrum, with mediation on one end, litigation on the other, and collaborative in the middle," she added.

Echoing that sentiment was Jordan Trager, an associate with Wisselman & Associates, a divorce and family law practice in Great Neck.

While most divorcing couples chose litigation, some opt for mediation. A mediator might be a lawyer or even a therapist, and an attorney then reviews the final agreement, Trager said. But with the collaborative divorce, "from day one, the husband and wife have attorneys who are both specially trained" in the process.

The collaborative method is thought to be kinder to the wallet than straight litigation.

"It takes on average a third of the time and cost of a litigated case," Ciesinski said. "At the beginning of the process, both parties sign a participation agreement," Ciesinski added. "They agree not to litigate. It sets the tone. Everyone has the same agenda. If one side decides to litigate, the team disassembles and both have to hire litigators."

Here's why professionals like collaborative divorce for parting couples who agree to it.

"You have all the right professionals at the table," Ciesinski said. Because there is "no place in the legal system for emotions, which are ignored, stifled or subject to punishment, there is an impediment to progress. Here, it's a safe, private environment where emotions are given their due." It's not uncommon, she added, for cases to stall in court because of emotions.

The built-in discretion in the process also has strong appeal, especially with business owners, she said. "This process is completely private. If there is liability to exposure anywhere, you don't have to worry – you will never see the inside of a courtroom. There is no outsider saying how you will live your life. Parties work together to reestablish your life with the guidance of counsel. Clients drive the bus. Attorneys sit behind them, give directions and warn of potential pitfalls."

And while this holistic approach to divorce might sound appealing, there are challenges. Perhaps the biggest hurdle for practitioners is that the process is not that well known on Long Island, and therefore, not very common. The process won't work if one party wants to stall, Ciesinski said. And as the movement grows, some say they offer the approach but haven't been properly trained in its protocols. But the professionals who offer alternatives to bitter divorces are dedicated, and believe the effort will gain ground here.

"On Long Island, there aren't that many cases as in upstate," Trager said. In Nassau and Suffolk, he added, "people are accustomed to litigation and think this is the way its supposed to be done."

But Ciesinski's efforts – she's a member of Collaborative Divorce Resolutions, a group of specialists that formed to offer collaborative divorce – dovetail into other means afoot in the region to offer alternatives to litigation. Hofstra University's Maurice A. Deane School of Law, for example, has a program was created to provide urgently needed dispute resolution, financial planning and mental health services to families stuck in contested matrimonial cases on Long Island.

"The court system is overburdened," said Matthew Kiernan, an attorney who serves as the director of policy and planning for Hofstra's Center for Children, Families and the Law. "In the time it takes to get through a contested divorce, couples spend years and thousands of dollars."

"In our program, we are child-centered," Kiernan said. "People put their children first. They make the agreement to make the sacrifices necessary for the benefit of their children."

The program is just getting off the ground, with law school and psychology students trained and supervised now working with clients. The program is promoted to the local bar associations and judges.

"We focus on people who couldn't afford a lawyer who are of modest means and need help," Kiernan said.

"We think it will build up over time," Kiernan said. "We want to start slowly to get everything right and are hoping to get more clients. The judges and courts are aware we are a resource, and hopefully over time we'll become a popular alternative for the right kinds of families."

Of course, collaborative and mediation aren't for everyone. Ciesinski, who offers both, refers clients who prefer litigation to her partner Maria Schwartz. And while Trager does offer collaborative divorce, he has more than 20 years of litigation experience and also handles mediation at a matrimonial law firm where there are eight attorneys.

Trager helps educate about the collaborative process by explaining it to prospects as one means to divorce, and by discussing it regularly in a mediation group where he's a member.

Meanwhile, Ciesinski is doing her part to spread the word with bylined articles, press interviews, a dedicated website that pops up on Google search results, and lunch-and-learns for mental health professionals, financial advisors and insurance advisors.

"It's my mission to raise awareness and educate the public," she said, adding that she's seen an increase in public interest.

These advocates say they will continue their efforts to build momentum.

"Over the years, mediation is starting to grow, there are more calls for mediation," Trager said. "At some point collaborative will catch on."

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Yes - Not everyone can afford/wants to to buy a house on Long Island
No - Our downtown is already overcrowded
No - It will change the character of my community
No - My downtown is perfect as it is!
Other - Tell us in the comments!

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Calendar for Tuesday, October 17 and Wednesday, October 18. Events include Networking Breakfast, Business Referral Networking, Breakfast Meeting, Networking Meeting, Improve Your Computer Skills, Top 50 Women Dinner.

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