

# FAMILY LAW

## Weaving With Two Threads, Not Just One

ATTORNEYS, MENTAL HEALTH PROFESSIONALS CAN COMEDIATE DIVORCE PROCEEDINGS

By LOUISE R. ZITO and BETH M. KARASSIK

Mediation as a divorce option has grown substantially over the years and is now considered mainstream. In the past few years there has been growth in the area of mediation, both for attorney/mental health professionals and attorney/divorce financial specialists. The focus of this article is the benefits of attorney/mental health professional (MHP) mediation.

Attorney mediators routinely refer their divorce clients to MHPs to help parents develop parenting plans. They now are seeing the advantage to having an MHP as a partner in the process, helping the parties untangle and address the emotional concerns affecting the divorce process.

Divorce is a tightly interwoven emotional and legal journey. Attorney mediators provide a road map of legal issues that must be addressed in a divorce and facilitate negotiations over alimony, asset allocation and pension distributions, but are not trained in getting at emotional factors underlying the resistance that can make it extremely difficult to reach agreements. It can be a great relief to share the emotional journey with someone trained in this area: to relax, to know there is a partner addressing those topics about which the attorney mediator feels less comfortable, allows for better thinking.

As objective as we like to think ourselves to be as mediators, we are human beings, subject to biases and automatic brain-based emotional reactions. The mediator observes while her partner interacts with the couple and brings into awareness things that might not have been addressed. Additionally, inside a mediation in which emotions are running high, a mediator may have her own fear-based reactions that shut down optimal thinking. The mediator can intervene and provide for a more fully conscious and considered response, resulting in a better chance of maintaining objectivity.

Specifically, the benefit of a partnership between mediators from different professions is that each person behind the other set of eyes provides a unique perspective, a way of listening arising from each professional's education and training, knowledge and experience, and resulting natural focus on different aspects of the process. This is the source of a broadened context inside of which the work is being done, which allows for more points of entry into the couple's thinking and their experience. It allows for a broader range of considerations, creates a wider variety of openings for solutions and greater opportunity for untangling the emotional thread from the legal one.

An attorney/MHP mediation allows for particular power in the conversations required to divorce. The extent to which couples are able to untangle "what's so" from their emotional reactions is the extent to which they will be effective in listening to each other, generating options and making concessions. The ability of mediators to distinguish these two threads brings people to the space of negotiation that allows them to reach agreements. Clarity, velocity and power come from uncollapsing the layer of emotions from the legal/factual considerations in a divorce.

Conversely, in other conversations dur-

ing the divorce process there is benefit to the mediator bringing in more emotional/psychological factors to the law; recognizing the emotional piece allows the mediators to go in directions not codified in the statutes. It can bring more of the client's "real" life to the standard considerations of the law, resulting in deeper and more satisfying solutions that align with the clients' values and concerns, and better serve their future adjustment.

### Drinking Issue

Let's look at a sample family: Maureen, 32, owner of a small real estate business, and Phil, 30, a school teacher, with three children, ages 4, 6 and 8. Dad teaches at the same school their children attend. He takes care of the children after school and during the summer. Maureen parents the children all day Sunday, takes off from work if they are sick and arranges their medical appointments and play dates.

They present as two loving, caring parents who share parenting of their children fairly equally. The mediators are therefore surprised to hear that Phil does not want Maureen to have the children overnight. He simply asserts that the children are used to being with him at night and it is in their best interest to be with him. Maureen waffles on this, sometimes asserting her desire to have them overnight and at other times conceding it would be easier for the children to stay with Phil so he could bring them to school.

The mediators caucus and discover that Maureen drinks heavily at night, but never during the day or on Sundays. During discussions, Phil gets quite hostile with Maureen and says he cannot discuss financial issues "until this is settled." The mediators understand that there is a history of alcohol abuse in both Phil and Maureen's families and that concerns over alcoholism will underlie all negotiations. The presence of the MPH allows for addressing concerns over alcohol in a direct and structured way, assessing the actual risk level and any needed precautions, as well as helping the parties understand how their family histories affect their present-day judgments and fears. This disentangling of the current facts and needs of their lives from the past enables Maureen and Phil to craft solutions that work for the entire family.

Once the conversations were complete, Maureen and Phil could then talk about finances. Though Maureen earns considerably more than Phil, he did not want to accept child support from her. He heard from someone that if you have shared physical custody, there was no child support, but someone else told him there was. At first Phil envisioned having the children most of the time with Maureen supporting them financially. Once the safety issues were addressed and Phil could support Maureen having more access to the children, Phil felt that he could "take care of my own children without her help."

The parents were given the child-support guidelines to review. At first Phil and Maureen barely glanced at the guidelines, voicing the opinion that "they were ridiculous" and that the amount of money determined to be needed to



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and support, which began as an emotionally driven conversation.

The mediation allowed Maureen and Phil to:

- Better understand their fears and concerns.
- Identify risks to the children.
- Develop a parenting plan that serves the best interest of the children.
- Address financial interest from an unbiased position.
- Address all aspects of the divorce without their judgment being clouded by their fears and their history.
- Create an agreement that addressed the specific needs of their family.
- Move forward in spite of the past.

Comediation allows for ease and flow in untangling the intertwined threads of emotions and legalities. Consider comediation as an option for your next mediated divorce.

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support the children was "ridiculously low." They questioned: "How could that amount of money address dance classes, lacrosse and college?"

Suddenly, they were examining the guidelines for answers and pursuing a discussion of other expenses of the children. They reached an agreement: in lieu of child support, Maureen would take the difference in their net incomes and put it into a college fund for the children. Bringing the structured information from the law, the child-support guidelines, into the conversation helped Phil and Maureen anchor and sort out their considerations about expenses



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