

family matters

Legal News for Mental Health Professionals

Welcome to the Winter 2008 issue of *Family Matters*, a newsletter created to educate mental health professionals about issues surrounding family law. Created by Randall Pitler, an attorney experienced in family law matters in the State of Michigan, *Family Matters* will share information that can help you and your clients deal more successfully with divorce through amicable and collaborative methods.

In the Winter 2008 Issue:

● Collaborative Divorce:
A Better Way to Divorce

● Facts Take the Fear Out of
the Divorce Process

● Myth: Filing First for Divorce



news of interest to:

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Feature Article Winter 2008

● Collaborative Divorce: A Better Way to Divorce

"Brad and Jennifer Call it Quits!"
"Michael Jordan Fouls Out of Marriage"

When celebrities file for divorce, their photos are splashed on the covers of the supermarket tabloids underneath sensational headlines. The tabloids contain in-depth articles with chronologies of the relationship, an analysis of "what went wrong," and quotes from someone with psychic powers. However, after the initial announcement, you rarely hear any news about the divorce proceedings and, several months later, when the divorce is finalized, the same tabloid will print a brief mention of the divorce on their "Passages" page, without any details of the divorce.

If celebrities, the most attention seeking group in our society, can manage to complete their divorces privately, then why can't the rest of us? The little known truth is that there is a method for us non-celebrities to complete divorces privately, an option that is ideal for many of your patients – Collaborative Divorce.

Collaborative Divorce is best suited for couples who want legal representation, but would like to avoid the courtroom. The parties and their attorneys agree, in writing, to complete the divorce amicably. The attorneys are specifically trained in collaborative law and are focused on assisting the parties reach a fair settlement, not on litigation. Instead of using traditional litigation tools, the attorneys assist the parties in resolving the issues in the divorce cooperatively instead of litigating.

There are three primary tenets of Collaborative Divorce. First, is an agreement to stay out of court. The parties and their attorneys execute a Collaborative Agreement, in which the parties agree to resolve all the issues in the divorce prior to either party filing for divorce. By agreeing to stay out of court, the parties control the pace and the tone of the negotiations, without court deadlines and the temptation to run to court to ask the Judge to resolve minor disputes.

If either of the parties decides to go to court and files a Complaint for Divorce, both attorneys are required to withdraw from the case. This prevents the attorneys from intentionally disrupting the negotiations to increase the legal fees and provides an incentive for the parties to stay at the negotiating table, to avoid having to start over with a new attorney.

The second tenet is an agreement to voluntarily exchange information and to negotiate in good faith. When parties litigate, a significant portion of the costs are incurred during "discovery," the information gathering phase of the case. This may include interrogatories (long list of written questions to be answered under oath), depositions and subpoenas). In a collaborative case, the parties provide the necessary information, saving a considerable amount of time and money. Further, by putting all the information on the table, the parties can concentrate on reaching agreements, instead of wasting time trying to find hidden information.

The third tenet of Collaborative Divorce is the use of other professionals. The parties are encouraged to engage therapists to assist them with the emotional issues related to the divorce and to coach them through the process. A divorce coach can be utilized outside the process or at the negotiating table. Alternatively, the parties can meet with a child specialist to help them agree on custody and parenting time issues.

In addition, the parties may agree to bring a financial professional into the process to help with tax issues, budgeting, creating cash flow analyses and answering other financial questions. Further, if a business or real estate needs to be appraised, the parties can agree to utilize a single expert, instead of having to hire two competing experts, which is common in litigation and adds to the costs.

There are many benefits to a Collaborative Divorce, primarily if the parties have minor children. When children are involved, the parties must be able to communicate effectively in order to continue to co-parent the children for years after the divorce. The collaborative process helps the parties get started on the right path, by encouraging the parties to communicate with each other, instead of through their attorneys. And by avoiding the animosity that comes with litigation, the likelihood of putting the children in the middle of the divorce is reduced significantly.

In litigation, the case is identified as Plaintiff vs. Defendant, immediately casting the parties as adversaries, while reducing the children to bit players. The collaborative process avoids the courtroom labels, which helps the parties avoid the "me against them" mentality. This allows the parties to focus on the children and to create a win-win-win settlement that is truly in the best interests of the children and financially as beneficial to the parties as possible.

In addition, the process gives the parties time to insure that they are making educated decisions. Although every divorce is unique, courts tend to force parties into cookie cutter positions. And while many cases settle through court ordered mediation, the mediation frequently takes place shortly before a scheduled trial, putting pressure on the parties to make hasty decisions in order to avoid the time and expense of a trial. Without court imposed deadlines, parties in a Collaborative Divorce have time to educate themselves regarding the implications of any settlement options and to sleep on any settlement offers to make sure they are making the best decisions.

The additional time also allows the parties to be creative in crafting a settlement that is favorable to both parties and the children. Another significant benefit of a Collaborative Divorce is the ability to keep personal and financial information private. The courts are public forums. In litigation, the parties frequently air their personal issues in front of a crowded courtroom and file personal and business information with become part of the public record, which anyone can view. In a Collaborative Divorce, just like celebrities, can keep this information private.

Finally, a Collaborative Divorce is usually less expensive and time-consuming than litigation. And by avoiding the courtroom, the parties are assured that most of their attorney fees will be for time the attorney actually spends working on their case and not for spending an entire morning in a courtroom waiting for their case to be called.

Collaborative Divorce is an ideal method for parties to resolve all of the issues in their divorce, with the assistance of attorneys, in a manner that addresses everyone's legal, financial, and emotional needs.



● Did You Know that Divorce is Bad for the Environment?

A recent study at Michigan State University found that divorced households spent 46% more on electricity and 56% more on water per person than married households. Divorced households in the U.S. use an additional 38 million rooms than they would require if the parties remained married. In 2005, the additional housing space necessitated an additional 73 billion kilowatt-hours of electricity, and 627 billion gallons of water than if their resource-use efficiency had been comparable to married households.

Conversely, remarriage of divorced household heads increased household size and reduced resource use to levels similar to those of married households.

Eunice Yu and Jianguo Liu, Environmental Impacts of Divorce, Proceedings of the National Academy of Sciences, December 5, 2007.

● Guest Column: Carrie Cole - Divorce Financial Planning

The cost of divorce in the United States is staggering. There are 1.2 million divorces every year with the average cost being \$20,000 per couple. That's \$42 billion a year being spent on divorce. Yes, 42 billion dollars.

Almost 50% of these couples state that money issues are their number one problem. How do these people solve their money questions while in the divorce process? Do they rely on friends? Relatives? Why is it that they don't seek financial advice before entering into negotiations to settle their divorce?

Several years ago, a financial advisor named Carol Ann Wilson created a solution—a financial specialist with specific training in the area of divorce.

The mistakes that can be made are usually costly and irreversible. A person who is going through the divorce process usually has only one opportunity to get their money decisions right. These choices, made during an extremely emotional time, will affect their standard of living for years to come.

Fortunately, these errors can be avoided with a simple one hour meeting with a financial professional who understands taxes, budgeting, employee benefits, and other money matters that relate to divorce.

Let me give you a couple of examples of some recent cases I've had:

A woman came to me who had finalized her divorce. They had negotiated for one half of her husband's employee benefits, including his executive compensation plan. Unfortunately, when she went to receive the funds, his company said, "Oh no. Those are his and his only—we cannot disburse them to a spouse." Unfortunately, no one had bothered to call the company and ask about this particular asset. The divorce was finalized. What now?

Another couple visited me who were very seriously in debt. They needed a way out and bankruptcy seemed to be their only option. However, there was another solution. He had some money in his 401(k) plan. There was a loan against it, which required him to make mandatory payments every month.

This was severely hurting their cash flow. With the help of a little known IRS tax code about pre-59-

1/2 distributions of retirement plans, they were able to pay off the loan and take a withdrawal from his 401(k). Now they had additional money available to them every month and they were able to pay off some of their credit cards.

It is very common for one spouse, usually the wife, to want to keep the house. She is often emotionally attached and gives up other "growth" assets in the divorce process. Usually no one helps her see into her financial future. What happens if one to two years later she has to sell the house? This can cause several problems, especially in today's real estate market. She is now solely responsible for expenses that could have been paid jointly: fix-up costs; costs of sale; capital gains taxes. In this situation, a financial person might have been able to show her the pros and cons of keeping the house vs. negotiating for other assets, such as mutual funds or some other liquid asset.

Typically, a divorce financial specialist helps both men and women, either separately or as a couple. Men want to know how it all can work. Can they afford spousal support and child support and still rebuild their life? Women, on the other hand, have dismal statistics. Usually one year after a divorce a woman's standard of living drops by 25% and their net worth can still be negative years later. They oftentimes never catch up to their spouses who have a career have the ability to earn career assets (bonuses, pension plans, stock options).

Money should not be a controlling factor during the divorce process. A financial person can help. Knowing the facts helps alleviate the uncertainty and fear. How many times have we heard of someone who has gotten divorced and several years later regrets their decisions? One of my clients said it best: "I wasn't smart enough to figure this out for myself. However, I was smart enough to hire someone who could."

Carrie Cole has been in the financial planning industry for over 20 years and has been specializing in divorce since 1995. She is a Certified Divorce Financial Planner, is certified in Collaborative Practice and is a trained mediator. She has been quoted in *The Wall Street Journal*, *Kiplingers*, *Dow Jones News Retrieval*, *CNN Money.com* and *The Detroit News*. She can be contacted at 734 542 8058 or carrie@smartdivorceplanning.com.



● **Invite Me ...**

Invite me onto your couch. I am always looking for therapists for client referrals. I would be happy to spend a few minutes on your couch and learn more about you and your practice. I can provide you with additional information on how I practice family law and can help you and your patients.

Invite me for lunch. I would welcome the opportunity to schedule a "lunch and learn" at your clinic where I can meet with you and your colleagues to answer any family law questions. **Please contact me at (248) 584-0400. I look forward to hearing from you.**

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● **Divorce Myth: Filing First for Divorce**

There is a popular misconception that the party who files the Complaint for Divorce has a substantial advantage over the other party. However, in most divorces it does not matter who files first.

There are two occasions where filing first can be advantageous.

The party filing first can ask the court to enter temporary Orders for Custody, Child Support, Parenting Time, Restraining Orders preventing the parties from moving or dissipating assets or to dictate how the household bills will be paid during the pendency of the divorce. If one of the parties anticipates a contentious custody or parenting time dispute, filing first may allow them to obtain an Order which contains a favorable custody and parenting time arrangement. While the other party can file a Motion and request that any temporary Orders be revoked or modified, there is a perception that the courts will follow its prior Orders unless there is a good cause to modify them.

In Wayne, Oakland and Macomb counties, approximately 1% of divorce cases go to trial. However, in cases that do go to trial, the party who files first has an advantage because they get to present their case first and can control the order in which the court addresses the issues. While both parties have an equal opportunity to present their cases, the non-filing party is frequently put in the defensive position.

Of course, when the parties agree to complete their divorce amicably, the issue of who files first is irrelevant.

● **Questions?**

If you have any questions you would like to see addressed in a future issue of Family Matters, please send an email to **FamilyMatters@pitlerlaw.com**.

In addition, if a patient raises a legal question regarding a family law matter during a session, feel free to contact us for more information. While we may not be able to provide detailed advice to your client's specific issue, we can provide as much advice as possible. We hope you will consider us as a resource to provide better service to your patients.

Randall B. Pitler is a family law attorney specializing in amicable divorces in Oakland, Macomb and Wayne Counties. A family law attorney for 14 years, he is a court approved domestic mediator in Oakland County and is certified in Collaborative Practice, a unique method of divorce in which the parties are both represented by attorneys, but agree in writing to resolve the issues in their divorce without litigation.

Mr. Pitler earned his law degree from the University of Detroit School of Law in 1992 and earned a B.A. in English from Michigan State University in 1988. Prior to entering law school, he served as a Community Development Specialist for U.S. Senator Carl Levin. In addition, Mr. Pitler spent several years in Los Angeles working on several television shows, including *Divorce Court*, *Power of Attorney*, *Biography*, *Intimate Portraits* and *Modern Marvels*.

A graduate of West Bloomfield High School, Mr. Pitler currently resides in Huntington Woods with his wife, Lori, and their daughter, Madeline.

For more information please visit: www.AmicableDivorce.com