

# 'Positive divorce' introduced here

By Tom Kaser  
Advertiser Staff Writer

Matrimony may be the high sea for which no compass has yet been invented, but at least Los Angeles attorney J. Michael Kelly has a plan for getting off that sea with a minimum of the usual bitterness, fear, anger and grief.

It's called "positive divorce" and essentially it changes the divorce lawyer's role from adversary to peacemaker as he helps bring about a mutually acceptable termination of a marriage. At the very least, positive divorce tries to separate resolvable issues from irresolvable ones, thus shortening the litigation process.

"Litigating a lawsuit is not hard, but negotiating a good settlement is very hard," says Kelly, who was here last week to describe positive-divorce techniques to Hawaii Bar Association members who do family law work.

He said during an Advertiser interview that a 1967 study found divorce to be the second-most-stressful experience — after the death of a loved spouse — that humans go through. Also, studies have shown that children of divorced parents have about a 300 percent greater chance of becoming divorced themselves than do children of parents who do not become divorced, he said.



Kelly

"If you saw the film 'Kramer vs. Kramer,' you saw why there is a need for positive divorce. Ted and Joanna Kramer went at it the wrong way — or rather their attorneys did. There was a settlement of sorts at the end, but only because Joanna decided it.

"Instead, the Kramers and their attorneys should have sat down and discussed how to dissolve the marriage in a way that was in the best interest of the child. They could have avoided all those scenes, especially in the courtroom, of anger and bitterness."

Kelly emphasized that positive divorce is not the same as no-fault divorce, which simply is divorce without having to state a reason.

"For many years, some states required you to prove a specific, allowable reason for the divorce, which I think was a cruel and unreasonable requirement. And many states said that if one spouse didn't consent to the divorce, there was no divorce — an even more cruel and unreasonable requirement."

About 23 states (including Hawaii) now allow no-fault divorces, he said, but that doesn't do what positive divorce can do to remove acrimony from the process.

He explained that in positive divorce, the attorneys become responsible for the way the spouses behave.

"The lawyers tell their clients to act as adults, be civil to one another, be on time for appointments and actually try to help the divorce end amicably.

"Of course, if one of the spouses is determined to sabotage this effort, it will be sabotaged. If there is harassment, foot-dragging, stonewalling and non-negotiable demands, you're going to have a very difficult situation at best."

Kelly's approach involves four initial steps that happen in about 10 days' time. First, the initiating attorney sends to the

opposing spouse and attorney a letter pledging fairness and openness, stressing the importance of maintaining civil relationships throughout and promising to avoid any aspects of who is "right" or "wrong."

Second, the first attorney meets with the client's immediate family and friends and stresses the importance of their support for both client and the positive divorce process. "Taking sides" is discouraged.

Third, the attorney enlists the client's promise — in writing — to behave as an adult and recognize that either the client or the attorney can "fire" the other at any time.

Fourth, the attorney and the spouse seeking a divorce meet with the other attorney and other spouse to discuss settlement aspects on which they do agree. This determines what, if anything, will go to trial.

"One of the things we discuss is the cost of going to trial, which sometimes helps resolve issues," Kelly said. "People need to be clear about the economic consequences of their stubbornness."

Kelly himself is in his second marriage but he has never been divorced. His first marriage — at age 23 — lasted six weeks but was annulled after he, his wife and her father "had a little talk" about whether the marriage was advisable in the first place.

That, and his experience as a divorce attorney, has given Kelly some insights into what he feels are the two main causes of divorce in the U.S. today: unrealistic expectations and a lack of basic "marriage skills," such as communication and introspection.

"The only thing people really know about marriage," he says, "is what they've seen in the media — especially on TV and in movies and novels. The media tend to present marriage as nothing but great weekends and candlelight and wine.

"So when marriage turns into something else, including work and even occasional drudgery, it appears to be 'not working.'"