

By Hadrian N. Hatfield

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Emotions Before Solutions

Have you ever wondered what makes some divorces so difficult? What leads to all the stress, chaos, and bad behavior in some cases when other similar cases resolve themselves easily? Is it the years spent together, the money involved, or the children? Or maybe the parties just have a different view of what is fair? Likewise, how many times have you heard “Oh, it’s just a simple matter” from a prospective client, only to find the case virtually impossible to resolve?

One explanation is the distinction between the emotional needs of the parties and the substantive questions presented. For example, imagine if both parties to a complex financial divorce or to a long-distance relocation case gave their attorneys full authority to settle the matter, with no solution instructions other than “be fair.” I am convinced the attorneys within a short time could find a solution that an outside observer would see as fair and reasonable. This is because the process effectively separated the emotional from the logical.

So what keeps us from doing this more often with the clients present? A facile answer would be “because it is the clients’ emotions that get in the way.” This ignores that some cases with similar emotional content still work out with relative ease, and sometimes even difficult ones work out over time.

Maybe instead the key is accepting that in divorce the approach and timing can be more important than the legal content and context. As an illustration, if one agrees that emotions evolved before rational thought, then it makes sense that emotions must be addressed before reason can prevail. This could explain why even the most well-intentioned attempts at logical discussion of divorce decisions often stall or fall apart – the emotional needs of the parties surface, regardless of best efforts to keep them hidden. Sometimes the repressed emotions erupt in outbursts that produce lasting negative consequences.

Imagine if instead the emotional needs of the parties are consciously and methodically acknowledged, identified, and addressed first. This can free the parties afterwards to focus on the purely objective aspects of the issues and more rapidly reach that “fair” solution.

One difficulty with this approach is that many attorneys resist getting deeply involved with the emotional needs of the participants, or even admitting that this is necessary for a solution. A related difficulty is that legal advisors to divorcing clients often lack the training or skill to identify accurately the emotional needs and to apply properly the appropriate interventions.

This is where the collaborative process and co-mediation, which pair attorneys with mental-health professionals, offer distinct advantages. These processes accept and focus on the emotional needs of the parties, recognize that often this focus must occur first, and involve

professionals with appropriate training and skills to address the emotional aspects of separation and divorce.

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