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Divorce Mediation

A Holistic, Structured Team Approach

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After much focus on reconciliation of the relationship and the marriage has clearly reached a “point of no return,” it is not uncommon to find yourself in a position where one or both parties is asking you, their most trusted confidant, about what steps they should take in the dissolution of their marriage. How might you respond?

While you can certainly tell your client that this is not your area of expertise and recommend they consult an attorney for

legal advice, you may consider another option. The standard court contested divorce process may be appropriate in some cases; however, the use of the adversarial process in divorce proceedings, may unnecessarily throw your clients straight into a “boxing ring,” unraveling the important work they may have done to preserve civility in their relationship and preserve the family unit.

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This article takes the position that mediation is a far more effective option for clients to consider first, even when they cannot agree or communicate well together. Additionally, there is often a role that psychologists may play as a member of a divorce team in helping

Unintended Consequences in the Court- Contested Divorce Process

It is important to take a moment to understand the potential set of adversarial chain reactions that could occur when your client retains a lawyer. When it comes to custody, for example, your clients will be advised to protect themselves, as well they should. However, litigation tactics are centered on things like proving who is the worse parent, and can cause a spouse to head down an emotionally and financially draining path of multiple hearings and court dates, sometimes even subjecting their children to have to testify in court. A custody trial alone often costs at least \$15,000 in legal fees on average, digging an even deeper financial hole that has additional anger, shame and guilt attached. Other protective tactics might also appear subversive, such as withdrawing and shifting funds in and out of joint accounts and redirecting paycheck deposits, setting the tone for a long and bitter divorce.

divorcing spouses successfully manage those emotions, both prior to and throughout the mediation process.

From the divorce lawyer's perspective, he or she is only doing what they have been trained to do – to zealously represent their client, regardless of the financial and emotional fallout that occurs. Judges are also part of an over-worked court system, which often sadly does not have the time to evaluate each case on its individual merits with the level of attention that it deserves.

While it is true that most contested divorce matters settle out of court, this is most typically at the eleventh hour on the courthouse steps before trial, two to four years may have past after numerous support, custody and property distribution hearings have taken place, and at a time when all the financial and emotional damage has already been levied on the family unit.



How a Holistic Divorce Mediation Model Works and the Psychologist's Role

When spouses have decided that their marriage is over and cannot agree, the psychologist can play a pivotal role in steering clients toward the emotionally and financially healthier option of divorce mediation, while playing a vital role throughout the process. In our practice, divorce is viewed as a change, neither positive nor negative. Mediation is the process for managing that change. As such, we have developed the following model for divorce mediation (see, Figure below). It is both facilitative and holistic, and focuses on four key aspects of divorce: legal, parenting, financial, and emotional.



Figure. Main Line Family Law Center Holistic Model for Divorce Mediation

A Holistic Model for Divorce Mediation

Not a cookie cutter approach, the process is tailored to the needs of each client. If minor children are involved, for example, and concerns about parenting separately are foremost, clients are advised to participate in the full program and possibly referred for co-parenting counseling. A child psychologist or therapist is also recommended if parents notice any unusual or prolonged changes in a child's behavior that suggest their difficulty in coping with the change.

Clients are also encouraged to use their own psychologist or therapist to recover from the overall trauma of divorce, or to work with a divorce coach to help them emotionally prepare for each mediation session. The psychologist may also act as a project manager, helping a client to get a better organized and prepared in planning for the change they are about to experience. We have a network of psychologists and marriage and family therapists who are oriented to this model

as part of the divorce mediation team, should clients need a referral.

In addition, when clients submit to the mediation process, they agree to trust the process and therefore, agree not to retain lawyers. However, an independent attorney may be used to review their marital settlement agreement draft at the end of the mediation process. Otherwise, the reason for abandoning lawyers is so that spouses can demonstrate their

commitment to the process, even when the trust of a spouse is in question. This “act of surrender” is critical to the good faith peacemaking that makes mediation so transformative and relationship - preserving. Along with that commitment, a stronger sense of vulnerability, or perhaps a newfound voice of anger or resolve, can develop resulting in the need for added support.

Table 1: Plan for Resolution Using a Facilitative Model

Process and Timeline (average 3-7 months)	Role of Psychologist
Step 1: Initial Consultation with Attorney-Mediator, Overview of Process	Similar to a coach, work with client(s) to review information from consultation and come to a decision on whether/how to move forward.
Step 2: Emotional Preparation	Holds either individual and or joint session with client(s) to focus on intentions, managing anger, guilt, and effect on decisions in mediation.
Step 3: Gather Financial Documents	Works with client to relieve sense of overwhelm around document gathering, understand importance of full disclosure of information and increased sense of vulnerability.
Step 4: Parenting Mediation	Works with one or both parents around decisions in a healthy parenting plan, co-parenting, trust, telling the children. While children are not involved in this process, parents are encouraged to monitor children's signs of difficulty coping, and work with child psychologist.
Step 5: Parenting Mediation	Works with client to understand emotional connections to money
Step 6: Financial Planning and Analysis	Reviews financial scenarios with client to sort through options and potential outcomes from an emotional perspective.
Step 7: Financial Mediation	Same as step 6
Step 8: Draft Review	Reinforce the careful selection of a mediation-friendly attorney who will not derail the progress of mediation.
Week 10: Filing for Divorce or Sign Separation Agreement	Helps client adjust to finality, and use the mandatory 90-day wait period as a time to rediscover and start anew.

In these situations of higher conflict couples who want to mediate, we have found that the holistic, team facilitative

approach lends itself especially well. There are several reasons for this. First, this model is directed primarily by an experienced attorney-mediator. While he or she cannot give legal advice, per say, spouses tend to feel they are still getting legally informed guidance, and have access to a seasoned practitioner who also has a keen sense of what is most fair for each divorce situation. Second, while not all spouses are ready to move quickly, they usually appreciate the ability to clearly see “the way out,” especially after feeling stuck in an unhappy marriage for so long. Third, clients generally seem to prefer to use the law as a starting point for their negotiations, as there is often a strong belief of “should” and the need to understand “rights and entitlements” when beginning the process. Sticking with what the rules say is fair is often a comfortable place for higher conflict couples to begin their negotiations. Depending on the needs of the client, our team of professionals includes any or all of the following: an attorney-mediator, parenting mediator, psychologist/therapist, divorce coach, draft review attorney, financial planner, and/or estate planner. With permission of the client (and when ethically appropriate), the attorney-mediator may discuss any concerning issues with the team to pave a smoother path toward resolution.

The process begins with parenting mediation, to allow focus on children’s needs first, followed by one to two financial mediations and a final agreement draft review meeting. The process’ takes as little as 3-7 months, and clients are encouraged to proceed at the pace that is comfortable to them.

One other major distinction in this mediation model, not to be underestimated, is that clients finish the program with a legally-binding marital settlement agreement and a final divorce decree (if they desire a divorce) - as opposed to a memorandum of understanding of their settlement terms that then has to be taken to an independent attorney to memorialize in an official agreement draft, and then file with the court. In this model, clients enjoy the convenience of having all services in one place, at the same time, all managed by an experienced divorce attorney, including administrative support and guidance with the county court filing to obtain their divorce decree.

Results from Holistic, Structured Approach Divorce Mediation

In our practice, we have found that approximately 7 of every 10 couples who decide to separate or divorce are indeed appropriate for, and can take advantage of the divorce mediation

process. Unfortunately, however, we find that many couples are unaware of the benefits of divorce mediation. Of the 121 individuals served since our firm began in 2012, approximately 90% (n=109) of them have successfully completed, or will have successfully completed our program in between 3-7 months. Ten percent (n=12) did not complete the mediation, and of those, 9% (n=11) opted to finalize their divorce process utilizing the standard model of private attorneys in a court-contested process, and one reconciled. Note that a proper screening process has been a critical factor in achieving this high success rate, and so you will want to carefully consider who is appropriate prior to a referral to this process.

Our practice model incorporates the use of a facilitative model of divorce mediation to assist clients with reaching a mutual resolution to their divorce process. We collaborate with psychologists and other mental health professionals who fulfill various roles and tasks throughout the process (see, Table 1 on page 88).

Assessing Proper Candidates for Mediation

While no two cases are the same and they each present with their own unique nuances and dynamics, here is a handy assessment of how the psychologists we collaborate with determine whether a client is appropriate for divorce mediation (Table 2 below):

Table 2. A Quick Assessment to Determine if the Client is Appropriate for Divorce Mediation

To be considered an appropriate candidate for divorce mediation, both spouses should agree to the following nine statements:

- My marriage is over.
- I want to retain control over decisions in my divorce.
- I want to keep my children's best interests in mind and at heart at all times.
- I don't want to hurt my spouse emotionally or financially.
- I believe my spouse is not out to hurt me emotionally or financially.
- I am willing to disclose all financial documents and other information for my spouse to view.
- I want to be educated and informed throughout the process.
- I am willing to trust in the process, even if I don't fully believe it can work for me yet.

Cases of past physical or mental abuse do not necessarily preclude spouses from mediation, unless the abuse is more immediate and/or there is a pending protection from abuse order with the court (see Beck et al., 2011 for a study of divorce mediation in the context of court-ordered mediation). Likewise, even if a couple has been in litigation for years, it is still never too late for them to finish in mediation. Speaking directly with the attorney-mediator about the specific dynamics involved in each case is the best way to determine if it is appropriate for mediation.

While it is ideal for spouses to finish in mediation, we recognize that this is not always the case either. It may be that spouses were able to come to agreement on, say, a parenting plan, but that alimony became so heated that an attorney was retained to finish the settlement. The privately retained attorney would, thus, be called upon to assist a spouse with the negotiation of a particular sticking point that could not be resolved in mediation.

On the flip side, spouses might come to us with parenting or financial issues already worked out, especially if they



have been physically separated for some time. Thus, they may have only a few remaining issues left to mediate.

Will a Holistic Mediation Model Work for Your Client?

Even after using the quick assessment (in Table 2 below) and still not 100% certain, the initial consultation may be seen as an experiential test as well as the beginning of the mediation process. Based upon our practice experience, the ability to complete this step successfully together is actually one of the strongest indicators as to whether a client will finish their divorce process in mediation.

Prior to attending the consultation sessions, clients must both attend and complete a marital inventory form together– which may, depending on the conflict level of the couple, be a challenging task! During a consultation, the attorney-mediator will provide: 1) overview of PA Divorce Law, 2) an understanding of the mediation process and the role of the attorney –mediator, 3) a discussion of what the clients’ roles and expectations are in order to successfully participate in the program, 4) detailed explanation of the holistic approach and which professionals clients may choose to work with as part of their team, and 5) comprehensive assessment

of the marital estate and all attendant issues that are involved in a divorce. Notice that there is no discussion in the consult of what brought the couple to this point. Not only does this approach help clients start on equal footing, but it also prepares them to present a fair proposal to their spouse and further acclimates them towards the process, should either one or both spouses ever doubt that they can “do it.” More amicable (and frankly, more educated) clients recognize they can confidently depart from the dictates of the law, should they choose, and make up their own rules for fairness. Either way, the process is empowering for spouses who are firmly in control of their own decisions.

The Sessions: What Goes on Behind Closed Doors

As mentioned previously, our practice model includes a variety of consultation sessions with the couple including, but not limited to, parenting mediation and financial mediation. Below, we provide sample of what may be included in those sessions.

The goal of the parenting mediation is to have a comprehensive, yet fluid parenting plan in place that addresses both the current needs and best interests of the children as well as other family dynamics, but that also stands the test of

time as the children's needs change over time. A comprehensive agreement, with the assistance of the parenting mediator, can usually be accomplished in as little as one 2 -2 1/2 hour session. This plan,

once finalized and signed by the parties, becomes a legally binding agreement which is fully enforceable in a court of law once approved by the assigned divorce judge.

A typical parenting agreement will address the following at a minimum:

- Parenting time (physical custody and overnight time decision making; legal custody)
- Transportation and exchanges
- Holiday time/special occasions
- Annual vacations and school breaks
- Contact with relative and significant other
- A dispute resolution process through mediation
- Contact information, relocation and foreign travel
- Social activities and school functions
- Communications and mutual decision-making
- School districts attended and access to records

A typical list of issues discussed and resolved in financial mediation sessions are as follows:

- Equitable distribution of marital property, including real estate, retirement, auto, valuables, etc.
- Equitable distribution of marital debts, including house debt, credit cards, loans, etc.
- Child support
- Spousal support and alimony
- Life insurance issues
- Taxation issues upon a divorce
- Family medical insurance issues
- College and college savings for children
- Estate matters
- Financial planning guidance
- Post-separation/divorce budget analyses

One or two sessions (or more, if necessary), each lasting about 2- 2 1/2 hours in length are usually sufficient to discuss and obtain mutually fair and creative resolutions around the above issues.



The attorney-mediator will require full disclosure of all financial documents before the sessions begin so that all cards are on the table for discussion. In the first session, the attorney-mediator will review the entire marital inventory with the clients and they will come to agreement on what are the date of separation values of all assets and debts that are subject to equitable division. Spouses will also discuss the applicability of a child support payment in accordance with the applicable state support guidelines (in our case, it is the Pennsylvania Support Guidelines), as well as discuss all other child-related expenses over and above the basic child support mandate.

In between sessions, spouses may ask the mediator any question they may have that is substantive to the mediation. All communication with the mediator is made with the other spouse either being present, or otherwise being made aware of the communication. As a neutral third-party to the process, the mediator cannot advise any one spouse on how to negotiate with the other, or what settlement offer(s) they should be making. Rather, it is the responsibility of the spouses to negotiate a fair settlement together after they have been armed by the attorney-mediator with the legal knowledge, information and perspective to make settlement offers that are fair, reasonable and practical for everyone concerned.

Spouses will also review their post-separation budgets to determine what their living expenses will be so they can be more financially secured in the residence they wish to reside in after the divorce is final. Further, spouses will discuss the division of all personal property and contents of the marital home as well as family medical insurance issues. In the second and final session, spousal support and alimony will be covered, as well as life insurance, estate matters, taxation issues, college expenses for children and then coming to resolution on the equitable division of the net marital assets for the settlement.

Summary

There are a number of ways psychologists can be part of a team in this holistic divorce mediation model and serve a very valuable and important role in the process. When a psychologist can team up with a mediator, it can greatly help divorcing couples struggling with anger, resentment, fear, depression, and mistrust. As such, when your clients mutually arrive at the conclusion that their marriage is over, you now have another referral option that focuses on family preservation and a healthy recovery.

References

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