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# Strategic Planning for Divorce Mediation

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Mediation is a process by which an impartial third person (sometimes more than one person) helps parties to resolve disputes through mutual concessions and face-to-face bargaining. . . . The mediator does not force parties to settle their dispute but tries to convince them that they and their family will benefit from reaching an agreement. The mediator helps the parties understand what is happening to them. . . . and encourages the parties to negotiate in good faith and to enter into arrangements that will be enforceable in future years.<sup>1</sup>

**F**OR A SIGNIFICANT portion of adults and children, marital and family relations are neither straightforward nor stable. In the United States, 12.1 million children, 20 percent of those under the age of 18, are living with only one parent. Furthermore, another 5 million children in two-parent homes live with a biological parent and a stepparent. It is estimated that almost half of the marriages undertaken in this country in 1984 will end in divorce. If divorce and remarriage trends continue, by 1990 about 50 percent of all children under 18 will have lived with only one parent for at least several months, and about 25 percent of all children will be living in single-parent homes at any given point in time. In addition, although the numbers are proportionately small, the rate of divorce is increasing rapidly for couples who have been married for 25 years or more.<sup>2</sup>

Clearly, the problem of family disruption is widespread. The question of how to minimize the pain of that disruption is one that growing numbers of professionals from legal and mental health disciplines are seeking to answer through the development of divorce mediation services. Divorce mediation is a relatively new mode of intervention, with its theory, underlying psychology, and principles of practice at an early stage of development. Nonetheless, currently, there are 150 minor dis-

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*There is widespread interest in developing mediation as an alternative to adversarial litigation in divorce. This article presents a theoretical model that focuses attention on the multiple arenas of life that are disrupted by divorce, the emotional stages of divorce, and the interpersonal dynamics of separating couples. The implications of these factors for strategically planning and carrying on the mediation process are discussed.*

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pute mediation centers in about 40 states.<sup>3</sup> Private family mediation services are also proliferating.<sup>4</sup> Social workers interested in developing expertise in helping conflicting parties to negotiate their own divorce settlement agreements, therefore, have access to a widening range of "how-to" models to facilitate mediation.<sup>5</sup> If we are to develop effective divorce mediation efforts, however, not only must we be knowledgeable about the process of mediation, but we must also ground that knowledge in substantive understanding of the broad-range impact of divorce on people's lives.

Intervention by a divorce mediator needs to be based on appreciation of the structural impact of divorce within different life domains and on differentiation of the emotional, interpersonal, and developmental dynamics of divorce for separating couples and their families. The issues that need to be negotiated between couples vary

considerably depending on the resources that each party controls and desires as well as the life stage during which the marital breakdown occurs. When planning for divorce mediation and sharpening our process skills, we must be careful to avoid generalizations. The divorce an unhappy couple seeks will be quite different from the divorce experienced by their relatively content children.<sup>6</sup> Eighteen-year-old Denise will have a very different experience of her parents' divorce than will her 6-year-old brother, Steven. And resolving Don and Mary Granger's divorce dispute after 15 years of marriage and child rearing will involve different issues than resolving that of Fred Wozniak and Renée DePaul who have been married five years and are childless or that of Erwin and Virginia Gold who are divorcing after 38 years, four children, and six grandchildren.

Having stated the foregoing cautions, however, I wish to bring some general principles about divorce to mind. First, divorce is not an event that is strictly bounded in time or consequence—its effects extend over long periods. Just as a marriage comprises more than the details of a wedding ceremony, the experience of divorce cannot be captured by detailing the events involved in the legal dissolution of a marriage. Second, divorce is a process that affects parents and children, friends and kin. As anthropologist Bohannan writes:

A divorce does not end everything about a marriage. It severs the legal contract between husband and wife but it leaves a moral and emotional contract between the ex-husband and ex-wife. It shatters the household that was based upon the marriage, but it cannot break the relationships that the children of the marriage create merely by existing.<sup>7</sup>

According to Bohannan, there are at least "six divorces" contained within any marital breakup. Each of these divorces—

which Bohannan identifies as the emotional, legal, economic, co-parental, community, and psychic divorces—presents the individual with unique challenges that demand time, effort, and skill to manage and resolve. The model for mediation presented in this article is but one of a spectrum of models now being developed. Here, Bohannan's framework is used to highlight critical issues that divorcing parties, and social work mediators who work to help them achieve a viable settlement, need to address. Strategies for handling focal problems within each divorce are pinpointed and discussed.

## THE 'SIX DIVORCES' AND THEIR EFFECTS

### Emotional Divorce

The emotional divorce involves the perceived erosion of love between the marital pair and the effects of that erosion. Couples refer to this divorce when they report: "I just don't feel the same way I used to," or "All I feel is angry when I think of my spouse's affair," or even "I care about my spouse, but I'm not in love anymore." Emotional divorce results in the loss of a loved one just as fully as does the death of a partner. One should recognize, however, that for the majority of the divorced, these feelings are emotionally ambivalent. Bohannan points out that many of the divorced, unlike the widowed, must cope with "purposeful and active rejection" by a partner who "merely by living" serves as a constant reminder and symbol of rejection.<sup>8</sup> Unraveling the hurt, anger, and grief involved in mourning the loss of an estranged spouse may extend over months or even years.

It should not be surprising that unless clients have some opportunity to express their feelings during the mediation process and hear these feelings acknowledged, agreements that might otherwise be reached can be sabotaged. Recognizing that divorcing clients need to express their feelings does not suggest, however, that prolonged expression, or catharsis, of feelings is to be encouraged in a mediation interview. In fact, a substantial body of psychological research on problem resolution indicates that "letting it all hang out" is as likely to be detrimental to successful mediation as is "keeping it all bottled up inside."<sup>9</sup> A highly intense emotional climate is not conducive to decision making, problem solving, and negotiation.<sup>10</sup> It is essential, therefore, that social workers in a mediation role take great care to balance recognition, solicitation, and acceptance of feelings with focus on instrumental task

achievement. Indeed, if feelings cannot be contained so that task-oriented work can proceed, referral to supportive counseling is advised. In this regard, although it has been suggested that a social worker might well fulfill the functions of both mediator and counselor for clients,<sup>11</sup> in my own experience, blurring the distinctions by serving in a dual role can create as many problems as it can solve. Therefore, I advise that necessary counseling (with or without temporary cessation of mediation) be carried out by another professional as a separate service.

### Legal Divorce

The second divorce Bohannan discusses is the legal divorce—the events, procedures, and relationships involved in the formal termination of a marriage in the eyes of the state. In the legal process, the client is likely to feel bewildered; even parties who initiate legal proceedings lose considerable control as events sweep them along. Given the intense emotional climate, the task of helping clients clarify their needs and goals is not easy. It is understandable that attorneys frequently attempt to alleviate pressure on their clients by taking charge. As we know from social science research, however, such an approach, rather than reducing intense emotions, may actually exacerbate them. Research on crisis intervention in a wide range of situations reveals that anxiety often increases when the individual perceives a situation as being outside his or her personal control. Conversely, to the extent that an individual can anticipate consequences and act in his or her own behalf in stressful situations, anxiety diminishes and positive problem solving is promoted.<sup>12</sup>

Based on such evidence and extensive divorce mediation experience, Haynes emphasizes that a critical aspect of mediation is that it helps clients to understand, be involved in, and even take charge of critical aspects of the legal proceedings.<sup>13</sup> Moreover, in contrast to the adversarial system, divorce mediation offers the couple an alternative that is designed to eliminate guilt and fault and "allows the parties to reach their agreement without casting blame on anyone or pitting one party against the other."<sup>14</sup> Divorce mediation services are predicated on the belief that

voluntary settlements, worked out by the spouses on both an emotional level as well as an intellectual one, are not only more humane than those forced by litigation, but they are also more practical. Mutual agreement means that neither party is the "loser" and

that neither has been taken advantage of.<sup>15</sup>

In this process, social workers as mediators facilitate the adjustment of their clients by helping them predict and plan for the steps to be taken in securing the legal decree. Within the negotiations, social work mediators may also help each party learn to bargain for items that he or she wants to see incorporated into the final settlement agreement. Caution must be exercised in this regard, given that this process must be done within the law:

The legal structure affects the bargaining by statute and case law. It gives each party claim or bargaining chips based on possible results should the case go to court. Bargaining takes place against the backdrop of uncertainty because there is a wide range of acceptable solutions to the court and a wide range of judicial discretion.<sup>16</sup>

Models of practice that incorporate attorney-therapist teams have therefore been suggested as most appropriate for divorce mediation work.<sup>17</sup> In essence:

The lawyer-therapist team first tries to help the couple gain insight into their difficulties and then develops a legal framework within which the partners can plan solutions or alternative approaches. The team is in a strong position to remind couples that there are alternatives to separation or divorce.<sup>18</sup>

### Economic Divorce

The third divorce articulated by Bohannan is the economic divorce or the reassignment of property and division of money. Here, the clients' feelings that commonly need to be acknowledged are anger that there isn't enough to go around and suspicion and fear that one is going to be cheated. The facts that need to be kept in mind are that, although the available family income of men drops to some extent (7 percent) immediately after a divorce, that of women declines by 30 percent. It is a reality in the United States today that the poverty rates of women and children double subsequent to divorce whereas for men they halve.<sup>19</sup> Despite media publicity for cases in which men have been required to pay substantial alimony and child support, women and children are more commonly left destitute by divorce—45 percent of all applications for Aid to Families with Dependent Children are a result of divorce.<sup>20</sup> Mediators must also be knowl-

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edgeable about pension rights or the lack thereof and hospitalization benefits that later life divorcés may lose as a result of marital dissolution.<sup>21</sup> It must be remembered that courts are better able to award financial settlements than they are able to ensure that these obligations are carried out. Economic realities must be understood so estranged spouses can base their settlement on “informed consent.”

Mediators must also be alert to the fact that husbands and wives may voluntarily give up their rights to money and property or press claims for it for reasons that are less than rational. How many of us have heard a client say, “I won’t take anything from him,” just as we have heard others attempt to use the property settlement as a means of retaliation. Mediation, at its best, provides an open forum in which the sensitive social worker guides the clients in discussion of relative need and away from irrational motives such as self-abnegation or revenge.

### **Co-Parental Divorce**

The co-parental divorce—the changing relationships of each parent to his or her children—is the fourth divorce under consideration. In this aspect, parents worry about how the divorce will affect their children and feel guilty about causing them pain. In addition, parents are confused about what they should or should not be telling their children about the divorce and how to communicate about such matters. Mediators need to be aware that these are extremely sensitive areas to explore, given that hostile parties may attempt to use a partner’s admission of questions and fears about the ability to handle child care as evidence of incompetence should a custody dispute arise. Unless both parties demonstrate willingness to disclose concerns about meeting their children’s needs, mediators must make certain not only to encourage the silent partner to voice his or her concerns but also to assert that the admission of having questions and searching for answers is a sign of parental adequacy rather than weakness.

Mediators are in a key position to encourage parents to communicate with their children about why the divorce is occurring. Just as adults can better handle difficult events when they can predict and

plan for various contingencies, children are also helped by being informed about what is going on and what to expect. In an article discussing the attorney’s power in a divorce, Hancock stresses that third parties can

make an invaluable contribution to the child’s need for clarification simply by asking the parent what the child has been told about the marital situation and encouraging the client to arrive at a simple explanation of what has happened, what caused it, and what the immediate future holds, geared to the child’s age and concerns.<sup>22</sup>

How well parents cooperate in developing a plan for communicating to their children can also be of diagnostic use to the mediator who is questioning whether the parties might benefit from referral to a child care expert for counseling about the co-parental divorce. As an experienced divorce attorney states:

I . . . encourage counseling (*not* mediation) for kids to sort things out *and* for parents who may need to think things through for the child’s best interests rather than to justify to themselves that the other parent is inferior (S/he was late, fed them junk food, etc.). Not just . . . when there’s ambivalence toward the divorce but because there’s always ambivalence toward the other parent, and the sooner appropriate behavior can be established the better.<sup>23</sup>

It is important to note that conflict and confusion regarding how to communicate to children are not limited to parents with minor children. I have interviewed men and women who have been divorced in later life after 30 years of marriage. Concern about the effects of divorce on children (and grandchildren) among this age group remains a critical issue that mediation should address. Although few experienced mediators recommend including children in early stages of the mediation, by the time that tentative plans affecting the children are agreed on, inviting children into the sessions to discuss their feelings and reactions to the proposed arrangements is often useful.<sup>24</sup>

For parents with dependent children, the most enduring pain is likely to come from the co-parental divorce. Children must live somewhere; and even when parents share joint legal custody, usually the physical residence of a child or children is more with one parent than the other. In discussing the co-parental divorce, Bohannon points out that “the word ‘custody’ is a

double edged sword. It means responsibility for the care of somebody. It also means imprisonment.”<sup>25</sup>

Mediators need to be sensitive to the reality that there are corresponding gains and losses connected to the changing parental roles initiated by marital separation. Generally, the noncustodial parent suffers loss of purpose and status, whereas the custodial parent suffers from overwork and a pervasive feeling of being locked into a world in which everything revolves around the children’s needs rather than his or her own. Mediators must help parents focus on their permanent role as parents and help them avoid treating their children as pawns or prisoners. As Haynes discusses:

When working with families the mediator has a set of goals that help to frame his/her values. Among those goals are an uncoupling of the spouses in a way that leaves no victims, allows the couple open lines of communication between themselves, and provides each child with a direct and open line of communication to each parent. Thus any arrangement that would victimize a person in that family would be unacceptable to the mediator. The solutions the mediator works for are family solutions.<sup>26</sup>

It appears to be a truism that when parents trust that their legal rights and parental roles will be supported, they become better able to consider their children’s living arrangements appropriately. For example, a mediator who asks a divorcing couple how joint physical custody is likely to promote or impede their children’s well-being is more likely to be responded to when parents feel secure that their relationship to the children will be maintained whether they live with them full time or not. In addition, a mediator who asks a couple how joint physical custody will promote or impede their forming lives independent of each other is also more likely to be heard under these circumstances. It is important to recognize that a request for joint physical custody—insofar as it requires that ex-spouses maintain relatively open lines of communication—may signal one or both parties’ ambivalence about the divorce itself. A mediator who suspects this to be the case needs to raise it with the couple, allowing them to consider the implications. If the couple acknowledge that they are having mixed feelings regarding the advisability of divorce, the mediator is in a good position to refer them to counseling in which they can explore these feelings and move

toward reconciliation or a less ambivalent decision to divorce.

### Community Divorce

The fifth divorce highlighted by Bohannan is the community divorce. This refers to the changing patterns of social support from friends and extended family that marital separation brings about. Feelings of anger and despair—evoked by what seems to be (and often is) a lack of loyalty in those on whom one has relied in the past for aid and comfort—compete with feelings of embarrassment and rejection of old ties that divorcing persons themselves initiate. Loneliness can be overwhelming, and many divorcing persons find great comfort through referral to groups for the separated or divorced that are available in many communities. The sensitive mediator can also promote dialogue and negotiation between the couple as they grapple with concerns about maintaining or breaking ties with in-laws and friends.

### Psychic Divorce

The final divorce to be considered is what Bohannan labels the psychic divorce, or the problem of developing psychological autonomy from one's former spouse. Here it is important to distinguish autonomy from independence if we are to understand the ramifications of this critical disruption. No one is independent in the sense that he or she can exist without other people. But if a person believes that he or she will wither and die without another's specific attentions, that person is without autonomy regarding the relationship. The person is what psychologist Weiss calls "attached" or "bonded" to a significant other.<sup>27</sup>

It is important to recognize that the ability to attach or bond is a necessary attribute of human beings. Parent-child bonding is critical for the survival of infants. A problem arises in a divorce, however, because adults may be bonded to intimate, long-term partners in their adult lives. Consequently, separation from the partner to whom one is bonded (even if one is no longer in love) can initiate a period of psychological anxiety and uncontrollable behavior that is extremely unsettling to the divorcing person and others. This often happens when a divorce is not wanted; it even happens occasionally when a divorce is desired—if the bonds of attachment have not been transferred or dissolved.

Mediators need to be aware that the possible emotional upheaval connected to the psychic divorce may be a serious impediment to the rational process of negotiation. But it is also critical to recog-

nize and communicate to clients that this disequilibrium usually represents a *normal* and *temporary* reaction to the disruption of a critical bond. Often a time-limited break from the mediation process with referral to counseling is appropriate at this juncture. Or the mediator may discover, instead, that attention to concrete and practical matters with some knowledgeable reassurance may help the client gain the necessary control to proceed with mediation. As Kressel, a research psychologist with experience in both counseling and mediation, writes:

A willingness to engage the client in discussions of pros and cons of various practical financial and related arrangements, and a *strong bias in favor of deliberation and slowness of decision making*, can be of inestimable value.<sup>28</sup>

### DYNAMICS OF COUPLES WHO ARE SEPARATING

With all these aspects of divorce to contend with, it is not surprising that even individuals with a strong philosophical commitment to the idea of a nonadversarial divorce often find themselves confused, angry, depressed, and unable to communicate with an estranged partner. Marriages break down because couples lack the very incentives and skills that are necessary to negotiate and resolve interpersonal differences effectively. In addition, few decisions to divorce are really mutual. To negotiate effectively, parties need to be motivated and ready to engage in the process. Yet, for many people, the decision to contact an attorney and initiate divorce proceedings may have little to do with a genuine desire to terminate a marriage. As Hancock describes:

The intricacies of the relationship between client and attorney begin with the initial consultation. Despite the impression of certainty that clients frequently give at this point—perhaps because seeking legal services seems to demand that they appear resolute—consulting an attorney may reflect any number of motives and hopes regarding marital or personal distress other than a reasoned wish to terminate a marriage. The client may use the visit for a variety of purposes, including finding alternative ways of handling marital discord, as a power play to coerce the spouse into taking a problem seriously or as retaliation for a sense of injury. The clients may even try to use legal action to counteract a loss of psychological identity, for in the

intimacy of marriage—no matter how fleeting—each spouse's sense of self comes to include connection with the other.<sup>29</sup>

Mental health practitioners are increasingly sensitive to the fact that people must grieve before they can resolve the significant losses and changes connected to divorce. A period of denial that the divorce is really going to occur, a period of depression and despair, and a period of protest and anger are classic stages of mourning that the person may need to experience before achieving a sense of detachment (or acceptance) that permits realistic planning for life without one's former partner.<sup>30</sup>

It is thus important to remember that estranged spouses are rarely in the same stage of the divorce process at the same time. One spouse may have done a great deal of preparation in relation to emotional as well as practical matters prior to announcing a desire to terminate the marriage. In consequence, his or her readiness to negotiate a divorce settlement will far exceed that of the spouse who is still in conflict about whether such a drastic solution to marital problems is necessary or that of the spouse who is consulting a third party in the hope of discovering alternative ways to handle marital problems.

Haynes asserts that mediators need to know the process by which couples have arrived at their decision to divorce.<sup>31</sup> Mediators should explicitly ask for this information, he advises, because it will allow them to take into account the divergent needs propelling each party in the mediation. In addition, information about a client's motivation can also help the mediator determine whether mediation is the appropriate service to be offered at a particular time. In this regard, we are cautioned to remember that just because divorcing parties say they want to mediate does not mean that they are ready or able to do so. To negotiate successfully, disputing parties must each control resources that the other partner recognizes as valuable and be willing to bargain about their exchange.<sup>32</sup> The effective mediator anticipates that differences in readiness and ability to negotiate will exist and suggests referral to counseling, to some form of premediation skills training, or to traditional litigation if discrepancies between partners in resources or skills suggest these forms of intervention would be more suitable.

Even if imbalances in resources, motivation, and ability are not initially apparent and mediation is agreed on as the interven-

tion of choice, mediators are well advised to question divorcing couples carefully so that hidden resistances to engaging in mediation are uncovered and dealt with early in the process. Too frequently, negotiations that appear to be progressing smoothly bog down entirely because a spouse who has been cooperating in the hope that the process will facilitate reconciliation finally realizes that cooperation will only bring about the divorce he or she hopes to avoid. Because a mediation that breaks down at the end seems especially difficult to reestablish, the mediator should anticipate that periods of disengagement will be necessary as each party comes to terms with divergent interests and should build time-outs into the process. In my own practice, I routinely inform clients that they should anticipate wanting to withdraw periodically from face-to-face negotiation. Furthermore, I stress that disengagement in these circumstances—unlike avoidance—is an active, positive form of problem solving that is frequently useful in cooling down intense emotions and providing the time needed to assess complex human interests adequately. In addition, I reassure clients that, by expressing a desire to disengage, they communicate valuable information to me about whether the content and pacing of the mediation is effectively meeting their needs or whether certain shifts in the procedures are necessary.

### OBSTACLES TO MEDIATION

As the preceding discussion stresses, clients come to mediation for a variety of reasons, only some of which can be achieved through a negotiated divorce settlement. If the goal of divorce mediation is to achieve an agreement that endures, then we and our clients must be prepared to devote enough time to its preparation to discover what goals can appropriately be satisfied through mediation and what goals can only be achieved outside this context.

Even if clients come with appropriate goals for negotiation, it is important to recognize that other factors exist that may inhibit their ability to negotiate effectively and that must be strategically handled for the mediation to succeed. Apart from the variety of problems associated with the six aspects of divorce that, by their very number, may overwhelm even the most able person's ability to cope, four additional obstacles to negotiation deserve consideration here: (1) high levels of internal conflict in one or both parties, (2) scarcity of divisible resources, (3) inexperience of the parties with negotiation and with

mediated negotiation in particular, and (4) a wide discrepancy in the parties' power relative to each other.<sup>33</sup>

Divorce mediators continually face and must manage clients with high levels of internal conflict generated by their ambivalence about the divorce itself and about their estranged spouses.<sup>34</sup> Although it is recommended that individuals who are extremely upset and reactive be encouraged to engage in some form of outside counseling simultaneously with or prior to mediation, Kressel et al. assert that all divorce mediation clients could benefit from participation in information sessions that alert them to how emotional conflicts can be played out within a bargaining relationship.<sup>35</sup> In addition, common practice suggests that family mediators need to provide emotional support to their clients as an ongoing part of any mediation process. Some acknowledgment by the mediator of the clients' feelings, combined with the mediator's permission for clients to express these feelings briefly, appears to facilitate rather than inhibit productive problem solving.

Kressel and his colleagues also cite evidence indicating that divorce negotiations are particularly likely to be prolonged and difficult when there is a previous marital history of debt and financial strain. Pressures generated by self-interest and an inability to arrange trade-offs by "sweetening the pot" are most likely to occur when divisible resources are scarce or nonexistent. Openly acknowledging these problems and developing educational materials or programs to train the divorcing partners in techniques of conflict management prior to beginning formal mediation is advised. Interdisciplinary cooperation is useful in this regard.

It is important to stress that in divorce mediation, the client who is a "naive negotiator" is not limited to the ranks of the financially indigent. As Kressel et al. describe:

The negotiating naiveté of the parties is virtually guaranteed by the newness of the process and the "first time around" characteristic of the divorce itself. In addition, in nearly all of the cases, the level of ignorance about basic details of family finances was high. . . . [This] made the search for viable compromises more difficult. . . . Much time was spent by the mediator trying to educate parties about certain fundamental principles of money management in the midst of negotiations, a time when ambivalence and emotional turmoil created strong obstacles to comprehension.<sup>36</sup>

To handle this, Kressel et al. suggest that courses in premediation skills training be routinely developed and offered as mediation services. These courses would include content on fundamental matters of money management and tax law, the documentary requirements of mediation, and techniques of constructive bargaining and negotiation.

The final obstacle to successful divorce mediation Kressel et al. identify occurs when there is a discrepancy in relative power between the disputing parties. In his experience, an imbalance of power generally stems from the disadvantaged position of a wife who has given up college or career for the role of homemaker. In addition, although many husbands are frequently uninformed about financial matters, Kressel et al. find them to be infinitely more knowledgeable than their wives. They write:

Husbands had almost exclusive control of important financial documents and were aware of financial arrangements of which their wives were ignorant. The ignorance of the wives combined with their heightened anxiety at their poor post-divorce prospects created strong pressures on the mediator to shore up the wives' side of negotiations.<sup>37</sup>

For mediators who wish to maintain a neutral rather than a power-balancing role in negotiations, the disadvantaged position of one party relative to the other can create a great deal of ethical conflict.<sup>38</sup> Zumeta and Kressel et al. suggest that this conflict can be lessened if mediators insist that each party also consult with an advocate.<sup>39</sup> Kressel et al. propose that these advocates might well be members of a mediation center's staff who would work closely with the other party's advocate and the mediator. They argue that such an arrangement would allow for the conflicting claims of the disputants to receive full expression in a structured arrangement wherein competitive pressures could be more easily contained. Yet, because of the ethical dilemma, I would argue that an outside professional might serve better in the advocate role.

Referral to outside legal counsel must, however, be carefully considered. The attorney who is invested in an adversarial model of practice and who sees his or her job as fostering conflict to win the case is a common obstacle to successful mediation. Clearly, the logical solution is to refer mediation clients to those attorneys who understand and approve of mediation.

## AN ALTERNATIVE MODEL

If we are to develop and implement effective divorce mediation services, we must understand for what kinds of couples mediation is likely to succeed. Although there is no substitute for empirical research, at this point in the development of a knowledge base, a conceptual framework is an essential guide to such an inquiry. Negotiation is defined as a process whereby "two or more parties with both common and conflicting interests come together voluntarily to put forth and discuss explicit proposals for the purpose of reaching agreement."<sup>40</sup> Embedded in this definition are a number of points, which, phrased as distinct questions to be asked of potential clients, may shed light on why some mediations are successful, and others are not.

First, do the parties coming to mediation have common interests as well as conflicting ones? Some marriages break down because of truly irreconcilable differences. To the extent that common ground cannot be found, it is hypothesized that mediation will probably not work very well or at least it will not work for those particular conflicts of interest. Second, are the parties coming to the mediation voluntarily? Research on conflict resolution in varied field and laboratory settings indicates that to the extent that one or both parties feel coerced, negotiations will be deadlocked or agreements that are reached are likely to fail in the implementation.<sup>41</sup> Third, do the clients have the skills to put forth and discuss explicit proposals? Mediation requires that clients be able to identify their needs, solve problems, make decisions, and communicate effectively. In addition, mediation requires each party's willingness to engage in ongoing discussion. To the extent that couples lack relevant skills or are unwilling to engage in dialogue with each other, mediation will be difficult, if not impossible, to sustain. Finally, does each party wish to reach an agreement? We have considered the fact that some estranged spouses participate in mediation for reasons other than that of reaching agreement. For example, one party may come to mediation in the hope of effecting a reconciliation and another may come to act vindictively. To the extent that both parties are not equally committed to reaching agreement, mediation will not succeed.

Divorce mediation services are currently being developed as an alternative model for resolving the conflicts generated by marital disruption. In mediation, rather than casting disputing parties in adver-

sarial roles, a neutral third party emphasizes cooperation between disputants and works to empower clients to negotiate their own settlement agreements. Although research on the effectiveness of mediation is still in its infancy, preliminary studies indicate that 20 to 30 percent of all divorcing couples will be unable to use mediation to reach mutually satisfying agreements because of "patterns of destructive interaction—either constant fighting or complete failure to communicate."<sup>42</sup> Notwithstanding, these same studies also indicate that

people who work out their differences together in mediation are more satisfied with their agreements than people who seek a settlement through lawyers and courts. There is also some evidence that communication and understanding between divorced clients improve after mediation.<sup>43</sup>

Mediation services are clearly not a panacea for resolving all divorce disputes. Nonetheless, for any case in which research and practice indicate mediation would be advantageous, the process holds tremendous promise for increasing a couple's ability to reach a mutually satisfactory and enduring agreement.

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