

# **DIVORCE AND FAMILY MEDIATION**

James C. Hansen, Editor  
Sarah Childs Grebe, Volume Editor

**The Family Therapy Collections**



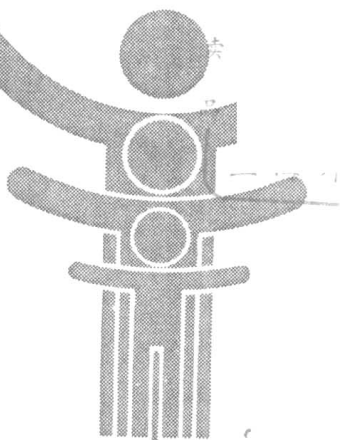
**AN ASPEN PUBLICATION**

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# Preface

*The Family Therapy Collections* is a quarterly publication in which topics of current and specific interest to family therapists are presented. Each volume contains articles authored by practicing professionals, providing in-depth coverage of a single significant aspect of family therapy. This volume focuses on divorce mediation.

There is an increasing interest in the use of mediation for family conflicts, particularly with divorcing couples. Mediation is not therapy, nor is it the practice of law; however, it may be used as an alternative to the legal adversary approach. In divorce mediation, a neutral third person or persons help the divorcing couple to negotiate their own settlement. Mediation encourages cooperation and is intended to reduce the anger and bitterness that often arise in adversarial situations. Although this volume focuses on divorce mediation, the concepts and techniques are applicable in other family conflict situations.

In most cases, divorcing couples volunteer to participate in mediation. The mediator works with a couple with the understanding that it is their intention to break up the marriage. The mediator does not function as a lawyer, but is knowledgeable of the legal and tax implications of the couple's proposed settlement and usually encourages both parties to consult with attorneys. Frequently, mediators are either lawyers or family therapists; they may work as co-mediators. This volume differentiates mediation from therapy, and presents the concepts, processes, and techniques of mediation.

The editor of this volume is Sarah Childs Grebe. She is the Director of the Family Center for Mediation and Counseling in Kensington, Maryland. She is also an instructor at Catholic University in Washington, D.C., in the

Mediation Certificate Program and a trainer for the National Center for Mediation Education in Annapolis, Maryland. Ms. Grebe has selected skilled therapists and mediators to contribute articles that will be useful for therapists working with families in need of mediation. This volume may also stimulate therapists to seek additional specific training in mediation.

*James C. Hansen*  
*Editor*



# Introduction

Mediation, defined in Webster's dictionary as the "intercession or friendly intervention for settling differences between persons, nations, etc.," has existed as a distinct means of resolving disputes for thousands of years. Only recently, however, has mediation been suggested for resolving one unique type of dispute, that of marital dissolution.

The movement toward an alternative approach to divorce began with two major developments, one national and one local. In the 1960s, the divorce reform movement was born through the efforts of people all over the United States who worked to change their state statutes on divorce. Their primary goal was the passage of no fault divorce laws, which eliminate the need to place blame and punish one's spouse in order to terminate a marriage contract. In the early 1970s, an original experiment called The Bridge was conducted in Atlanta, Georgia. The Bridge provided parents and their runaway adolescents a neutral ground on which to resolve their differences with the aid of an impartial facilitator; the process they used was mediation. On the board of The Bridge was an attorney and family therapist named O.J. Coogler, who was impressed by the success of mediation at The Bridge. Searching for a way to help people avoid traumatic divorce, Coogler developed a Structured Mediation approach, a cooperative problem-solving approach to separation and divorce that has gained growing acceptance by the public and professionals alike.

The aim of this volume on mediation is to present the different aspects of mediation as they affect the family therapist dealing with divorce. In the lead article, Anne Milne, a mediator in Madison, Wisconsin, and the author of several articles on mediation, explores the differences and similarities in therapy and mediation. She defines and compares the goals and processes

inherent in both disciplines, suggesting how each leads to the use of certain techniques with clients.

The second selection is by Edward Beal, a family therapist and clinical assistant professor at Georgetown University Medical School in Washington, D.C. He develops a systems view of three different strategies: therapy, mediation, and litigation for intervention in divorce.

In the third article, Sarah Childs Grebe reviews the various theories and schemata on the divorce process and analyzes their impact on the mediation process.

Susan Brown, formerly director of the National Center for Family Studies at Catholic University, Washington, D.C., has firsthand experience as a mediation client. She also has an interest in the ways that different models of mediation affect the outcome for individual clients.

Lori Heyman Gordon, director of The Family Relations Institute in Falls Church, Virginia, has developed an option for couples seeking mediation for separation and divorce that she calls marital assessment. Whether the couple reconciles or proceeds with the divorce, the assessment helps them understand more fully the reasons for their decision.

Co-mediation as an option is explored by Martin Kranitz, vocational counselor and mediator in Annapolis, Maryland, and mediation trainer for the National Center for Mediation Education. He discusses the different combinations of professions and sexes for co-mediation, as well as the ramifications of each.

Emily Brown, director of the Divorce and Marital Stress Clinic in Rosslyn, Virginia, describes emotional dynamics of couples who are utilizing mediation. She details ways of detecting behavior patterns and suggests ways to deal with them.

Karen Irvin is a mediator, therapist, and trainer in Minneapolis, Minnesota, where she specializes in working with children. She describes the pitfalls and benefits of including children in divorce mediation and offers suggestions on ways to include them based on her own experience.

Catherine Crockett is a domestic relations lawyer and mediator in Bethesda, Maryland, and trainer in mediation for the National Center for Mediation Education. She addresses many of the legal questions that mediators and therapists working with divorcing couples must consider.

Elizabeth Koopman of the University of Maryland's Institute for Child Study writes on the many issues surrounding the appropriate education and training of mediators who work with divorcing couples and their families.

This collection brings together many of the persons directly involved in shaping and defining the field of mediation as it applies to separation and

divorce. They are in mediation practice and, thus, have firsthand experience in the areas about which they chose to write. The field of mediation is growing and expanding daily, moving in many exciting directions. This collection is part of that growth.

*Sarah Childs Grebe*  
*Volume Editor*

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# **1. Mediation or Therapy— Which Is It?**

**Ann L. Milne**

**F**AMILY CONFLICT HAS BEEN ADDRESSED BY A VARIETY OF PROFESSIONALS using a diversity of interventions and techniques from a great many disciplines. The use of mediation as a technique for resolving conflict within the family, notably that between divorcing spouses, draws on the bodies of theory developed in anthropology, sociology, psychotherapy, theology, education, law, and philosophy. As mediation evolves into a distinct field of practice, it attracts practitioners from each of these disciplines. Confusion about definitions arises as techniques are borrowed from previously established models of conflict resolution and incorporated into the practice of mediation. A blurring is most noticeable among the practices of marital and family therapy, divorce counseling, and divorce mediation.

The study of the development of a field of practice provides an understanding of its definition and theory. Definition and theory, in turn, provide the foundation for process and dictate the practice and interventions that apply. Although psychotherapy and mediation both focus on the resolution of conflict, the conflict is defined and addressed in dissimilar ways.

## **HISTORY OF PSYCHOTHERAPY**

Early psychotherapy included the treatment of fools, psychotics, and the feeble-minded through the use of magic potions, medicines, banishment, and institutionalization. These primitive healing techniques for dysfunctional individuals were closely linked with religion and the confession of wrongdoing or with superstition and the use of magical incantations and concoctions (Silvano, 1974).

The confinement and institutionalization of disturbed individuals allowed a clinical observation of behavior and of the effect of various treatments. The resulting collection of experiences and rudimentary research produced a body of knowledge that was based not on religion and superstition but on more rational judgments of physical symptomatology. It was concluded that aberrations in behavior were the result of disturbances in blood, bile, and phlegm. Treatment included bloodletting and the administration of medicines. Primitive psychiatry evolved as a means of cataloging symptoms, causes, and treatment.

When it appeared that dysfunction was the result of disturbances in thought and passion, the physiological assessment and treatment of illness was expanded to include meditation, exercises in self-control, and the recitation of maxims. Therapy through thought control and words included support and consultation, with the elicitation of unconscious thoughts. Psychiatry as



a biological science was later joined by psychoanalysis as a science that focused on the examination of thoughts and experiences (Enelow, 1977). The inclusion of experience as a determinant of behavior precipitated an explosion of new theory and methodology. A behavioral focus was added to the treatment of personality disturbance through insight and support.

Consideration of the patient system grew to include family, environment, and the patient's ability to function within a social system. Treatment of intrapersonal conflict was extended to treatment of interpersonal conflict. Individual therapy progressed to couples and family therapy, and the treatment of personality disorders grew to include the treatment of dysfunctional relationships. As the extended familial system evolved into a nuclear model, marriage and family counseling developed. Separation and divorce have now become remedies for interpersonal conflict and have led to the establishment of divorce counseling.

Psychotherapy has now evolved to include a plethora of models of treatment and interventions:

- insight therapies directed toward self-understanding and self-motivation
- supportive therapies directed toward self-actualization
- behavioral therapies directed toward the extinction of dysfunctional behavior and the reinforcement of functional behavior and interactions
- marital and family therapies directed toward the stabilization of intimate relationships

In spite of the diversity of the therapeutic schools of thought, the underlying principle is that of change. Therapists seek to change an individual or a relationship through the resolution of a crisis or trauma, through the acquisition of insight, through symptom relief, or through social rehabilitation. Although this goal may be reached by various means, depending on the method of treatment, therapy is considered successful when well-being and change are accomplished.

## **HISTORY OF DIVORCE MEDIATION**

Interpersonal conflicts include disputes between individuals, neighbors, tribes, communities, and countries. Methods that have been used to resolve disputes include domination through physical force, duels, war, coin tosses, treaty negotiation, adjudication, and mediation. Although many definitions