

## ***Sorting Out and Managing Emotions in the Divorce Process***

It's not unusual for lots of different emotions to swirl around two persons going through the process of divorcing. Those various emotions are by no means all created equal. They are, in fact, quite diverse as to how they came into being and how they affect each of the parties.

### **Emotional categories based upon the sources and effects of emotions.**

Leaving out all sorts of psychological labeling, the emotions of divorce fall into two main categories, based upon differences in their nature and their effects on the participants. The two categories are: (1) **emotions that suggest a need for understanding and empathy, and perhaps counseling**, and (2) **emotions that affect negotiations over divorce agreements and management of the legal process of divorce**. These are by no means two mutually exclusive categories, but it is useful to sort out their separate characteristics.

**Categories based upon the sources of the emotions.** One viable way to categorize the various divorce emotions is to identify their sources:

1. Emotions arising out of problems in the marriage, such as blaming, guilt, and issues over control;
2. Reactions to the emotional process of divorcing, such as denial, depression, and anger;
3. Emotional responses to the substantive legal and financial issues of the divorce, such as anxiety about finances and future security;
4. Emotions focused on the process of the divorce case, such as stress, frustration, and mistrust;
5. Negotiating-related emotional issues, such as defensiveness, competing, inflexibility, disorganization, and unreasonable expectations;
6. Family systems emotions, such as anxiety and reactivity over relationships and parenting;
7. The “supposedly irrelevant factors” of behavioral economics, such as lack of impulse control, inability to focus on future plans, managing losses, and reactions to fairness issues
8. Serious mental health conditions, such as schizophrenia, obsessive or bipolar syndromes, narcissism, and character or personality disorders.

Obviously there may be multiple sources for the emotions in a particular case, but it can still be useful to try and pinpoint the primary source. Most of the above categories do not depend upon a precise psychological diagnosis. Only the 8<sup>th</sup> category necessarily includes irrationality as a basic element.

**Emotions affecting each party's own stability.** These include the emotions that are analogous to Elizabeth Kübler-Ross' stages of death and dying – denial, anger, bargaining, depression, and acceptance. There are more sophisticated versions of the same idea, such as that suggested by collaborative attorney Joryn Jenkins. Although Joryn starts with the same list, she turns it around to consider the means by which her clients develop their capability to become engaged in a more positive process and to become motivated to work on creative decisions. Collaborative professionals Kate

Scharff and Lisa Herrick treat the divorce as a developmental challenge. They see many of the emotions that divorcing clients experience as stemming from the challenges of letting go of the familiar and the known, and moving toward new ideas that may be unfamiliar, frightening and/or may involve some kind of loss.

**Situations appropriate to counseling.** There are certain divorce-related emotions for which counseling is clearly appropriate. These include depression, low self-esteem, insecurity, defensiveness, and more generally, difficulties in normal day-to-day functioning. There are two sub-parts of this group, namely (1) problems resulting from the divorce process, and (2) problems that also emanate from earlier points in the marriage. Often the former can be resolved as a party works through the divorce, while the latter have settled in during the marriage and will stay around for a longer term.

**Emotions affecting divorce negotiations.** This second category of emotions often reflects emotional aspects that are quite different from the first one. It includes the conflict styles of the Thomas-Kilmann test, competing, accommodating and (worst of all) avoidance. Another model comes from a family systems analysis of negotiating, which focuses on the parties' emotional enmeshment or emotional distance, and on their inflexible or disorganized approaches to marital negotiating.

**High conflict cases.** An often intractable level of emotionality is described in Bill Eddy's category of high conflict couples, in which the conflict itself becomes the focus that engages the parties' emotions. This is frequently accompanied by the obsession of one or both parties over the conflict, and may extend well beyond their substantive disagreements. In this kind of case, which can be very reactive, the emotions of the parties generate further elements of conflict, which in turn leads to an even higher level of emotionality. Emotionality = more conflict = even more intense emotions, and so forth. Bill has demonstrated how the family court system may unintentionally foster this kind of perpetual conflict. His strategies for high conflict cases may be found on his website, [www.highconflictinstitute.com](http://www.highconflictinstitute.com).

**Sorting out the emotions.** Those divorce-related emotions for which a party needs counseling to maintain stability during the process should be acknowledged and managed, since they too can get in the way of reaching an agreement. The second category of emotions, those that more directly impact on negotiating, are the ones that are less likely to be recognized as such by the professionals in the process. At times we also see what might be considered a separate third category of emotions. These are the arguments that are carried on out of anger or frustration and basically take place just for the sake of arguing. They resolve nothing and simply leave bad feelings.

**Managing emotions in collaborative practice.** One of the most brilliant aspects of collaborative practice is the institution of collaborative coaches, so it makes sense to start with their roles. Coaches are mental health professionals who work with one or both of the parties to address the emotional issues in a case. The collaborative coaches also often consult with the parties on parenting issues. The coaches need to be aware that emotions that affect negotiating are a basic and somewhat different category of divorce-related emotions. Since many of the serious communication issues in marriages and divorces are also negotiating problems, it is important for collaborative coaches to keep this concept in the foreground as an appropriate professional role for them to consider.

A starting point for a collaborative coach is to sort out the client's emotions by their **source** and by their **effects**. The initial focus is to identify the matters on which the client may need counseling, and then to determine the type of intervention that would be responsive. For *negotiating problems*, the next step is then to ascertain the extent to which the problem is transitional or perpetual. Since such negotiations involve legal and financial as well as emotional issues, any responsive strategies should be discussed and worked out by the collaborative team.

At issue is whether to work through the negotiating problem or to work around it. If coaches are not initially part of the collaborative team, this would be an argument for adding them. The coaches need to be comfortable with their roles in each case. So, for example, a coach could discuss with a client how anger and blame are often ineffective negotiating strategies, but should not use this to advise the client to make changes in his or her substantive negotiating goals.

**Managing emotions in other contexts.** A divorce lawyer or an impartial mediator obviously may not also function in a personal counseling role. That being said, divorce lawyers and mediators have substantial experience in managing their clients' negotiating problems in the context of their traditional roles. A divorce attorney who recognizes that the client's emotional state is creating problems can deal with that situation as a matter of conventional attorney counseling. A mediator's role is trickier since the mediator cannot give legal advice. However, a mediator may point out to the clients that the manner in which they are negotiating is counter-productive, so long as this is done in an impartial way designed to promote a more effective process.

**The value of accurate diagnosis.** It's time to stop treating the emotions of divorcing as a mishmash or a collection of labels. As a structuralist, I believe that if a divorce professional can diagnose the nature and source of a particular emotion and also understand its probable effects, he or she should be able to identify the best intervention (including the option of not intervening). If there are serious emotional problems in a given case that would likely affect how settlement negotiations are to be conducted, the best process to use may be collaborative practice with a team that includes coaches, or perhaps a thoughtfully structured team mediation. I know some litigating divorce attorneys who are quite sensitive to their clients' emotional states and can channel them into sensible agreements. I also know some other family lawyers who don't have a clue!