

# Conflict Transformation for Separating Couples

By Louise Phipps Senft

People do not marry to get divorced. When divorce happens, the experience is one of the most complex and profoundly disturbing events of one's life. The possibility of emerging better and stronger is a remote reality for most. For those who have even a glimmer of a better future, such possibility is often obscured, lost or forgotten in the painful, and often ugly, divorce process.

Before mediators can help clients through this process, we must ask ourselves what *kind of help* do they need? Many mediators might say that divorcing couples need help creating a Separation Agreement. Others may expand this and say they need help with decisions about property distribution and custody arrangements, or parenting plans. Indeed, in asking hundreds of divorcing couples what matters most to them about their separation or divorce as they enter into a mediation process, they usually say something about the desire to come to a fair agreement or to make fair decisions, often couched in language about not getting screwed by the other party or hoping that the *other party* will make fair decisions. Thus many mediators have come to believe, understandably, that the greatest kind of help they can offer to divorcing couples is help in coming to a fair agreement. However, because there are very different ways by which a mediator can help people come to a fair agreement, this does not answer the question nor yet define the best kind of help mediators can offer divorcing couples.

To understand this further for myself, I have asked hundreds of separating couples who are entering the mediation process the questions, "What is the greatest barrier or concern you face? What gives you the greatest anxiety about this process? What troubles you most about the divorce experience and being here in mediation? How can I as your mediator be of greatest assistance to you?" I have resoundingly been told time and time again that the two greatest barriers are, in this order: 1) the other person; and 2) a lack of knowing/ lack of control (usually relating to the other person). And the most common response about what gives the parties the most anxiety is a direct corollary to the above. It's the anticipated *negative quality* of the interaction between the divorcing spouses, which is also expressed in many forms: "I need

him/her to stop ..."; "I want him/her to understand ..."; "I want to be able to speak"; "I want information"; or "I want respect."

Thus, it is possible, even probable to consider that the best help mediators can provide to divorcing parties is to help change the negative quality of their interaction to something that is more constructive. That's it. Elegant. Simple. And it makes good sense. For despite the fact that the decision to divorce—made by one or both of the parties—is rarely entered into without months or years of consideration, most couples still come to the mediation process with a great deal of confusion and uncertainty and a good dose of suspicion. Making room for and highlighting opportunities for both parties *to speak to each other* as well as providing the opportunity for each to be *responsive to the other*, rather than reactive, re-stabilizes both parties. This then allows them each to regain that sense of control they were most concerned about, and to be reconnected with themselves and the other person, even when they still hold different views or attitudes and may not agree with each other. When anxiety and fear are reduced, competence, confidence and decisiveness usually emerge.

Thus, a settlement approach could be replaced with an approach that values and supports mediators providing a forum for divorcing couples to better the quality of their dialogue as they make decisions about possible resolutions related to their divorce. This type of an approach is a transformative approach, informed by the premise that conflict is a crisis in the interaction between people which presents the opportunity to change a negative quality of the communication or negotiation.

Mediators have the best chance of alleviating some of the devastating experience of divorce by inviting divorcing couples to have a conversation with each other, and by encouraging them to believe that they have the capacity to do this, with or without other experts' assistance. Mediators can provide a process that frees people to play by their own rules, create their own topic agendas, and discuss such topics with clarity and confidence rather than fear and bluff. This is what parties value and this is what can and does alleviate the devastating experience of the divorce process.

Mediators also can help by listening carefully for the areas



where there is uncertainty or confusion, and slowing the process down so that both parties have the opportunity to clarify, ask questions and be responsive if they choose. Mediators can help by listening carefully for the times when suspicion or hostility—such as digs, biting remarks, throw-away remarks—occur and slowing down the process to check-in with the parties and inquire, genuinely, if the quality of the interaction is satisfactory or helpful; it may be or it may not be. If it is, the mediator can get out of the way. If it is not, the mediator can provide the parties the rare opportunity to make genuine requests of the other, in the presence of a third party, about how each would like to be treated or spoken to. It's a powerful moment that most divorcing couples, otherwise communicating unaided during the middle of a divorce, do not often get the chance to experience.

When one spouse is responsive, rather than reactive, to the other, the quality of the interaction shifts, even if in a small way. It *feels better* to the parties. Such shifts provide a foundation for greater strength of self and openness to the other's points of view. More often than not, these shifts pave the way for a higher level of quality decision making that more likely than not yields quality terms and genuine agreements.

In the transformative framework, the mediator replaces the goal of getting the parties to agree with the goal of strengthening both parties in the quality of their interactions. Agreement is not the goal, but it is the likely byproduct when parties are able to interact, communicate, converse or negotiate more confidently and meaningfully. In using this model, I have experienced many

couples agreeing to separate legally but not divorce, and still others, although much fewer, agreeing to enter couples' counseling to work on their marriage. Stated in another way, a mediator does not lose sight of what the parties may want, if it is agreement or settlement or otherwise; however, the mediator does not presume any of these outcomes. The mediator is guided by what conflicting human beings express is the deeper need: to interact more humanely and decently.

If we believe that mediation offers an alternative to divorcing families, beyond mere settlement or evaluative conferences, then we as mediators can be of assistance and provide the true alternative when we understand and respect what the experience of going through a divorce means to divorcing couples. We will be most effective with our clients if we genuinely believe that people have the ability to have a conversation and provide the environment for them to do so. We can help parties clarify what they want to do by highlighting new information, common themes, and agreements, as well as by surfacing and sharpening differences to help divorcing spouses clarify what they want to do. Mediation from a transformative approach creates outcomes that are genuinely satisfactory to the divorcing clients because we have trusted them to make their own decisions about the structure of the process as well as the outcome (including the decision to get help or information from other experts, or not). As importantly, this approach also avoids potential mediator abuses, especially the exercise of excessive pressure or dual representation.

We must look to the different operational premises on which our family and divorce mediation programs and mediation practices are based, such as clearing court dockets more expeditiously or in a less costly way, or getting people to agree without litigation. Whatever the premises are, they not only inform the reasons for various mediator interventions, but they also justify them. Some, albeit not all, of these underlying premises most probably include reasons that, while not inherently bad, actually perpetuate rather than alleviate human conflict and suffering; and while not intentional, these premises actually thwart clear decision making and genuine agreement. We are at a time and place in our understanding of the mediation process when the family and divorce mediator, or mediation program manager, regardless of venue—court or private—has a grand opportunity to value and thus integrate transformative premises and interventions into his or her mediation program and practice. Why? Because these transformative premises are what divorcing couples value most. ◉



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