

By Hadrian N. Hatfield

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## Attorney Led Negotiations

Over the last two months, Modern Family Law Views has explored the importance of choosing the right separation/divorce process, and has examined one of the options available – mediation. This month we will look at another popular choice: the use of attorneys to conduct negotiations.

Divorcing couples in our society traditionally have sought help from attorneys to resolve their differences, and for good reason. Attorneys are trained in solving financial and practical problems, have knowledge and experience in the customary rules for addressing common issues, and often are skilled in negotiation theory and practice. Often neither of the divorcing parties has this training, knowledge and experience. Moreover, they usually are encountering significant difficulty with basic communication.

Two experienced attorneys with an established relationship of trust can quickly and effectively arrive at solutions that conform to standard practice and are objectively fair. They can offer creative options that take advantage of tax rules, laws affecting retirement benefits, and other legal frameworks. They can have honest and frank dialogues focused on problem solving, without a lot of the emotional baggage that often obstructs direct discussions between the parties.

Indeed, I have long thought that if divorcing couples put their attorneys in a room and gave them only one simple instruction – come out with a fair agreement – the attorneys would make short work of the matter. For some couples, this might offer the perfect quick, simple, and effective outcome they so much desire.

Several problems exist with this plan, though. The attorneys' solution might not meet the couple's priorities. The attorney's solution might overlook the emotional needs of the clients, with the result that these emotional issues would remain. The couple might not agree so much that the solution was "fair," with the result that their need for individual, subjective fairness would go unmet. Basically, the couple would have no ownership of the outcome. Unfortunately, few attorneys receive any formal training to help them resolve these aspects of divorce.

Many divorce attorneys believe that this is their strength – they can remain removed from the more subjective pressures that their clients feel. Other attorneys have just the opposite reaction - they take on the emotional personas of their clients. Both situations can create their own difficulties for the couple seeking a resolution. Attorneys in the first group are left to "sell" their solutions to clients who may be resistant. Attorneys in the second group can find themselves stuck in the same emotional quagmire that drove the clients to them in the first place.

Another risk of this process is that the attorneys may be unable to get a satisfactory solution upon which both parties agree. In this roadblock situation, the typical lawyer solution is to send the matter for a decision from a neutral third party – a judge. The resultant litigation can be expensive, emotionally damaging, and ultimately unsatisfactory to both clients.

These situations illustrate why the choice of attorneys in this process is so important. The parties must each select an attorney with significant experience helping couples through divorce – or with great innate relationship skills. It helps if the attorneys are willing and able to firmly address their own client’s emotional needs, and sometimes unrealistic expectations. These are attorneys who have embraced the lawyer’s role as a “counselor” at law. It also helps if the clients have their own therapists to address the emotional, psychological, and communication elements present in divorce.

Couples must also consider the cost of using attorneys in this process. Good and committed attorneys can smoothen and expedite the process, thus avoiding many of the high legal fees seen in some divorces. Others, who instead adopt the client’s emotional needs, can slow the process, or even worse can increase the costs by fueling the emotional flames.

In the end, the parties bear significant responsibility for their choices within this process, including the selection of attorneys, whether to consult therapists, and how much to fight for their emotional needs. It is a process where the well informed, flexible and balanced client, with the help of their attorney, often can find solutions that otherwise might evade them.

Next month I will explore the collaborative divorce process.

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Modern Family Law Views is meant as an information tool to help people going through the separation or divorce process and those working with them.

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Thank you for your time!

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