

Meet Michael Kelly. He may be the one divorce lawyer you'll want to see. He won't change your marriage, but his philosophy and practice may turn a punishing divorce into a growing experience. Kelly has created something called . . .

## A positive divorce

By D'Arcy Fallon  
Staff Writer

**T**heir divorce has dragged on since 1968. The wife says the settlement is unacceptable. Her husband's life remains on hold while she inspects — and rejects — various points of the agreement. What her reluctance is really all about is revenge, "financial suicide" and an inability to let go, says Michael Kelly, the Santa Monica family law attorney who has taken on the case.

The endless finagling is a way to "punish" the other party in the marriage, says Kelly, who also serves as a pro-tem judge in Los Angeles Superior Court and volunteers as a divorce mediator in the Santa Monica courts.

Kelly wants no part of seeing the legal process used as a tool for spousal vindication. Instead, he and law partner Michael Cogan have created "positive divorce," a step-by-step process that enables spouses to divorce with respect and fairness. The idea is to get through the divorce as quickly and efficiently as possible so his clients can get on with the rest of their lives.

Under California's no-fault divorce law, which went into effect in 1970, a person wishing a divorce needs only to say he or she has irreconcilable differences with his or her partner to dissolve the marriage.

Through positive divorce, about 80 percent of Kelly's clients settle their divorce cases out of court, while the rest require some litigation. None has resulted in full trials, he says.

Kelly, who's been using positive divorce for the last six of his 15 years in law, sees his role as a peacemaker.

His dislike of seeing the legal process used as "a strategy device or a snare for the unwary" stems from his first family law case in 1970. The custody battle revolved around a grandmother who was trying to take his client's son away from her, stating she was an unfit mother. The case dragged on for 2½ years through courts in three states.

Eventually, Kelly was able to prove the grandmother was lying and won the case, but by then the damage done both to the child in question and his parents cut to the bone.

The child's father, "a highly motivated guy," went through two or three jobs in the interim. Their marriage collapsed under the weight of the drawn-out trial. "When I saw that I said, 'There's got to be a better way.'"

Through positive divorce, Kelly strives to benefit both parties, not by giving them everything they want, which is "unrealistic," but by providing

them with what they need, he explains. There is a difference, says Kelly. What a client wants is usually "a little bit of revenge and 100 percent of everything."

He is currently handling an Orange County divorce involving \$13 million in community property. "The divorce will be over fairly quickly and inexpensively because Kelly and the attorney representing the other party are cooperating."

He estimates that a divorce involving \$13 million in community property could easily support \$75,000 in legal fees on either side if the most expensive accountants were hired or if the lawyers disputed every point of the divorce.

A year and a half ago Kelly had a case in which he placed three different appropriate settlement offers in front of his client. They were unacceptable on the grounds that Kelly wasn't being difficult enough with the husband. (He had amassed \$15,000 in lawyer's fees by that point.) By the time both parties were through with the divorce, lawyer's fees on both sides were more than \$100,000.

What they were fighting over was the length of spousal support and one large house. But there was another element at work here, he says. "This was a case where the legal process was used as a vindictive mechanism to damage the other side."

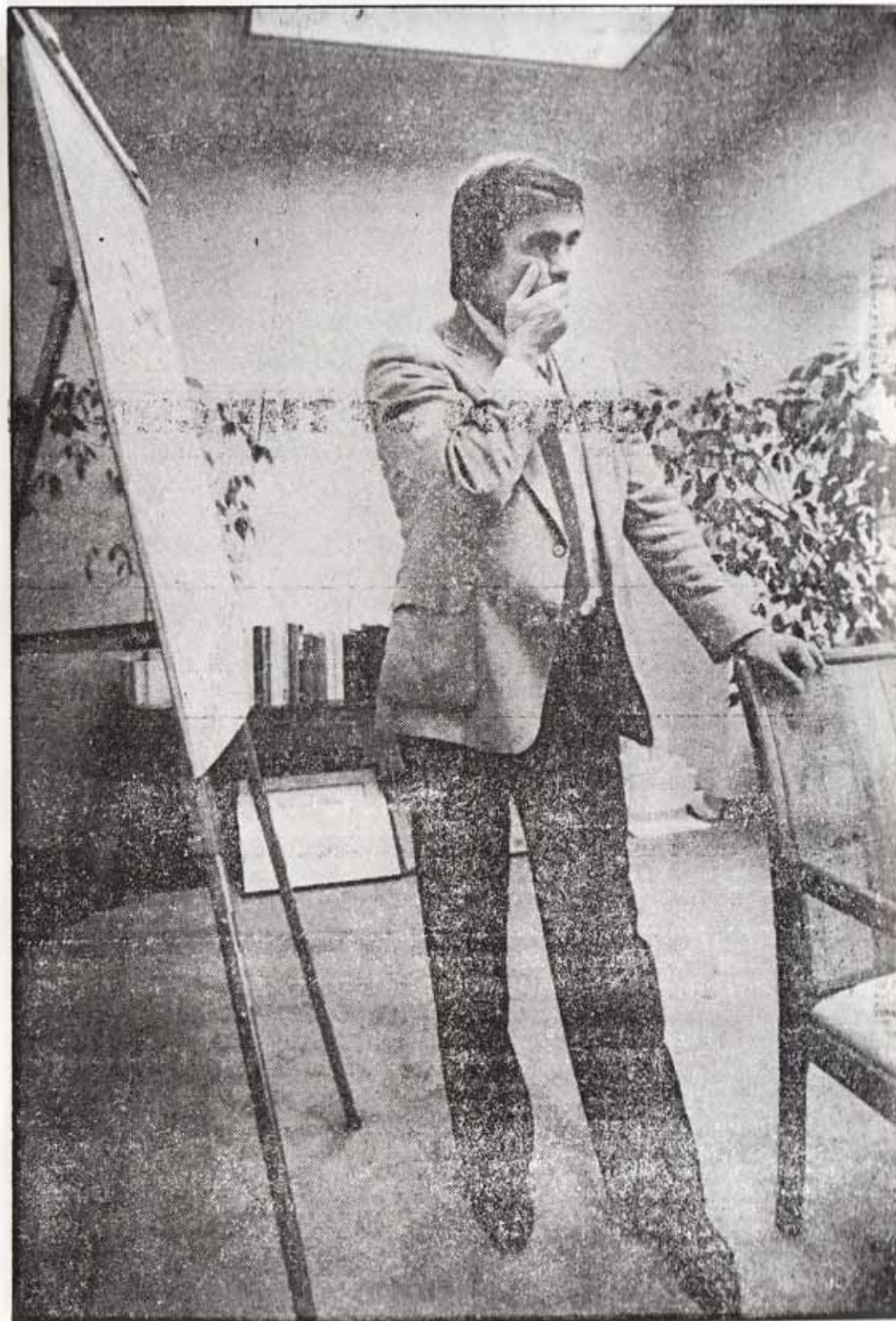
"Clients are never clear when they say 'go get my spouse' who is paying the bill. They are," he says. "They have this anger going on, and anguish and fault-finding and what they want to do is remove that — but they don't understand that it's \$300 an hour that's being spent." (Kelly charges \$150 an hour.) The result is "a \$300 (an hour) collision" (between two attorneys). When lawyers bring in appraisers, top-flight accountants or psychiatrists or child psychologists, the rate soars even higher.

If one party hires an attorney who practices divorce law solely by litigation, Kelly says there's not a lot he can do but respond to that litigation.

But it's costly, both financially and emotionally. The distraction it causes in one's life is "unacceptable," says Kelly, 43. It saps the creative juices, is very stressful and runs into thousands of dollars.

People often blame their attorneys for the way a divorce goes, he says. They carry their anger and disagreements into the divorce and when things get nasty, it's the lawyer who gets blamed, he says. He makes it a requirement of his clients that they don't use the adversary system.

Even if the marriage hasn't worked out, there's no reason the divorce can't be successful, he reasons. Kelly maintains he is in a position to process the di-



ATTORNEY MICHAEL KELLY is creator of the "positive divorce" process.

CONTINUED/ L/S2

L/S2 PRESS-TELEGRAM/SUNDAY, JAN. 2, 1983

## Turning failed marriage into successful divorce

FROM/ L/S1

orce, not give his clients psychological counseling. Opposing counsel Josh Fredricks spoke highly of Kelly's approach to divorce. Fredricks, a divorce and criminal lawyer from Redondo Beach, has represented clients opposite Kelly in two divorce cases. Fredricks describes Kelly as very fair, both to his own client and opposing spouses.

"I got the impression that Mike has his client's interest at heart, that he had everybody's (parents, children) interest at heart," Fredricks said.

After enlisting Kelly's services, his clients sign retainer letters, which contain very specific clauses stating Kelly's office won't be retained to harass anyone. If the other marriage partner isn't represented by Kelly's offices, a letter is sent to him or her stating Kelly's firm will be scrupulous and fair. As quickly as possible a meeting is set up so both sides can begin to delineate what they can and cannot agree on.

Using a large pad of paper set up on an easel and a set of colored markers, Kelly, the opposing counsel and the divorcing couple draw up a "map" of the settlement. On it is listed exactly what the couple agree and disagree about.

More than a hard and fast settlement, the draw-

'Marriage should be a relationship that nurtures both parties and gives both parties an opportunity to maximize their personal growth.'

— Attorney Michael Kelly

ing is a communication device to get people talking, according to Kelly.

The questions are practical. Who gets the Toyota? The house? Who gets the \$4,000 in the bank account? What's the value of the business? The things they can't agree on are litigated.

Kelly says the number of things a couple agrees on far outweigh the things they can't agree on. Custody, the length of spousal support and who gets to keep the house are items agreed on fairly soon.

Ron Bongard retained Kelly's services in 1981 after the disintegration of his 20-year marriage. It was a move the writer and film producer has never

regretted. More than anything else, says Bongard, Kelly influenced the attitude of his divorce, which changed from being adversarial to one of "almost philosophical compatibility" between he and his wife.

Kelly's methodology of settling things as peacefully as possible made Bongard's estranged wife and her attorney, who was "going for the throat," reconsider their tactics of getting everything they could.

Drawing up "his" and "her" columns to look at such emotionally loaded issues as child custody and possession of their house gave Bongard a practical "form to react to." It took away much of the speculation, the "what ifs" and simplified things, he says, enabling he and his wife to get over their "kicking and screaming" quickly and move on to more practical considerations, like the fate of their two children, then 12 and 15.

Kelly is bent on changing the concept of divorce (for many people, it's synonymous with "failure," he says) and removing the "stuckness" of it. The immediate reaction most people have to getting a divorce, says Kelly, is "it's going to be horrible."

He foresees divorce escalating in the future. The biggest problem is the lack of communication between couples, says Kelly.

False or unrealistic expectations about marriage also contribute to the downfall of marriages, adds Kelly, who's been married twice. (His first ended in

an annulment after six weeks. He was 23.) "Marriage should be a relationship that nurtures both parties and gives both parties an opportunity to maximize their personal growth," he says.

Don't think your marriage is going to be like all those holiday weekends you had with your partner before you got married — the weekends that made you want to get married in the first place, says Kelly. Unfortunately, "people tend to change partners after the glow wears off."

He says divorce will accelerate because "people have no way of handling their expectations. There is no process of actual serious training before going into the marriage."

Kelly advocates three or four "serious" premarital encounter weekends before people get married to "get underneath the things that are never said" before you get married.



Frank Anderson

Frank Anderson is on vacation.