

## **COLLABORATION FOR DIVORCING FAMILIES: FAMILY THERAPY AND FAMILY LAW**

**Lynelle C. Yingling, PhD  
Larry Hance, JD**

**Journal of the Texas Association for Marriage and Family Therapy,  
vol 6, no 1, 2001, pp 41-56**

### Abstract

Because divorce is both a legal and a family functioning process, collaboration between the family law and family therapy professionals is necessary in order to effect the most helpful services for restructuring families. This theoretical article begins with a review of systemic principles necessary for any partnering relationship to work. Delineation of the historical development of family therapy and family law collaboration leads up to the discussion of possible services. For some time, family therapists have been offering the services of custody evaluation, conjoint divorce therapy, divorcing family education, and mediation. With the introduction of collaborative law and collaborative divorce practice, many new specialized intervention services requiring systemic skills are being developed. The time has never been better than now for family therapists to enter into collaborative relationships with the legal community to meet the needs of divorcing families.

One of the greatest challenges facing our society today is reorganizing systems. Not only is restructuring playing havoc with our business world and threatening our retirement plans, but family restructuring through divorce is leaving devastating impacts on many of our children. Divorce is a legal as well as a family system restructuring process. Therefore, solving the problems requires collaboration between family therapy and family law professionals. This theoretical article suggests guiding principles to effect successful partnering and describes several valuable services that family therapists can provide in this family therapy and family law collaboration.

#### Characteristics of Effective Partnering

How do family therapists predict and prepare for success in this partnering venture? Partnering involves the interrelatedness of multiple systems. Family therapists must understand the functioning strengths of each system separately as well as in the partnering relationship in order to build on strengths and not be blindsided by ignored weaknesses.

Assessing the functioning level of any human system can be summarized in the variables of organizational structure, interactional/problem solving processes, and output/emotional climate identified in the Global Assessment of Relational Functioning [GARF] in the DSM-IV Appendix (Yingling, et al, 1998). The GARF model was developed by the DSM-IV taskforce headed by Dr. Lyman Wynne and Dr. Florence Kaslow to include a systemic assessment model into the DSM. The inclusion in the appendix rather than the body of the DSM is perhaps an indication of how cautious our society is to change

from a simple linear way of thinking to the more complex circular systemic model. Family therapists must constantly remind themselves of this reality when interfacing with other professional systems. However, the age of computers forces us all to recognize circular systemic functioning--or at least to admit some level of control by it. Using, refining, and improving systemic models for assessing human systems [especially the family system] is the ongoing challenge for constant improvement by family therapists.

Dr. Dudley Chewning (2000) has adapted the GARF model developed for family functioning into the Team Functioning Assessment [TFA] to be used for organizational team/partner assessment. Chewning parallels the GARF, designed for family relationship functioning assessment, by using the same 100-point scoring grid for the three variables: Interactional/Problem Solving, Organization, and Trust. The Interactional variable is defined as communication skills; skills in negotiating goals, rules, and routines; ability to resolve conflict; and adaptability to stress. Organization is also defined the same as for families: maintenance of roles and boundaries; hierarchical functioning; and coalitions and distribution of power, control, and responsibility. The Emotional Climate (output) variable in the GARF is renamed the Trust factor in the Team Functioning Assessment scale and is defined as tone and quality of caring, empathy, involvement, and commitment; sharing of values; and mutual respect and regard. These universal variables seem to apply well when assessing any human system, whether at the family level, the family-therapist system

level, the profession level, or inter-profession team level.

When we are looking at the partnering potential of the legal system and the family therapy system, we should first assess the readiness of each independent system for collaboration. We can then see how well the combined new partnering system may function. Massive information in a broadly defined profession and the demand for quality service delivery by each professional resulted in specializations within professions. Specializations are intended to improve interactional processes by creating a more manageable size system with common language, goals, and procedures. These interactional skills are then used to create a consensus definition of practice (organization/boundaries) and to build trust among colleagues. Family Law and Family Therapy are the two specializations this article focuses on within the broad legal and mental health disciplines.

Looking at the functioning level of each specialized profession is a complex challenge. Perhaps assessing the subsystem of selected colleagues we plan to collaborate with in the separate professions is more effective than attempting assessment of the entire profession in preparing for the partnering between the professions. We can ask ourselves the following questions: how well are each profession's representatives functioning with each other in terms of effective communication processes, well defined egalitarian roles, and attitudes of mutual respect? Are we functioning on at least a 50% level of our potential in all variables? If not, how can the score be improved? Healthy system functioning within the select subsystem of colleagues will then predict possible healthy partnering relationships between the specialized professions. When we assess the broader partnering relationship between the professions, we ask the same questions about communication processes, egalitarian roles, and mutual respect. These three variables provide the framework for intervention to improve functioning when trouble occurs. Sitting down and talking (face to face or through e-mail), keeping the balance of power equalized, and showing mutual respect are essential ingredients for making the partnering relationship work.

Family Therapists are the specialists from mental health who are parallel to the Certified Family Law specialist in the legal field. We already have a common frame of reference, meeting the needs of families. As Family Therapists have evolved from traditional linear models of mental health language, goals, and procedures, so have Family Law attorneys evolved from a traditional linear litigation model. Both linear background models operate on assumptions of simple right and wrong, cause and effect answers being possible. However, families function in complex circular patterns. Family Therapists are trained to practice from a systemic view of these circular patterns,

replacing the traditional linear thinking. Family Law also operates systemically when practiced through the Family Court model using Certified Family Law attorneys as practitioners.

One foundational example of the Family Law evolution from linear to systemic is the change from sole custody presumptions in divorced/never married parenting to joint custody binuclear coparenting presumptions in the law. Legal presumption for coparenting requires more focus on the relationship skills of the parents in order to comply with the law. Thus, binuclear parenting often requires supportive intervention services not used in the traditional linear legal system. In many instances, family courts have turned to mental health professionals as partners to find the needed resources. But family therapists must continually educate family law attorneys and judges on the special systemic skills and services family therapists offer to help families comply with the systemic relationship expectations of the law in order to make this partnership work.

#### Historical Development of Family Law-Family Therapy Partnering

Formalized partnering of the legal system with family therapists was first initiated in 1955 with the establishment of the first conciliation court in Los Angeles and the hiring of the first court-employed professional marriage counselor, Meyer Elkin (Elkin, 1986). Concern for the professional credentials of conciliation court marriage counselors led to state licensing of marriage counselors with the 1963 California law. The Conciliation Courts Review began in 1963 in response to "the need to have an interdisciplinary forum for the exchange of ideas and experiences for Conciliation Court judges, counselors, as well as attorneys and others involved in divorce matters" (p. iii). Elkin, the founder and editor of the Review, wrote passionately and prophetically in his editorials. His well known 1982 editorial entitled "Cast a Pebble in the Pond" includes the following powerful justification for the mental health-legal partnership: "The Conciliation Court concept was pioneering. It demonstrated that the search for truth in family law required more than an adversarial process; that such a search also called for an interprofessional, non-adversarial process, as well as an acceptance of the principle that *feelings are also facts*. Perhaps the adversary approach is well suited to resolve issues in most areas of law. However, one can only conclude, after several decades of Conciliation Court experience, that divorce law is a different kind of law; it is law that, because of the nature of human nature, requires attitudes, practices, procedures and a process that are more sensitive to the most sensitive of phenomena in the universe—*human feelings and human needs*. Divorce law is different because the search for truth and justice takes place in the delicate area of human emotions that have been shaped by genetic,

sociological, psychological and economic factors. Divorce law is different because it involves, for the most part, normal people, who, in the struggle and agony of great loss and disconnection are, for the moment, engulfed by anger, rage, depression, and a feeling of not being in control, ingredients normally found in all crises and grieving. If law is to be just and the search for truth is to be an honest one, then divorce law needs a process that contains and helps dissipate these disabling emotions rather than a process that breaks the dams of destructive emotions, resulting in clients who are helplessly swept along, flailing their arms, choking and trying to save themselves and their families in the tumultuous waters of the adversary system in divorce” (Elkin, 1982, p. iii). One of the many pebbles Elkin tossed into the pond exemplifies his systemic thinking: “Replacing the principle ‘what is in the best interest of the child’ with ‘what is in the best interest of the family.’ To separate what helps the child from what helps the parents is artificial and unrealistic. We know that if the parents are not coping, the child’s ability to cope will be diminished. The ‘best interests’ of parents and child are interrelated and inseparable” (Elkin, 1983, p. v). Perhaps the new millennium will be the time for our total family court system to truly understand and act on that concept in innovative ways.

#### What Family Therapists Can Bring to the Table Traditional Statutory Services Available to Courts

Focusing on the divorce-impacted family needs, Figure 1 outlines a number of services family therapists can provide to meet the needs of families and improve family functioning. Identifying the family as the customer, family therapists can effectively partner with the legal system to meet the needs of the customer. Concurrent, joint, or team services can be used if indicated by combined deficient family functioning and legal agreement resources.

[Insert Figure 1 about here]

The array of services family therapists can offer to improve functioning varies from the custody evaluation with virtually no family empowerment to mediation that is built on family empowerment. The traditional services of conjoint divorce therapy and divorcing family education are in the middle of the family therapy half of the continuum. These services are often available for court order by statutory authorization. For example, the Texas Family Code provides for marital therapy (Counseling, 2000), divorce therapy (Order for Family Counseling, 2000), and divorce parent education (Parent Education and Family Stabilization Course, 2000).

Figure 2 graphs the distribution of power between the family and various service providers: the family therapist, the family law attorney, and the family mediator. The graph identifies how empowerment of the family changes with different traditional legal/family therapy interventions. The intervention service that offers families the greatest level of

empowerment is pure mediation. However, the definition of mediation covers a wide variety of styles, as described in Yingling (1996). The perfect meeting point of therapy and law seems to result in the peak empowerment for the family. This empowerment-based divorce mediation service would theoretically be used when the family functioning is at the 50% level (GARF score of at least 50 on each variable) and a moderately complex level of legal issues is involved, as graphed in Figure 1.

[Insert Figure 2 about here.]

The unified family court model has been defined as therapeutic justice (American Bar Association, 1998; Babb & Moran, 1999; Wexler, 2000), and will involve the therapist as a strong partner with the court rather than being a distant adjunct who is rarely seen or heard by the court. A family therapist working under a court order creates new and challenging parameters for confidentiality and client self-determination, which are fundamental principles in family therapy. In order to make court-ordered interventions effective, family therapists need to clarify with judges whether the order defines the therapist’s role as evaluator, supervisor, therapist, educator, or mediator. Limits of confidentiality and intervention procedures to be used need to be disclosed to clients before the intervention begins. Clear boundary definitions in the order will result in healthier system functioning and better outcomes for all participants. But the constantly evolving nature of services needed makes boundary definition difficult and limiting for families. Perhaps the new millennium will bring a way of understanding the complex family system’s need for a continuum of services based on a dynamic needs assessment process. Who better than family therapists could help the courts conceptualize and implement this dynamic model?

Brown’s historical article (1982) emphasizes the critical contributions of family therapists in developing and defining the practice of divorce mediation. In 1969, Walton, from the Harvard Graduate School of Business, wrote about third-party consultation and mediation in marital counseling, describing this approach as a “branch of psychotherapy which is concerned with the treatment of pathologies or dysfunctions in social relationships” (Brown, 1982, p. 13). Walton himself was trained in counseling. In 1970, Fuller, a Harvard Law School professor, anticipated the future role of divorce mediation “when he referred to ‘a form of mediation that is coming to be called marriage therapy’” (p. 13). In 1973, the social psychologist Morton Deutsch published his classic work on the nature of human conflict in *The Resolution of Conflict*. His theory is seen as foundational in mediation training programs today. Though not specifically discussing mediation, he talked about similar functions of third-party helping roles by the “*intervener* in community disputes, the *psychotherapist*

in marriage therapy, the *mediator* in industrial negotiations, the human relations *consultant* in group conflicts, and the *conciliator* in international disputes” (p. 13).

In the 1970s, divorce mediation evolved simultaneously in conciliation court and private practice settings (Brown, 1982). Family mediation was defined in 1970 by an Atlanta, Georgia program for runaways and their parents. Family counselors brought the family members together to mediate their differences at a facility called The Bridge. O. J. Coogler was a founding director of The Bridge. Though The Bridge services did not include divorce mediation, in January 1975, Coogler established the first formal private divorce mediation center in Atlanta. Coogler was himself a family therapist and an attorney who had gone through a painful personal divorce. Working with family therapy colleagues to develop the mediation model, in 1978 he published the first book on the subject (Coogler, 1978) entitled *Structured Mediation in Divorce Settlement*.

During the 1970s, at least five family therapy related private practice mediation programs were evolving (Brown, 1982). Coogler’s work is described above. In Canada, the family therapist and University of Toronto faculty member Irving reported on the use of conciliation counseling as an alternative to divorce litigation. In 1978 Irving initiated the Toronto Conciliation Project and later published books on the use of mediation in divorce (Irving & Benjamin, 1995). In Washington, DC, the sociologist Lohman received a 1977 grant to pilot test a divorce/mediation service; he then developed a very successful private practice in mediation. In 1978, the New York Social Work professor and family therapist John Haynes recommended that social workers and family therapists incorporate mediation into their existing professional services, and developed a very prominent divorce mediation training program. His books (Haynes, 1994) and videotapes have been used extensively in divorce/mediation training by other trainers. A Georgia State University psychologist Kessler published her training manual in 1978, based on interviews with mediators around the country as well as her own experience. Haynes and Lohman were instrumental in establishing the Academy of Family Mediators in 1982 as a result of administrative conflicts with Coogler in the Family Mediation Association founded in 1975.

While private practice mediation was evolving, court connected services were also being refined. Elkin’s Los Angeles Court conciliation counseling as far back as 1955 was the precursor of divorce mediation (Brown, 1982). As early as 1962, Elkin described the conciliation counseling services as a means of helping divorcing couples work out agreements concerning the legal issues of divorce. In 1974, Folberg used the term “mediation” by a conciliation court counselor. While Los Angeles

offered the earliest conciliation counseling services, other courts across the county began using mediation, counseling, or a combination of mediation and counseling to help divorcing families in the 1970s. Statewide mandates began in 1980 with Massachusetts mandating pre-trial mediation/conciliation conferences of all contested custody/visitation disputes. Connecticut also adopted mediation counseling in custody/visitation disputes on a statewide basis. On January 1, 1981, California established court-connected mandatory mediation in all contested custody/visitation disputes. California minimum qualifications for court-connected mediators included the following: “Master’s Degree in a behavioral science substantially related to marriage and family relationships; two or more years’ experience in counseling or therapy relevant to problems seen in court-connected family conciliation programs; knowledge of human development, parent-child relations, and the effects of divorce on children; and specific knowledge of court programs and family law procedures” (Brown, 1982, p. 23). Current California law maintains the same mediator qualifications for court-ordered mediation of custody and visitation issues, while adding special knowledge about adult psychopathology, the psychology of families, family violence and community resources (Qualifications of Mediators, 1999).

With such a strong involvement of family therapists in the early development of family mediation, what has happened in the past twenty years of the last millennium? Yingling [formerly Hale] (Hale, 1986) developed a court-connected private practice model of divorce mediation in Central Illinois in the mid 1980s. Through the 1980s, there seemed to be a balanced involvement between attorneys and therapists in the refining of divorce mediation practice. Yingling moved from Illinois to Texas the same month the Texas statute defining mediator qualifications was passed, and offered the first family mediation training program responding to the new law in the fall of 1987. The only court-ordered family mediator requirements in Texas law remain forty hours of training in mediation theory and techniques plus twenty-four hours of training in family dynamics, child development, and family law (Qualifications of Impartial Third Party, 1996). During the first few years of legislatively authorized court-ordered mediation in Texas, few attorneys seemed to be interested in divorce mediation. However, in the early 1990s, mediation seemed to be here to stay, and attorneys became much more interested in becoming mediators. The model familiar to attorneys was settlement conferencing used in other civil litigation. The techniques of keeping the parties separated in order to leverage an agreement through risk assessment were familiar to practicing attorneys. Very few Texas family therapists were actively involved in divorce mediation to offer another approach, so attorney mediators using

caucus format for getting divorce settlements through the court process filled the vacuum.

In 1996, the authors filmed a demonstration tape for an AFCC conference presentation that illustrates the extreme differences in styles that can occur under the broad definition of family mediation. Along with the videotape, we produced a consumer guide (see [www.SystemsMediation.com](http://www.SystemsMediation.com)) to educate consumers about the styles of mediation available so that they might choose the style best suited to their needs.

The great majority of court-ordered divorce mediation goes to attorneys practicing mediation. This is understandable, considering that client attorneys are generally the ones selecting the mediator for their clients after litigation has begun. Therapists could also guide clients in selecting a family therapy trained mediator early in the process. Mediation is clearly accepted as a requirement in many divorcing families' experiences. What kind of service will they get? If some empowerment model of mediation which addresses family system needs is not used in the initial divorce conflict, the family will likely be back for ongoing fights through the legal system. Perhaps that is the time when Relationship-Focused mediation or court-ordered family therapy will be used as a last resort. But what happens to the children in the years of returning litigation?

Changes in the Practice of Family Law that Invite Partnering

One encouraging new development is the initiation of Collaborative Family Law, opening the door for Collaborative Divorce Law as the model for true systemic partnering. These new ways of operating in the legal system open the door for many innovative services from family therapists, such as serving as special master, parenting coordinator, guardian ad litem, therapeutic mediator, collaborative family assessor, or domestic violence screener.

**Collaborative Family Law**--Collaborative Family Law is a problem resolution model for family law disputes which provides excellent partnering opportunities for attorneys and family therapists. Attorney Stuart Webb of Minneapolis, Minnesota (1996, Tesler, 1999) initiated this model in 1990 as a modification of the mediation process. The model has spread to many states and seems to be increasingly accepted in the legal community. At the time of this writing, legislative attempts are underway to include Collaborative Law as an alternative dispute resolution procedure in the Texas Civil Practice and Remedies Code, or perhaps in the Texas Family Code. This movement, if formalized and accepted, will create a paradigm shift in the legal profession. Litigation will no longer be presumed to be an acceptable method for solving divorce disputes. With the litigation door closed, the facilitated problem-solving door will open wider. The result will be an increasing need for family

system support services to help divorcing families succeed.

The process of Collaborative Law resembles a Relationship-Focused mediation without the mediator. The essential feature of this model involves the spouses and attorneys entering into a Participation Agreement in which they contractually agree that the case will be resolved outside of the litigation model. The attorneys agree that if the case is not resolved in the collaborative model, they will withdraw and the clients will retain litigation counsel for the trial of the case. All professionals, including therapists, used in the collaborative process will be exempt from use in subsequent litigation.

Figure 3 illustrates the communication flow differences in three different approaches to legal settlement.

[Insert Figure 3 about here]

The Participation Agreement with the essential provision that the attorneys must withdraw if the process fails provides tremendous incentive for the spouses and the attorneys to work productively and creatively toward settlement, with the help of other professionals. This is the only model in which the attorneys share the risk of failure equally with the clients. In the litigation model, if the divorce case fails to settle in negotiation or mediation, the attorneys earn additional fees by taking the case to court. However, in this model, the attorneys in a failed collaboration are out of a job and the clients must incur the additional expense of hiring new lawyers to litigate their divorce case. These strong penalties for failure result in a creative synergy among the parties and attorneys that is usually capable of overcoming any impasse.

The vehicle for the collaborative case is a series of four-way communication meetings between the two spouses and the two attorneys, and frequently other professionals. Financial records and other information necessary to a full and fair discussion of the issues are voluntarily provided without the necessity of discovery. The parties focus on their interests and needs as well as those of their children. Full disclosure of information, ideas, wishes, and interests is a central aspect of the model.

"Hired gun" experts, who are the bane of the adversarial model, are not utilized in the collaborative system. The attorneys, instead, encourage the parties to employ neutral experts or consultants to help deal with specific issues or problems. Avoiding the expensive clash of opposing experts is an attraction of collaborative family law for service seeking parties. Family therapists may fill a number of roles in this process. They may provide emotional support to a party as therapist; perform a non-litigation evaluative role which becomes an advisory role, with the consent of the parties; play an educational role regarding child

development and post-divorce co-parenting arrangements; among other possible roles. These experts help the family solve the problems as opposed to supporting the position of one of the members.

When the parties have reached an agreement, the settlement is incorporated into an agreed decree of divorce by one of the attorneys decided by agreement in the collaborative process. The document is then proved up and made a judgment of the court in the same manner as a traditional divorce. The document the client emerges with is exactly the same (an enforceable judgment) as in the litigation model. However, the process by which it was obtained is much less painful, both economically and emotionally.

Attorneys who adopt the Collaborative Family Law philosophy and service into their practices create a compatible subsystem within the legal system with family therapists. They can serve either as referral sources for therapy clients or as partners in some innovative model of inter-profession collaboration.

**Collaborative Divorce.**--A sister model to Collaborative Family Law is called Collaborative Divorce. In this model, an integrated professional team of divorce specialists provides skill and support to a family throughout the divorce process. The team offers clients support, advice, and assistance with the emotional, financial, and legal aspects of divorce. The team works closely together to prevent unnecessary escalation of conflict.

The most common team consists of a mental health counselor for each parent, a mental health counselor for the children, a financial counselor, and an attorney for each party. Mental health members of the team should be trained in family therapy and family mediation. In this model, the counselors for the parents help the parents understand and sort out their feelings and prioritize their interests and needs. They also coach them in structured and constructive communications. The parents' counselors generally coordinate the team effort. The child counselor provides the children with someone to discuss his or her fears and wishes, and to help the children see the post-divorce future. The counselor also provides feedback to the parents and their counselors that will help to structure the post-divorce parenting arrangements.

In 1993, a team of Collaborative Divorce instructors developed a training program for attorneys, mental health professionals, and financial counselors to learn to work together as a team. This training program is described on the internet at [www.collaborativedivorce.com](http://www.collaborativedivorce.com). Concepts and processes are described in their book *Divorce: A Problem to Be Solved, Not a Battle to Be Fought* by Fagerstrom with other instructors (1997).

**Opening opportunities for family therapists.**--These models provide significant opportunities for partnering between family therapists and attorneys for the long-term benefit of divorcing families. Being

innovative to meet the customer needs may mean creating service designations that have fuzzy definitional boundaries. Garrity and Baris (1994) describe an intervention plan for high conflict families using a parenting coordinator, and include a services agreement in the book appendix. The role of the parenting coordinator varies with the level of conflict in the family. The goal of the coordinator is to help the parents plan, revise, and implement a dynamic parenting plan. The authority of the coordinator varies, sometimes being mediator, sometimes educator, and sometimes arbitrator.

Stahl (1994) describes several roles, sometimes overlapping, that a mental health professional can play in the legal system: therapist for child, parent, couple, or family; psychologist evaluator; mediator; consultant to attorneys; expert witness; special master; or custody evaluator. Blending the roles, as with the parenting coordinator described above, is sometimes helpful and even necessary, but also risky. Clear professional boundaries generally result in better long-term outcomes for the professional and the family. Most of the roles are familiar to family therapists and can be relatively clearly defined. A new role for family therapists may be the special master. Special mastering is a concept where judicial authority to make minor adjustments in the parenting plan is transferred to a professional with special expertise for the case (Lee, 1995). The role is somewhat similar to the parenting coordinator in that a variety of techniques are used, including mediation, education, therapy, and arbitration. Special masters are appointed for several reasons: when other forms of conflict resolution have not worked, when ongoing monitoring due to concerns about child abuse is needed, or when a very young child will need frequent adjustments to the parenting plan to meet developmental needs. "A special master should be a professional who is a recognized expert in the areas of divorce, child development, psychopathology and family systems, and who is experienced with mediation and familiar with the legal concepts utilized in their family court" (Lee, 1995, p. 5).

Another blending of roles to meet the needs of families is therapeutic mediation (Erickson, 1997; Irving & Benjamin, 1995). This model is similar to the Relationship-Focused model of mediation mentioned earlier. The philosophical orientation of the mediator is clearly systemic with relationship dynamics clearly up front in the mediation process. The distinction from family therapy is fuzzy. Certainly, the goal of mediation is to reach an agreement. The therapeutic mediator uses therapeutic empowerment strategies to make successful communication between the parties a reality that cannot be undone, thus achieving long-range as well as immediate results. The ideal practice of therapeutic mediation is in a co-mediation team with an attorney mediator. The currently popular Transformative mediation model required by the US

Postal Service REDRESS program is a version of therapeutic mediation defined and popularized by non-therapists (Bush & Folger, 1994).

A blending of the therapist and evaluator role is evident in the therapeutic supervision facilitator (Sudol & Marsh, 2000). Families who need supervised access of at least one parent with the child/ren now have the possibility of that access time being more than just play. Family therapy goals are pursued during access by a trained family therapist. In 1992, the international Supervised Visitation Network was formed and now includes standards and guidelines. Models in Canada, Australia, and New Zealand preceded work in the United States. Family therapists are well suited to this work, but again must be clear with clients and the courts regarding confidentiality limits when blending the role of evaluator with therapist.

With the increasing concern by courts of how to address domestic violence impacted families, a group of family therapists in Dallas, Texas worked for a year on a monthly basis in developing the Mediation Readiness Consultation Service. This is a highly structured intervention service, which is a collaborative family needs assessment, education, and decision-making model, along with a screening for domestic violence (Yingling, 1999). This model is yet to be implemented by the courts, though clients uncertain about their decision to move forward with legal proceedings have used it voluntarily. Goals of the four-hour intervention are as follows:

1. Take a thorough look at strengths and problems of the family functioning, involving all family members above age 4;
2. Help parents make informed decisions about whether to proceed with a divorce at this time; and
3. Guide parents to create a "next-step" plan with support resources identified to help carry out the plan.

The entire family meets during the first two-hour session to assess family needs. Assessment instruments used include the GARF Self-Report, the SAFE, the Goal Attainment Scale (described in Yingling, et al, 1998), the genogram, and a basic conflict-level screening tool. Between the two sessions, parents are requested to read a handbook of prepared materials on divorce decision-making and on divorcing parent guidelines. They also check out a copy of the videotape "Children: The Experts on Divorce" to view with their children before their second two-hour session. If preliminary screening indicates a possibility for domestic violence, they are asked to come early for the second session and complete additional domestic violence screening tools. Based on the results of the domestic violence screening, the second session interview with the parents will be a planning session to decide what the parents' goals regarding divorce are at this time and what support resources will help them

achieve their goals. A six-month follow-up session is scheduled to assess whether the goals have been met or need to be modified.

This model was developed to address several unmet needs:

1. Families sometimes find themselves in the middle of the legal divorce process without making a careful assessment upon which to make the decision. They then get pushed into mediation when they may not really want a divorce at this time. If a mutual decision regarding divorce has not been reached, the mediation process is premature and risks failing, wasting money, and escalating conflict. If the marriage cannot be reconciled, at least the process can be slowed so that the entire system can adjust to the change.
2. The new Model Standards of Practice for Family Mediators include a requirement to screen for domestic violence (Schepard, 2001). Few mediators in Texas seem to have a plan for screening. The screening procedures in this model were very carefully thought out and are progressive so as to avoid unnecessary intrusion upon clients. They include response protocols based upon screening results.
3. Texas law prohibits the award of joint custody if there is a recent history of domestic violence. Yet courts have no procedures in place to effectively screen for domestic violence. The presumption for joint custody takes over without screening, placing some children at risk of escalated parental violence with all the negative consequences. This screening service can help the courts respond effectively to the law and family needs.

The intervention is designed to be in compliance with state requirements for divorcing parent education programs, providing a private individualized compliance opportunity for families. The family assessment and collaborative decision-making model is also readily adaptable for courts to use as a family interview by a family therapist [using Texas Family Code § 153.010] focused on understanding the parental access preferences of the child in lieu of the child signing a legal affidavit designating the primary residential parent—a concept that makes no sense even for the attorneys. Legislative change in this direction could be a meaningful 2003 session goal for TAMFT.

#### Final Word

As courts continually explore new ways to improve their ability to help families comply with society's legal constraints, new service possibilities will evolve. Family therapists have much to offer in this new frontier. However, the waters are uncharted and sometimes treacherous. Only the brave Trekky will venture out into this new frontier with an unfamiliar legal partner by your side. To prepare for the journey, family therapists need to know how the legal system

functions, keep clear but flexible role definition boundaries, invest in excessive communication to get to know this alien legal colleague, assume and operate

from a position of equal authority and equally necessary expertise, and keep sights focused on meeting the needs of the mutual client—the family.

### References

- American Bar Association. (1998). American Bar Association Policy on Unified Family Courts: Adopted August 1994. Family Law Quarterly, 32 (1), 1-2.
- Babb, B. A., & Moran, J. D. (1999). Substance abuse, families, and unified family courts: The creation of a caring justice system. Journal of Health Care Law & Policy, 3 (1), 1-43.
- Brown, D. A. (1982). Divorce and family mediation: History, review, future directions. Conciliation Courts Review, 20 (2), 1-44.
- Bush, R. A., & Folger, J. P. (1994). The promise of mediation: Responding to conflict through empowerment and recognition. San Francisco: Jossey-Bass Publishers.
- Chewning, D. (2000). Team functioning assessment. Unpublished manuscript.
- Coogler, O. J. (1978). Structured mediation in divorce settlement. Lexington, MA: Lexington Books.
- Counseling, Texas Family Code. § 6.505 (West 2000).
- Deutsch, M. (1973). The resolution of conflict. New Haven: Yale University Press.
- Elkin, M. (1982). Editorial: Cast a pebble in the pond. Conciliation Courts Review, 20(2), iii-vii.
- Elkin, M. (1983). Editorial: Family self-determination in divorce: In the best interests of the family. Conciliation Courts Review, 21 (1), iii-v.
- Elkin, M. (1986). Editorial: Finally there is a finally. Conciliation Courts Review, 24 (2), v-xiii.
- Erickson, B. M. (1997). Therapeutic mediation. Journal of the American Academy of Matrimonial Lawyers, 14, 233-266.
- Fagerstrom, K., Kallish, M., Nurse, A. R., Ross, N. J., Thompson, P., Wilde, D. A., & Wolfrum, T. W. (1997). Divorce: A problem to be solved, not a battle to be fought. Orinda, CA: Brookwood Publishers.
- Garrity, C. B., & Baris, M. A. (1994). Caught in the middle: Protecting the children of high-conflict divorce. San Francisco: Jossey-Bass Publishers.
- Hale, L. C., & Knecht, J. A. (1986). Enriching divorced families through grass-roots development of community-wide court-referred mediation services. Conciliation Courts Review, 24 (2), 7-28.
- Haynes, J. M. (1994). The fundamentals of family mediation. Albany, NY: State University of New York Press.
- Irving, H. H., & Benjamin, M. (1995). Family mediation: Contemporary issues. Thousand Oaks, CA: Sage Publications.
- Lee, S. M. (1995). The emergence of special masters in child custody cases. AFCC Newsletter, 14(2), 5.
- Order for Family Counseling, Texas Family Code. § 153.010 (West 2000).
- Parent Education and Family Stabilization Course, Texas Family Code. § 105.009 (West 2000).
- Qualifications of Impartial Third Party, Texas Civil Practice & Remedies Code. § 154.052 (West 1996).
- Qualifications of Mediators, California Family Code. § 3164 (West 1999).
- Schepard, A. (2001). Model standards of practice for family and divorce mediators. Family and Conciliation Courts Review, 39 (1), 121-134.
- Stahl, P. M. (1994). Conducting child custody evaluations: A comprehensive guide. Thousand Oaks, CA: Sage Publications.
- Sudol, P., & Marsh, K. (2000). Family therapists and supervised visitation: A natural connection. [www.aamft.org/members/newarenas/Forensic](http://www.aamft.org/members/newarenas/Forensic).
- Tesler, P. H. (1999). Collaborative law: What it is and why family law attorneys need to know about it. American Journal of Family Law, 13(4), 215-225.
- Webb, S. (1996). Collaborative law—A conversation: Why aren't those divorce lawyers going to court?. The Hennepin Lawyer (July-August), 26-28.
- Wexler, D (2000). Therapeutic jurisprudence: An overview. Thomas M. Cooley Law Review, 17 (1), 125-134.
- Yingling, L.C. (1996). Family mediation: An overlooked specialty for MFTs. Journal of the Texas Association for Marriage and Family Therapy, 1(1), 37-53.
- Yingling, L. C. (1999). Mediation readiness consultation: Family assessment & divorce decision-making intervention model training manual. Rockwall, TX: J&L Human Systems Development.
- Yingling, L. C., & Hance, L. (1996). Family mediation: Stylistic range. Rockwall, TX: J&L Human Systems Development. Videotape with training manual. [[www.SystemsMediation.com](http://www.SystemsMediation.com)]
- Yingling, L. C., Miller, W. E., McDonald, A. L., & Galewaler, S. T. (1998). GARF assessment sourcebook: Using the DSM-IV Global Assessment of Relational Functioning. Levittown, PA: Brunner/Mazel.

Figure 1. Family and legal functioning levels and support services needed to improve functioning.

# SERVICE NEEDS OF DIVORCING FAMILIES

model developed by Lynelle C. Yingling, PhD

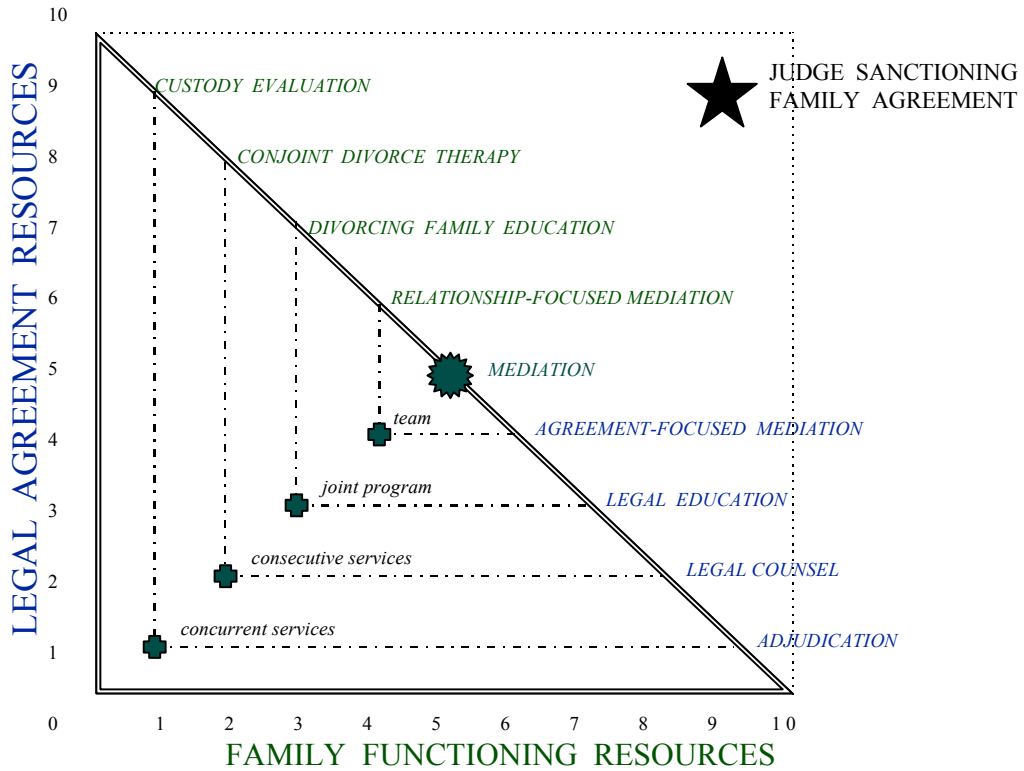


Figure 2. Power distribution in various divorce interventions.

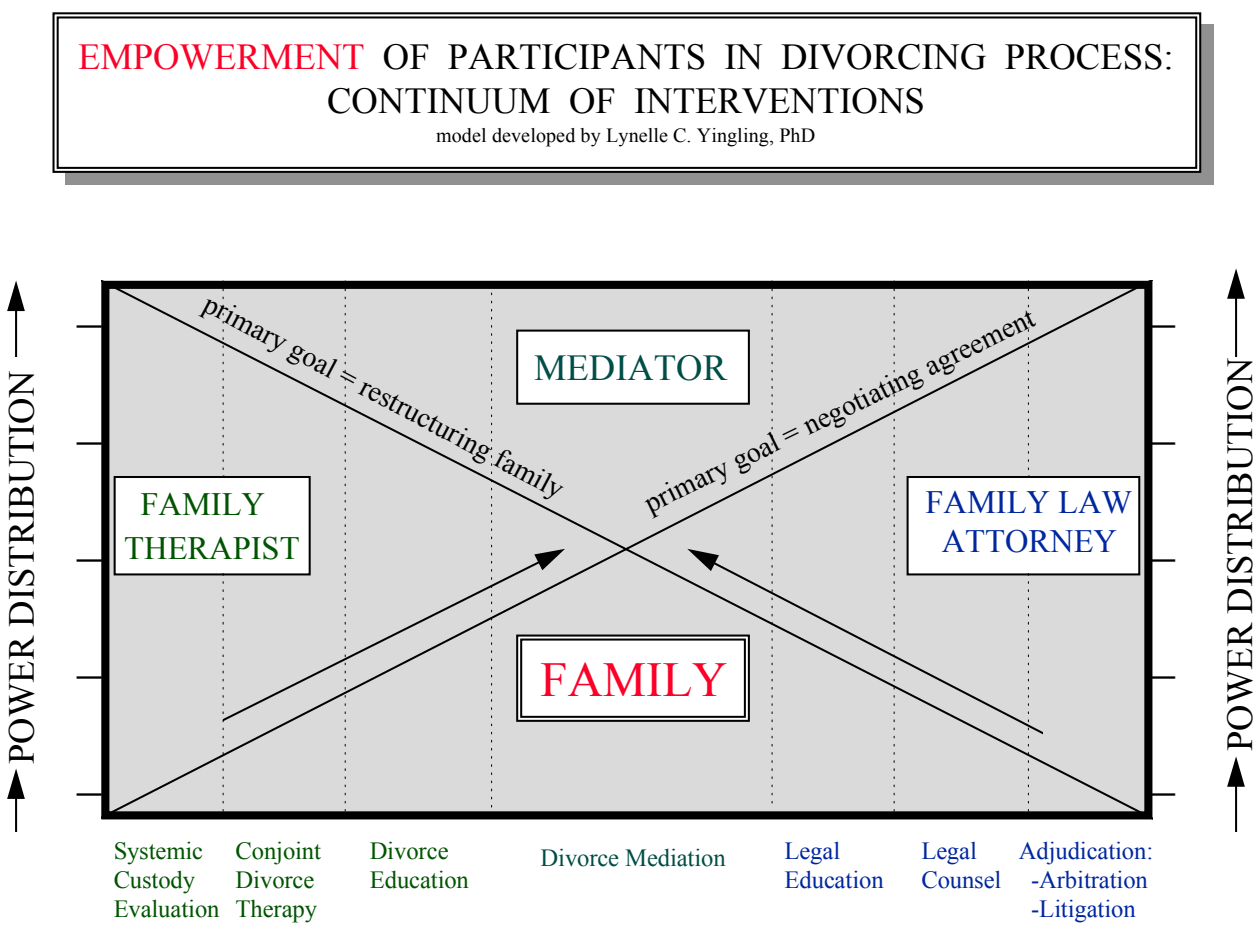


Figure 3. Communication flow comparison in various settlement models.

