

How a Divorce Lawyer Can Help A Marriage

by Laurie Israel, Esq.

During the past few years, my divorce practice has been transitioning – from a practice that helps people get divorces, to (at times) a practice that helps people stay married. In fact, recently when asked what I did for a living, I heard myself saying that I was a “marriage lawyer”. Was it a Freudian slip? Can someone be a “marriage lawyer”? Can a divorce lawyer help a marriage?

My transition from divorce lawyer to marriage lawyer happened in the following way:

First, I started analyzing the personal stories of people who came to my office for a divorce consultation. In many instances, they seemed to be complaining of the normal things that occur in a marriage. In short marriages, I often saw a pattern of intense dislike of the person one loved developing a few short years after the marriage. What happened to that affection? How could the closeness they once felt turn to anger so quickly and completely?

In longer marriages, I noticed that many of the problems articulated by the parties to the marriage had to do with money, finances and practical security issues. Another major topic was the issue of contribution to the marriage. When finances are uncertain, and when one (or both parties) feel like the level of contribution by their spouse is not commensurate with theirs, the marriage will be in trouble. Key facts are periods of joblessness, inability to work in or outside of the house, not-agreed-upon spending patterns, lack of appreciation for a spouse’s efforts, or lack of a spouse’s effort in the marriage enterprise. There is also the problem of lack of appreciation and respect for the spouse, often the detritus of daily interaction over many years. Why is it that people often treat the individuals closest to them worse than strangers or colleagues?

Many people who come to my office asking about divorce tell me stories that I have seen and encounter from my married clients, friends and relatives. Evaluating a story and telling someone that their story is in the “normal” range for marriages can be very helpful to a client. Telling a client that many people work out the problems they are expressing and stuck in can be “news” to a client. That news is very empowering to spouses in a painful marriage. It is good know that there may be a solution to their tension and unhappiness, because not so many people actually wish or prefer to end their marriages. Most would like to work it out. They just feel there is no other choice.

I generally ask a potential divorce client if she or he has seen a marital therapist with the spouse. Often the answer is yes, but that it “did not help”. People accept help at different times and from different people. Help given by a martial therapist may fall on deaf ears at one point, but could be helpful at another point. Even getting one bit of help from a martial therapist can be valuable to a couple, and should not be seen as a failure.

People think if they leave their marriage, their problems will be over. The sad truth about divorce is that prior to a divorce there was one problem – the marriage. After the divorce, you have two problems – the problems you had in the marriage that caused its pain and failure (some of which were your own) and the divorce itself.

Divorce affects the family, the children, a person's place in society, and usually has a severe effect on the parties' finances. A person who leaves a marriage often enters into another marriage without solving the personal problems that caused the first marriage to fail. It is a well-known fact that second marriages have a greater failure rate than first marriages.

We are not perfect, our relationships are not perfect, and our marriages are not perfect. Often people (especially younger people) have completely unrealistic expectations of marriage, engendered by movies, songs, and cultural fantasies. So when the inevitable conflicts arise after the "honeymoon" period, a couple might believe their marriage is fundamentally flawed, and that they must divorce. The thoughts of divorce become a self-fulfilling prophecy -- these thoughts populate the mind, like the ghouls in "Night of the Living Dead", and the unwitting partners stagger towards their divorce as "the only alternative". Unfortunately, most divorce lawyers do not look behind what the client is saying, and proceed to execute the divorce like a worker on a factory line, and the die is cast and the divorce takes place.

The good news for a struggling marital couple is that even if they cannot absorb the help of a therapist at the time they sought it, the marriage is not "lost", and there are many other things they can do. A marriage is so important that a couple should spend the time, effort, and money in turning their marriage from a painful experience to a good marriage.

What can a couple do if marital therapy fails to help in the instance they've tried it? Many things. With the help of the internet, a person can do some web searches and find many helpful websites and books dealing with marriages. One of these websites is SmartMarriage.com. John Gottman has a website with materials on it that are available in CD form. The books of Howard Markman and George Pransky are very helpful, and there are many other resources available for self-help using written and video resources of marital specialists. Purchasing materials and video courses on the internet and books on marriage health is a lot simpler and cheaper than getting a divorce. Besides, you might find that it really works, and that you and your spouse can rebuild the affection and respect you once had. The secret of a long happy marriage is that it is not an easy path, but it is worth the effort.

Communication is at the basis of every marriage. Disturbances in communication cause marital conflict. When there is a very high level conflict for a long time, the marriage becomes corrosive. If people cannot get control over their conflict and learn how to resolve it and to communicate better, then a marriage will be in trouble and divorce may be the only way that the couple can get relief.

So how did I become a "marriage lawyer"?

After helping divorcing couples for many years get divorced as a divorce mediator and divorce lawyer, I had an epiphany. I started to wonder whether the same skills that I was using as divorce mediator and divorce lawyer working with couples to set the terms of their divorce could work with couples that wished to stay married. These couples were having great and destructive conflicts on a daily basis. But for these couples, as with many others, the first choice was to stay in the marriage. But they just didn't know how to. The problem is that I was seeing these couples a year or two too "late", when the

decision to divorce was pretty much irrevocable and the “ghouls” of divorce thought were already fixed in their minds.

A physician is a professional who deals with the physicality of the body. A lawyer is a professional who deals with human relationships. Clients put their trust in lawyers and confide in them the inner workings of their domestic and business lives. Lawyers tend to develop a great deal of experience in marriages through client contacts. Many people in a troubled marriage (or experiencing long-term or temporary distress in their marriage) don't fully realize that this is a natural phenomenon of marriage. A lawyer may be able to help a couple identify where their marriage falls within the continuum of marriages, and whether their marriage has the “normal” range of stresses. Having an outside professional take a look at a couples' marriage can give them perspective as to whether it makes sense to continue working on the marriage.

Another very important function a divorce lawyer can provide to a couple (or an individual) in a troubled or painful marriage (or a marriage undergoing a difficult period) is to give clients a “read” on divorce. A divorce lawyer can analyze the facts of the marriage, and apply the law of the jurisdiction to these facts, and can come up with an opinion as to what the legal and practical terms of the divorce would be (financial and otherwise), giving ranges of outcomes. Because divorce (except for the very well-off) almost invariably has harsh financial and personal costs, knowing what a divorcing couple might expect can be very helpful in their analyzing whether it makes sense to try continue to make the marriage better.

Lawyers are trained financial professionals, dealing with money matters, legal structures and strategies. These skills can include estate planning, real estate law, bankruptcy and debtor/creditor law. A lawyer can help a couple (or an individual in a marriage) work towards identifying the financial concerns that are often at the root of a more mature marriage suffering a setback. Strategies can be put into place that can help eliminate risk and protect the financial interests of the respective spouses. Agreements can be made by the couple. This alone can often eliminate the conflict and distrust that has marred the marriage, and can help a couple move forward in their marriage.

One of a lawyer's major jobs is to settle disputes. A lawyer does this by mediating issues and helping parties come to agreement. Lawyers do this whether or not they are formally trained in mediation or Collaborative Law. In recent years, mediators (both lawyer and non-lawyer mediators) have developed the area of divorce mediation, in which a divorcing couple sees one mediator to help them come to terms in their divorce. It is not a very large step to envision that same mediator, if engaged by the couple a year or two prior, helping the couple mediate the issues in their marriage *before the divorce*. This is actually happening in a new area of mediation called “marital mediation” or “Mediation to Stay Married”.

Married couples often get into habitual ways of arguing and experience many moments of seemingly impenetrable impasse. These patterns can be quickly identified by a mediator. A mediator uses a variety of techniques that can effectively break through habitually negative and unproductive communication. These include active listening and reframing.

Active listening (or “mirroring”) is a technique in which the mediator (or one of the parties) reflects back the content of someone's statement by saying, “Is this what you

mean?”, and then paraphrases or restates in his/her own words what the person said. Although on the face this seems like a childish exercise, it is quite powerful. Knowing precisely what the person means and what is important to him or her makes the person feel heard and validated. Often, surprising miscommunications are made, and the mirroring of the person’s statement reveals them. When correctly used by the couple, , active listening and mirroring leads to increased understanding between the couple. And it is a little-known axiom of marriage that understanding breeds love and affection.

Reframing is a similar technique and is often done by a mediator. It generally involves taking a negative statement made by a party and rearticulating it so that it becomes a positive statement. When the statement is reframed, it often expresses a need of the speaker and not the negativity in which it was originally voiced. In a surprising number of instances, the other person in the couple has no problem with helping the spouse meet the need. It was the method of communication that got in the way.

A mediator can quickly identify the “hot speech” (resulting from “hot thoughts”) that is so common in troubled marriages. These habitual and unproductive interchanges are immediately identifiable by the third party, and the mediator can easily view escalation during the sessions as they occur. The mediator can give the couple tools for learning how to identify it and fight against it. A mediator can ask pointed and tough questions of both parties. As a neutral, these questions can be acceptable to the parties, and can help the parties get beyond a stalemate. A mediator often can identify a parties’ underlying needs that may be expressed in a way that the other party cannot fully understand.

The tools learned in the mediation sessions and the understandings gained by the couple can help the couple move forward in their marriage. A troubled marriage can become a more peaceful marriage – even a good marriage.

Conclusion

A troubled couple owes it to themselves and to their relationship to use every tool they can to see if they can have a good marriage. If marriage therapy is tried and feels unsuccessful, do not give up the fight! Try something else. There are books, CDs, courses (online and in-person) that can help a couple with problems. A couple can see a lawyer to see if any insights can be gained, and can try marital mediation to try to help them resolve some of the conflicts that they cannot resolve themselves, and to teach them the tools of conflict resolution to use in their own marriage.

-- Laurie Israel
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About Laurie Israel:

Laurie Israel is an A-V rated lawyer practicing in Brookline, Massachusetts. Laurie helps clients resolve their disputes with a high level of dignity, integrity and creativity.

Laurie works in the areas of collaborative divorce, divorce mediation, divorce negotiation and prenuptial agreements. She also helps people who wish to stay married through

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