



# OPENPALM

---

## WIN-WIN DIVORCE BY JORYN JENKINS

### GOALS AND INTERESTS ©

When the collaborative team members meet with the clients for the first time, the neutral facilitator begins by asking the participants to describe their goals, what they would like to accomplish in their divorce. Then she explains and emphasizes the importance of understanding the difference between a position and a goal or an interest. An example of a position is, “I want the house,” while the actual goals or interests are, “I want the kids to be near their friends; I want them in the best school system; I need a house that has room for my office in it.” Another example of a position is “I want permanent alimony,” while the true goal or interest is, “I want financial stability.”

A position is a specific demand. An interest is the reason at the heart of the position taken. Increased stress often masks the true motives that influence people to take the positions that they do. The interest is the underlying concern or need, more general than a position, and therefore open to interpretation. Interest-based negotiation is a collaborative method which encourages the clients to understand where the other spouse is “coming from.”

Position-based negotiation is an adversarial approach that considers only one side, “what I want.” It limits each person to considering only his or her wants and needs, and restricts the negotiation process like blinders inhibit the eyesight of a horse.

Focusing on positions, rather than on interests, hampers settlement options. A collaborative team focuses the participants on achieving their goals, rather than on demanding their positions. By helping each person define his or her goals, the team can generate multiple settlement options to accomplish each one. Articulating goals expands the bargaining parameters and enables spouses to understand that there is more than one way to resolve their divorce issues. By prioritizing goals, the team can work towards achieving each person’s most important objectives and can then agree to compromise on less important ones.

Also, couples who spend time identifying their big-picture goals at the outset will be likely to see that they share many common interests and concerns, which will play an important role in achieving the best possible outcome for both of them.

Although people undergoing a divorce are, by definition, in conflict, by focusing on interests rather than on positions, they are able to negotiate reasonably, without using threats, intimidation, or ultimatums. If one of them insists on a specific outcome, she is taking a position, rather than negotiating an interest. If the other person takes the opposite position, which they almost always do, the participants inevitably deadlock. However, if they discuss each other’s fundamental interests, they are likely to uncover different outcomes. They will identify goals and



# OPENPALM

---

## WIN-WIN DIVORCE BY JORYN JENKINS

brainstorm several options to achieve them, rather than adhering to a single choice that satisfies only one position.

Consider the many layers of an onion. Positions are the outer skin and the superficial layers close to the outer skin. They are shallow and not as connected to the core because of their obvious proximity to the surface. They are simply too accessible to be useful. Like the onion, the strong and real flavor of a party's interests is found deep, many layers below the surface, closer to the heart. By actively listening to the participants, asking questions, and reframing their comments, the facilitator peels the onion, coming to the heart of the matter and their core interests, rather than their superficial positions.

At each person's first individual meeting with the team facilitator, when she asks him to describe his goals for his divorce, to assist him, she may ask him to visualize how he felt when he was first married, when he was in love and excited about the future. She will ask him to close his eyes and to remember how he felt back then. She will talk in a soothing voice, trying to relax him as much as possible. She may dim the lights and/or ask him to lie down. This serves to remind the participants of the commitments they made to one another and of the positive intentions they had back then. She may ask how they would have felt back then if a trusted friend had said, "I know this is unthinkable, but divorce does occur, and it might happen to you and your new spouse. Loving your spouse as you do today, what promises would you make about how you will behave if you should have to divorce some day?" She might ask how they would have responded.

If the party responds negatively or positionally, the facilitator may choose to take him back even farther. "What qualities in your spouse did you first fall in love with? Her sense of humor? Her good nature? What did you two have in common? What did you enjoy doing together back then? How did she make you feel? Can you recall those feelings for me here today?"

The facilitator may then ask the participant to describe his or her wedding day. "What feelings did you have? Excitement? Love? Why did you feel that way? Can you remember how that felt? Can you recall those feelings for me here today?"

Perhaps the facilitator will then request other details about the marriage in order to elicit a positive response. "How did you feel on your first anniversary? How did you feel on the day when your child was born?"

The facilitator will tread carefully with these questions, looking for but avoiding possible hot button issues.

Once the individual reaches a place where he is remembering the past fondly, the facilitator will again ask what his goals are for the divorce. The key to uncovering the party's underlying interest is to link the solution to the interest to be solved. The facilitator may need to guide the



# OPENPALM

---

## WIN-WIN DIVORCE BY JORYN JENKINS

participant by offering examples of goals that are more profound than quantifiable rewards like houses and bank accounts. Such core interests may be:

1. To achieve a fair and equitable process and outcome for both of us;
2. To have enough time to think about the process and the choices before making decisions that will impact my outcome;
3. To maintain a realistic, reasoned, and positive focus during the process;
4. To parent my children during both school time and vacation time;
5. To be able to effectively co-parent with my soon-to-be-ex;
6. To maintain my financial stability, both in the present, and in the future;
7. To meet my financial responsibilities while still being incentivized to work hard;
8. To be able to choose my occupation for personal satisfaction instead of because I'm burdened with paying lifelong support;
9. To communicate better with my soon-to-be-ex-wife or husband;
10. To ensure that my divorce has as little negative impact on my children as possible;
11. To continue to be a role model for my kids;
12. To remain friendly towards and cooperative with my spouse;
13. To maintain my relationships with my in-laws; and
14. To be at peace at the end of this process.

Participants should be encouraged to think about what truly matters to them, more than anything else, regardless of whether it relates to the divorce. They can then focus on which of these broader goals or interests they want to achieve through the divorce process.

The team will encourage the participants to focus on life after divorce. "Imagine your life no longer anchored to your spouse. What does it look like three years from now? Where are you living? What are you doing for fun? Are you dating? If so, what will you look for in a date? What do you think will matter to you ten years from now?" This helps the participants to separate their immediate, short-term goals from their critical, long-term goals.

The team will propose "process anchors," questions that encourage each person to remain on the high road. These are queries like "How would I act right now if I knew that my child will watch a recording of me in this meeting ten years from now?" and "What if I had to explain my actions to my parents or my clergy?"



# OPENPALM

---

## WIN-WIN DIVORCE BY JORYN JENKINS

Sometimes one of the participants seems unable or unwilling to identify his or her goals. She simply may not know what they are, may distrust her spouse, may believe she's making herself vulnerable if she shares her interests, or she may be so focused on positions that she *cannot* identify them. The facilitator might remind her then that it is in her best interest to reach a settlement agreement that meets both participants' most important interests. The facilitator will explain that this ensures that each party will be more willing to abide by such an agreement, and that there will then be less drama after the divorce.

In addition, settlement negotiations in which a person's highest priorities remain unaddressed waste time and money because she will refuse to sign an agreement that does not meet her most compelling concerns.

Further, when participants are aware of each other's desires, they can more effectively negotiate because they can trade interests to achieve the most satisfactory combination for both. Remind the participants that big-picture concerns, such as stability for their children and long-term financial security, really should be the most important goals.

Once goals have been defined, the collaborative professionals will remind the participating couple of these routinely, throughout the process. Each full team meeting will begin by reviewing them. Participants will each be asked to focus on the other's goals. When one person gets stuck on a position, or when the negotiations are not proceeding as effectively as they should, the team will remind the participants' of their goals and will brainstorm options to achieve those goals.

By negotiating interests rather than positions, couples are more likely to reach a mutually satisfying settlement agreement that they can and will abide by going forward.

Contact Open Palm Law now. We can help you resolve your disputes.