

Broken Love: The Intersection of Divorce and Therapy

A Legal Perspective by Dina Haddad, Esq., LL.M

I'm Getting a Divorce. Now what?

Welcome to *Broken Love*, a regular column in the SCV-CAMFT News to address issues related to the intersection of divorce (family law) and therapy. Over the last few months, I have had the opportunity to meet several of you, and had requests for information about the divorce process to help inform your practices when dealing with clients facing divorce. My hope is that this column will provide you that information, and be useful to your practice. Always feel free to send in any questions you may have.

Suppose you are working with a couple, and one or

suggest to a client traumatized by the divorce process, or stuck in years of post-divorce legalese?

An appropriate place to begin our column would be discussing the basics of a divorce case, and the options available to each couple to process a divorce. In this article, I'll provide some general information, and then in the following columns, we'll discuss these in more detail.

The 411: In California, it only takes one spouse to initiate and finalize a divorce. This is important when you are working with a couple, and only one spouse wants the divorce. The spouse who does not want the divorce should be encouraged to participate in

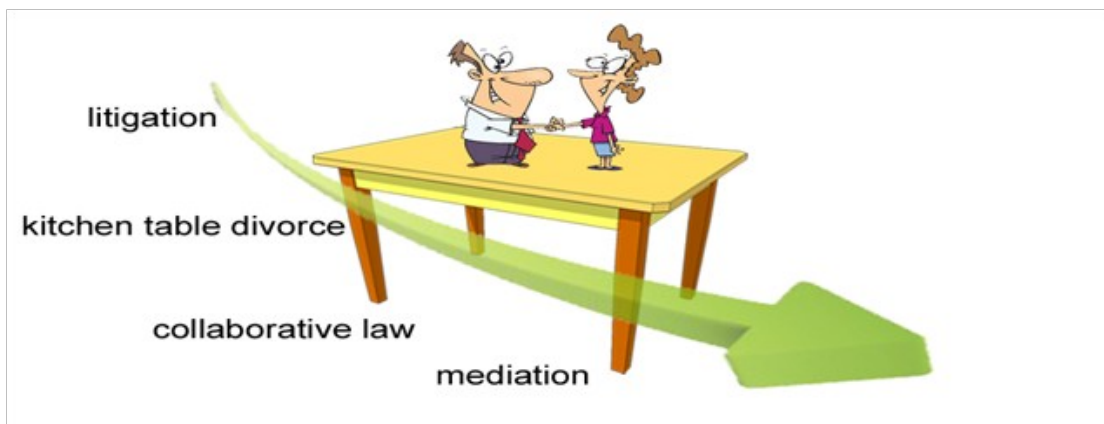
amount. If the couple cannot agree, the divorce will go to trial, and the judge will ultimately decide. As you can imagine, requiring a divorcing couple to make healthy decisions during one of the most traumatizing life events, is highly improbable. The process the couple selects plays a crucial role in determining the end result, including what emotional and financial consequences they are likely to confront.

In general, there are three approaches to resolving a divorce matter: litigation, alternative dispute resolution options (which include mediation and collaborative law), and the kitchen table divorce. Imagine a spectrum. On the far left is litigation,



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both have decided to file for divorce. What options are available to them? How much time will different options take? What are the advantages or disadvantages of each? Are some options less emotionally intense than others? What practical things can you

the process. If s/he does not, s/he puts her/his legal rights at risk!

During a divorce, the couple works to divide their assets and debts, arrange a child custody agreement, and agree to an appropriate child and spousal support

tion, considered an *attack response*, and on the far right is mediation, a *peace-making response*. The kitchen table divorce falls in the middle. Let's begin with the far left.

In litigation, the couple goes before a judge,

argues for their side of the story, and the judge issues a ruling. If attorneys are retained, typically each lawyer will require between \$5,000-\$25,000 as a retainer. Lawyers will prepare for hearings, negotiate, and appear at court, costing thousands of dollars in the lawyer's time. This cycle continues until all issues are settled, or the unsettled issues are brought to trial. On average, this process takes a *minimum* of two years, even for couples who have little to divide or disagree about. The process is draining, both emotionally and financially.

The second process is the kitchen table divorce. This couple decides they can complete the divorce on their own, without the use of other professionals or a judge. The couple might download forms online, or read divorce guides. Working together, or electing one spouse to do the work, the couple will do their best to complete their divorce. If the couple can manage, and there are minimal assets, they stand to save money. However, they run the risk of legal complications and getting stuck along the way. Those who choose this route are most successful when they take their final agreement and documents to a mediator, or attorney, for review. This process lands them in the middle of our spectrum.

The third process encompasses alternative dispute resolution (ADR) options, such as collaborative law and mediation. ADR options are non-adversarial options available to resolve disputes outside of court.

In collaborative law, each spouse retains a collaborative law attorney, a joint mental health professional, and a forensic accountant. The couple then works with this team of professionals to resolve their divorce, all who have agreed not to use the court process. This is one of the chief benefits of collaborative law, as well as having a concentrated group of professionals for support. However, these also are its downfalls. Collaborative law runs the risk of stalemate, because there is no external force to overcome obstacles, and the team may not be united on every point. If the couple cannot resolve their dispute, or at any time someone breaks rank and uses the court system, both husband and wife must fire all their professionals and start over with new attorneys. Despite these shortcomings, collaborative law can be very useful when there is a significant power imbalance between the spouses, especially to keep the couple on the "right side" of the spectrum.

At the far right of our spectrum is mediation. In mediation, the couple works with a mediator, who guides them through the divorce issues in a safe space, without representing either party. Mediation gives the couple plenty of time to discuss the issues and create workable solutions. The mediator is not limited by the court's time frame or procedures. For example, in mediation, the couple could make agreements about adult children (over the age of 18), where a court could not. Both husband and wife must agree

to mediation, but it is a misnomer that only "amicable" couples can mediate. The mediator will adjust power imbalances to assist the couple. Similar to collaborative law, the couple never goes to court. The mediator will formalize their agreement in a court order. Typically, mediation is the most cost-effective approach, and results in the most workable custodial arrangements. For instance, one extensive study showed 30% of nonresidential parents who mediated their divorce saw their children weekly 12 years later, compared to 9% of those parents who pursued litigation. Mediation is quicker than litigation because the couple receives concentrated time and only needs to work with the mediator's schedule.

A couple can pursue any one of these routes, and practically at any time, can switch routes to use another (although the costs and benefits might discourage it). For instance, a couple litigating their divorce might become worn out from the divorce fight and decide to go before a mediator for a settlement conference to resolve their entire matter. A wise idea. In the next column, I'll discuss in detail the disadvantages couples will face when they choose litigation. In the meantime, feel free to send me questions or comments to me by email at dina@ffmediation.com.

The 411:

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