

Transformational DivorceSM

Desk Compendium

Protocols for Collaborative DivorceSM Series

*A Collaborative Family InstituteSM Publication
"Redesigning Post-Marital Relationships"SM*

Collaborative

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CFI

Family Institute

(First excerpt)

Collaborative Case Management

I. Philosophical Overview

People live in various rooms of a four-room house...

When things are going well, they live in a room called *contentment*. At the first hint of trouble, they move to an adjoining room called *denial*. “We don’t have a problem,” they’ll often say. At the individual level, this is the typical response of the individual with a drinking problem. “Oh... I don’t have a problem,” says the person. “I just drink socially. Sometimes I kick back a few *brewskis* to unwind. I can quit any time I want. *Trust me.*”

However, when the evidence continues to build, we finally have to accept that *we do have a problem* after all! That prompts a move upstairs and into the *panic room*.

When a person or an entire family moves into the *panic room*, they frantically search for a *quick fix* for their problem. They try *something* – but it doesn’t offer immediate relief – so they abandon the attempt and move on to something else.

What is important to notice is that, if you can’t get a person or a family out of denial, there is really no hope. Once you get them out of denial, you then have a chance to move them into the fourth room of *renewal*, but only if you can keep them focused on one course of action long enough for it to work.

Finally, they can move back into *contentment*.

However, no living, breathing socio-economic entity, such as a family or any of its individual members – post dissolution or otherwise – can be satisfied spending too much time in the long-term parking lot of *contentment*. The living organism must constantly be searching for ways to improve itself.

In terms of the four-room house, what success and fulfilment means is a constant moving back and forth between *contentment* and *renewal*, without the pain of having to go through *denial* and *panic* anymore... to the extent we can possibly avoid it.

This is the essence of where we want to be.

This applies to individual families, as well as to society as a whole. A family is a microcosm within the larger whole. The same practices that apply to the “parent” must be applied to all of its parts.

In systems thinking terms, the word *organization* has the same etymological root as the word *organism*. We know that if one part of an organism is unhealthy, then the entire animal may suffer and die. Problems with one’s teeth can poison the entire body. So, too, with parts of an organization. If families, post-divorce or otherwise, do not function properly, then the entire organization of community and society at large may suffer.

There’s one significant point that should be made about this:

We must be careful about *suboptimization*.

Using the analogy of a sports team, it does no good for one player to be a superstar if in fact the total team cannot play together. If and only if all of the constituent parts work in concert, can the entire organism function and thrive in its overall environment. This indispensably vital lesson must be applied to *families in transition*.

II. Concurrent Divorce Settlement TechniqueSM

What does the *Collaborative Family Institute* Divorce Settlement TeamSM look like? How does it function? How is it different from litigated, as well as from various other alternate dispute resolution methods of the past?

The key component that governs the new face of divorce and family dispute settlement socio-technology is a concept of *concurrency*. It is the concept of concurrency that is important, and it is our conviction that this concept must be applied to all divorces and otherwise litigated family disputes, no matter what their configuration.

Concurrent Divorce Settlement TechniqueSM is a systematic approach to the integrated, concurrent redesign of post-coupling relationships and their related processes, including the processes of positive change and transitional support.

This approach is intended to cause all members of the Divorce Settlement TeamSM – from the outset – to consider *all* elements of the *dissolution life-cycle*, from conceptualization through final disposition, including the quality of the dissolution, the related costs, the required time frame, and the needs and the requirements of the uncoupling parties and their families.

Concurrent Divorce Settlement TechniqueSM is characterized by a focus on the uncoupling parties' requirements and upon those of other family members, a conviction that the quality of life is the result of improving the process of living, and a philosophy that the improvement of the processes of relationship redesign, transition management and support are never-ending responsibilities of the involved parties.

To summarize, Concurrent Divorce Settlement Technique is a systematic approach to the integrated, concurrent redesign, development, or construction of positive post-coupling relationships, which include the articulation and implementation of plans for successful economic transitioning, as well as the related processes of positive change management and transformational support.

The Divorce Settlement Team will consider from the outset all elements of the dissolution life-cycle, from conceptualization through final disposition, including the quality of the dissolution itself, the costs related to making the transition, the underlying time frames, and the ultimate requirements of the parties and family involved.

Concurrent Divorce Settlement Technique is further characterized by a focus on family requirements and priorities, a firm conviction that the quality of life as well as the post dissolution quality of family life – particularly where children are involved – is the result of continuing to improve upon a set of interrelated living processes, along with an underlying philosophy that improvement of all such processes is the never-ending responsibility of individual members, as well as the family taken as a whole.

It is firmly maintained that, even in situations where no children are involved, and where there might be no continuing obligation or expectation of support, collaborative concurrent processes, learned and internalized within the crisis of relationship breakdown or breakup, benefits both the individuals involved and society as a whole, especially in terms of the learnings that each party will carry forth into their respective worlds, well beyond the breakup or redefinition of their relationships with each other.

What this definition says is that there will be no more dis-assembling of families without first taking into account the true needs of the parties and family in transition, as well as the real needs of our community and society as a whole.

Concurrent Divorce Settlement Technique will also seek to improve its own processes in order to continually better the manner in which it is able to serve its client families. The Divorce Settlement Team will embrace the multidisciplinary learning approach, in order to coordinate the total effort so that the entire Divorce Settlement Performance System is optimized, and not just the settlement engagement at hand.

This cross functionality-based learning not only means a series of purely insular experiences where a single multidisciplinary team gets together and does a fine job settling a divorce, but signifies the management of a process of organizational learning, so that the settlement organization as a whole learns progressively from the experiences of each engagement in order to achieve overall optimization.

This is the future of Divorce Settlement Socio-Technology; a process that will achieve the *Transformational Divorce*.

III. A New Way of Looking at Divorce

A divorce is a one-time *project* that has defined starting and ending dates, a clearly specified set of objectives or scope of tasks to be performed, a predefined budget and a temporary Divorce Settlement TeamSM organization that is dismantled – as far as the divorcing parties are concerned – once the divorce is finalized.

Examples of subsets of divorce-related objectives include: redesigning post marital relationships; setting up new households, drafting parenting plans; developing new processes for addressing post dissolution family objectives; setting up various estate and trust devices; and developing plans for re-entry into the workforce.

Some counter-examples – otherwise present in intact family units, but not part of the divorcing process *per se* – would include: cleaning the house, paying the bills, cooking the meals; driving to and from work; earning a living; or pursuing a hobby. In short, anything of a purely diurnal, repetitive nature.

Another definition of divorce: A divorce is a problem scheduled for solution.

As this definition indicates, settling a divorce is problem-solving on a relatively large scale. One of the common causes of difficulty in settling divorces is that insufficient time is spent at the beginning of the engagement defining exactly what problems are to be *solved* by the divorce. This can lead to the unfortunate situation in which the right solutions have been developed, but for the wrong problems.

Collaborative Divorce Management is the planning, scheduling, and controlling of divorce-related activities, in order to collaboratively achieve divorce objectives.

Collaborative Divorce Management involves three major *activities*, which are aimed at achieving divorce *objectives*. These activities are called Collaborative Divorce Planning, Scheduling, and Control. The primary *objectives* – which exist in all divorces – can be listed as follows.

In order to be optimal, a divorce must finally reach its conclusion:

- P** Leaving the parties with durable solutions that will *Perform* in a manner likely to satisfy their needs;
- C** Within *Cost* or budgetary constraints;
- T** On *Time*;
- S** While holding the *Scope* of the divorce constant, and while using resources efficiently and effectively.

The first three of these are referred to as the *P*, *C*, and *T* aspects of Collaborative Divorce Management. A simplistic way to address these aspects would be to refer to them as *good*, *fast* and *cheap*. (*P*= *good*; *C*= *cheap*; *T*= *fast*). The term *scope* refers to the *magnitude* of the divorce or related family engagement, as well as to certain other boundaries or constraints.

For instance, suppose the divorce settlement engagement is initially priced or cost-estimated with the understanding that there will be no disputes involving child custody or parenting. Then suppose further that one of the parties subsequently announces that he or she is planning to relocate to the opposite coast, and is hoping to preserve his or her parenting relationship in so doing by whatever means – including bringing the children along – we say that this is a change in the *scope* of the divorce settlement engagement, which will definitely result in a price increase.

A very important point:

You cannot tie down all four of these aspects *simultaneously*. If three of them are specified, the fourth must be allowed to vary.

Mathematically, this can be illustrated with a general equation as follows:

$$C = f(P, T, S)$$

In other words, the equations says, Cost is a *function* of Performance, Time, and Scope. Generally speaking, the *Cost* of the divorce will increase as, P, T, and S increase, except in the case where the parties are insistent – for whatever reason – upon bringing the divorce to its conclusion much earlier than the difficulty and magnitude of the issues would normally dictate.

In spite of the fact that the four variables are *interdependent*, many divorcing parties try to dictate *all* of them at once – then start to wonder why they cannot be met. One of the most common problems is for the *scope* of the divorce to *increase* as *time* passes. Divorcing parties often begin to think of things that did not initially occur to them, once the divorce has gotten underway. More often than not, the divorcing parties fail to invest enough time and effort at the *beginning* of the divorce, in order to properly define the problems sought to be solved at the *conclusion* of the divorce.

Unfortunately, the scope tends to increase in small increments – rather than large ones – making such changes a bit innocuous. Such incremental changes in the range of issues treated in the course of a single divorce engagement are known as settlement scope *creep*. The added difficulty is that many clients suffer from *amnesia* at the end of a divorce, which means that:

The Divorce Settlement Team must control scope creep!

IV. The Dissolution Life Cycle

The *CFI* approach to *Collaborative DivorceSM* recognizes a Dissolution Life Cycle, generally consisting of six phases: 1) Concept; 2) Definition; 3) Design; 4) Development; 5) Application; and 6) Post-Completion. The character of the processes change with the occurrence of each life-cycle phase (see Figure 1).

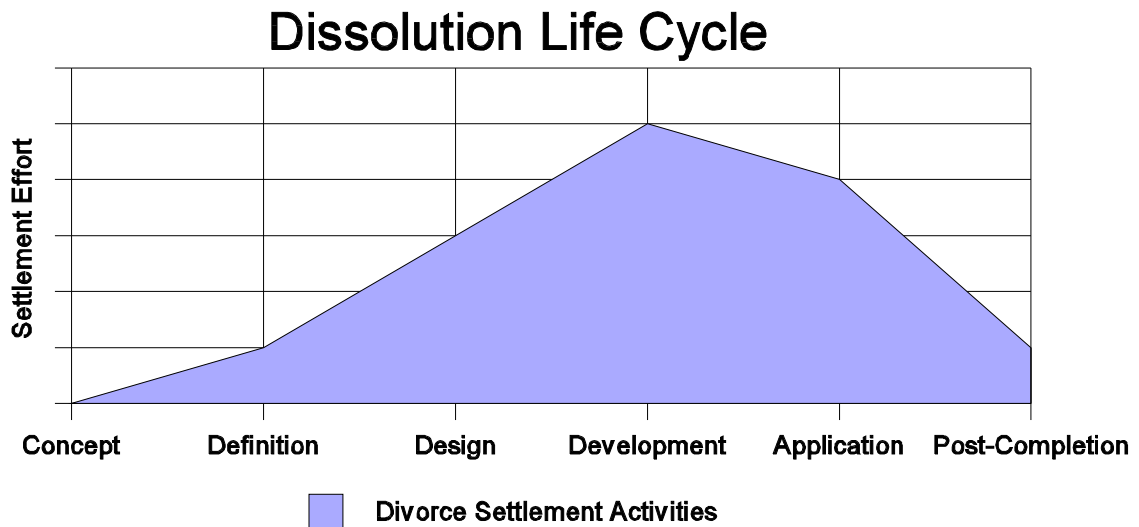


Figure 1 Life-Cycle Settlement Effort Distribution

Concept.

At the beginning of this phase, one party – the *initiator* – usually starts by giving the possibility of divorce serious thought. Statistically, this is a far more common scenario than simultaneous mutuality. Whether or not the parties happen to be “*on the same page,*” this phase is characterized by one or both parties:

- (a) making a provisional decision about whether they would seriously consider acquiring a divorce – a sort of *thing* or *amalgam*;
- (b) investigating the feasibility of such a decision while weighing alternatives, including reconciliation; and
- (c) gathering information to flesh out the concept, to build *decisional commitment* (also known as *nerve*), and to decide upon next steps.

Definition.

One of the major pitfalls divorcing couples face when traveling through the dissolution life cycle involves the acceptance of an initial *conceptualization* – which is often somewhat fanciful – for *definition*. This often leads to the development of the *right solution* for the *wrong problem*. The definitional phase ideally includes:

- (a) specifying settlement objectives – *P, C, T, S*;
- (b) establishing milestones or targets for planning, implementing and testing potential solutions – including interim ones;
- (c) setting standards for checking the quality of the definitional phase;
- (d) deciding how to control and monitor the rest of the dissolution process;
- (e) putting together the appropriate Divorce Settlement Team or resource pool; Organizing a Collaborative Divorce Notebook.

It should be relatively obvious that the definitional phase – in most instances – brings with it the need for professional divorce settlement assistance. This assistance typically begins by thoughtfully dispelling any *misconceptions* – or less than useful conceptions – that might have been arrived at during the conceptualization phase.

It may also involve special attention with regard to any non-initiating party – who might well be years behind the initiator in terms of readiness and orientation. It should likewise be quite apparent that – absent a well thought out definitional phase, approached *collaboratively* – divorcing parties will tend toward arrested development in the concept phase, each to their own, and each increasingly “dug-in.”

Rough concepts – quite predictably – lead to intransigent *positions*.

Design.

The design phase has as its primary “deliverable” a set of conceptual negotiated settlement solutions – both short and longer term – which are custom-suited to address the family’s problems as collaboratively defined. The various settlement scenarios are carefully reviewed and adjusted by collaborative attorneys and appropriate case-specific experts, with provisional measures put into place. At this point, *P,C,T,S* s are much more clearly understood, with cost and performance target revisions likely.

Development.

At this phase, parties approve smooth drafts articulating terms of their negotiated settlement agreement. The collaborative lawyers have ideally focused their resources upon devising the very best legal pathways for affecting the conceptual agreements of the parties. During development, the parties may begin *selling* some of the agreed-upon solutions to concerned others – quite possibly the children, in some parenting cases.

Also in the development phase, standards are set for checking the overall quality of the dissolution and settlement agreement.

Application.

The implementation of at least part of the settlement solution will typically begin prior to the actual entry of the Judgment of Divorce. Other aspects of application will commence at the time of divorce, while still other provisions may await the passage of post-judgment time – perhaps upon certain foreseeable contingencies.

In any event, the smooth Property Settlement Agreement is executed, and a date is scheduled to put through the divorce as an uncontested matter with an agreement between the parties. This phase also comprises post-divorce de-bugging and redesign. Naturally, this is where various Divorce Settlement Team members begin exiting the engagement.

Post-Completion. Once the engagement has concluded, it is important for a Post-Engagement Analysis to be conducted. This is an in-house closeout activity for the Divorce Settlement Team. The objective is to learn what was done well in guiding the dissolution, and to understand what might be in need of improvement.

A potential pitfall to be avoided would involve aborting this learning phase. This could readily occur, owing to an unfortunate principle of human nature: By the time the divorce is completed, the people involved are ready to get on with something else.

On quite a different note – and a more significant one – the people involved may very well be reluctant to face the fact that there might be *some aspects* (of how they may have contributed to the settlement effort) needing improvement. This is of particular importance in cases where the collaborative effort has failed and the parties have ended up in litigation.

IV. A Model for Managing a Collaborative DivorceSM Case

Overview

Figure 2 is a macro-flowchart illustrating the discrete steps that must be followed in managing a Collaborative Divorce engagement. These steps will be explained in detail in subsequent sections of this Desk Compendium. The following broad-brush sketch is provided as part of a general overview.

Steps (1) through (8) comprise the collaborative planning process, including the scheduling of the typical engagement. Steps (9) through (16) specify the steps involved in monitoring and controlling progress. The macro-flowchart describes an overall case management approach designed to avoid the sorts of problems typically encountered when employing the team concept.

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