

Make it Work; Divorce Alternatives

Written by Kaine Fisher

Q&A with [Kaine Fisher](#), Director of Rose Law Group [Family Law Department](#)

“When I said “I do” 10 years ago I took my vows seriously. I still do today. I made a commitment and keeping my promise to my spouse is important to me. But my crumbling marriage is having a negative impact on our children. Are there any alternatives to filing for divorce?”



I always admire those people who arrive at my office for the first time having not given up on their marriage. Call me old-fashioned but there is something to be said about spouses who choose to exhaust every option in a last ditch effort to save their marriage. This is especially paramount when children are involved. It's no secret that there are ups and downs in every marriage. Most wedding vows even foreshadow these turbulent times. Some couples persevere and uphold their promises to one another. However, some couples simply cannot or will not; that is ok. But why not strive to one day be able to look at yourself in the mirror and know you gave it everything you could.

Divorce lawyers are not in the business of promoting divorce. The public, and even lawyers in other practice areas, seems to have a misperception about this. My responsibility is to assist spouses in divorcing gracefully, and to protect and advocate for them, once that very tough decision has been made. I do not work on a contingency fee basis, and trust me - I'm busy enough not to have to force spouses into divorce when there is a chance (even a small chance) it might work out. I adamantly believe it is my duty to present my clients with alternatives to divorce and at least explore them in some detail.

Litigants in family law matters are often, for whatever reason, filled with strong feelings and emotions, such as anger, resentment, jealousy, distrust and disappointment. The first step is to ensure my clients are taking steps to address these emotions through appropriate counseling/therapy. There is no hope for the marriage unless and until my client processes their own feelings and accepts and understands any role they may have played in the deterioration of their marriage. However, I do not force clients into counseling; it is their choice and I respect that. Only when progress has been made on that front, though, can the couple begin thinking about couples therapy or marriage counseling – that is, unless of course, there has been domestic violence in which case I generally recommend divorce as the only course of action. All good family lawyers have a list of referrals for mental health professionals of all sorts.

Before going down the road of contentious, expensive litigation, I find that some cases may benefit from a referral to Conciliation Court. The Superior Court in some Arizona counties has chosen by rule or order to establish a separate court to afford spouses a chance to save their marriage and/or resolve their family law disputes. The goal of this independent court is to promote the public welfare by protecting family life, children and the institution of marriage. The process is commenced when either spouse files a Petition which can be done at any time before filing for divorce or even after a divorce action has been initiated so long as the Petition (1) is filed within 60 days from the date of service of the divorce Petition, (2) is filed after 60 days from the date of service and the other party agrees to proceed with this process, or (3) is filed after 60 days from the date of service and the assigned judge finds that the process will not delay the orderly processes of the pending action. Once a Petition is filed, the assigned Family Court Judge refers the matter to Conciliation Court, an order is issued setting the matter for Conciliation Counseling, and a 60-day stay is imposed on the underlying divorce matter. Generally the goal of the session(s) is reconciliation or resolution of any broad range of family law-related matters in an effort to keep the family together and ease the burden on judicial resources. Unfortunately, some litigants use this procedure to unscrupulously delay the divorce proceeding for whatever reason and it is not often the process that effectuates reconciliation. But to my earlier point, this option provides some litigants peace of mind knowing they tried everything.

Occasionally, I am asked about whether a legal separation would be a better alternative to filing for divorce. A legal separation does not require a finding of irreconcilable differences (like a divorce), but rather, a finding that the parties desire to live separate and apart. Other than that, I advise clients the processes and procedures are identical in almost all respects. Just as in divorce matters, the task of dividing property and debt, and addressing the issues of spousal maintenance, legal decision-making, parenting time and child support are all tackled in a legal separation. The only real distinguishable difference is that at the end, the parties are not legally divorced. Why then go that route? Well, some folks have strong religious beliefs that prevent divorce from being an option. Other folks do not in their heart desire a divorce but want to try this option hoping that this less aggressive filing may cause their spouse to “snap out of it.” Yet another reason may be because one spouse has a life threatening illness and a termination of that spouse's health insurance may effectively be a death sentence. Why is that? Once a divorce is final, many spouses who were previously covered under their spouse's insurance are forced to obtain their own private insurance or opt into COBRA coverage. Obviously, the uninsured spouse may be uninsurable or the cost of private insurance or COBRA insurance may not be affordable due to a pre-existing condition. Remember, a legal separation does not result in a divorce so both spouses can remain insured by the existing policy.

Most everyone has heard a joke or two about the relative cost associated with getting married and getting a divorce. I have witnessed spouses reconcile just a few short days before Trial after thousands of dollars have been spent in attorney's fees. Perhaps this all could have been prevented if all reconciliation options had been vetted. Just something to think about before throwing in the proverbial towel on your marriage.

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