

LAW & GOVERNMENT

Divorce neutrality

Helping divisive couples reach common ground

By JOSEPH KELLARD

When attorney Maren Cardillo meets with couples that seek a divorce but harbor acrimony toward each other, she believes her profession, divorce mediation, can uniquely create a non-adversarial atmosphere in which reason can rule over divisive emotions.

A partner at Divorce Mediation Professionals in Garden City, Cardillo finds there is a general misconception that couples must be amicable in divorce mediation – a process by which they work together to compromise on crucial matters, such as division of property and child custody, with a neutral mediator rather than through litigation.

“We do have a lot of couples that we work with that do have a lot of anger and animosity toward one another because betrayal and terrible things have gone on,” Cardillo said. “And amazingly they do this because they are still able to hear that it’s common sense – that they still have to be parents together and don’t want to spend two or three years of their lives entrenched in this bitterness and anger.”

As an attorney, Cardillo can draft and formalize a legally binding separation agreement and file divorce papers for couples who seek her services. To reach that point, though, especially with warring mates, she meets with both parties together, listens to their concerns, and tries to get them to recognize that, no matter the issues dividing them, practical problems need to be resolved.

Cardillo works to reach a sensible agreement that both parties can live with, as opposed to a divorce litigator whose role is to advocate for and obtain the best outcome for his individual client. When children are part of the equation, Cardillo’s main goal is to get the couple to preserve the ability to function appropriately and effectively as co-parents.

“So much of why this process works is because the parties themselves are making decisions about what they are or aren’t willing to compromise over, and they’re not delegating those decisions to a court or a judge or the opposing attorneys,” said Cardillo, who noted that her firm has a social worker who helps couples work through emotionally charged matters.

Cardillo, of course, recognizes cases in which mediation simply won’t work, as does Jacqueline Harounian, a partner at Wisselman, Harounian & Associates, a mediation and litigation law firm in Great Neck. Harounian cites two general cases that she

MAREN CARDILLO: Divorcing couples need to preserve the ability to function effectively as co-parents.



believes mediation can’t solve.

One involves allegations of domestic violence and threats, wherein one party feels intimidated by the other or there is an order of protection, creating an atmosphere un conducive to communication and agreement.

“If one party is legitimately afraid of the other or feels that there’s going to be retaliation if they speak up in front of a mediator, then you can’t really have an even playing field,” Harounian said.

The other case involves a party that has too much financial information and control. Harounian has seen many cases in which the husband is a business owner and the wife lacks financial sophistication and is not in a position to figure out these matters.

“As a mediator, I turn those cases down, because I don’t feel the wife is going to get a fair outcome and I don’t think in that situation I can be neutral,” she said.

Of course, the lure of mediation for couples is the general lower costs and shorter time it takes to finalize a divorce relative to the standard litigation process. Harounian said that mediation tends to attract simpler cases, in which people come without a high level of animosity toward each other and are ready to agree. Under such circumstances, she can generally mediate a case for a flat fee of \$3,500 and finalize it within a matter of months, whereas a litigated case can drag on for three years and cost an average of \$25,000.

However, Harounian cautioned that she has seen

cases in which people went through mediation and lived to regret it.

The more complicated the case becomes financially, she said, the more risk people take through mediation.

“That’s because a lot of times there are documents that can only be obtained by subpoena or that really need to be reviewed by your own advocate that is going to look out for you,” she added.

Joseph Trotti of Vishnick, McGovern & Milizio, a litigation firm in Lake Success, said he refers cases to mediation when both sides have decided they want to try it. He finds the results of mediation are often mixed and the process can work when both parties are close and they can trust the mediator.

Trotti said some clients will still have their attorney review a mediator-drafted settlement to make sure it is fair and legally sufficient for filing.

“Maybe it was fair, maybe it wasn’t, maybe their attorneys are going to rip up the agreement, but I think mediation does work in a certain number of the cases,” he said.

Cardillo said that while every client in mediation has the right to consult with an independent attorney to review the agreement, a good mediator knows the law and informs couples if they are agreeing to something that may deviate from normative standards.

“Many individuals in mediation feel they are capable of determining what fair means to them,” she said. “After all, it is their reality.”