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When Emotion Overwhelms Reason (and How to Counter It In Divorce Negotiations)
Filed under: Coping with Stress and Emotions in Divorce, Divorce and Conflict Resolution, Lawyer Perspective on Collaborative Law, Mental Health Professional Perspective on Collaborative Law, Resources for Divorce

This article is from Kevin Fuller, founder of Dallas-based Fuller Mediations, a firm that provides a range of mediation services to settle divorces and other disputes, and a former president of the Collaborative Law Institute of Texas.

I've been involved enough with divorce negotiations to see this more than once: I bring a solid settlement offer to a client, in which we've been able to work out a parenting plan and a financial settlement that meets the client's needs. And yet, it's rejected, simply because emotions are preventing that client from making a rationale decision.

In stressful situations – and divorce certainly qualifies – we can be overcome by an actual physical transformation that floods us with emotion, and can actually move us into an involuntary fight or flight mode. Pauline Tesler, one of the first proponents of collaborative law, notes that “our brains organize memory in neural pathways that include sensory data saturated with intense emotions; these patterns shape incoming sensory data to fit the pre-existing template.” When a client revisits bad experiences related to divorce, it merges with other painful memories, triggering the fight-or-flight reaction. As she notes:

Blood pressure rises, heartbeat speeds up, cortisol floods the bloodstream. As a direct result the newer cognitive centers of the brain – located in the neocortex, which engages in cause and effect thinking and in imagining new solutions to old problems – go offline for as long as several hours after a triggering memory while the “fight, flight, or play dead” response plays out in body and mind. Some studies have suggested a substantial temporary drop in I.Q. of 30 points or more when a spouse experiences rejection by the former partner. Our divorcing clients are required (perhaps for the first time in their lives) to make complex and far-reaching decisions about finances and parenting at a time of unprecedented and sustained stress, and for many of them, deep and wounding rejection is the context in which this decision-making must take place. We are, in other words, representing clients who may for much of the time we work with them be experiencing transient states of diminished capacity.

She went on to say that lawyers, not typically being experts in neuroscience, might allow divorcing couples to “unload on one another at settlement meetings” in order to achieve some sort of catharsis. However, such a move can actually trigger a fight-or-flight reaction in both parties, which halts the potential for creative problem solving while they’re in that state.

A. Michelle Jernigan added that while some mediators consider the expression of emotion (or “venting”) as a helpful prelude to negotiations, “there should be sufficient space in terms of time between venting and rational decision making in mediation. This is because venting can induce the emotion of fear, which is extremely powerful in the neural network, and can inhibit rational thinking.”

People who are overwhelmed with hurt or anger have essentially temporarily broken brains. So how do we help someone with a temporarily broken brain make better more effective strategic decisions?

This is where a mental health professional can be vital to negotiations. Lawyers are trained to give legal advice, but have little or no formal training in how to help people deal with overwhelming emotions. In fact, much of what lawyers routinely do can unintentionally trigger these reactions.

When a client reverts to primal emotional reactions, a mental health professional’s intervention help bring out the logical part of the client, shorten his or her recovery time, and redirect the client to strategic and rational thought rather than a desire to punish the other party. Often, the mere presence of the mental health professional causes people to have better behavior.

Having a mental health professional involved in the settlement process as a communications facilitator can be invaluable. When men and women get divorced and experience emotional turmoil, they may communicate as if they are a lot farther away from each other than, as the famous relationship book termed it, Mars and Venus. The mental health professional, in the communication facilitator role, can serve to enforce communications ground rules, help the parties manage emotional eruptions that develop during the negotiations, and help both the parties and their lawyers communicate more constructively and more effectively with each other.

When settlement discussions hit an impasse, it’s not usually because we can’t find solutions to the issues. Rather, it’s because one or both of the parties are emotionally blocked from saying yes to a settlement. Since emotional issues are the big roadblocks to achieving resolution, why not invite someone into the negotiating environment to help people better manage their emotions and make more effective strategic decisions?