

LAW & GOVERNMENT

Matrimonial attorneys see co-parenting, prenup trend

New divorce laws reflect changes in gender roles, finances

By JOSEPH KELLARD

Attorney Maren Cardillo has many more divorcing couples who visit her office agreeing to share equally in parenting of their children.

A partner at Garden City-based Divorce Mediation Professionals, Cardillo is unsure if the uptick is due to more couples wanting to avoid courtrooms for alternative, less costly cooperative resolutions. She does know that, increasingly, more couples steer away from traditional divorces in which mothers serve as the primary caretaker and fathers see the child every other weekend. She also believes many couples that want to share custody even don't necessarily want to have an obligation to the other parent.

"A lot of couples that I work with choose — rather than one person paying child support to the other — to share the expenses, which sometimes works when they have a similar income," she said.

Cardillo is among a number of Long Island attorneys who believe the evolving roles of parents, particularly households in which both parties work full-time and the wife earns more than the husband, have played an important part in some significant changes in matrimonial law in recent years.

Elena Karabatos, a partner at Garden City-based Schlissel, Ostrow and Karabatos, sees two-parent involvement evolving and changing. She said she has seen clients from households in which both parents work and who are both equally involved in the family after they divorce.

"Because it is so expensive to live in New York, what we're seeing now is two parents who work and you're seeing a lot more shared parenting," Karabatos said. "And that plays out in the divorce, in the structure of custody situations and arrangements. So that's really changing."

Jacqueline Harounian, who has practiced matrimonial law for more than 20 years, said she has seen these "dramatic" changes play out in courtrooms and in outside negotiation. In years and decades past, she said, it was unheard of that a woman didn't get primary custody, even if she was working. But joint physical custody and legal custody, in which both parents have input on decision making, are increasingly gaining ground in New York.

"The courts now are very, very receptive to fathers that ask for custody, who at the very least want 50-50 custody. So obviously that changes the economic entitlements, child support and spousal support, if her income was less," said Harounian,

a partner at at Wisselman, Harounian & Associates in Great Neck.

There are a new set of laws that are probably considered more fair and evenhanded — in that they are more gender-neutral and reflect two working parents — but are much harsher for the "stay-at-home, non-monied parent," Harounian said.

Here, Harounian points to both parties paying legal fees, where in the past the husband had to pay at least a portion of his wife's fees. She cites shorter durations of spousal support.

And Harounian highlights an amended bill, to take full effect in January, in which licenses and academic degrees that

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a spouse earned during marriage are no longer an asset, insofar as they led to the spouse's enhanced earning capacity. In 2010, New York became the last state to allow no-fault divorce, effectively eliminating grounds for divorce based on allegations of abandonment, adultery, cruel treatment and other claims, which she believes has narrowed the cases to two main areas: custody and financial.

Harounian noted that five or 10 years ago, most husbands wouldn't ask for spousal support, even when they were entitled to it, but more men today are taking it. She believes this is a reflection of many more women earning more money than their spouses and that many men who lost their jobs during the Great Recession of 2008 decided to stay home to raise their children, making them candidates for spousal support.

"So, the support laws are less protective of women in general and more evenhanded," she said. "So you do see women now paying spousal support; you see more women paying child support. The laws on the books are very in favor of joint custody and there's been a very recent adopting of shared custody, 50/50 plans."

Harounian echoed other attorneys who have also noticed a substantial increase in prenuptial agreements, and not just among millionaires. These often involve middle-class couples where the woman has greater assets and higher incomes.

"Prenuptials are pretty inexpensive and are a little awkward to discuss before a wedding but do require couples to communicate about finances, assets and debts, and almost every divorce lawyer will admit

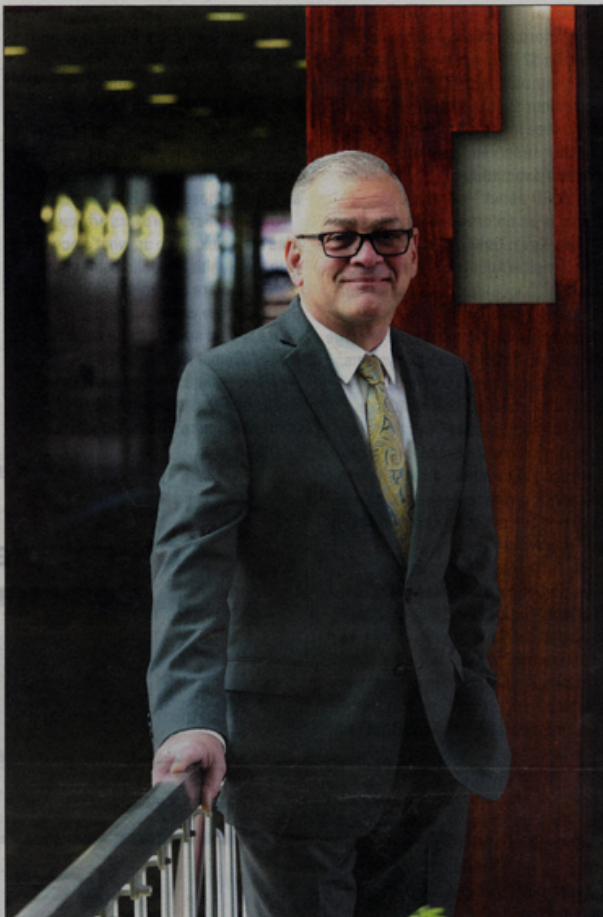


Photo by Bob Giglio

JOSEPH MILIZIO has counseled same-sex couples for the past 14 years.

that they are very effective and really take a lot of the financial trauma out of a divorce," she said.

With more couples marrying later in life, Karabatos is drafting many more prenups for people between the age of 29 to 35, who are more established and probably entering a marriage with more assets than younger newlyweds.

"I'm talking about young people who have worked some and they're ready to commit but they just want some protection," she said. "You'd be surprised at how many people in that age demographic have made some money."

While same-sex marriage was legalized in New York in 2011, and nationwide earlier this year, Karabatos has yet to see many divorces between gay couples but has written a few prenups for them. She finds there is nothing distinct about it.

"It's like anyone else; two people get married and they have the same concerns that anybody else has, the same desires for a family, to have a life together, to all the same things," she said.

But Joseph Milizio, a partner and head of the LGBT practice at the New Hyde Park-based Vishnick, McGovern & Milizio

who has worked with same-sex couples for the past 14 years, said increasingly more of these couples are preplanning, especially to have children, which is a marked contrast from the past.

Milizio said that he's already seen a number of marriages that formed soon after same-sex marriage was legally recognized deteriorate to the point of divorce. He believes when the right to marry became legally available, many of these couples looked at it as more of an obligation rather than really thinking about the responsibilities that come with marriage.

"So it was done more as a celebratory thing than a rights and obligations type thing," he said. "So that seems to have largely passed from a time perspective."

What he sees now is more same-sex couples who have the benefit of contemplating marriage and are planning much more carefully, which has translated into more prenups.

"Many of them are seeking counsel with respect to what are their rights and obligations," he said, "as well as whether or not they should have prenuptial agreements in place."

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