Alimony reform is in the works in NJ

by Gary L. Borger, Esq.

The NJ assembly on June 19th unanimously passed a combined bill, A-845/971/1649, that would drastically alter how alimony is awarded in NJ. While 98% of the divorce cases filed settle (as opposed to going through a trial for a judge to decide what the parties can’t decide on their own), the law affects how cases settle. First, the bill would, if enacted into law, eliminate permanent alimony in most cases (calling it “indefinite alimony” rather than “permanent alimony” in cases of long duration marriages so that it is viewed as less than permanent). Second, it would give judges (and attorneys) factors to apply to determine the length of alimony and when alimony payments can be stopped or terminated. For example, for marriages of less than 20 years duration, alimony a judge would not be able to award alimony that lasts longer than the marriage lasted. For the first time we would have criteria not just on the amount of alimony to be awarded but also criteria on the length the alimony is to be paid and received. Third, the bill would attempt to clarify existing law addressing when alimony can end due to retirement of the payor upon attaining full Social Security retirement age (which varies now based on one’s year of birth). Fourth, the bill tries to clarify the law on the effect of cohabitation of an alimony recipient on his or her right to continued receipt of alimony or at least the amount to be paid. Fifth, the bill would allow those out of work to apply for relief from an alimony obligation after 90 days of unemployment (presently considered “temporary” by most judges based on existing law that results in denial of the application for a suspension or reduction of alimony payments. Sixth, it would clarify that the lifestyle of both spouses is an equal consideration, not just that of the
alimony claimant. These are all reforms that are long overdue and have been years in the making. Those already paying alimony under a judge’s ruling or a divorce settlement would not be affected by this proposed change in the law. The bill now moves to the State Senate to consider and can only become law once thereafter signed by Governor Christie.

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**NJ Legislature unanimously passes Collaborative Divorce Law!!!**

by Bruce Matez, Esq.

Last week, both houses of the the New Jersey legislature UNANIMOUSLY passed the new Collaborative Law Act. The bill has been sent to the Governor for his signature. The June 26th press release from the New Jersey Council of Collaborative Practice Gr0ups stated, “This extraordinary showing of support for the collaborative law process represents a paradigm shift in thinking within the State Legislature, and paves the way further expansion of collaborative practice in New Jersey.” Collaborative Divorce has been growing in popularity within New Jersey in recent years and was brought to the South Jersey area by a group of attorneys and other professionals how formed the South Jersey Collaborative Law Group (www.sjclg.com) in 2011. Linda Piff, co-chair of the Council, said “The Bill will empower families to divorce with privacy and dignity and avoid the emotional and financial strain of conventional litigation. Collaborative law is a powerful idea whose time has come.” This is very exciting news for Collaborative professionals
and divorcing couples who are seeking a better, more amicable, less costly, less time consuming and more respectful means of settling the issues collateral their divorce and provides them with a viable and now legally recognized alternative to their traditional models of negotiation between attorneys and litigation.

College costs post-divorce from an alienated parent

by Gary Borger, Esq.

NJ is in the minority of states which gives judges the power to order parents to make financial contributions to the cost of their children’s higher educations. While the 12 factors a NJ judge must take into account in doing so have been in place by case law since 1982, this week an opinion by a trial judge in Ocean County (Judge Lawrence Jones) offers guidance to trial judges and attorneys in how to deal with the situation where the parents agreed at the time of their divorce that they would contribute to their three children’s college education expenses when the time came but where the child and the non-custodial parent (father) are estranged and, although the father was willing to work on the relationship, the child was not. The relationship between the parent and child is one of the 12 factors in deciding whether a parent must contribute to his/her child’s college education expenses. Judge Jones addressed this factor by not looking back (as he recognized that trying to find who was more at fault in the deterioration of the relationship was less productive than trying to
rehabilitate the relationship) but rather looking forward. While the judge ended up enforcing the agreement and ordering the father to make his contribution, he also ordered the son and father into counseling, and kept the courthouse doors open for the father to apply again in the future to terminate his obligation to pay for college if the child refuses to engage in the mandatory five counseling sessions the judge ordered. The judge also ruled on the conflict between the cost of a state versus a private university, considering the financial circumstances of the parents and that there were two younger children who would need a higher education down the road. For those interested, the opinion can be found at: http://www.judiciary.state.nj.us/trial_court_opinions/BLACK-V-BLACK.pdf

Collaborative Family Law Helps Take Litigation Out of Divorce

Bill Mooney | May 2, 2014

Pending legislation could mandate use of process, easing crowded court calendars and reducing stress and strain on families

John Caroli knows what it is like to go through a divorce.
About six years ago, after 24 years of marriage, the Atlantic Highlands financial planner and his wife, an attorney, parted.

And however else the experience transformed him, one change was completely unexpected: He became a champion of a practice generally known as collaborative family law, a procedure that requires parties to a divorce to negotiate face to face and in good faith.

“My attorney said, “Listen. This process is going to save you time, it is going to save you money, it is going to save you whatever is left of your relationship with your wife, and it is going to minimize toxic stress on your children,” Caroli said.

His attorney was right, so much so that Caroli now serves as a neutral advisor on financial matters to other couples using collaborative family law to negotiate their divorce.

He feels that if he can provide a neutral viewpoint to help parties equitably settle on support and alimony then he has provided a needed service that helps the divorcing parties and the children involved.

He also prefers not to work as a financial advisor on more litigious cases.

Now, collaborative family law may be codified in New Jersey – if pending legislation passes.

If the bills – S1224/A1477 – become law, New Jersey will join approximately 39 states that utilize this approach as an alternative to conventional divorce.

The collaborative family law movement began in the 1980s and is practiced in some form in about 29 countries.

In New Jersey there are more than 500 lawyers practicing it in varying degrees, according to Linda Piff, a Wall Township attorney who has been involved in family collaborative law since 2005. She is president of the New Jersey Council of
Collaborative Practice Groups and trains others in the practice.

“Often litigation starts out with a declaration of war and children are the victims,” she said. She believes that the collaborative process not only saves wear and tear on the participants, but also can relieve crowded court dockets.

According to her estimates, the average family collaborative law divorce takes about 6.9 months, compared with anywhere from 12 to 18 months for contested divorces.

In addition, Piff said that the collaborative approach is generally a third of the cost of litigating a divorce case.

The way such a process works is that the divorcing parties hire lawyers to assist them but negotiate face to face about dissolving the marriage and dividing assets.

The direct contact makes a difference, according to Caroli. “If you go to litigation,” Caroli said, “You’ve got a lawyer lobbing letters and the other lawyer lobbing them back. In our process, you have to negotiate in good faith and stay on track.”

In a traditional divorce Caroli said that the people involved run the risk of a judge making a decision that will just anger one of them even further. In his case, the process ended up taking over a year, but it did save money in the long run.

Taking his and his ex-wife’s education and income levels into consideration, Caroli said, “I think if we had litigated . . . we could have turned it into a spectacular income stream for the lawyers.”

Not every family collaborative process ends successfully. If the parties cannot come to an agreement, they can proceed to the regular divorce court, but the lawyers who helped with the unsuccessful collaborative negotiations are not allowed to
represent the parties in the traditional divorce litigation.

According to Piff, there is an 88 percent success rate nationally and in New Jersey — based on one study of about 250 cases from a random sampling over two years — there is about a 91 percent success rate.

But if the process is growing and is proving so successful, why is legislation necessary?
“So there is no misunderstanding about the parameters of what this is” said Sen. Loretta Weinberg, (D-Bergen), who sponsored the Senate bill that cleared the Judiciary Committee 12-0 in March. The Assembly version has not been heard yet.

The Senate bill has been sent to the Budget Committee for consideration because it could represent a savings to the state in reduced court costs. The legislation will provide uniformity, according to Piff, as well as mandating full disclosure of all relevant information when the parties employ this process. In addition, she said it will extend confidentiality privilege to neutral third parties.

The lawyer-client relationship is privileged already, “but we often have mental health professionals assisting, Piff said. “They can only get the privilege against disclosing communications by statute. The bill is to give that confidentiality.”

Under the bill, the parties sign an agreement to use this alternative to the courts, and then, with the assistance of lawyers but without a judge presiding, negotiate toward a resolution.

Once all matters are agreed to, the completed document will be presented to a judge who will question the parties to ensure they understand and agree to it. The legislation is based on recommendations from a 2013 New Jersey Law Revision Commission report.
“It seems like an appropriate way to handle what are usually emotional and sensitive issues,” Weinberg said. “It seems like if we can avoid courts and avoid extra bureaucracy that comes into all that and antagonistic issues that always result from that, this is a good way to do it.”

But no one is presenting family collaborative law as a cure-all.

Make no mistake, said Caroli, “It was painful. You are sitting facing the person and making a decision. You have to sit there and think it through, and it’s different than hiding behind an attorney.

“On the other hand,” he said, “I do own the outcome. I don’t love it, but I can live with it.”

Conscious Uncoupling- NOT really a new concept.

By: Bruce P. Matez, Esq.

By now most everyone who follows popular culture or watches the news has heard about Gwyneth Paltrow's plan for “conscious uncoupling” from her husband, Chris Martin of Coldplay. Many are asking what “conscious uncoupling” is. People have been doing this for many years without the fancy nomenclature. My partner Gary and I have been helping couples “consciously uncouple” for many years through mediation and collaborative divorce, both generally friendlier and gentler methods of divorcing. These alternatives to the traditional litigation and adversarial model for divorce have been around for decades and have been gaining in popularity over the last 10 years. These methods typically help people spend less
money on legal fees, maintain good communication and co-parenting, create far less stress and anxiety during the divorce and after, and allow couples (especially parents) to remain respectful toward each other and have a good relationship beyond the divorce. The decision that couples make about HOW they will divorce can be the most important decision they make because it sets the tone for them, their children, grandchildren, extended families and others for the rest of their lives. I hope that more couples will take the same route that Gwyneth and Chris are going and choose to divorce in a more respectful and “conscious” way. As Robert Frost said “two roads diverged in a wood, and I, I took the one less traveled by, and that has made all the difference.” When you are divorcing you can choose which road you’ll take, the traditional litigation road or one that is less contentious and more “conscious.” Choose the one that will make all the difference like Gwyneth and Chris.

Collaborative Law Act

by Gary Borger, Esq.

On September 10, 2014, Governor Christie signed into law the New Jersey Family Law Act. Thus, New Jersey now has established collaborative divorce as a statutory option to traditional divorce litigation for resolution of marital disputes in a less destructive and more cooperative (and collaborative) fashion.
Change of a Child’s Surname

by Deena Betze Esq.

Child’s name change: On August 12, 2013, the NJ Supreme Court ruled in Emma v. Evans on a request by a mother who, after the divorce, started hyphenating the parties’ two young children’s surname (with her birth name to which she returned following the divorce listed first, followed by the father’s surname) on their health and school records. The father objected and filed a motion to compel the mother to continue to use his surname as the children’s surname as had been the case during the marriage; in response, the mother sought court approval of her unilateral change of the children’s surnames to hyphenated names. The judge ruling on the mother’s motion followed a previous NJ Supreme Court ruling in Gubernat v. Deremer which had concluded “that in contested cases the surname selected by the custodial parent — the parent primarily charged with making custodial decisions in the child’s best interest — shall be presumed to be consistent with that child’s best interests, a presumption rebuttable by evidence that a different surname would better serve those interests. (Using such a presumption in favor of the custodial parent shifts the burden to the other parent of proving that the new name chosen by the custodial parent is not in the child’s best interest, giving the custodial parent a strong advantage at a name change hearing.) That motion judge’s ruling was reversed by the Appellate Division of the Superior Court of New Jersey (our intermediate appellate court), ruling that giving such a presumption in favor of the custodial parent is improper in cases where the children’s surname was chosen by the parties at the birth of each child and especially in cases where the parents share joint legal custody. (In Gubernat the Supreme Court in 1995 ruled in a case involving children of parents who never married, that the court in ruling on a name change motion should consider: “[T]he length of time that the child
has used one surname, the identification of the child as a member or part of a family unit, the potential anxiety, embarrassment, or discomfort the child might experience if the child bears a surname different from the custodial parent, and any preferences the child might express, assuming the child possesses sufficient maturity to express a relevant preference.”) In Emma v. Evans our Supreme Court ruled that such a presumption was improper, that the standard is what is in the children’s best interest without either parent having a leg up on the other in the decision. The Court stated: “the party seeking to alter the status quo from the surname jointly given to the children at birth must bear the burden of proving by a preponderance of the evidence that the change in the children’s surname is in their best interests.” The factors to be considered by a judge ruling on a name change motion are:

1. The length of time the child has used his or her given surname;
2. Identification of the child with a particular family unit;
3. Potential anxiety, embarrassment, or discomfort that may result from having a different surname from that of the custodial parent;
4. The child’s preference if the child is mature enough to express a preference;
5. Parental misconduct or neglect, such as failure to provide support or maintain contact with the child;
6. Degree of community respect, or lack thereof, associated with either paternal or maternal name;
7. Improper motivation on the part of the parent seeking the name change;
8. Whether the mother has changed or intends to change her name upon remarriage;
9. Whether the child has a strong relationship with any siblings with different names;
10. Whether the surname has important ties to family
heritage or ethnic identity;

11. The effect of a name change on the relationship between the child and each parent.

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**Irreconcilable Differences**

**IMPORTANT CHANGES TO DIVORCE LAW**

by Bruce Matez Esq.

Divorce based upon “irreconcilable differences” has been available in New Jersey since March 9, 2007. A divorce can be granted based upon “irreconcilable differences which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.” (N.J.S.A. 2A:34-2(i)) This was a long-awaited change in our legislation that eliminates the need for spouses to allege particularized acts of fault such as extreme cruelty which only added to the cost and unnecessary acrimony of divorce proceedings. It also avoids the older no-fault cause of action from 1971 which requires an 18-month physical separation before filing for divorce. This newest cause of action brings a new level of civility and practicality to marital dissolution in New Jersey.