

The Art of Working with Spouses Who Do – or Who Don't – Negotiate Effectively with Each Other

- I. A Basic Question Divorce Professionals Should Always Ask: “To what extent have you and your spouse discussed what might be in an agreement?”
- II. Why it Makes a Big Difference.
 - a. What therapists refer to as “communication” is frequently **negotiating**. Negotiating is how spouses make decisions in their marriage and adjust to ongoing changes.
 - b. Many couples who get divorced can still negotiate effectively when it comes to working out the terms of their divorce. If they can, mediation is a good process because it enables them to make certain that everything is covered and gives them an opportunity to resolve any final issues.
 - c. Dysfunctional marital negotiating is what makes so many divorces excessively expensive, time-consuming and stressful.
- III. Identifying Couples Who Negotiate Effectively.
 - a. They treat each other with civility and respect.
 - b. They are problem-solvers.
 - c. Each party takes responsibility and prepares properly.
 - d. They are willing to compromise and to make tradeoffs.
 - e. They are adept at listening as well as talking.
 - f. Their “bottom line” is within the scope of *fair* and *workable*.
- IV. The Most Serious Characteristics of Dysfunctional Negotiators.
 - a. One or both parties are *positional*, *competitive* and *inflexible*. Each of these attributes has a separate focus, but where one appears the other two are also likely to be present. We can refer to them collectively with the acronym **PCI**.
 - b. One or both parties has a serious *personality disorder (PD)*. DSM-5 lists ten of these, of which five are the most serious: *sociopathic*, *narcissistic*, *paranoid*, *borderline* and *histrionic*. These are discussed in detail in Bill Eddy's most recent book, *Five Types of People Who Can Ruin Your Life*.
 - c. One or both parties has a *high conflict personality*. The acronym is **HCP**. Often a person who is a HCP has a PD, and may also be PCI.
 - d. *Conflict avoiders*, and especially those who are *passive-aggressive*.
 - e. Clients who refuse to furnish appropriate disclosures in cases where such disclosure is essential. These are also people who often furnish misleading information.
- V. An Intermediate Level of Problem Negotiators.

- a. “*Crap tossers*”. This is a form of communication that is neither *sharing* nor *negotiating*. It is simply passing on one’s frustration in the form of insults, put-downs, threats, bad language, etc.
- b. *Control freaks* who insist that everything must be done their way.
- c. *Meta-negotiators*. Instead of negotiating about the issue(s) at hand, these are individuals who often criticize the ways in which the other party negotiates.
- d. Negotiators with *unreasonable expectations*. People who treat negotiations like a Christmas letter to Santa Claus.
- e. *Procrastinators*. These are less “dug-in” conflict avoiders who nevertheless consistently fail to get things done on time.
- f. Individuals who want to focus *backwards* on the problems of the marriage rather than focus *forward* on the needs of a fair and workable agreement.
- g. *Insecure* persons who have difficulty making decisions due to an inability to make forward-looking plans.
- h. *Nobody wins* cases where the figures just don’t add up for either party.

VI. Different Situations, Different Strategies.

- a. Be careful about jumping to conclusions. At times people who negotiate in nasty ways can work out fair agreements, and couples who are very nice to each other can get stuck with an inability to compromise.
- b. When negotiations are working, the mediator should be cautious about “butting in.” As family systems pioneer Murray Bowen, M.D., often said, “Don’t just do something - sit there!”
- c. The most seriously dysfunctional negotiators need special strategies. Joint meetings with seriously dysfunctional negotiators are often ineffective and may even be counter-productive. A careful strategy is needed. Bill Eddy’s books are a good place to start.
- d. If you have a negative “gut reaction” to a couple, or at least one of them, check it out and try to figure out the cause of such a reaction.
- e. The effective negotiators often need little more than a checklist of the issues to be covered, some useful and impartial legal, financial or practical information, and a review of the customary options.
- f. Couples with negotiating problems at the intermediate level often respond to effective ADR negotiating, such as those set forth in the classic book by Roger Fisher and William Ury, *Getting to Yes*. This includes a *problem-solving* approach, focusing on *interests* or *concerns* rather than *positions*, and surfacing *options* that have an objective basis.
- g. Regardless of whether effective or dysfunctional negotiating is going on, mediators should use Bill Eddy’s **EAR** approach – *empathy, attention and respect*. And, of course, consideration of other classic ADR skills.