

DIVORCE MEDIATION GUIDE



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Divorce can be a long, stressful, expensive, and confrontation-filled experience. When both spouses chose to resolve their divorce-related issues in mediation rather than litigation, however, the process is usually faster and much less costly in terms of both money and stress.

In this **Mediation Guide**, you'll find articles, checklists, advice, book excerpts, and more to help you understand some of the benefits and limitations of this out-of-court dispute-resolution method. Use the information here to help you decide if mediation is the best way forward for you, your family, and your future.



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THE MEDIATION ALTERNATIVE

By Brad Marcoux

Mediation can be a viable alternative to traditional divorce litigation. Here's what you need to know about this form of alternative dispute resolution.

While death and taxes may be the only guarantees in life, acrimony and financial woe almost always accompany an adversarial divorce. It isn't surprising, really: after all, the legal system by its very nature puts people against each other, seeming to offer the possibility of only one "winner" and little opportunity for compromise. The search for a way to make the process of divorce less painful

has led many to mediation – a form of alternative dispute resolution sometimes also known as "assisted negotiation".

Unlike traditional divorce proceedings, mediation takes the approach that individuals who were once able to organize their lives together can also arrange to live them apart. It's a different way of viewing divorce, and one with many advantages.

But there are a few concerns that need to be addressed before you can be sure that mediation is right for you.

What is Mediation?

Mediation is a negotiated agreement between divorcing spouses on the issues of children, finances, and property. The key word here is “agreement” – you and your future ex create an agreement that both of you can live with. The mediator is simply there to keep you on track, assure negotiations are fair, and make suggestions when roadblocks are encountered.

The focus for both parties is on controlling their own divorce, rather than giving control to a judge. Unlike in litigation (in which the lawyers speak on behalf of their clients), in mediation, lawyers act as advisors while the spouses speak for themselves based on their own individual needs and priorities.

The Stages

While mediators handle each case differently depending upon their personal style and their training (an attorney-mediator might handle things very differently than a therapist-mediator), there are generally a few common stages. An initial meeting with you and your spouse is arranged to assess the dynamic between both of you, explain what you can expect,

the most appealing aspects of the process: although mediators generally charge between \$150 and \$450 per hour – about the same as a lawyer – the speed can make it tens of thousands of dollars cheaper than fighting it out in court.

There are other advantages as well: since you’re crafting your own agreement, you can arrange for all of your concerns to be addressed to your satisfaction before the process ends.

Choosing mediation means you’re more likely to be happy with the final result and willing to follow through with your commitments than if your settlement had been decreed by a court. No one likes being told what to do, after all. Also, you can arrange visitation and support agreements that are most beneficial to your kids: a massive plus, considering how harmful a disputed divorce can be for children. And there won’t be any worries about whether or not your agreement is legally binding; the final agreement is drafted by the mediator into a “memorandum of understanding”, which is then hammered into legalese by your lawyers.

The Perfect Process?

Saving time, money, and perhaps your dignity are all wonderful; these potential advantages may make mediation seem like the perfect way to end your imperfect relationship. But, as with any form of divorce settlement, there are complexities

“*Choosing mediation means you’re more likely to be happy with the final result and willing to follow through with your commitments.*”

and discuss costs. Some mediators may also have you fill out a questionnaire or come in individually, based on what kind of relationship you currently have with your spouse and the mediator’s personal preferences.

Once this initial stage is complete, you’ll set meeting times (usually weekly, but you can arrange any schedule that suits you), ground rules (no degrading or insulting language), and goals (usually regarding support, asset division, and visitation).

Next, information-gathering begins: your mediator will need documentation for property, assets, and debts, as well as tax returns, bank and pension statements, and any other paperwork relating to your marriage and finances. Based on the initial assessments and this documentation, a decision is made as to whether financial, legal, or emotional experts need to be consulted, and the actual process begins.

The Big Plus

While individual cases vary, most cases can be resolved in a couple of months. This short duration highlights one of

that you should be aware of before you dive headlong into the mediation process.

One of the biggest bricks to be hurled at mediation is that of power imbalances. It’s felt by some that if one person in the relationship has dominated the other in the past, the weaker party is put at an impossible disadvantage when trying to represent themselves. It’s a valid worry, especially if you feel that you’re the weaker party – and even more so if there is or has been abuse in the past. But it’s also a problem that a good mediator should be able to correct. Power imbalances – from resource possession to intimidation or even outright physical abuse – does not have to rule out mediation as an option. Training for mediators in recognizing and dealing with power imbalances is the key.

Questions to Ask

In your initial interview with the mediator, they will be looking for specific signs that your case is appropriate for dispute resolution. You should take advantage of this initial consultation to assure yourself that the mediator has all of

the qualities necessary to bring your marriage to a fair and balanced end. Here are some of the essential questions you should ask:

- What is your training and experience? Most organizations require mediators to complete at least 30 hours of training (and, in some cases, extra hours of schooling in domestic violence awareness), several hours of negotiation, and several cases. You should be looking for someone who has done at least ten divorce dispute resolutions. Ask if they have experience with cases like yours (especially if you have some unique circumstances to negotiate) and what training they've had.
- What organizations are you affiliated with? You can follow up with phone calls to find out some information about those organizations.
- What is your approach? You should get as much information about the process as the mediator gets from you about your case. Some mediators hold individual meetings, while others use questionnaires or other methods of screening. Ask questions and be sure you're clear and comfortable with everything you're told.
- Do you have any biases? It's a blunt question, but a valid one: everyone has viewpoints that skew their perspective. Ask them how they feel about the role of mothers or fathers or about the care of children.
- Should our children be involved in the mediation process? If so, how?
- Should new partners be involved in the process? If so, how?
- What is the cost?
- How much time do you feel the process will take?
- Should other experts be involved?
- What role will my lawyer play in the process?

When used by a skilled and sensitive mediator, techniques such as shuttle mediation (where the parties are separated and the mediator "shuttles" messages between them) and precautions such as separate arrival and departure times can often effectively deal with the fear of psychological or physical violence. Additionally, a trained individual mediator can usually balance out the more general fear of a gender advantage.

Subtle Power

The mediator has a vested interest not in taking sides but in keeping the process balanced and fair. A mediator's business can rely heavily on word-of-mouth, so crafting an unbalanced settlement would likely cost them both business and reputation.

Those who voice concerns about power imbalances, however, tend to worry less about cases where the problem has been identified than a scenario where a mediator is oblivious to it. While each mediator's methods of searching for both subtle and overt power imbalances may be different, a good mediator will take the time to inquire about potential imbalances and formulate a plan to compensate for them.

There are cases in which mediation is inappropriate, of course. Most mediators agree that if there is active and continuing violence, or a fear of violence, mediation is inappropriate – but all stress that each case must be individually assessed and broad generalizations cannot be applied.

Legal Fears

Even though the final agreement is subject to your lawyers' approval, there is still a danger of your ex-partner not making a full disclosure of assets. But such concerns are rare, and, since mediation can be abandoned in favor of a trial at any time, any apparent dishonesty can be dealt with in the old-fashioned manner. Besides, as with domestic violence cases, if you don't trust your ex in the first place, you're unlikely to seek a negotiated settlement.

Final Thoughts

Mediation offers many significant advantages over the traditional divorce process. It can save time and money, and allow two people who have decided they no longer wish to share their lives to negotiate how they will cooperate and work out the details of living apart. Although there are some concerns – the lack of government regulation and the possibility of an unrecognized power imbalance leading to an unfair agreement – generally speaking, mediation can let you and your soon-to-be-ex make arrangements that you both can live with today and in the future. If nothing else, alternative dispute resolution is an alternative worth investigating. ■

Brad Marcoux is a former staff writer at Divorce Magazine.

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The Mediation Combination

Mediators can also be attorneys, therapists, or even accountants. Which combination is right for you?

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Divorce Dispute Resolution: Choosing the Right Method

There are many options to settle your divorce issues, including mediation, arbitration, collaboration, litigation, and *pro se* (do-it-yourself). But which one is right for you? Here's an overview of the options at your disposal.

Going through a divorce requires making difficult decisions that will impact the rest of your life. One of the first items you and your spouse must decide upon is the type of dispute resolution that makes the most sense in your unique set of circumstances. Like many people experiencing divorce for the first time, you may not be aware of the options available for resolving your divorce. To help you make an educated decision, here's an overview explaining the options at your disposal.

Mediation

Some divorcing couples enlist an independent third party, called a mediator, to help them reach a divorce settlement. Both private and court-ordered mediation are designed to encourage couples to voice their opinions and reach a balanced settlement in a neutral environment.

The two main benefits of mediation are lower divorce costs and a higher chance of reaching a balanced agreement that is acceptable to both parties. When divorcing parties reach a resolution together through mediation, they are

more likely to adhere to the agreement, which simplifies life during and after divorce. However, in order to remain neutral, mediators are unable to provide legal advice or recommendations to either party.

In mediation, both parties retain a lawyer to read over the mediated agreement and offer advice before the parties sign it. Even if the mediator is also a lawyer, both parties should still have independent legal advice to make sure they fully understand the legal ramifications of the agreement they've created.

If you would like to bypass a lengthy court case and are willing to negotiate fairly with your spouse, mediation may be a great choice for settling your divorce. On the other hand, mediation is usually not recommended in cases where there is a history of abuse or mental illness, if the parties are poor communicators, or if there is any question that the best interests of the children are not being protected. Additionally, mediation is not advisable for couples hoping to rely on a third party to make final decisions for them.

By Emily Bauer

Arbitration

Unlike mediation, arbitration removes the task of decision-making from the two divorcing parties and hands it over to a third-party individual. The process of arbitration requires both spouses to meet with the arbitrator without their lawyers' present, describe their goals and priorities for the divorce settlement, and leave the final decision to the discretion of the arbitrator.

In most jurisdictions, the decision reached by an arbitrator is final and binding, meaning the couple has no choice but to follow whatever settlement is decided for them. The benefit of arbitration is that a neutral third party assumes control, ensuring that important choices related to the divorce are founded on fact and logic rather than based on the emotionally charged perspectives of the divorcees. Arbitration is also less expensive than litigation through the court system.

If you would prefer to retain the power to renegotiate and potentially challenge the divorce agreement, arbitration is not the best option for you. Nevertheless, many couples who are unable to agree on important issues choose arbitration as a means to overcome their stalemate. As long as you are comfortable accepting the resolutions prescribed by an unbiased third party, arbitration may be a viable approach to divorce dispute-resolution for you and your spouse.

Collaboration

The newest dispute-resolution option for divorcing couples, collaborative divorce often engages an entire team of professionals to help resolve your case. Experts in the fields of law, finance, mental health, and, when necessary, child advocacy come together to help families through the challenging divorce process. This team approach to divorce allows both parties to retain their own specially-trained lawyer to act as coaches; all other professionals are shared by the divorcing couple, which helps keep costs down.

The lawyers on both sides aim to help their clients reach an equitable settlement. Both lawyers and the parties sign an agreement stating that they will settle without going to court; if the parties fail to reach an agreement, the entire collaborative team must resign, and the parties must start the process over from square-one with new litigation lawyers.

A variation on this theme is collaborative law, in which you hire collaborative lawyers without a full team to support you through the process.

Collaborative divorce can be a very effective approach to divorce, since there are professionals available to handle the legal, financial, emotional, and children's issues that will

inevitably arise during the process. The diverse perspectives provided by the collaborative team members facilitate a fair and respectful settlement process.

You should consider the collaborative approach to divorce if both of you are willing and able to negotiate in good faith, and spend the time and energy necessary to reach a mutually-agreeable settlement. However, collaborative divorce will not work well for couples who are unwilling to compromise, communicate, and commit to reaching a resolution. If one of you is not actually negotiating in good faith, or not interested in reaching agreement, the process will likely fail.

Litigation

Although only about 5% of divorces go to court, you should understand the process if you are not good candidates for any of the Alternative Dispute Resolution (ADR) models described above – or if you fail to reach agreement during ADR. In divorce cases that go to trial, both sides have a chance to make their case (either as a *pro se* litigant or one who is represented by a lawyer); instead of crafting their own agreement, they rely on the knowledge and discretion of a judge to determine their future.

Litigation fees can be very expensive, especially in difficult, drawn-out divorce cases. Another unfavourable aspect of litigation is that couples who are unable to reach an agreement without the intervention of the court often struggle with the judgement delivered to them. Divorcing parties are more likely to honor a divorce settlement that they have contributed towards rather than the orders mandated by a judge.

If you would prefer to retain control over the outcome of your divorce, litigation is not an ideal method for resolving your dispute. On the other hand, if you are comfortable entrusting a judge with your divorce outcome or if other approaches to divorce dispute-resolution have been unsuccessful, litigation may be necessary.

Pro Se/In Propria Persona

At the other end of the spectrum from litigation is *Pro Se* representation. Sometimes called "*In Propria Persona*" or "*Pro Per*" (from the Latin meaning "in one's own person"), in this approach to divorce, either one or both parties choose not to hire a lawyer to represent them. The Latin term *Pro Se* translates as "on one's own behalf", meaning that the litigant is acting as his/her own attorney in a lawsuit – including self-representation in court. A *pro se* party is responsible for properly completing all relevant legal paperwork, remembering important court dates, doing his/her own research

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Is Mediation for You?

By Gary Campbell and Meg Mathur

Mediation allows you to make your own decisions about the future, but it isn't for everyone.

The mediation process requires two individuals willing to look past their emotions and, in a spirit of cooperation, find the best solution for their unique situation. Mediation isn't a magic pill – it can't turn a terrible situation into a good one – but it can create a future everyone can live with.

For mediation to succeed, there must be some communication between you and your spouse, or at least a willingness to focus on the issues rather than on your emotions. You both must be willing to make concessions, and at

times compromise, in order to find a workable solution.

Both parties must understand that everything discussed at the mediation table is to be in the best interests of the family. If both of you are committed to resolving your conflicts, the rewards can outweigh the effort required to talk and compromise.

Studies have shown that mediation is the way of the future. While statistics vary, couples are generally more willing to comply with a solution they

have drawn up themselves. Mediation can also provide a sense of closure to a relationship gone sour.

Mediation gives people an opportunity to deal with their emotions; it allows them to talk about their feelings and gain a sense of validation. You can't get this type of interaction in the court system: it's not a therapeutic process. All litigation does is put you on the stand to give evidence. Judges are interested only in facts – not in your personal feelings.

In addition, divorce mediation is an opportunity to receive closure for the relationship. It can be a time to express remorse and say your goodbyes.

Separating Emotions from Issues

During mediation, your emotions have to take a backseat to the tangible issues. Which spouse will stay in the family home? Who will be paying the bills? And who will support whom, and for how long? If one or both of you isn't sufficiently in control of your anger or sadness, maintaining focus on the issues may become too difficult. For some couples, keeping emotional issues off the mediation table is impossible.

At the beginning of the process, it's very critical for a couple to meet face-to-face with the mediator in order to establish each party's issues. This helps a mediator ascertain what stage you and your spouse are at in your relationship and with your emotions. The initial meeting also helps you decide if you're ready for mediation, or if you need marriage counseling or therapy first. For most people, emotion is part of the mediation process, and if they're in denial that their relationship is ending, mediation can be difficult. Many people are angry about their situation and become emotional during the mediation process. A skillful mediator can help you manage your anger, or suggest individual counseling or coaching to help you or your spouse work through your anger before returning to mediation.

"You vs. Me"

The process of divorce is one of the most difficult times in life and finding the energy to work towards a mutually cooperative agreement is sometimes impossible. A legal solution worked out between a judge and lawyers may seem easier.

Mediation avoids the "you vs. me" polarization of the court system because the divorce agreement is worked out and

mutually agreed upon by both spouses, who are working from the same side of the table. Mediation focuses on solutions and the future.

Mediation is not intended to bring you and your spouse back together. The process of mediation helps draw up a blueprint for living apart; the mediator's job is to help each of you get on with your lives as separate individuals.

In many cases, one spouse is dominant and the other is passive. A good mediator will be aware of power imbalances and can compensate for them, evening out the weight of power on each side and promoting discussion. It's essential for a good mediator to handle clients' emotions at their worst without getting intimidated themselves.

Mediation is generally not an option in cases where there's a history of child or spousal abuse. The abusive spouse may have intimidated his or her spouse into mediation and the abused spouse may fear recriminations or reprisal after the process ends. A mediator should ask: "Are you here on your own free will?" or "Has there been hitting or hurting in your marriage?"

A joint interview is very difficult when abuse is involved, because the abused spouse obviously can't speak freely. That's why one-on-one sessions offer more freedom and more information than joint interviews. There are also cases where "shuttle mediation" is useful: the mediator could work with both spouses at different times or they could sit in two different rooms at the mediator's office while the mediator walks back and forth, communicating with each spouse individually.

Benefits of Mediation

Mediation can have a number of positive benefits, including:

- It costs less than going through a lengthy divorce trial.
- You may find a mediated agreement that has been created to suit your

family's needs easier to accept and respect than one that has been dictated to you by a judge.

- Mediation often teaches couples new communication techniques that can help them avoid future difficulties.
- As time goes by, your situation may change; should you need to revise your agreement, you already have an established framework for communication in place.
- Creative solutions are much easier to achieve because there's more freedom in mediation than in litigation.

The monetary, emotional, and psychological rewards of mediation can often outweigh the time, effort, and concessions necessary to reach an agreement. If your hope is to find a peaceful future with your soon-to-be-ex spouse, the trick is finding a mediation solution that works for you.

Finding a Mediator

Since it's an unregulated field of expertise in many areas, people who call themselves "mediators" can have widely different levels of formal training, experience, and expertise.

A good place to begin your search is with a professional organization dedicated to enhancing the practice of mediation, such as the Association for Conflict Resolution (ACR) or Family Mediation Canada (FMC).

Another place to look is the family court system, as many courts provide mediation services to help families resolve custody and visitation disputes. Mediators also work in private practice. Your lawyer may be able to recommend a mediator, as can friends, family, or co-workers who have used mediation.

Before you settle on a mediator, be prepared to ask questions, such as:

- Do you belong to any professional organizations for mediators?
- What kind of training have you had in mediation? A skilled mediator

should have a good working knowledge of family law, psychology, and negotiation techniques.

- How long have you been a mediator?
- What kinds of mediation do you handle? You're looking for one who deals primarily with family or divorce mediation – not a business mediator.
- How much will mediation cost?
- How long will the process take?

Are You a Good Candidate?

You may be an ideal candidate for mediation. Here's a short checklist to find out.

Positive signs:

- Are you in control of your emotions?
- Are you and your spouse on speaking terms?
- Are you willing to take responsibility for creating and honoring your agreement?

Negative signs:

- Is there a history of physical or mental abuse to yourself or your children?
- Is there a significant power or financial imbalance in your marriage?
- Are you interested in a fair and peaceful solution, or would you rather just nail that rotten so-and-so to the wall?

When Mediation Works

Beth and John separated after four years of marriage. John had no idea the marriage was in trouble and was still in "separation shock" at their first appointment with the mediator. Because she had been thinking about divorce for some time, Beth was much more prepared to deal with the issues of the separation agreement than John. His emotional state was like a ship lost at sea – shifting from depression to hostility, anxiety to denial – while Beth was ready to face mediation and move on with her life.

When the mediation process began,

the two were very much in opposing corners. Through the mediation process, and with the help of an outside therapist, John came to accept that his marriage was over and nothing he could say or do would bring Beth back to him. Initially, John felt betrayed; he thought he had fulfilled his role as a husband and mediation gave him a chance to voice these views. This chance to "work through" his thoughts and feelings about his separation from Beth – to speak his mind and express some of his emotions – was very therapeutic. Beth realized John had tried to be a good father and husband, but this realization wasn't enough to save their marriage. In the end, he and Beth parted on amicable terms.

Mediation was effective for Beth and John because it offered each of them the opportunity to understand the other's perspective. Counseling could not salvage their marriage, but mediation has shown them how to live peaceful lives apart. ■

Gary Campbell and Meg Mathur are former Contributing Editors to Divorce Magazine.

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and discovery, and assuming any other responsibilities otherwise handled by a divorce lawyer.

Many people who opt for self-representation do so for the financial benefit of avoiding lawyer fees and to maintain complete control of their case; however, *pro se* parties face risks not shared by their represented peers. In addition to the extra stress of representing yourself at court appearances, you may struggle to understand the tax and legal implications of a property settlement, and may also fail to grasp the long-term consequences of the support agreement you're negotiating. Pensions and retirement accounts are high-value marital assets, some of which have complex rules about how – or even if – they can be divided, requiring expert advice and assistance.

If your divorce is straightforward, uncontested, you have no children or significant assets, and you are capable of doing thorough research and court preparation without assistance, *pro se* representation may be an appropriate option for you. However, if your divorce involves child custody or support, spousal support, significant property or pension division, then *pro se* is probably not the right choice for you. ■

Emily Bauer is a staff writer at Divorce Magazine.

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A FAIR NEGOTIATION



By Jeffrey Cottrill

Negotiation skills will help you achieve some of your needs and wants without alienating or angering the other parties involved. Here's how to use negotiation to resolve disputes and to build better interpersonal relationships.

We've all heard about those nightmarish divorces that drag on in court for months or years because one or both parties is determined to get his or her way in the final outcome no matter the cost. There are also cases in which one party gets "cleaned out" by the other because of a failure to communicate or an inability to stand against the more powerful personality's demands.

Extended litigation is a costly, damaging process; the adversarial "win-lose" contest inevitably results in bitterness and dissatisfaction for at least one of the parties. That's one

reason why mediation and collaborative law have become more popular as cooperative "win-win" methods of settling divorce. Rather than duking it out until one party wins, it's more constructive to work out an agreement together through the art of negotiation.

Negotiation is an important personal-relations skill that enables you to get what you want without running roughshod over those around you. Whether you're dealing with your ex-spouse, friends, relatives, neighbors, co-workers and supervisors, professionals, or even your children, you have to be able

to put everybody's point of view in clear perspective, so that you can create a solution that works for both of you.

Be Fair to the Other Party

You know what you want, of course. That's the easy part. It's when you show respect for what the other person wants that you move toward fair negotiation. Sometimes a solution that addresses both parties' goals is possible, and sometimes both parties' goals directly conflict with each other. But once both parties understand and empathize with each other's point of view, the situation can change from an adversarial deadlock to a resolvable dispute.

One of the most difficult barriers to successful bargaining is when at least one party chooses a fixed position or "bottom line" and stubbornly sticks to it without considering its fairness to the other. For example, if both spouses in a divorce want full custody of the children and completely refuse to compromise, the process won't go anywhere. But if one spouse yields to the other – or better yet, if both agree on joint custody – the process can move toward resolution. Smart negotiators know that they will have to compromise on some issues to a certain extent and that they're highly unlikely to get everything they want.

Sometimes, however, a party will be immovable not because of needs or wants but out of a personal desire to "get back" at the other party. This only leads to escalated conflict and the kind of expensive, draining, adversarial mud-slinging that you're trying to avoid. Don't give in to anger or hate. Even if you're still carrying hostility toward the other person over past issues, keep it out of the negotiation process. Remember that the goal is a fair agreement, not revenge or "teaching a lesson."

Negotiation is about working together, not competing against each other. So if you want the other party to understand your needs and make a few compromises in your favor, you will have to do the same for him or her. Listen to the other person. Give the other party the space and time to make his or her needs clear. Try honestly to understand how the situation looks from the other side's point of view; this may be the most valuable skill you can master in bargaining with others in any dispute situation. Listen to the other side in the way you would like them to listen to you. The more respect and attention you show, the more likely the other person will be to let down his or her defensive guard and show you the same respect.

Even if you know that something the other side wants is impossible or unfair to you, don't immediately criticize the person for it. That's a good way to burn down the bridge of understanding you're trying to build. Instead, hear the other party out first and then deal with how to reconcile your conflicting wants. Is there a solution that leaves both of you satisfied, as

opposed to having one happy and the other unhappy? Also ask yourself if this particular issue is as important to you as you think it is. Would it really be that much of a loss if you made a sacrifice in this area or just gave way a little? Or maybe there's a way both of you can "share" the benefits.

This will require you to "take the high road" and leave the past in the past. You can't drag old hurts and resentments into your negotiation and expect it to succeed. Find somewhere else to vent your anger and frustration – with a counselor or a support group, for instance – so that you can be as calm and cooperative as possible under the circumstances. A complete understanding of the other person's perspective as well as your own is essential to negotiating a fair resolution to any problem.



“The object of negotiation is not to right past wrongs or to keep the other person quiet: it's to achieve a fair resolution for both parties.”

Be Fair to Yourself

Negotiation is about give-and-take. While it's important to let the other party feel that his or her needs are being addressed, be sure that you're being heard equally. As admirable as it is to give way on issues, a deal can't be truly fair unless you're receiving the same generosity and respect in return. Remember, the saying isn't "do unto others better than you would have them do unto you."

There are instances in which one party may give in too much to the other because of a power imbalance: the former may feel threatened or simply be too much in the habit of giving in. For example, this may happen for a marriage in which

one spouse has always been dominant; sadly, this pattern often continues when the couple breaks up. There are also instances in which one party may want to “give away the farm” to ease guilt, particularly if the other party has been very vocal about supposed injustices done by the former. But the object of negotiation is not to right past wrongs or to keep the other person quiet: it’s to achieve a fair resolution for both parties. This is where a neutral third party (such as an experienced divorce mediator) may help in assuring that all get their say in a negotiation; he or she would be able to spot when one person is getting the short end of the stick or just isn’t being heard.

If no neutral third party is available, you may have to stand up for yourself when dealing with somebody who tries to take advantage of your guilt or generosity. Listen to the other party’s needs and concerns, but don’t let them completely override your own. Be firm if you know that you’re not being treated fairly; don’t give in to guilt or feelings of inferiority. If the person you’re trying to negotiate with continues to be unreasonable, a fair final agreement may be impossible without the assistance of a trained mediator or collaborative lawyers. Sometimes a firm, confident attitude in bargaining can work wonders. A normally domineering or stubborn person may be baffled by your refusal to back down and eventually find no other alternative than to give in on the issue.

When the other party agrees to let you have something your way, don’t be ashamed to take it. In exchange, of course, assure the other person that some other issue will go his or her way. Accepting the other party’s concessions is just as important to negotiation as offering concessions: both reinforce the fact that you are aiming at a “win-win” solution rather than either of you being short-changed.

As important as it is to understand the other party’s needs, he or she has a duty to do the same for you. Negotiation is a cooperative process: it won’t work if either of you is trying to get the better of the other.

A Better Outcome

There are many benefits to bargaining instead of arguing or fighting to the bitter end over an issue. Negotiation turns your opponent into a partner – even, potentially, an enemy into a friend – because you’re working together to benefit both of you. You can avoid the increased hostility and awkwardness that result from continued antagonism – the wasted energy, stress, and emotional strain involved in clinging to your position and pursuing your wants at all costs – and wind up with an outcome that’s fair, pleasing, and the result of your own empowerment.

Better negotiation skills lead to better outcomes in most situations. Follow the tips we’ve provided, and you can reap

benefits without having to risk being defeated in any “battles.”

Negotiating Dos and Don’ts

Here are some things to do and not to do when negotiating with someone:

- Do listen attentively.
- Do demonstrate respect for the other person’s point of view.
- Do make your own point of view clear without blaming or whining.
- Do separate your “non-negotiables” from areas where you’re willing to compromise.
- Do look for “happy medium” solutions that satisfy both parties.
- Don’t drag past disputes into this one.
- Don’t be rude to, interrupt, blame, or patronize the other party.
- Don’t back the other party into a corner with absolute demands; these inflexible statements usually begin with phrases such as “You must...” or “You will never...”
- Don’t give in to demands out of intimidation or guilt.
- Don’t expect to get everything you want. ■

Jeffrey Cottrill is a former Divorce Magazine staff writer.

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Mediation Checklist: Interests and Objectives

By Deborah Lynn Zutter

This checklist will help you to make conflict-resolution decisions objectively and in an organized manner.

Use this checklist to gain insight into what is motivating you, to make your best guess about what is motivating others who are involved in the dispute, and to brainstorm creative ways to meet all your objectives. Write or type out your answers to the following key questions to help you make conflict-resolution decisions objectively and in an organized manner.

1 Your Objectives

- What are your objectives concerning this dispute?
- Rank them in order of importance.
- Distinguish between essential and “wish list” objectives.

2 The Other Side’s Objectives

- What do you think the other side’s objectives are?
- Rank them in order of importance.
- Distinguish between essential and “wish list” objectives.

3 Identical

- What objectives do you seem to have in common?

4 Complementary

- Which objectives appear to be independent of each other?

5 Incompatible

- Which objectives appear to be in conflict?
- In what creative ways could these be overcome?

6 Hunches

- How can you check out your hunches about the other side’s objectives?

7 Trades

- What do you have that you believe the other disputant wants or could benefit from?
- What does that other disputant possess that you could benefit from?
- How might a trade work?

8 Timing

- Can the timing of events be structured to meet both your objectives and those of the other disputant?

9 Laws

- How can laws and rules, such as income tax, be applied for mutual gain?

Deborah Lynn Zutter (B.A., LL.B., LL.M.) practices mediation in Vancouver, BC. A conflict-resolution trainer who has taught mediation at the University of British Columbia, Faculty of Law, she is also the author of *Divorce Mediation: What You Need to Know*. www.debzutter.com



KEEP YOUR COOL IN HEATED SITUATIONS

By Carolyn Ellis

Tips for keeping your cool during heated divorce-related negotiations or conversations.

Patricia was negotiating a separation agreement with her soon-to-be ex-husband with the help of a mediator. After months of mediation sessions and mounting legal bills, she felt like abandoning the negotiations and taking her ex to court. “I don’t even recognize who this man is anymore. How did I ever decide to have two children with Frank?” she asked during one of our coaching sessions. “All I’m trying to do is what’s in the best interest of our kids and obtain the kind of support that the law requires him to pay. But Frank is being so belligerent and disrespectful!”

At this point, Patricia was too upset to negotiate calmly; she wanted to “give Frank a taste of his own medicine” by becoming equally belligerent and disrespectful to him. This could have derailed the mediation process and ended with the two of them slugging it out in court. Instead, Patricia worked to control her emotions to prevent the heat of the moment from undermining her long-term goals, and she was able to negotiate a settlement that both of them could live with.

There aren’t many people who jump for joy at the prospect of having a potentially contentious and heated conversation with someone they used to love. It can be very unsettling, profoundly frustrating, and deeply disappointing. The unfortunate reality for the vast majority of divorcing couples is that tense moments, conflicts, and arguments are inevitable during your divorce journey; but it is how you handle the conflict that will help to determine how long and how difficult the process will be.

Negotiating your separation agreement requires you to make decisions about crucial factors that will impact you and your family for years to come – such as division of marital assets, child custody, and financial support. When emotions run high, intelligence tends to run low. During divorce, you’re asked to make decisions about your life when you’re least equipped to do so.

Brain science helps to explain why it's so hard to make complex and challenging decisions when you're in a place of emotional upset. When faced with situations that create fear or insecurity, the amygdala in the limbic brain is triggered and sets off the "flight or fight" response. Adrenalin floods through your body, creating physiological responses to ensure your physical survival. For example, breathing and heart rates increase sending blood to your limbs so you can run or go into battle.

Instead of being able to respond, you can only react when you are hijacked by your amygdala. The cerebral cortex, the part of your brain that governs reasoning and logic, is hard to access; however, this is what you'll need to call upon the most when you're in the midst of finalizing your divorce or co-parenting agreement with your ex.

Use these ten simple tips to help you keep your cool when the conversations get heated.

Tip 1 – Take Some Deep Belly Breaths

Nothing helps prevent you from spiraling into emotional reactivity like taking a few deep breaths. Plus, this strategy is free, easy, and something you can do any place, any time.

Studies show that taking deep, conscious breaths for even one minute can help you feel more grounded quickly. Breathing like this helps to dial down the amygdala response that triggers the "fight or flight" response so you can better access the part of your brain that governs rational thought.

Most of us tend to breathe more shallowly, using primarily the chest cavity. It can take a bit of an adjustment to learn how to breathe more deeply, using your full lung capacity. To help you get the deep breaths going, place your hand on your navel and breathe deeply right down into your diaphragm. When you inhale, imagine you're sending your breath right down to your hand. You're on the right track when you see your hand moving outwards with your inhale, and then back in towards your body on the exhale.

Tip 2 – Move Your Energy

To help express yourself clearly in your negotiations, it's important to get your energy clear. Past upsets and grievances, unexpressed emotions, worries about the future, or feelings of anger, sadness, guilt, or fear create static that can make it harder to get your point across effectively.

If you're feeling angry, write an angry letter (don't send it, however!), write about your feelings in a journal, take your dog for a walk, or work up a sweat at the gym. If you're feeling sad, spend time with people you love or do some yoga. To get a fresh perspective, take a nature walk, or get creative in

the kitchen or with a hobby. Finding ways to move and release pent-up emotions before you have your tough conversations makes it easier to speak your truth when it really counts.

Tip 3 – Get the Big Picture

When you're deep in the trenches of negotiating your divorce settlement, it's so easy to lose perspective. Everything feels urgent and high-stakes. It's important to take the time to get the big picture.

One of the most effective ways to do this is to look out into the future: imagine what you want your life to look and feel like 20 years from now. Do you want to be upset and still resentful about your ex, or do you want to feel more peace and clarity in your life from all the wisdom you're gaining from this divorce experience? If you have children, what do you want the day they graduate college or get married to be like? Keep the big picture in mind and do your best to let that vision pull you through the stress and conflict you might feel today.

Tip 4 – Don't Give Away Your Power

When it comes to a divorce, everyone has an opinion for you. We hire lawyers; we talk with therapists or coaches; we poll friends, family, and neighbors for their experiences and suggestions. We devour self-help books and attend workshops to try and find our way through the divorce maze. But at the end of the day, you are the world's best expert on you and what's right for your life.

When you decide to take responsibility for your choices, you put yourself in the driver's seat of your life. When the heat is on and the conversation gets tough, it's tempting to give your power away to others in order to avoid conflict. Your lawyer may be an expert on the law, but you and your family are the ones who will have to live with the consequences of your legal decisions. Your ex-partner will know what buttons to push to upset you; during your marriage, you may have backed down when he or she pushed those buttons. Today, don't take the bait. You have both the power and the responsibility to give input on decisions that will affect the rest of your life.

Tip 5 – Pick Your Battles

What tends to surprise most people is how grueling it is to actually implement the decision to end your divorce. Especially if you have children, there are a lot of major issues that need to be negotiated such as child support and custody, spousal support, and division of assets and debts.

It's crucial to pick your battles. You'll get exhausted if you go to the wall on every single issue that arises. Brainstorm a list of all the issues that you can think of – holiday schedules,

education choices for the kids, what happens when one of you loses a job or when a new partner comes on the scene, and how to handle it when your teenager wants to get tattoos and a few piercings. What's negotiable for you? What's a deal-breaker issue for you?

Get clear on your core issues and set some priorities. You'll need to have some give and take in your relationship with your ex, particularly if you are co-parents. Learn to become strategic and identify where you're willing to get creative or compromise in order to build good-will for the long run.

Tip 6 – It's Not Personal

One big trap that is easy to fall into is taking interactions and choices made by your ex-spouse personally. Especially in situations of conflict, people will inevitably have different opinions and strong emotional reactions. Allow others to have their own emotional upsets. Doing your own emotional homework with a therapist or coach can help you defuse some of those "hot buttons" that ex-partners are so skilled at pushing.

Realize that what your ex-partner thinks of you is no longer any of your business. The degree to which you continue to respond and react to what your ex thinks, says, or does is the degree to which you help create your own suffering. In the words of spiritual teacher Matt Kahn, "What others think of you is their journey. What you think of yourself is yours."

Tip 7 – Own Your Part

We are human beings, not saints. Particularly when under stress, we're likely to do or say things that we may regret later. Help keep your negotiations moving in the right direction by taking responsibility for your actions and how you may have contributed to the conflicts you're trying to resolve.

In negotiations, take ownership for your feelings when you speak. Avoid blaming statements such as: "You're being unfair!" Instead, take responsibility for your feelings by using "I" statements, such as: "I feel upset when XYZ happens."

When you do find yourself making a misstep or losing your cool, show yourself compassion. See these "mistakes" as enormous learning opportunities.

Tip 8 – Get Support

Einstein said that problems cannot be solved at the level of thinking that created them in the first place. Learn to ask for help and support; if you don't ask, the answer will always be no. If you do ask, the chances are great that you'll be able to break through whatever problem is keeping you stuck.

If you reach an impasse with your ex-spouse, get help when you need it. You may need to enlist a third party (counselor,

mediator, lawyer, etc.) to help resolve difficult issues. It's critical that you find effective support in your social network during your divorce process. Find a trusted friend or divorce "buddy," a divorce coach, therapist, or a community support group.

Tip 9 – Talk It Out

When you have big stakes on the line, it's best not to "wing it" and hope it all turns out the way you want. Taking time to prepare yourself in advance helps give you the confidence and clarity that can make all the difference.

One way to do this is to write down all the key points you want to make. Get some of those nervous jitters and hesitations out of the way before the meeting even starts by practicing out loud. You can even do this in front of a mirror to take your "talk it out" strategy to an even deeper level.

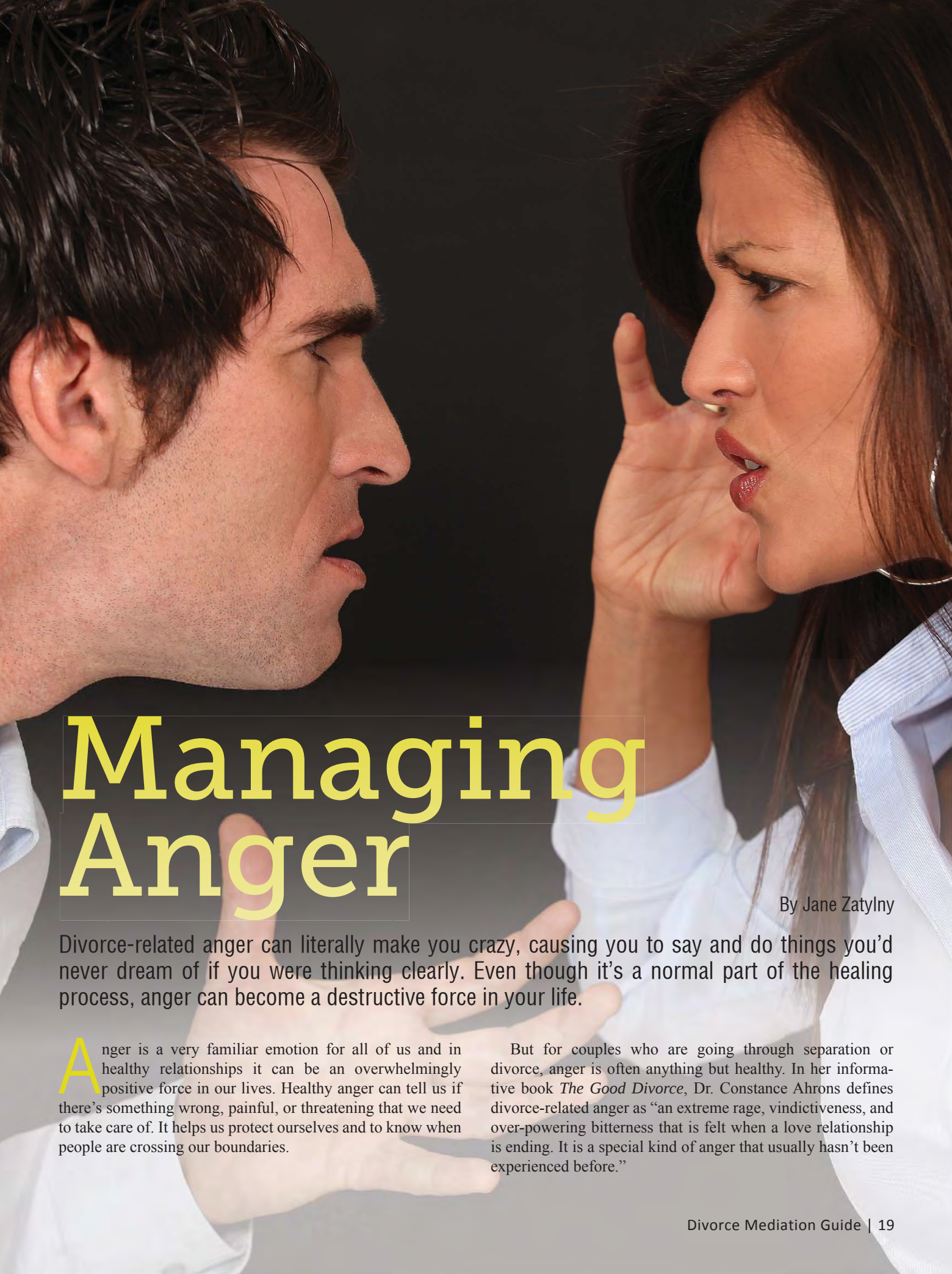
Tip 10 – Surrender

Anyone who has ever tried to paddle a canoe or swim upstream can confirm that going against the current can be exhausting. When you make the choice to surrender, you let go of needing to know or control everything all the time. Surrendering isn't a sign of weakness: it doesn't mean you're giving up your position or your beliefs. Sometimes, the best choice about "what to do" is simply to breathe and stay in the present moment; stay open to learning any wisdom this situation has to offer you.

Before you head in to your next tough conversation, take a moment to close your eyes and get centered. Create an intention that you can come back to when you feel challenged or unsettled, such as: "Let this be resolved in the highest and best interests of all involved" or "Let me speak my truth powerfully and clearly today." You can even anchor this intention by holding a small object, such as a small crystal or stone, in your hand. Bring this object with you to your meeting to help you stay centered and remind you of your intention to surrender your desire to control every aspect of the negotiation. ■



Carolyn Ellis is the Founder of ThriveAfterDivorce.com and BrillianceMastery.com. She is an award-winning coach, transformational expert and author of the award-winning The 7 Pitfalls of Single Parenting: What to Avoid to Help Your Children Thrive after Divorce and The Divorce Resource Kit. Combining her deep intuitive abilities with her Harvard-trained brain, Carolyn specializes in helping individuals navigate change and uncertainty by tapping into their own inner brilliance and emotional resilience. To learn more or to book a session, please visit www.ThriveAfterDivorce.com.

A close-up, profile view of a man and a woman facing each other in a tense, confrontational manner. The man on the left has dark hair and is looking intently at the woman. The woman on the right has long dark hair and is gesturing with her hand near her face, appearing to be shouting or speaking very loudly. Both are wearing light blue button-down shirts. The background is dark and out of focus.

Managing Anger

By Jane Zatylny

Divorce-related anger can literally make you crazy, causing you to say and do things you'd never dream of if you were thinking clearly. Even though it's a normal part of the healing process, anger can become a destructive force in your life.

Anger is a very familiar emotion for all of us and in healthy relationships it can be an overwhelmingly positive force in our lives. Healthy anger can tell us if there's something wrong, painful, or threatening that we need to take care of. It helps us protect ourselves and to know when people are crossing our boundaries.

But for couples who are going through separation or divorce, anger is often anything but healthy. In her informative book *The Good Divorce*, Dr. Constance Ahrons defines divorce-related anger as "an extreme rage, vindictiveness, and over-powering bitterness that is felt when a love relationship is ending. It is a special kind of anger that usually hasn't been experienced before."

When anger is coupled with divorce, it's often used as a misguided means of hanging onto a failed marriage. After all, for many people, a bad relationship is better than no relationship at all. Divorce anger allows people to punish their ex as often as possible while maintaining an ongoing (bitter) relationship with him or her. It's a situation that leaves both partners in divorce limbo, a perilous situation that obstructs growth and self-awareness. If you wish to move forward, you'll need to learn to handle your anger.

Some people hold onto their anger so tightly – stoking the fires on a daily basis – that their rage takes over their whole lives, coloring and informing all their thoughts and actions. They weigh every action to see how much emotional or physical harm it will inflict on their ex-spouse (even simply being a nuisance will do “in a pinch”) without seeing the injuries they may be inflicting on innocent victims. Using children as human shields in the divorce battle is a common way to fan the flames of divorce anger. Many scenarios are possible, all of which are damaging and punitive to the children: the custodial parent withholds visitation from the non-custodial parent; the non-custodial parent refuses to pay child support; the custodial parent “forgets” to pick the children up; or the non-custodial parent is hours late in bringing them back. “We forget what’s best for the children because we are so intent on getting that other person,” writes Ahrons. But “getting back through the kids is hitting below the belt.”

Divorce anger is also often expressed through the legal process itself. Here, it's very important to remember that your lawyer is your advocate, not your therapist or your best friend. Expressing anger to your ex-spouse through the legal process invariably leads to prolonged, emotional proceedings that will ultimately leave you and the family resources drained dry.

Using the court as a setting to vent your anger is a bad idea for a couple of key reasons: it's the wrong venue, and it's very expensive (both financially and emotionally). Unfortunately, the legal divorce process itself tends to add fuel to the fires of anger. Dividing property (some of which has great sentimental value) and trying to prove your case for custody and/or support can be very emotionally charged because these issues underline what is being lost or changed by your divorce. Some degree of upset is inevitable, but driving yourself alongside your ex into bankruptcy is truly cutting off your nose to spite your face.

So, how can you cope with this new and intense anger? The key lies in understanding its roots and in finding constructive ways to express the hurt, disappointment, and loss that both you and your former spouse are feeling as you proceed through separation and divorce.

Here's some advice about coping with your own and your ex-spouse's divorce-related anger.

If You're Angry

Write it out. Work through your anger by keeping a journal or by writing letters you don't intend to mail. By doing so, you can release your anger without engaging another person. Also, it is possible that you maybe angry with yourself.

Shout it out. Roll up the windows in your car, or put your head in a pillow and scream.

Talk it out. It's important when you're angry to develop your own personal support system. Instead of directing your anger at your ex-spouse, talk to a good friend (or two), or find a therapist who specializes in anger management.

Get some professional help. Anger can suppress other emotions, both positive and negative. Talking to a professional can help you begin to feel those emotions you've been suppressing and move past the anger. You could also benefit from a support or anger management group, where you can share your story and help yourself and others move to a position of growth and development.

Take responsibility for your part of the marriage break-up. “It's a rare couple in which both partners were exactly equal in the breaking of the marriage, but it's an even rarer couple in which one partner was solely at fault,” writes Constance Ahrons in *The Good Divorce*.

Do some personal growth work. Anger is a great motivator toward action and can propel you to take steps in your life to change situations.

Learn what “pushes your buttons”. Try to understand your anger – and what triggers it – before you express it. Don't be afraid to say that you need some time to think about your response.

“Remember that anger is a projection of one's own inner feelings and one's own world. Accept the fact that your ex is angry because they're going through turmoil.”

Protect your children. Never make them part of your conflict with your former partner by withholding visitation or support or poisoning their minds against your ex. “For the sake of the children, if for no other reason, learn constructive methods of expressing anger,” Ahrons says.

“Realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck.”

Keep conflicts at a moderate level. Your ex will often match your level of intensity. Be sure to choose your battles carefully, as expressing every little irritation and disagreement provokes resentment. Think about the most important issues and let go of the small stuff.

Use “I-messages” when expressing anger. Say: “I feel disappointed when you don’t call,” not: “You stupid idiot, you’re always late!”

Give yourself time to recover from the loss of your marriage. On average, experts say that the healing process takes at least two years and often longer. “It’s important to realize how sad you are,” says Ahrons. “This won’t necessarily make you more vulnerable to your ex-spouse; your successful handling of your emotions puts you in a more powerful position.”

Forgive, let go, and move on. Anger can become a comfort, a constant in our lives, but as long as you continue to nurse your anger against your ex, you will never have a happy, fulfilled, post-divorce life. Own your responsibility for the break-up and realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck. It doesn’t matter what your ex does; you can still choose forgiveness.

If Your Ex Is Angry

Listen to and validate your ex-spouse’s comments. By really listening to his or her concerns, you may learn where the anger is coming from and identify what you can do to help. It also really helps to defuse the situation by saying something like, “I understand why you’re angry with me.”

Don’t be afraid to take a “time-out”. Walk away from an anger attack if you can’t handle it. You can try saying, “I’m not going to talk to you until you calm down.” Put limits on what you’ll take and how you’ll be treated.

Get some assertiveness training to boost your self-esteem. “Anger is like a fire that must be burned up into the ashes of forgiveness,” writes Ahrons. “If we are passive, it is like throwing more logs onto the fire.”

Try not to take your ex-spouse’s comments too personally. Remember that anger is a projection of one’s own inner feelings and one’s own world. Accept the fact that your ex is angry because they’re going through turmoil.

Stay calm. It can really help de-escalate the other person’s anger. Relaxation techniques, such as deep, breathing, can be effective when you’re listening to someone who’s really angry.

Learn to recognize your own hot buttons. When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.

Try to feel a little compassion – no matter how hard that may be. Your ex may be feeling fearful and threatened, so try to hear what’s underneath the anger; quite often, it’s fear, pain, or shame. Showing empathy or compassion for your ex can go a long way to defusing his or her anger.

Be honest with yourself. Recognize that when someone is angry with you, there may be some truth in what they’re saying. If your ex is yelling at you, you can choose to think he or she’s a jerk and start yelling back, or you can “dig for the gold” in what he or she is saying. Keep the gold; discard the dirt and rocks.

Value your safety above all else. If your former partner’s divorce anger seems to be headed in a dangerous direction, put some boundaries in place and communicate through a third party. Threats should always be taken seriously: remove yourself from the situation and refuse face-to-face contact if you sense any danger at all. ■

Jane Zatylny is the former Editorial Director of Divorce Magazine.

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Choose an Effective Resolution Process to Transform Grief

The legal process you choose can help you to move beyond the anger and resentment, release your anxiety and fear, and move toward renewal.

By Mari J. Frank



“The truth is that our finest moments are most likely to occur when we are feeling deeply uncomfortable, unhappy, or unfulfilled. For it is only in such moments, propelled by our discomfort, that we are likely to step out of our ruts and start searching for different ways or truer answers.” – Scott Peck

Transforming grief through the divorce process

There is no doubt that divorce is uncomfortable. But if you stay conscious, focus on positive, affirming thoughts, and choose a constructive legal process for the dissolution, it will propel you to growth, new insights, and greater happiness.

Believing that this life change is a “blessing in disguise” may not be easy at first. You may feel as though you are living in a separate reality. While your friends and colleagues are engaged in routine daily activities, you may be experiencing mental turmoil. This is

typical of individuals on the divorce journey.

To move beyond the anguish in divorce, you’ll need to take charge of your healing and engage in a legal course of action to attain a fair resolution of your marital issues. Although the wave of emotions can be overwhelming, consider this a time of renewal or renovation of the aspects of your life that haven’t been working.

You’ll encounter many mood swings and conflicting feelings as you go through the grieving process. Elisabeth Kübler-Ross, a pioneer in grieving research, first described the cycles

below. You will vacillate back and forth among the various stages of grief – it’s not a straight line to acceptance and recovery!

The stages of grief

- **Denial, Shock, Avoidance:** “This isn’t really happening; we can work it out; this is just a mid-life crisis; I know she/he will come back, so I will just wait.”
- **Anger, Resentment, Blaming:** “How could you do this to me/us? You are the one who causes all the problems; this is so unfair; I can’t take your actions anymore! You are always complaining.”
- **Bargaining, Disempowerment:** “If you stay, I will stop drinking/seeing other people/spending recklessly, etc; I’ll change and we can get back together; I can only stay if you...”
- **Depression, Guilt, Anxiety, Fear:** “It’s all my fault – I was a terrible spouse; I can’t go on without her/him; I can’t stop crying; how can I live alone? How will I manage? How will I care for the kids?”
- **Acceptance, Recovery, Renewal:** “It’s finally time to move on with life; I see that we aren’t going to get back together; I have to forgive myself and her/him to be happy; the past is gone and I look forward to being free. We did the best we could and now we can accept what is.”

Although some degree of grieving is inevitable in separation and divorce, your mindful and deliberate response to those feelings is your choice. Be aware of your thoughts, seek quiet time, express inner feelings with journal writing, ask for positive emotional and spiritual support, eat healthy, exercise, limit

alcohol intake, move your mind off the pain, and focus on this as an opportunity for renewal. Life challenges are transformative lessons. How well you cope will also depend on the decisions you make concerning your legal issues. The alternative legal forums each have emotional and financial ramifications.

The anger stage intensified

Litigation and arbitration are adversarial processes that facilitate anger, blame, and guilt in divorce. Your lawyer acts as a fervent advocate on your behalf against your spouse's legal counsel. The parties confront issues as opponents, not as problem-solvers. The hostile nature of court proceedings forces parties to linger in the anger/resentment stage of grieving. If one party wishes to engage in an antagonistic manner (to act out the pain and anger), the other spouse will be forced to rival the opposition. The aggression escalates, the costs spiral out of control, and the grieving process is protracted. Although a majority of litigation cases do settle, this normally happens after the parties have struggled and are emotionally and financially depleted. The courtroom battle and the aftermath delay the emotional and financial healing.

Collaborative Divorce

Collaborative lawyers represent the spouses and attempt to deflect the anger, resentments, and blame, but they must advocate on behalf of each of their clients. With opposing counsel and various experts in session, you may not feel comfortable to express your private and sensitive feelings and concerns. You might also feel less control over the discussion of your needs with the various participants at the table. You may feel disempowered if you are not actively engaged in your own bargaining but must speak through your lawyer in the process. An advantage of this process is that the fear and anxiety of going to court is reduced; however, the continuing expenditure of having both parties meeting together with their respective

Although some degree of grieving is inevitable in separation and divorce, your mindful and deliberate response to those feelings is YOUR CHOICE.

lawyers and multiple experts in numerous joint negotiation sessions can be cost-prohibitive for many couples.

Mediation: an empowering, private, and trusting environment

Mediation often involves an experienced lawyer/mediator who is usually trained in the psychological aspects of divorce. Your mediator empowers you and your spouse by educating you as to your rights and obligations and facilitates negotiations. A confidentiality agreement assures you of privacy – no accusations or offers made in mediation can ever be used against you in court, and the neutral can never be called to testify in court to hurt either party. In this private process, you are encouraged to express pain and feelings in safety. The mediator helps you understand the stages of divorce, deflects the conflict, and intercedes if one party blames the other. It educates and empowers you to make informed legal decisions, and it helps you to find solutions so you can release any resentment allowing you to co-parent if you have children. The anxiety and fear of losing in court is gone, guilt and blame are averted, and you focus on fairness and acceptance. In mediation, you experience all of the emotional stages of divorce, as in any other process; however, the difference is that you are educated and enlightened to be conscious about these feelings allowing you to move through the grief more quickly. Although the mediator must file a judgment with the court – just as in litigation and Collaborative Divorce – the costs, accusations, sensitive financial information, and other confidential issues of the marriage are never revealed to anyone except your spouse and your mediator. In

mediation, you are more likely to move past blame and guilt to gently and confidently arrive at acceptance, recovery, and renewal.

Mediation fosters cooperation, understanding, sensitivity, privacy, educated decisions, and mutually acceptable solutions, which soothe the grieving process.

Make conscious decisions to promote healing and growth

If you're considering divorce, or even if you're in the midst of it, consider the emotional stages of divorce and the legal approach you have chosen. Does that process help you to move beyond the anger and resentment, release your anxiety and fear, and move toward renewal? If you are ready to nurture yourself and strengthen your emotional processes to move beyond the pain, consider which approach is best for you. Ask your lawyer or mediator what to expect during dissolution procedures. How will anger, resentment, and blame be handled? Will there be a focus on mutual respect and dignity? Will the process be private and confidential, so you can share intimate and important secrets? Will there be a mutually satisfying settlement at the end, and how will that happen? Don't let your negative emotions direct you to engage in a process that will prolong your pain and grieving. ■

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Be Prepared:

Planning Your Financial Settlement

When you're negotiating the financial aspects of your divorce settlement, preparation is the key to success. Are you really ready to negotiate your financial future?

By Dr. Fadi Baradihi

During the course of your marriage, you accumulated both assets and liabilities. Although there are regional differences when it comes to who gets what, basically, everything purchased, received, or saved during your marriage must be divided when you divorce. So now you're about to sit down and negotiate a financial

settlement with your ex – but are you truly ready to do so? As with any negotiation, preparation – including a thorough understanding of the situation, as well as assistance from professionals to ensure your interests are being protected – is the key to success. Here are a few questions you need to be able to answer before sitting down to negotiate.

Do You Know What Your Marital Assets Are?

You can't divide the marital assets fairly if you don't know what's there. The discovery process, which can be informal or formal, is important in every divorce. The informal way is to exchange lists of your assets and

debts in an affidavit form. This method should only be used if you are sure that you know everything that exists in your estate; if you're not sure, then a more formal means of discovery should be utilized.

Start by collecting statements for all your financial holdings and put together a list of your assets. Here's an example of items you'll need to list on the Asset Worksheet at the end of this article (remember to note the value of each asset, and who owns what portion of it):

- Retirement Assets
- Liquid Assets
- Real Estate
- Personal Property
- Cash Value Life Insurance
- Business Interests

As you work your way through the asset split negotiations, each asset can be moved to its appropriate column: "Husband" or "Wife". To figure out the percentage split, divide the total for each spouse by the grand total.

What if There's a Business or Professional Practice Involved?

A business or professional practice tends to complicate a divorce. More often than not, the value of the business becomes a focal point of contention. Couples need to seriously consider getting a professional and objective valuation of the business. The costs of a professional valuation are usually steep, but you can't divide something fairly if you don't know its true worth. Then comes the question of what to do with the business.

There are a few options, such as:

- One spouse keeps the business and gives the other a reciprocal dollar value using other assets.
- Sell the business and split the proceeds.
- Keep ownership in the business at 50/50.

In a business-owner situation, the business is usually most or all of their

net worth, so there aren't usually enough other assets to compensate the other spouse. Even if selling the business is an option (it usually isn't), finding a buyer to pay the right price within an acceptable time frame is practically impossible. Most divorcing couples don't want to maintain a relationship – not even a business relationship – after the divorce. So what do you do? The only real options are a property settlement note (one spouse buys the other's share in a series of installment payments at a market-interest rate) or a spousal support arrangement to compensate for the difference.

What About a Budget?

It is critical to determine the incomes and expenses of the parties and to try to estimate what the future expenses will be after the divorce is final. If there are children, one spouse will probably pay child support to the other, and in many marriages, one spouse will also pay spousal support ("alimony"). It is

What About Pensions?

In many divorces, the most valuable assets are future benefits such as pensions. These must all be determined and considered before starting to think about a settlement. In most cases, the marital portion of these benefits – in other words, the portion of the pension or other deferred benefits that have been acquired during the marriage – is subject to division as part of the divorce settlement. A good lawyer and CDFA will help you consider these benefits as part of the overall settlement plan, making sure your future needs will be met.

What About Personal Property?

Personal property is important, but don't spend thousands of dollars fighting over property with more sentimental than real value. Items such as collectibles, favorite home furnishings (from chairs to rugs to pots and pans), hobby equipment, and other personal



important to determine both income levels and future needs before you start negotiations. A Certified Divorce Financial Analyst® (CDFA™) can play a critical role in determining both a budget and cash-flow needs. They can also help to plan a course of action for the future by preparing different scenarios utilizing assumptions based upon needs and projections with different income levels.

property must not become the focus of your negotiations. A good lawyer and CDFA can help you gain perspective on these items and focus on the big picture when you're getting ready to negotiate a settlement. Remember that an expensive television or computer has almost no value a few years after you made that big-ticket purchase. The courts don't look at replacement value but the actual value of the item, which, in the

“Insoluble disagreements arise when divorcing couples are negotiating based on wants rather than needs.”

case of used furniture, is often valued at garage-sale prices.

What About Your Home?

Over the years, we have seen people who were determined to stay in the marital home no matter what. In some cases, that can be a big mistake. First of all, it may be too expensive to maintain. In some situations, it's better to sell the home and find another one that's smaller and less expensive to pay for and maintain. As you move ahead and rebuild your life, it may be better to start fresh in another home. Aside from the financial considerations, there may be too many memories attached to the marital home to let you move forward emotionally as long as you're still living there.

Here are the traditional options for the matrimonial home:

- One spouse stays in the house (with the children, if any) and buys the other spouse's share by:
 - a) Cash-out refinance
 - b) Giving up another asset
 - c) Property settlement note
- The spouses sell the house during or after the divorce process and split the proceeds.

In many cases, one spouse – often the wife – wants to keep the house. Though this might be emotionally satisfying, it usually makes little or no financial

sense. The equity in the house is illiquid, meaning it won't pay the bills.

If one spouse wants – and can afford – to keep the house, that spouse should pre-qualify for a mortgage before the divorce is final. Sometimes, a divorcing couple will decide that one spouse is going to keep the house. They take the other spouse's name off the deed – and then the spouse who wants to keep the house gets turned down for a mortgage because he/she doesn't make enough money to qualify to refinance in his/her name alone. The spouse who is leaving the marital home ends up being on the hook for the debt, has no reciprocal asset, and can't qualify for his/her own mortgage because he/she doesn't make enough to support both mortgages.

What Do You Want – and Why?

You must have a game plan when you enter into settlement negotiations. Do you know what you want? Do you know what you need? Are you thinking about all options? Are you being realistic in your demands? It is standard negotiating practice to ask for more than you expect to receive without going to extremes. Don't be a doormat, but don't be excessively greedy, either. Insoluble disagreements arise when divorcing couples are negotiating based on wants rather than needs. So take the time to objectively determine your own needs and those of your spouse before starting to negotiate. We have found over the years that if your demands are reasonable and based more on needs than wants, then the chances for a quick, fair settlement are good. There must be give-and-take as well as wiggle room in your settlement proposals; your lawyer and your financial advisor can help you strategize and come up with different game plans and scenarios as you prepare for negotiation.

The Bottom Line

You must be well-represented and advised in order to negotiate effectively. This includes knowing the “ingredients”

of the marital pie, and also how much of that pie you can realistically expect to keep as you prepare to negotiate your settlement. A team consisting of a lawyer and a Certified Divorce Financial Analyst® (CDFA™) – and perhaps a therapist if emotional issues are getting in your way – can help you understand your needs, your rights, and your true “bottom line” before you sit down with your mediator to negotiate with your spouse.

Divorce is one of the most difficult and stressful experiences you'll ever have. During this emotional time, it can be hard to think clearly or rationally, so make sure to enlist the help of professionals who can guide you when you've lost your way. Remember: if both sides are somewhat unhappy with the outcome, then the negotiations went well. ■

Fadi Baradihi (DBA, MBA, CFP®, ChFC®, CLU, CDFA™) is the former president and CEO of the Institute for Divorce Financial Analysts (IDFA). www.InstituteDFA.com.

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Worksheet: Charting Assets

Make one copy of this page for each of the following assets you and/or your spouse own: Bank Accounts (including investments and CDs); Retirement Accounts; Real Estate; Businesses; Vehicles; Patents, Copyrights, Royalties; Antiques, Art, Collections; Cash-Value Life Insurance; Licenses and Degrees (if applicable). Note whether Marital or Non-Marital funds were used to purchase the item under the “Source of Payment” category.

Description of Asset	Date Acquired	Titleholder	Cost	Source of Payment	Value as of (date)

Parenting Pitfalls

By Dr. Elissa P. Benedek and Catherine F. Brown`

Here are some of the most common warning signs that you need help before your children become casualties of your divorce.

The process of separation and divorce sets up an almost impossible situation for parents. At the same time that they need time out for themselves – to deal with the emotions and stress accompanying the loss of their marriage and to decide a new course of action – their children have the greatest need for reliability and assurances of love. Absorbed in their own problems, parents may become less affectionate with their children or fail to discipline them consistently. The more parents pull back to regroup after a divorce, however, the more fiercely children show their need for attention. When both parents and children have lost their emotional equilibrium, they exacerbate each other's problems.

The keys to breaking this cycle are for parents to:

- Take control of their lives.
- Create a nurturing, predictable environment for the children.
- Learn to deal with the children authoritatively.
- Be aware of the problems that divorced parents commonly encounter (as described later in this article).



Common Problems

When a husband and wife first separate and divorce, they experience the gamut of emotions from sadness, anxiety, guilt, shame, and shock to elation over believing that all their problems are now solved. The spouse who didn't want the divorce may feel worthless and unlovable; the spouse who wanted the divorce may have second thoughts. There is no single order in which these emotions appear; each may come and go again and again.

It's vitally important that parents overcome these reactions and, for the children's well-being, learn how to handle the stresses brought about by their divorce. A child's adjustment to divorce is directly linked to that of his/her parents.

Adult Regression

Children sometimes behave in ways typical of an earlier stage in their development in reaction to their parents' separation and divorce. In the same way, a keenly unwanted or brutal divorce has the potential for throwing an adult back into an earlier stage of development or leading to behavior that is unusual for that person. Some adults may go so far as to become helpless, depending on others – including their children – to take care of them.

Role Reversal

After a divorce, some parents experience a specific type of regression in which they become too dependent on one or more of their children. In essence, a role reversal takes place in which the children become the parents' caretakers, confidants, and counselors. These parents are most often troubled, depressed, and lonely; they are unwilling or unable to take responsibility for themselves. Sometimes, they are alcoholics or drug-addicted. The result of this dynamic is a form of mental bondage and skewed development in the child and a faulty sense of reality in the

adult. In its most destructive (but thankfully rare) variant, some adults go so far as to commit incest, using the child as a replacement for the lost marital partner. More commonly, they have the child sleep next to them to alleviate their loneliness.

The temptation to become too dependent on your children is always there if you don't have another adult to whom you can turn when you need advice or just someone to talk to. Although there's nothing wrong with soliciting your children's opinions in matters that concern them (in fact, doing so helps build their sense of responsibility and family commitment), avoid relying on them for advice that affects only you or that should be offered only by adults. For example, it's all right to ask your children to help pick out the family's new car, but you should not ask them whether you should date someone you just met at work.

Overburdened vs. Idle

For many harried, overworked single parents, it can be all too easy to fall into a routine in which they depend on an older child to care for younger siblings or assign chores that require an unrealistic degree of responsibility.

Although it's not unreasonable for single parents to expect their children to carry some of the weight of household duties, such responsibilities should be assigned with certain limits in mind:

- The chores should be appropriate to the child's age.
- Generally, children under the age of ten should not be left unsupervised.
- Older children should not be given total responsibility for the care of younger brothers and sisters – they are siblings, not substitute parents.
- Chores should not interfere with schoolwork or sleep, or preclude time with friends. Schoolwork is a child's most important job and an active social life is a necessary ingredient of healthy development.

Instead of overburdening their children, some parents slide too far towards the other end of the responsibility scale. To assuage their guilt over the divorce, these parents exclude the children from household tasks and try to do everything themselves. Or they may use faulty reasoning, such as, "I had to do too many chores when I was a kid. I don't want to put my kid through that." Such selfless intentions are unrealistic from the parent's point of view and do a disservice to the child. Being assigned and expected to carry out age-appropriate tasks creates a sense of accomplishment and self-discipline in children. It's a training ground for handling the increasingly more difficult demands that will be placed on them by school, other institutions to which they belong, and eventually, paying jobs.

“A child's distress is compounded by the antics of an out-of-control parent and, not surprisingly, they often come to mirror that irresponsible behavior.”

Studies have shown that children with divorced parents reap unanticipated benefits from assuming a greater amount of responsibility at a young age. Many of these children report that they have a greater sense of strength, independence, and capability as a result of their experiences in a post-divorce family. They are clearly proud of themselves and of their ability to assist their parents at a time when the family's future was seriously jeopardized. Like all children, those with divorced parents deserve to feel needed; thus, parents should not try to protect their children from the vagaries of everyday life. The danger comes when the children are robbed of their

childhoods and forced to grow up far before they're ready, as they can never re-capture those years.

Isolation vs. Activity

In the immediate aftermath of divorce, many people follow one of two patterns: they either isolate themselves from others or pursue an overly hectic social life.

People who choose isolation may do so for many reasons; they may not be able to afford a babysitter or they may feel guilty about leaving their children with a sitter after being away from them at work all day. Although their motivations are different, parents in either of these situations may come to resent their children.

Some parents, however, use their work and/or their children as a handy excuse for avoiding interaction with others. They may still be sad and upset about the divorce, unable to put it behind them to take the first few shaky steps to reestablish their lives. They show no interest in dating and may deny having sexual feelings.

Some people, overwhelmed by depression, may feel unable to make the effort to meet new people or take on new challenges. Such behavior often fosters over-dependence on the children, since they become the parent's only focus in life. What will become of such a parent when the children break-away and establish their own lives? In its worst form, isolation may lead to severe depression and other psychological problems.

At the other end of the social spectrum are those parents who are any place but home. With a full schedule of night classes, church activities, outings with friends, or dates, these parents leave their children with a round of babysitters and relatives (including the children's other parent). Some may go so far as to replace the former spouse with a serious new love interest before

they are emotionally ready or frenetically engage in indiscriminate dating and sexual relationships. Sometimes, such parents are (subconsciously or not) trying to blot out the fact that they even have children, who may be viewed as reminders of their failed marriage or a responsibility they wish they didn't have.

Obviously, the children suffer greatly by missing out on the consistent parenting and love they need, particularly in the first few months after their parents' divorce. A child's distress is compounded by the antics of an out-of-control parent and, not surprisingly, they often come to mirror that irresponsible behavior.

Moving On

In the first months to a year after a separation and divorce, your life may be in a state of upheaval. When the dust finally begins to settle, however, there is the business of building a new life.

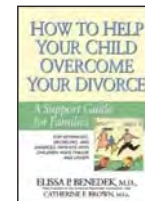
Your first task in this reconstruction is to put your failed marriage behind you and deal with any residual feelings of grief, anger, or guilt. In addition, you need to realize that your role as a spouse is separate from your role as a parent. Although your marriage has ended, your parenting relationship goes on.

That your children come to terms with your divorce has important consequences – not just in the period following the divorce, but in their adult years as well. Children with divorced parents sometimes rush into relationships for which they are ill-prepared in an effort to prove they are lovable and to fight their fear of rejection. If they see that you can recover from such a devastating trauma, such negative reactions in their adult lives may be avoided.

Attaining an inner peace about your divorce partly depends on the quality of the relationship you and your ex-spouse are able to build as co-parents. If you become emotionally charged

when seeing or thinking about your ex-spouse, you may need to monitor your attitudes and behavior towards your ex in front of your children.

Remember, although you were unable to continue your marital relationship, this has nothing to do with the right or ability of each of you to be a good parent to your children. ■



This article has been edited and excerpted from How to Help Your Child Overcome Your Divorce by Elissa P. Benedek, M.D. and Catherine F. Brown, M.Ed. Dr. Benedek is lead-

ing child psychiatrist and forensic expert.
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