

'Gray divorce' can be amicable and fair

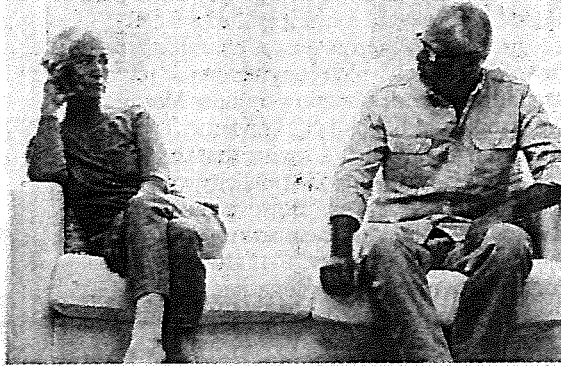
By PETER J. FIORELLA JR.

I read with interest the article by Rodney Brooks in The Buffalo News on May 2 regarding "gray divorce" dragging both parties into the red.

For over 50 years I have chosen to limit my practice to matrimonial and family law, and I wish to offer a different perspective on "gray" divorces. Over the last several years, approximately 25 percent of my practice has involved parties over the age of 60, and we have found that predominately they fall in two categories: pre-planned by one spouse or a total surprise by the other.

Most recently I have experienced women clients in their 60s and 70s exploring how to proceed with a divorce action. Since Oct. 10, 2010, New York State has been aligned with all of the other states to provide for a "no-fault divorce." The grounds for divorce – ir-retrievable breakdown – allow either spouse

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to initiate an action for divorce by acknowledging under oath the marriage has been ir-retrievably broken for a period of six months or more. As such, the cost and stress associated with a contested divorce no longer exist. In certain cases, the parties can be divorced without either party or either attorney ever physically appearing in court before a Supreme Court justice, which also significantly reduces the overall cost.

In the majority of cases, but not all, the monied spouse is the husband and as such will be required to provide maintenance (alimony) to the other spouse pursuant to the recently amended Maintenance Guidelines Law in effect in New York as of Jan. 25, 2016. There is a maintenance income cap of \$178,000 and a maintenance formula by the party with the higher income (payor) to the party with the lower income (payee). However, the new law

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Avoiding court litigation is possible

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also provides the parties may agree otherwise or waive this right if they so choose by agreement.

While Mr. Brooks correctly states "divorce is not generally the part of a retirement plan," there are significant ways to provide to each party a standard of living that, while not as generous as a single household, can still provide the lifetime security that both parties desire. It is correct in long-term marriages that pensions, 401(k)s, 403(b)s, IRAs and other retirement vehicles are divided 50 percent husband-50 percent wife.

There are many creative methods to reduce legal and expert fees but still achieve a resolution that is fair to both parties.

In many cases with older clients in which one spouse handles the finances, I have found the other spouse can compile a marital estate in the initial stage for settlement discussions by compiling financial documents from a check list the attorney provides and reviewing federal and state tax returns.

Avoiding court litigation, which is stressful, expensive and time-consuming, can be done by establishing a strategy to initiate and complete discovery (documentation/verification) in a divorce regarding seniors. This involves a pliable but deliberate process during the negotiation and settlement.

I have often been asked how I can practice only matrimonial law. My answer has been the same for over 35 years - "I make unhappy people happy and try to have them maintain a friendship, whether it is because of the children or because of the long years they have spent together."

"Gray divorces" should not be an exception.

Peter J. Fiorella Jr., a prominent attorney and author, practices law in Williamsville.