

Divorce Therapy: Helping Families Separate and Reorganize

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March 10, 2010

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What is Divorce Therapy?

-Treatment which aims to recover, restore and reconfigure family relationships and the functions of parent, child, sibling in response to a separation.

(Isaacs, 2000)

-DT helps a family reorganize into a functional “two-home family”. (Dozier, 2004) DT helps families alter their ways of relating, levels of intimacy, degrees of power, and roles of its members so the family functions more effectively. (Emery, 1994)

-DT principles can be applied in work with families who have already experienced divorce; DT is especially powerful when applied during separation and divorce.

-One can utilize principles of divorce therapy when working with an individual adult or child

-Pieces of divorce therapy (co-parenting work, work to strengthen individual households, sibling work) can positively impact the whole family system.

Paths to Divorce Therapy

-The “cleanest way” is when a couple comes after having worked on their marriage (perhaps in couples therapy) asking how to divorce in a way that works for everybody.

-A common path to DT is when a couple comes to you asking you to focus on an individual child during a separation and divorce process.

-DT also frequently comes out of child/family or couples work if a family starts to separate.

-Couples therapy can be converted into divorce therapy (need for a clear division).

-“Co-Parenting” therapy (perhaps court-ordered) can sometimes be converted into full-fledged divorce therapy which involves the whole family.

Topic for discussion

-Medical pediatric professionals often hear about impending family separations early, and have long-standing relationships with multiple family members over long periods of time. As such, they may be in a position to positively impact the separating family. How can they apply the principles of divorce therapy to benefit their patients and their patients’ families?

A Brief History of Divorce and Divorce Therapy

-Rate of divorce rose markedly in the 1960s and 1970s: causes included economic mobility, the sexual revolution, focus on individual children's development as distinct from families, more women in workforce, rise of no-fault divorce laws.

-Divorce in late 1960s/early 1970s had generally straightforward custody agreements, and the divorce process tended to be less conflictive. "Father's Rights" groups saw many divorce agreements as inequitable and fought for legal changes.

-Rise of high-conflict divorce over the last 30 years. Causes include that custody has become linked to parental qualifications and child support payments have become linked to custody issues.

-Research began to show that the negative effects of divorce on children can be ameliorated by an orderly divorce process, and that this process tends to set the stage for how the family organizes itself throughout children's childhoods.

(Wallerstein, Heathington, op. cit.)

-1980s: rise of mediation (Margulies, 2007) Montalvo's structural approach studied divorce therapy in a clinic in Philadelphia (Isaacs, op. cit.)

-1990s: Co-parenting and "good divorce" concepts refined (Ahrons, 1994); rise of collaborative law; mechanisms like parenting coordinators and best interests attorneys are developed by courts to ameliorate effects of high-conflict divorces.

-2000s: Brenda Dozier's "two-home family" approach looks at family as reorganized unit with distinct parts. (Dozier, op. cit.)

Impasses Which Prevent Healthy Family Reorganization

-Individual adults and children: May get stuck in or cycle through feelings of hurt, fear, anger, shame, and elation. Depression, anxiety, acting out, and under-functioning may ensue.

-Interactional: cross-generational alliances/triangulation, extreme enmeshment, dramatic, hurtful showdowns, abdication of familial responsibilities, acting out/defiance by children.

-External/Social: Focus on “justice” by friends, family, lawyers, broader society.

-The focus on justice often stems from desires to protect loved ones following the trauma of real and perceived “wrongs” (i.e., infidelity, taking of assets, alienation of children); these efforts can lead to more chaos, and divert the family from the tasks of divorce.

Divorce therapy is about helping individuals and families to contain the chaos, get unstuck on focus on the needs of the whole family system

(Emery, 2004; Margulies, 2007)

Stage IV: Assisting the Spouses with the Legal Process

-Ask up front about the legal steps spouses have already taken; evaluate the level of trust and the risk of precipitous actions.

-Frame the legal process as way of finding an arrangement that works instead of “justice”. Remind them that an out of control legal process can result in: a higher likelihood of emotional and behavioral disturbances among the children, more family stress, a depletion of finances, an increased chance of further litigation, and the greater possibility of alienation of children from one or both parents. Cite research that shows that children of high-conflict divorce develop black-and-white thinking and have difficulty solving interpersonal problems (Gaulier Et. Al., 2007).

-Remind spouses to take responsibility for legal decisions.

-Encourage compromise by pointing out that in any divorce each partner will need to have “less”—money or time with kids—and that when one partner “wins” by having much more than the other, the whole family loses (Margulies, op. cit.).

-Discourage a focus on “winning” by citing research that shows that kids in divorced families do better when parents have roughly equal levels of economic and emotional well-being (Ahrns, op. cit.).

-Remind spouses that aggressive legal action will likely result in reactions, with increased conflict and costs.

-Advise spouses that legal processes that move families through the tasks of separation and divorce tend to be predictable, without surprise attacks.

-Remind parents that custody is not the only way of maintaining a relationship or caring for the needs of children. Considerations for custody decisions should be based on the need for children to have continuity, be cared for, and maintain a relationship with both parents (Emery, 2004) .

-Advise spouses of the various legal paths to divorce. Explore which paths are most likely to lead to positive effects for the whole family.

Continually monitor the legal proceedings, as they have the potential to undermine the entire therapeutic process

Essential Legal Knowledge for Practicing Divorce Therapy

(Written in collaboration with Lori Rothfeld, family lawyer and mediator)

The Conventional Paths Towards a Legal Divorce:

-While much progress has been made over the last 20 years towards increasing the use of Alternative Dispute Resolutions (ADRs) such as mediation, arbitration, and collaborative law, about 90% of legal divorces are still done via litigation.

1) *The Uncontested Divorce*—one or both spouses files for divorce, in which a resolution of all issues (custody, support, property division, grounds) has been reached, usually by agreement. This can be the least complicated route with limited conflict, although it can also involve lengthy and costly negotiation.

2) *The Contested Divorce*—one or both spouses files for divorce, in which a resolution of all or some of the issues (custody, support, property division, grounds) has not been reached, leading to litigation. Not all contested divorces lead to high-conflict divorces. However, any contested divorce runs the risk of spinning out of control.

Even if a contested divorce is necessary it is important to remind spouses to maintain control of the legal process with an eye towards the needs of the whole family.

A Primer of Legal Terms

-*Separation Agreement*: A contract, written or “on the record”, between the parties containing a resolution of all or some of the issues arising from the marital relationship (custody, support, property division, grounds).

-*Limited Divorce*: Legal separation. It serves to legalize the physical separation of spouses and to provide support.

-*Absolute Divorce*: Divorce is permanent, permits remarriage, and terminates property claims.

-*Legal custody*: refers to the right and obligation to make decisions relating to the child’s education, religious training, discipline, medical care, and other matters concerning the child’s general welfare. Legal custody can be joint (both parties making final decision) or sole (one party making final decision).

-*Physical custody*: where the child is physically located. Can be shared or sole (defined in terms of child support).

-*Grounds for divorce*—grounds can be based on fault (i.e., adultery, desertion, constructive desertion, mental cruelty, insanity, separation for period of time) or no-fault, depending on laws of jurisdiction.

Essential Legal Knowledge for Practicing Divorce Therapy (continued)

(Written in collaboration with Lori Rothfeld, family lawyer and mediator)

The High Conflict Divorce

-Extra/quasi-legal actions which generate conflict: moving money into personal accounts, alleging neglect/abuse of children, cutting other spouse out of children's lives, staying in the marital home without spouse's consent, hiring investigators to establish grounds for divorce, threats and intimidation, cutting off of communication, bad-mouthing of spouse to children and others.

-Legal actions which may escalate the process include:

- restraining orders
- onerous motions for discovery
- orders to vacate marital home
- contempt of court motions
- challenges to "fitness" of a parent (may lead to psychological evaluations of one or either parent)
- motions for injunctive relief (freezing of assets)

-Legal costs can run into the hundreds of thousands of dollars. Parties often receive money from extended family and/or run into debt—sometimes lawyers sue litigants to collect.

(Gaulier, Et. Al., op. cit.)

Professionals involved in high-conflict divorces:

***Custody evaluators:** typically appointed by judges to determine legal and physical custody. Usually forensic psychologists.

***Best Interest Attorneys (formerly *guardian ad litem*):** Lawyers appointed by the Court to represent the needs and wishes of children.

***Parenting Coordinators:** Individuals (therapists or lawyers) usually appointed by the Court who work with the parents, advise and/or make limited decisions/recommendations regarding schedules, education, and medical decisions.

*Generally both spouses bear the cost of hiring these professionals.

In high-conflict divorces, lawyers and other professionals tend to take increasing control over the divorce process.

Essential Legal Knowledge for Practicing Divorce Therapy (continued)

(Written in collaboration with Lori Rothfeld, family lawyer and mediator)

Options for Alternative Dispute Resolution Procedures

1) Mediation— A process of “good faith negotiation” by the two spouses with a qualified mediator, usually without lawyers present. The mediator does not represent either party and cannot bind parties to an agreement. They can either be retained privately or court appointed. Mediators recommend that the parties have the draft agreement reviewed by their respective lawyers prior to signing. Mediation can be less expensive and straightforward, but it can generate higher conflict or poor agreements if there are economic, intellectual, or emotional power imbalances between the spouses. In certain instances and jurisdictions, mediation can be court-ordered.

2) Collaborative Law--Both spouses make a formal agreement to hire their lawyers only to negotiate, not to litigate. Everyone involved has to disclose all relevant facts. Most negotiations happen in four way meetings. Besides lawyers, a collaborative law case can involve therapists, financial planners, appraisers, evaluators, mediators, and child development experts.

3) Binding Arbitration— Both spouses along with their respective lawyers meet with a third party, usually an attorney or retired judge, in an effort to resolve the financial and property issues. Can save both time and money. Arbitration can be court ordered.

4) The “do it yourself” divorce—can be an inexpensive and fairly rapid option; only appropriate in low-conflict divorces where there is a roughly equal power balance and partners are knowledgeable about rights and law.

Characteristics of legal processes that facilitate productive divorces

-Relatively expeditious, while still planned and deliberative.

-Costs as little as possible.

-Results in improved communication between ex-spouses, or at least contains negativity.

-Results in roughly equal levels of economic and emotional well-being for both ex-spouses.

-Maintains the involvement of both parents in children’s lives. (Margulies, op. cit.)

Stage VI: Building a New Organization: Setting up Effective Co-parenting

- This stage generally grows out of the uncoupling work—in most cases it should continue throughout the treatment.
- Set up mechanisms of communication, identify what parents will communicate about
- Hold limited sessions if necessary to “put the past behind”.
- Agree not to use kids as messengers, or tell kids to keep secrets
- Agree on minimal behavioral expectations for kids; warn of hazards of “fairy-tale parenting”.
- Focus on need for parents to give a common message to kids to respect both parents. Get them to support rules of other household in front of the kids.
- Focus on need for both parents to demonstrate confidence in the capacities of the other parent.

Different Strategies for Different Couples:

- For relatively amicable separations, aim for **cooperative parenting**: open, frequent communication, maximum consistency
- For higher conflict couples, **encourage parallel parenting**: communication around emergencies, deviations from plan (Ahrons, op. cit.).
- In sessions with “sporadic and scared fighters”, make sure to build trust individually with each parent; aim for controlled, calm encounters.
- In sessions with “frequent and direct fighters” highlight consequences of fighting.
- Judicious involvement of the children in sessions can enhance co-parenting. The “Confrontation Parade” can be a powerful technique for decreasing conflict.

(Emery, 1994.; Isaacs, op. cit.; Ahrons, op. cit.)

**Stage VII: Building a New Organization:
Strengthening Individual Households**

-Support the hierarchy: encourage limit setting, chores, etc. Challenge child’s anger at parent (including wrongs done to other parent) as reason to defy authority.

-Support new rituals—ask about daily, weekly schedule and events

-Strengthen particular parent-child relationships

-Balance need for each child to get needs met and for sibs to support each other with the need for many single parent households to have a “deputy”.

-Weaken divisive coalitions: Ex: support children identifying with “bad parent”; support parent in being firm with kids on “their side.”

- Work with each parent to support the other parent; carefully planned whole family meetings, wherein the parents present a united front, can improve the cohesion of each household

(Isaacs, op. cit; Appell, op. cit.; Gaulier, op. cit.).

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