

Mediating Towards Forgiveness & Family Reconciliation in Divorce

Select Issues in Dispute Resolution: Apology & Forgiveness

ABSTRACT

This paper examines the importance of forgiveness and the rebuilding of trust in the reconciliation of the family during and after a divorce, and contemplates the mediator's role in leading the parties in this direction.

Like the bond between a mother and an infant, a married couple commonly forms and maintains a shared exclusive mental-emotional space. But unlike a mother and an infant, the parties in a marriage are both mutually dependent on each other. "Partners are mutually influenceable and psycho-neuro-biologically connected with powerful but invisible bilateral "projections" that thicken over time. In this way, they begin to hardwire together."

I. Introduction

This unique relationship is what causes the level of difficulty in mediating divorce cases. Unlike parties in other disputes, couples have been actually psycho-neuro-biologically hardwired together. For the "non-initiator" party in the divorce, forcefully pulling apart this hardwiring quite literally feels like someone is tearing apart their insides. The pain of this is so visceral that it is inevitable that many are swallowed up by it; unable to let go of the anger it creates and go forward with their life. In addition, when someone is betrayed by a partner who is literally hardwired to them, the betrayal is so deep that the idea of trusting that person again can seem unthinkable. Even though these feelings are natural and even more understandable considering the invisible neurological hardwiring, they prevent parties who are parents from reconciling their parenting relationship and adjusting to their new family system.

A divorce mediator has been asked into this extremely intimate emotional space the couple shares. A place where it is likely that no one else, except perhaps a therapist has been invited. A place where the couple is raw, fragile and completely exposed. A mediator with integrity honors the responsibility of their role and the

great opportunity it presents to help the couple shape how they approach conflict going forward. While mediation provides a safe place for a couple to reconcile their marriage if at all possible, once they walk through the mediator's door, their marriage relationship is often irreconcilable. However, if the couple has children, there is still a family. Perhaps a very different type of family than the parties had envisioned, but still a family nonetheless. Even though there may not be a reconciliation of the marriage, there still desperately needs to be a "reconciliation of the family".

Some couples present with this reconciliation already complete. They can separate the parenting from the romantic relationship. They may even come to the mediation session with a parenting plan in place. Unfortunately, many others are stuck in their anger and cannot see past it to recognize that they are only hurting themselves and damaging their children. If this anger and distrust is not dealt with through some type of forgiveness and reconciliation of the parenting relationship, the couple will continue to struggle with conflict for years to come.

A mediator with integrity in their role as a conflict manager understands the need to prevent this future conflict and does not simply look for settlement of finances and schedules, but also looks for ways to mediate the parties towards reconciliation of their parenting and family relationship through both forgiveness and a regaining of trust where it has been lost.

II. Criticism of this Role for the Mediator

Before addressing the different methods for "mediating" parties in divorce

towards forgiveness and the re-establishment of trust, it would be remiss not to discuss whether this is a proper role for mediators. Some scholars would take issue with the idea of mediators intentionally mediating parties “toward” anything. To these theorists, the thought of having the mediator be the champion of forgiveness or trust or entering the mediation with this agenda would be extremely distasteful. This would show a mediator’s preference for one outcome over another. Folger and Bush discuss in their writings how even a good outcome is not appropriate if it was caused by the mediator and not the transformation of the parties through their own self-determination.ⁱⁱ “Neutrality means that the mediator who facilitates this discussion should not have an interest in advancing the goals and positions of any party involved.”ⁱⁱⁱ As this quote exhibits, many believe a mediator should not use their influence to affect the outcome of the case.

The first argument in response to this is that unlike other issues to be resolved in a divorce settlement, such as who gets the 401(k) or primary custody; forgiveness and the rebuilding of a basic workable level of trust are not just the goal of one party but are universally beneficial to the entire family, especially the children.^{iv}

Obviously the person receiving the forgiveness and trust will benefit from receiving things such as civil treatment by their ex-spouse or amicable communication regarding the children. However, studies have shown that forgiveness is extremely beneficial to the forgiving party. They experience significant health benefits, such as the lowering of risks for depression, heart disease and stroke.^v Two independent studies on participants in divorce recovery

and forgiveness intervention workshops both found a decrease in depression in those parties who were able to forgive their ex-spouse.^{vi} In addition, other studies have shown that parties that forgive their ex-spouse experience better adjustment to the divorce and are able to go forward with their life.^{vii}

Forgiveness between the parents is also extremely beneficial to their children. "Research indicates that the strongest predictor of child health in the aftermath of a divorce is the ability to have close relationships with both parents."^{viii} Forgiveness and the letting go of anger allows for this. If one parent is still filled with resentment, anger and mistrust towards the other parent, the children can sense it, even if the parent does not outwardly express it. This cannot help but negatively affect the child's relationship with the other parent, especially if they are not the primary custodian. The child may feel guilt and disloyalty to the primary caregiver if they ask to see the other parent, speak of them, or express having a good time with them on a visit.

The second argument in response to the criticism of this role for the mediator is that a skilled mediator is not pressuring the parties through the use of guilt, shame or moralizing, but is instead planting the seeds for forgiveness and the rebuilding of trust to occur. The mediator helps the party fully understand that these both are options and works with them to address their concerns and explain the benefits. The forgiveness or rebuilding of trust may not occur in the mediation sessions or before final settlement, but the hope is that as a conflict manager, the mediator has planted the seeds for these things to happen. These seeds will

hopefully grow to maturity in the future, helping to prevent the couple and the children from suffering through unnecessary conflict.

A colleague, who also does work as a therapist, relayed a telling story about planting a seed. She told of a man she had counseled as a teenager with drug addiction issues. Sadly, despite her best efforts, he returned to drug use and she eventually lost track of him. Ten years later, he appeared in her office one afternoon. When she saw him, it took a moment for her to recognize him. Ten more years of drug addiction had severely aged him. He reintroduced himself and said he had come back to thank her. She was surprised and asked “for what?” He told her he had been clean for a year after his third and final stint in rehab. What had made the difference this time was remembering and finally comprehending something she had said to him ten years earlier in counseling.^{ix} That is a seed. A seed that eventually grew, making a profound difference in someone’s life. There is a distinct difference in trying to manipulatively force a human reaction and planting a seed in a party’s thought process that will one day grow and lead them out of the hole in which they are so deeply stuck.

Perhaps the most compelling argument supporting mediator’s intentionally mediating toward forgiveness, trust, and family reconciliation is that it is integral part of the mediator’s mission to bring about the parties’ best thinking and a person consumed by anger is not doing their best critical thinking. A distinguished member of the Academy of Matrimonial Attorneys once said that in criminal law, lawyers represent bad people at their best and in family law, represent good people at their worst.^x At the root of this statement is the astute understanding that

divorcing parties' thinking is clouded with anger and resentment. They are not doing their best thinking. The mediator's role is to get them thinking in a clearer way that is in line with their core values. Decisions should be made from their finest place, the place where they keep their aspirations and ideals, not from a place of anger, where they keep their fear and insecurity. A mediator's real value is their ability to elevate people's thinking regarding the conflict to a higher level from where it was at when they walked through the door, or creating the ideal "thinking environment".^{xi} A thoughtful mediator realizes that forgiveness helps take parties to this place.

III. Forgiveness

Forgiveness in divorce is complex. Unlike other types of mediation cases, a divorce case has no clear perpetrator to apologize and no clear victim to accept it. Instead, there exists an intricate past with each party dancing in and out of both roles. Rationalization of behavior runs rampant with any attempt at uncovering the origin of the first misstep, proving futile and exhausting. Because of the complexities of the hardwiring together of couples, it is difficult, if not impossible for even an extremely trained therapist to untangle what has transpired in the couple's past. The neurobiology of a couple in conflict causes them to reconstruct events in their brain. This extremely technical quote from an article from the *Psychoanalytic Psychology Journal*, regarding the functioning of the neurobiology of a couple in conflict, vividly illustrates why a mediator does not want to try and reconstruct events from a couple's past in order to determine who is owed an apology:

In extreme hyper- or hypo-aroused states that accompany severe marital conflict,

hierarchical neuro-regulatory processes involving the ventral-medial prefrontal cortex give way to subcortical processes to insure survival. During these periods of dysregulation, the hippocampal declarative memorial ability to accurately represent and sequence events is highly compromised; so too is the ability to appraise intention. It is impossible for partners to “set the record straight” and as such, the couple cannot adequately regulate via this method. Attempts at repair must also fail as long as both partners believe recall of such events is possible. The therapist would be unkind to allow this process to continue. Instead, the therapist should attend to the dysregulation occurring in the here-and-now.^{xii}

Unsophisticated perspectives might argue that there is clarity of roles of victim and perpetrator in situations of infidelity or substance abuse, even without fully constructing past events. However, even in these scenarios, a marriage’s complexities cannot be simplified into neat packages of good and bad. For this reason, the use of apology is less productive as an antecedent to forgiveness in divorce cases than it is in most types of tort and employment cases, for any attempt by a mediator to illicit an apology from one party to another will likely be met with a tit for tat response: “I’ll apologize for this, if they will apologize for that”.

Interventions designed to help divorced parents forgive their ex-spouse focus on the party letting go of anger for the benefit of the children and the coparenting relationship, so that they are able to move forward in a new way.^{xiii} People progress through accepting and letting go of past hurts at different rates. What may be clear to a mediator, however, is that one of the parties before them is “stuck”. The mediator’s job is to help get them unstuck, so they cannot only move on with the settlement, but hopefully with their new life and with being a successful parent. They are frozen in their pain and need help finding a way to let go of the anger, accept where they are, and move forward. Forgiveness can provide that path.

Researchers have developed various definitions for forgiveness. A definition developed by Enright and Fitzgibbons has been used in studies regarding

forgiveness and adjustment to divorce.^{xiv} The focus of Enright and Fitzgibbon's definition is about letting go of resentment, even when good reason exists to be resentful:

People upon rationally determining that they have been unfairly treated, forgive when they willfully abandon resentment and related responses (to which they have a right), and endeavor to respond to the wrongdoer based on a moral principle of beneficence, which may include compassion, unconditional worth, generosity, and moral love (to which the wrongdoer, by the nature of the hurtful act or acts, has no right).

This definition's focus on letting go of resentments, even when a party has a right to them, is extremely helpful in moving someone towards a future with less conflict in parenting and their new family structure. However, to a non-initiator spouse, the idea of being able to give the person, who has caused them so much pain, generosity and moral love is a difficult one to swallow. Parties with a strong faith may accept this idea more easily. Psychologist Fred Luskin's idea of forgiveness as a gift to one self with a therapeutic emphasis is an easier concept for a spouse to digest.^{xv}

Whether Enright and Fitzgibbon's definition or Luskin's definition is used, forgiveness in both definitions is a willful and conscious choice made by the party. It is always one of the options on the table when there is conflict.

A mediator can begin laying the foundation for forgiveness from as early as the first meeting with each party. As part of the opening statement or first conversation at the pre-mediation interview or in the first caucus, the mediator can discuss in general terms how both parties may want to consider self-care steps outside of mediation that can help them deal better with the emotion and stress of divorce so they can approach the mediation sessions in a more intellectual manner instead of a reactive, emotional one. These steps can include exercising regularly,

seeking counseling, obtaining spiritual guidance if they are a faithful person, and keeping a daily gratitude journal. All of these things can help refocus parties to positive emotions that will slowly help them begin to let go of anger.

Once sessions begin, mediators can delicately educate parties that forgiveness is an option available to them. It is important to realize that the word “forgiveness” does not have to and probably should not be uttered. It is not necessary for a party to openly say to the other party or consciously to themselves that they forgive their ex-spouse. Letting go of the anger so that they are able to work together as parents is the true goal. This is not done by a direct conversation, which would serve to put them on the defensive. Instead, parties can be eased into considering what it would feel like to let go of their anger by contemplating the future. Future goal setting is often an effective way to accomplish this.

One method to accomplish this is to ask the couple in joint session to think of a point in the future, say five years from now, when hopefully, the stress and upheaval of the divorce is over. The mediator asks them if they had the power to create their reality, to describe (1) what their children’s relationship with the other parent would look like and (2) what their co-parenting relationship with the other party would look like. The mediator should write the responses on a board, with a separate column for each party’s responses. When the responses are lined up in columns next to each other, their commonality usually becomes apparent.

An exercise such as this does several things, first, it gets the parties focused on both the future and what they really aspire for their children. Unlike the angry thoughts that come from a hurt, wounded, defensive place, these thoughts come

from their finest place. It elevates their thinking. Second, often the parties see that despite all of the hurt and anger, they have similar goals for their relationships with their children and the other parent does see their value in the children's lives.

A party may not even recognize they are stuck in anger. A mediator's gentle questions can help them realize how their anger is affecting their daily life. For example: "How much of your day is spent thinking about the past?", "If you were over being angry about the affair, what do you think you would say about the parenting plan?"^{xvi} A great visualization exercise for clients is the "garbage at the curb" scenario. This is especially appropriate with a party that cannot stop bringing up things that happened during the marriage. The mediator confirms with the party that they no longer want to be in a romantic relationship with the other person because of the wrongdoings that occurred in the marriage. Then the mediator asks them to pretend that just like other things that they no longer want in their life, they have placed the relationship and all of the bad things that happened during it in a garbage bag and have taken it out to the curb to be picked up by the garbage truck. With their normal bags of garbage, they never see the items inside again. However, with this bag of garbage, they have decided to sit at the curb and pull out every item and analyze it before it is picked up. However, it doesn't change them, they are still garbage. This story accomplishes two important things. First, it validates the client's feelings that things that happened to them were wrong..."garbage", but it then creates clarity in the client's mind that continuing to analyze these events is pointless.

Mediating toward forgiveness is a conscious behavior. The methods described above are simply examples. Mediators who look for them will find other opportunities to gently lead parties in the direction of forgiveness by providing clarity and education that it is always an option available to them.

IV. Trust and Reconciliation

For parties to reconcile the family and be able to successfully coparent between two homes, there must at least be a workable level of trust between them. An interdependence inevitably exists between them because they depend on the other to help them obtain, and at the very least, not frustrate their goals for their children. If trust has been lost during the divorce, it must be reestablished to a workable level, so that the parties can function as parents.

Trust has levels. We have a different level of trust for people we have known for short periods of time, compared with someone we have a long-term relationship. The type of trust we have for people when we are at the start of a relationship, is calculus based trust (CB trust).^{xvii} This trust is based on a calculation of observing the person's behavior. As long as the person meets deadlines, does what they promise, and behaves consistently, our trust for them will grow. A deeper level of trust is when we have known someone for a long time and through repeated interactions understand that we have similar goals and values. This type of trust is called identification-based trust (IB trust).^{xviii} The parties have mutual care and concern and the trust is more emotionally driven.

Married couples have IB trust. When this trust is violated preceding or during the divorce, the betrayed party believes that they can never trust the violator

again. In reality, although they may never be able to establish IB trust again with the party, they may be able to develop CB trust. Establishing CB trust will allow them to have a workable enough level of trust to coparent.

Researchers in the area of trust have suggested several steps that an individual trying to regain another's CB trust can take.^{xix} When a party expresses frustration at the other party's lack of trust for them, mediators can discuss and educate them as to these steps. The first step is performing competently. When the noncustodial parent has custody, this means doing such things as getting the children to school and activities on time, making sure they take their medicine, and supervise them properly. The second step is to establish consistency and predictability. The noncustodial parent can exhibit this by being on time and present for custody exchanges. The third step is communicating accurately, openly and transparently. The mediator and the party can discuss communication guidelines the parties can use to keep the lines of communication open and stress the importance of being honest. The fourth step is sharing and delegating control. The noncustodial parent can exhibit this by seeking input from the other parent and allowing them to handle things that are in their area of expertise. Finally, the last step is showing concern for others. The noncustodial parent must exhibit that he is concerned about the children's well being and not just their own.

The mediator can help to rebuild the other spouse's trust by (1) educating them that there are different levels of trust and that it is alright to trust their ex-spouse regarding some things and not others, (2) help them examine which areas their ex-spouse has exhibited trustworthy behavior even though they have failed in

others, and (3) putting in place temporary plans that give the untrusted spouse an ability to regain trust but also include safe guards while trust is being rebuilt

Parties come in with a blanket statement "I can not trust him because he betrayed my trust when he had the affair. How can I trust him with the children now? Clients are not cognizant of the fact that there are different types and levels of trust, even though they exhibit them every day. The mediator can educate them to these concepts. They trust the dry cleaner with their clothes, but they may not trust them with watching their children or investing their money. In turn, they may no longer trust their spouse to be faithful, but they can still trust him or her with having custody of the children.

With questions, the mediator can gently guide the client through considering if their partner has been trustworthy in one area compared to another. Often times, the self-protective part of a client has simply put up the blanket defense "I can no longer trust them". On further examination, they may slowly realize that perhaps they can trust their ex-spouse with the children, even if they cannot trust him to be honest about areas such as finances, fidelity or drug/alcohol use. A mediator's job is not to force trust where it does not exist, but to help parties make a critical assessment of the other party's behavior.

Especially in situations where one spouse is recovering from substance abuse, the primary caregiver of the children may be extremely hesitant to allow for custody time with the children. In these situations, mediators can work with temporary custody arrangements, starting with very strict protections such as supervised visitation with terms that allow for increasing custody time as trust is

regained, and suspension of custody time if the party does not stay clean/sober. Sometimes a primary caregiver simply does not trust the other party to have extended of custody time because they never spent that much time with the children during the marriage. The other parent has not done anything to cause them not to trust them as a parent. However, they also have not been given any opportunity to prove that they can handle the parenting responsibility. The primary caregiver is often suspicious of the other parent's newfound interest in the kids. In these situations, the mediator can also use a temporary arrangement with provisions that increase custody time as things go well. In their work with the custodial parent, the mediator can talk about the idea of "suspended disbelief". Just as our mind suspends its disbelief when we watch a movie about super heros, the mediator can asks the custodial parent to suspend their disbelief that the other parent is going to show up on time for a custody visit. The custodial parent is often willing to do this if the noncustodial parent allows safeguards to be put in the agreement that protect them if the parent does not do what they agreed to, such as forfeiture of a visit.

"Trust is a peculiar resource: it is built rather than depleted by use." xx

Reestablishing a workable or CB trust level between the parties will take time.

However, the mediator can help the parties set up the framework so this can occur.

V. Conclusion

Each couple is at a unique place in the emotional divorce process. Some have moved through the undulations of disengaging from the marriage outside of the mediator's office and look to the mediator purely for help in dissolving their financial partnership. However, others are stuck in a complicated web of fear,

desperation, hurt and anger. A mediator has an amazing possibility before them to help the couple transition into their new life with more acceptance and peace. This will make a tremendous difference in both their parenting and in their life in general. If a mediator takes their role as a conflict manager seriously, they can offer much more than simply helping divide property and putting in place a schedule. Instead, they can help to lead the couple on the path to forgiveness and rebuilding of trust that will lead to less conflict in the future and reconciliation into a new type of family.

Every year at Thanksgiving, after a couple glasses of wine, something will come up which will make my mother-in-law start off on a rant against my husband's father and all of his shortcomings. I will look over at my husband's face and his change of expression says it all. The sad thing is my husband is not 7, but 47 and my mother-in-law was divorced 35 years ago, has been remarried over 25 years to a good man, and although she struggled during the divorce, now has more wealth than most people will see in ten lifetimes. This is what I think of when someone pontificates that it is not a mediator's role to intentionally mediate toward forgiveness. I think my husband would be eternally grateful if a mediator had helped his mother let go of her anger all those years ago and would care very little that she had not done it through her own transformation. How can you be a conflict manager and ignore the opportunity to prevent this kind of internal conflict that will go on for a lifetime when you have a chance?

ⁱ Stan Tatkin, "Psychobiological Conflict Management of Marital Couples", *Division of Psychoanalytic Psychology Journal*, Volume XXI, no. 1, (Winter 2005), at 24.

ⁱⁱ Robert A. Baruch Bush & Joseph P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, 88 (Josey-Bass, San Francisco, 2005).

ⁱⁱⁱ Maiese, Michelle. "Neutrality." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: June 2005 <<http://www.beyondintractability.org/bi-essay/neutrality>>. Citing: Kevin Gibson, Leigh Thompson, and Max Bazerman, "Shortcomings of Neutrality in Mediation," in *Negotiation Journal*, (12:1, 1996), at71.

^{iv} This paper is not meant to address situations where there are allegations of sexual or physical abuse of the child, as these cases require special handling that cannot be covered in the scope of this paper.

^v Fred Luskin. *Forgive for Good: A Proven Prescription for Health and Happiness*, 86 (Harper One, NY 2002), citing F.M. Luskin, "A Review of the Effect of Spiritual and Religious Factors on Mortality and Morbidity with a Focus on Cardiovascular and Pulmonary Disease," *Journal of Cardiopulmonary Rehabilitation*, 20, no. 1, (2000): 8-15; A. Ferketich et. al., "Depression as an Antecedent to Heart Disease among Women and Men in the NHANES I Study," *Archives of Internal Medicine* 160, no. 9, (2000); and B.S. (2000), 463-71.

^{vi} Mark S. Rye, Amanda M. Fieri, Crystal Dea Moore, Everett L. Worthington Jr., Nathaniel G. Wade, Steven J. Sandage & Kevin M. Cook, "Evaluation of an Intervention Designed to Help Divorced Parents Forgive their Ex-Spouse," *Journal of Divorce & Remarriage*, 53:3 (2012), 231-235; and Elaine M. Aysta, "A Quantitative Study of Forgiveness and Divorce Adjustment in Divorce Recovery Groups," (June 2010) (Unpublished Phd Dissertation, Capella University) (on file with www.undini.proquest.com).

^{vii} Juliet Rhode-Brown & Kjell Erik Rudestam, "The Role of Forgiveness in Divorce Adjustment and the Impact of Affect", *Journal of Divorce & Remarriage*, 52:2, 109-124.

^{viii} Lee Rosen, "Children & Divorce: The Emotional Issues", <http://www.rosen.com/childcustody/carticles/children-and-divorce/> (last visited December 2, 2012).

^{ix} Kathryn Gibson, MSW at Generations Mediation Program Peer Review Meeting. (best recollection 2008).

^x Chris F. Gillotti, Esq. (date unknown).

^{xi} Nancy Kline, "Who is listening: Mediation in a Thinking Environment," *More Time to Think: A Way of Being in the World*, 201-208, (Fisher King, England, 2009).

^{xii} Stan Tatkin, "Psychobiological Conflict Management of Marital Couples", *Division of Psychoanalytic Psychology Journal*, Volume XXI, no. 1, (Winter 2005), 20-24.

^{xiii} Mark S. Rye, Amanda M. Fieri, Crystal Dea Moore, Everett L. Worthington Jr., Nathaniel G. Wade, Steven J. Sandage & Kevin M. Cook, "Evaluation of an Intervention Designed to Help Divorced Parents Forgive their Ex-Spouse," *Journal of Divorce & Remarriage*, 53:3 (2012), 231-235; and Elaine M. Aysta, "A Quantitative Study of Forgiveness and Divorce Adjustment in Divorce Recovery Groups," (June 2010) (Unpublished Phd Dissertation, Capella University) (on file with www.undini.proquest.com).

^{xiv} Robert D. Enright and Richard P. Fitzgibbons, *Helping Clients Forgive: An Empirical Guide for resolving*

Anger and Restoring Hope, 24, (American Psychological Assoc., D.C. 2000).

xv Luskin at 71 .

xvi Kline at 206.

xvii Lewicki, Roy J. and Edward C. Tomlinson. "Trust and Trust Building." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: December 2003 <<http://www.beyondintractability.org/bi-essay/trust-building>>.

xviii Id .

xix Id..

xx Id .