Collaborative Practice—An Alternative Dispute Resolution Option

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This issue introduces readers to an alternative dispute resolution option (ADR) called Collaborative Practice. For any psychologist working with clients or children going through a divorce, the collaborative process is a new way to divorce that allows families to resolve disputes with dignity and respect, maintaining control over life altering decisions rather than giving that power to a judge, and produces a durable agreement that everyone involved can support going forward.

There are a range of legal options for obtaining a divorce. Beginning with litigation, where a judge decides, to arbitration, collaborative practice, mediation to just sitting down at the kitchen table, where two spouses work out their own agreement. As shown in Figure 1 (Emery, 2010), divorcing couples and parents have more control over the divorce process nearer the top of the funnel when compared to the increasingly adversarial and third party decision-making towards the bottom of the funnel. As Figure 1 demonstrates, litigation may be rare but all too often couples prepare to go to court at devastating costs both financially and emotionally. Moreover, in my work with children and families, too often it feels that the legal matters may have been decided but the emotional divorce is still pending. New research points to positive effects on children and the parent-child relationship when using collaboration and mediation over litigation outcomes (Kelly & Emery, 2003; Pickar & Kahn, 2011).

The two most common alternative dispute resolution (ADR) processes used to resolve child custody disputes outside of court are private mediation and collaborative practice (Pickar, 2011). This issue will focus mainly on Collaborative Practice or Collaborative Divorce. The collaborative process supports the promotion of respectful and effective communication by asking for each spouse to be forthcoming, to communicate, to give to the divorce process their best self, and if they have children, to do what is in the best interest of those children.

A full collaborative practice team consists of two attorneys, a financial neutral, a divorce coach, and a child specialist, when children are involved. Attorneys educate the spouses about the law and agree to work together outside of court. The financial neutral provides financial settlement analysis, including tax implications. The divorce coach works with the spouses to manage the intense emotional issues throughout the process, providing tools to communicate and resolve disputes respectfully. The child specialist works with children and parents, giving the children an opportunity to voice their concerns about the divorce process. The child specialist also provides guidance to help the children cope throughout the process, and supplies information to the coaches to assist parents in developing an effective co-parenting plan for their children.
Most children are resilient throughout the divorce process. Resiliency in children whose parents are divorcing depends primarily on three factors: the mental health of each parent, the mental health of the child pre-divorce, and the degree of conflict between the parents before, during and after the divorce. Furthermore, resiliency is promoted by respectful and effective parental communication before, during and post divorce. In his book, Renegotiating Family Relationships, Emery (2012) stated that “it is best to think of divorce as a process of transitions rather than a singular event. How parents promote the well being of their children throughout these transitions is key” (pp. 205).

Good co-parenting is not litigated. Except for extreme circumstances, the research tells us that children need both of their parents. The collaborative divorce process brings parents to the table, gathering the information necessary to make financial, emotional, and legal decisions based on the developmental needs of the child(ren). At the very least it sets the tone for moving forward, helping parents learn to sit down and talk about the future. It may not be the future they imagined when their child was born, but it will likely be a better future than one brought on by a contentious, protracted and litigated process that asks legal minds to decide what is in the family’s or child’s best interest.

As clinicians we have the opportunity to assist our clients during one of life’s most stressful transitions, either by providing them with knowledge about ADR—mediation and collaborative processes—or when we ourselves become members of a collaborative team, acting in the role as a divorce coach or child specialist. As psychologists we are uniquely qualified to assist families during major life transitions. In addition to our education and training in family systems, child and adult development, family, couples or group therapy, and psychological assessment, being a member of a collaborative team requires additional training in the multidisciplinary model of collaborative law, working with family law attorneys and financial neutrals. Additionally, everyone on the team must complete a 40-hour course in divorce mediation.

In this issue you will hear from all the members of a collaborative team. Vicki Viramontes-LaFree, JD will talk about ADR processes, including mediation and collaboration. Regina DeMéo, JD will inform us about the history of the ADR process and collaborative practice. Dr. Andrea Leiman will discuss her role as a child specialist. Jane Ochsman, CPA and Debora May, CPA will tell us about the role of the financial neutral. I will provide some additional thoughts about working as a neutral coach in the Collaborative Process.

For additional information about the emerging roles for psychologists in the Collaborative Divorce process please see the following:

- Association of Family and Conciliation Courts: www.afccnet.org
- Collaborative Dispute Resolution Professionals: www.collablawmaryland.org
- Family Court Review (a quarterly, interdisciplinary journal): http://www.blackwellpublishing.com/journal.asp?ref=1531-2445
- International Academy of Collaborative Professionals: www.collaborativepractice.com

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References