

Demand for ADR, mediation up, family-law bar reports

More clients now seeking cheaper ways to divorce

By Julia Reischel

Published: August 24, 2009

Family-law attorneys who specialize in mediation and "collaborative practice" say they are seeing a marked increase in demand for their services, a phenomenon they suspect is fueled by the faltering economy.

"The number of cases involving mediation or collaborative practice is twice as much as it was last year," said Howard I. Goldstein, a partner at Rosenberg, Freedman & Goldstein in Newton. "I'm getting two or three inquires a week about mediation. That's really unusual."

Others say they have noticed a jump in business as well.

"I feel like I'm standing under Niagara Falls," Cambridge mediator John A. Fiske said. "I'm swamped. It's amazing because I got just one phone call in December, and now I can't keep up. These are salad days for mediators."

Laurie G. Israel reports a similar rush of work.

"We are intensely busy," the Brookline collaborative-law practitioner said, speculating that, regardless of what the economy is doing, "people still need to get divorces." What has changed, Israel said, is that these people are seeking more cost-effective ways to undergo the process, with less conflict involved.

In mediation, the parties typically work with a single lawyer and split the costs, while in the collaborative-law process, each side has an attorney and participates in what amounts to a four-way negotiation. Both methods avoid the lengthy and costly process of a traditionally litigated divorce.

"Even the most affluent, well-heeled clients are now fee-sensitive," Goldstein said. "This is the new frugality."

'Going gangbusters'

Because the Probate & Family Court does not track divorces that involve mediation at some point in the process, there is no reliable way to confirm the anecdotal evidence that more would-be litigants are turning to ADR.

"Mediation cases don't show up in the filings," Goldstein said. "There's no statistics about things like collaborative practice, arbitration or other methods of dispute resolution."

Preliminary data shows that the number of divorces filed in Massachusetts in fiscal year 2009 rose to 21,233, compared to 21,067 in fiscal 2008.

Those figures suggest that if more litigants are choosing ADR, they are using it in conjunction with the court system rather than in place of it.

But there is other evidence to suggest that the use of ADR in family law is on the rise. Divorce attorney Martin F. Kane said the conciliation program he runs in conjunction with the Middlesex County Bar Association has been "going gangbusters" over the past year.

"The numbers are up," he said. "I think that's based on the economy, but I also think that more and

more practitioners are seeing the benefits of this."

Through July 2009, the Middlesex program has received 221 cases, putting it on track to exceed the 338 cases it handled for all of 2008, Kane said.

And the trend is present in other counties as well. Between July 1, 2007, and June 30, 2008, volunteer lawyers in Essex County conciliated 238 family-law cases, while between July 2008 and June 2009 they handled 290 cases, according to the Essex County Bar Association, which runs the conciliation program.

'Cost savings?'

Although family-law practitioners agree there is more demand for mediation and collaborative-law approaches in their practice area, they offer different explanations for why the phenomenon is occurring.

Some believe the economy is motivating clients to consider ADR.

"It's got to be," Fiske said. "I charge \$400 an hour. Most couples take 10 hours or less of my time to get a complete divorce, so the total cost is \$4,000. When clients go to a lawyer downtown, and the lawyer says, 'We've got to start with a retainer of \$30,000, and we'll spend that on discovery,' it's very different."

Israel, the Brookline collaborative-law practitioner, said some of her divorce-seeking clients explicitly cite cost as the reason they turned to alternative dispute resolution.

"We are seeing people who want mediation more, and some of them want it purely for the cost savings," she said.

But other lawyers question whether the economy is the primary motivator for their clients' growing interest in ADR, suggesting instead that a larger public awareness of the many benefits of mediation and collaborative law is causing the rise in demand.

"I am not much busier than I was a year ago, but I am finding that more and more people know about their options in terms of a non-adversarial process," Worcester mediator Marcia E. Tannenbaum said.

When she wanted to list her practice in the Worcester telephone directory some 10 years ago, Tannenbaum said, she had to request a new category heading for mediation services because no one had ever heard of it.

"What has happened over the last four to six years is that it is now normative for people to know about mediation," she said. "What I'm seeing is that people know about it. They may not know how it works, or really understand your role as a mediator, but they know about it."

Doris F. Tennant, a Newton mediator and collaborative-law specialist, said that she, too, has encountered more demand for ADR than usual this summer.

"I definitely have found that more people are calling me now and specifically identifying the process [of collaborative divorce] as what they want, as opposed to a couple of years ago," she said.

Tennant believes that collaborative law and mediation have become more mainstream, citing as an example the 2007 hit film "Juno" in which one of the characters made a reference to "collaborative divorce."

"I think that it is becoming better known," she said. "It's gotten more publicity. And I would say that, in the past 18 months, more people have been calling specifically requesting collaborative divorces."

But, she conceded, the economy might be motivating prospective clients to search for affordable alternatives to litigation.

"People may be doing more research," she said.