

TITLE PAGE

NASW-NJ, Proposal for Workshop
Annual Conference May 2014

Social Justice: Embracing Our Values

Workshop Proposal:

**Mediation and Collaborative Divorce: Empowering Families
to Negotiate Outside the Court System**

(non-clinical; 2 hours)

Mediation and Collaborative Divorce: Empowering Families to Negotiate Outside the Court System

ABSTRACT

Divorce requires decision making that is crucial to long term well being, especially children's. An adversarial legal system often renders decisions based on power and privilege, reflecting biases of gender, race, sexual orientation and financial means. Mediation and collaborative divorce encourage non-adversarial negotiations to level the playing field and protect children.

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WORKSHOP DESCRIPTION

A breakdown in the marital relationship causes stress in a couple's life; the definitive decision to divorce leads to major life transitions and trauma. Unfettered emotions, such as anger, can be powerful forces in shaping the future of the re-structured family. An adversarial legal process feeding into an overstressed court system can result in decisions influenced by personal and cultural bias and social inequity.

Even parents who agree on the most important issue -- wanting what is best for their children - - can experience a loss of control over their family's lives as attorneys argue on their behalf and judges devoid them of decision making power by dictating custody and parenting time. Short and long term financial decisions are also determined by the arguments of lawyers and the discretion of judges.

Societal bias, lack of diversity, economic disparity and lack of familiarity with the cultural mores of the family play out in the court system. Examples include potential difficulty relating to same sex couples or bias against inter-racial families; inability to understand a family's cultural or religious mores; or bias against a stay-at-home dad. Unequal bargaining power can result when one spouse has more money (or a family funding the litigation) and the other cannot afford to proceed.

Historically, societal biases have also played a role in how courts view children, and, thus, custody. For example:

as "property" (favoring paternal custody);

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as “reward for good behavior” (favoring non-fault based custody);
as “tender years” dominion (favoring maternal custody); and
as developmentally distinct and changing needs (through attachment theory and
the Children’s Bill of Rights).

This two hour presentation will touch on the social science research of Judith Wallerstein and Joan Kelly – addressing the behavioral and psychological risk factors of divorce for children and what we know about children’s healthy adjustment to divorce: how a couple behaves during divorce impacts children far more than the divorce itself.

Collaborative divorce is a team approach (attorneys, mental health and financial professionals) designed to help families re-structure emotionally and financially, and as co-parents, into two households. Negotiations are interest-based, rather than positional, allowing for greater expression of each family member’s goals and needs.

Social workers are a valuable part of interdisciplinary collaborative teams, serving as coaches or child specialists. Social workers understand the long-term consequences of divorce on children. They understand cultural biases and power inequities, and are mandated to develop professionally to promote change within organizations and at the societal level. These multidisciplinary collaborative teams help level the playing field by providing families with knowledge, power, support and communication skills.

Attendees will be able to compare and discuss the advantages/disadvantages of mediation and collaborative divorce and describe how negotiation options outside the

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court system allow for cultural, social, and financial equity. Attendees will be able to describe the role of social workers as coaches or child specialists on multidisciplinary collaborative teams facilitating couple communication, negotiation, and family restructuring without the need for litigation.

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Prior Presentation

A workshop on mediation and collaborative divorce was presented at the NASW Annual Conference in 2011. It focused on the process of mediation and collaborative divorce, and the opportunity for social workers to train as mediators or members of a collaborative team. This workshop will emphasize awareness of the issues and problems surrounding family culture and diversity as it relates to both legal and emotional divorce in today's society.