

Divorce Mediation from the Inside Out: A Mindful Approach to Divorce

By Ora Schwartzberg, (Wheatmark Publishing, Tucson, Arizona, 2009)

Book Review by Ellen Joseph

When I offered to review Ora Schwartzberg's handbook entitled *Divorce Mediation from the Inside Out: A Mindful Approach to Divorce*, I assumed that the book's intended

audience was divorce attorneys. Shortly after sitting down with this handbook, I quickly discovered that its purpose is to educate people who are contemplating divorce or who are getting divorced. For them, this book is a must read, as it provides specific information necessary to decide how to go about the legal process of divorce.



Ellen Joseph

Schwartzberg, whose law practice is now devoted to mediation, provides the reader almost immediately with compelling reasons not to engage in combative divorce litigation. In her opening chapter, she addresses the issue head-on by stating "Divorce is expensive, and the resulting aftermath can devastate a family for a long period of time. Mediation minimizes this expense and the continuing aftershocks of the initial destruction."

As a divorce attorney, I found it somewhat challenging to analyze the information contained in Schwartzberg's book as a non-lawyer would do. When I forced myself to view her recommendations as a layperson, I realized that the author provided critical information that people need when confronted with this situation. The author's message is direct and fact specific.

The Costs of Litigation

For example, Schwartzberg provides a specific contrast for the reader considering the options of either litigation or mediation. Schwartzberg discusses the emotional and financial costs of contested divorce litigation versus the cooperative and less expensive approached involved in mediation. At every turn, I found her information to be accurate, realistic and insightful.

She discusses not only the financial costs associated with litigation, but also identifies the emotional toll that is fre-

quently inflicted upon individuals and their families. She discusses specifically retainers and how they are used, temporary hearings, and the practice of attorneys who seek to gain leverage in litigation by "winning" a favorable decision early-on in a case. She refers to the common scenario of litigants who are so involved in protracted litigation that they become unable to focus on their work and sometimes end up losing their jobs.

This handbook is offered at a time when our courts are less and less able to meet the immediate needs of citizens who need efficient resolutions to failed marriages and broken families. The economic crisis that will continue to result in overcrowded dockets means that divorce litigation may be even less an alternative than ever before.

Schwartzberg aptly notes that even when parties are able to get into court, our system is ill-equipped to resolve family litigation due to the complicated psychological, cultural and societal issues that must be balanced in order to attain a fair resolution for families.

Again, I found that the author's message was appropriately supported by convincing and accurate data about the flaws often encountered when divorcing litigants put their contested divorce issues in the hands of a judge or marital master.

The Mediation Process

After outlining to the reader why mediation usually provides a better alternative to litigation, Schwartzberg provides information necessary to begin the mediation process. She informs the reader how to go about selecting the right mediator and what necessary background information and documents he or she must provide the mediator at the outset.

Schwartzberg instructs her reader that the most important question to ask the parties why they are seeking divorce mediation. The answer to that question, according to Schwartzberg, should convey a sense of purpose in their own lives that they can pay forward to their clients.

In fairness, she also points out to the reader that there are occasions when mediation is not successful. She identifies five common scenarios that frequently

contribute to a mediation "gone wrong." They include stonewalling, blaming and punishing, bullying, hiding assets or information, and attorney interference.

As a trained mediator, I concurred with the author's perception that sometimes these behavioral traits can sabotage an otherwise cooperative and meaningful process. Additionally, the reader needs to understand these pitfalls in order to best identify the proper way to handle his or her divorce.

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If I had to identify any weaknesses in Schwartzberg's handbook, it would have to do with a few case studies that she provides to the reader in a chapter entitled, "How to Decide What's Fair – When Behavior Counts." Schwartzberg describes three hypothetical case scenarios and poses queries about each one but does not provide "answers" or further information about how such situations might be resolved in actuality. I wondered if the reader might be looking for possible outcomes to each scenario and end up "wanting more" out of the chapter.

This handbook clearly articulates why mediation is often a more attractive option than divorce litigation. Schwartzberg provides her target audience with the necessary information to make a difficult decision about this entire process. I would recommend that any layperson contemplating divorce sit down with this book and gain an insightful perspective before making decisions that will impact himself/herself and the family for many years to come.

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