

THE BUMPY ROAD TO THAT HUG FIRST CASE LESSONS

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We had read about it, listened to experienced practitioners rave about it, and we had even served on panels discussing it, but until we walked hand in hand with our divorcing clients through the collaborative law process, we didn't have a clue....

Yet, we, Paula and Karen, the "formerly-known-as-opposing-attorneys" who became "collaborative attorneys" through the case, were stunned by the success of the process in our case involving Ginny and Marco. The purpose of this article is to reveal the honest transformation that lead us to the day of the divorce hearing where Ginny gave Karen (her husband's collaborative attorney) a big hug - not, as we know, an everyday occurrence!

How did we get there? The road was bumpy and full of learning experiences for us all. For all intents and purposes, we were each "new" attorneys to the collaborative practice, so we had to teach each other, and we had to learn from and teach the clients as well.

Ginny and Marco had been married for 30 years, and had two children, an emancipated daughter and a teenage son. Both parents had worked throughout the marriage, although Ginny had worked part-time and neither of the parties were high income earners. The home in which the parties lived with their children had been purchased from Marco's family at less than fair market value. Religion was an important part of their lives, and they practiced in a traditional fashion. However, Ginny and Marco had grown apart over the years for many reasons.

In addition, Ginny had a serious alcohol problem, which led to the temporary loss of her driver's license, may possibly have caused her to lose her job and impeded her ability to find a new one. However, she was in treatment and was making a sincere effort to recover. Marco did not dwell on Ginny's alcoholism during the divorce. He was glad she was in treatment, but was angered by the effect the problem had on the family's finances.

Ginny and Marco had been separated for approximately two years when they contacted the lawyers. The separation was initiated by Marco who wanted the divorce, while Ginny did not. Remarkably, the parties continued to act as parents and partners in many ways, despite the long separation. Marco came to the house

almost daily, often driving their son to and from school. They continued to celebrate religious traditions as a family and even ate together on a regular basis. In hindsight, it is easy to understand how this continued connection complicated and confused each of them during the collaborative divorce process.

Ginny came to Paula for divorce information and was excited about the possibility of a collaborative divorce. Although Ginny had not wanted the divorce, she now understood that it was inevitable, and thought that the lure of a non-adversarial settlement was exciting. She left the first meeting with Paula bearing literature and articles about the collaborative process. Since finances were limited, it took Ginny nine months to accumulate a retainer and return to Paula. Ginny gave Paula permission to contact Marco regarding the possibility of collaborative resolution, and Paula wrote Marco a letter introducing herself and the possibility of collaborative divorce.

Several months later, Marco came to see Karen. He didn't need much "selling." Although they explored the full range of divorce options, including litigation and mediation, he was attracted to collaborative law, both for its promise of an amicable solution and the possibility of less cost. Interestingly, Marco and Karen were unaware that Ginny had consulted with Paula several months earlier. When Marco received Paula's letter, introducing herself as Ginny's representative and raising the possibility of collaborative law, he jumped at the opportunity. He retained Karen, who called Paula to discuss doing the case collaboratively.

The first meeting was held in Paula's office. A written agenda, which included, among other items, the review and signing of the collaborative law process agreement, had been exchanged in advance. The issues that had been identified as needing urgent attention were the co-parenting schedule and Ginny and Marco's treatment of each other. The parties also needed to discuss financial issues in light of Ginny's recent unemployment. Perhaps the suggested agenda was overly ambitious, given that the parties and counsel were so new to this process.

The meeting was awkward. Although Karen and Paula were both active members of the Massachusetts Collaborative Law Council they had never handled a case together. They had agreed to start by reviewing and signing the collaborative law participation agreement, but neither Marco nor Karen knew that Paula was going to review the agreement paragraph by paragraph. Since the parties had seen the agreement in advance they did not think it had to be reviewed in detail. Although the first four-way meeting did result in a temporary parenting plan, there was little time to discuss other issues. Following the meeting, Marco already felt frustrated and did not like Paula's style. He was concerned Ginny was going to "drag her feet" throughout the process.

It was clear after the first four-way meeting that the parties' styles were very different. Marco tended to be result-oriented and Ginny was more process-driven. Marco approached things in a very "cut and dry" manner and Ginny preferred to have lengthy discussions before reaching resolution. The parties' differing styles, and their lack of a real emotional separation during their two year physical separation, became a stumbling block in the process. In addition, neither party could understand each other's emotional level or appreciate it.

We held a total of five four-way meetings. Many of them were contentious, especially because of the nature of the clients. They continued to have a hard time separating from each other. For example, Marco would, in spite of warnings from Karen, show up uninvited at the marital home where Ginny and the children were living. They often got into shouting matches with each other, and the attorneys received calls from their respective and furious clients on a quite regular basis. Ginny felt abused because she didn't see Marco providing her with any relief from the children-related demands. Marco, in turn, would complain that Ginny, while wanting her privacy and wanting him to remain away from the home unless invited, would then invite him in to do repairs in the home but be angry if she thought that he stayed too long.

Even though we were starting to work out the parenting plan and financial details of the divorce, the personal situation between Ginny and Marco just wasn't getting better. Karen and Paula regularly talked about the effect that personalities were having on the resolution process.

Normally, the emotions of the "opposing" client are unknown to the "opposing" lawyer. But in a 4-way meeting everyone's concerns and reactions are out in the open. Paula perceived Marco to be a difficult, and often impossible, person but realized that the collaborative process demands new lawyering skills that require treating the "opposing" client with as much respect as one's own. She realized that she had would have to recognize her reaction to Marco and either accept him as he was or mask her frustration with him.

For Karen, keeping Marco in the collaborative process was the challenge, as he repeatedly expressed his feeling that it was not going fast enough and that Ginny and Paula were not working hard enough toward a resolution. He complained that Ginny would bring up the parenting plan at every meeting; she was frustrated at his inability to abide by their previous decisions, and he just wanted to move on to other issues.

This meant Karen had to frequently remind Marco about the collaborative law process and its goals and that although both parties were moving at different speeds, we would continue to work toward a rapid resolution. Karen also had to

recognize that Ginny needed affirmation from Marco that she was a good parent, and to try to get Marco to understand Ginny's need for his support.

Between meetings, there were periods of what seemed to be chaos. Even though the lawyers would summarize each meeting in writing and send out a summary letter after each meeting, Ginny frequently misinterpreted the parties' agreements even when they were spelled out in the summary letter. Marco would often ignore or not follow through with agreements he made in the four-way meetings.

Paula and Karen were at times puzzled by the parties' action or inaction between meetings. However, certain issues began to emerge that Karen and Paula recognized had to be addressed. We began to recognize that the parties needed to **separate both emotionally and physically**, that we had to deal with Marco's belief that he was entitled to a greater percentage of the marital home, that we had to find a way for the parties to achieve financial stability even if it meant selling the marital home. In addition, Ginny needed assurances that Marco valued her as a parent and that he would adhere to the parenting plan they devised, since he made clear he did not intend to implement the permanent plan until the divorce was final - in effect, holding the plan "hostage" until everything else had been decided.

The parties retained a financial planner to assist them in resolving the financial issues. Despite their low incomes and limited assets, involving the financial planner allowed the parties to maximize their income and use all available financial tools to enable them to maintain the marital home until their son graduated high school. In addition, Ginny's began working, which increased their finances.

Entering the last meeting the parties were still stuck on two major issues: dividing the equity in the marital home and getting Marco to endorse the parenting plan. The marital home had been bought from Marco's parents at a significant discount. Marco's position was that at some point in the future, when the house was sold, he should receive the value of the discount, i.e., "gift," with Ginny sharing only in the subsequent appreciation. Ginny believed that because she contributed to the long-term marriage, both financially and as a homemaker, that she should share in the entire equity.

The discussion got heated and everyone decided to take a break. Something miraculous happened during the break, and when everyone returned, the parties were ready for a resolution.

For the first time Ginny was able to express her feeling that she was hurt by Marco because he did not value her contribution as a parent and partner. Marco, for his part, was able to express to Ginny for the very first time that he was embarrassed

about his apartment and that he had not invited the children there because he was afraid they would think less of him as a father if they saw those surroundings. He had made efforts to improve his home environment for the children and felt that once the divorce was final and the financial issues were resolved, he would be able to provide a decent home for them. The parties openly talked about needing to take that "leap of faith" in reestablishing trust between them as divorced people. It was clear to us that a safe environment had been created for the parties' to express their emotions but neither of us was able to explain how it happened.

Yet, despite the "breakthrough", the case wasn't over. The parties had worked hard. They had discussed and compromised and disagreed and agreed. Now we only had to sign the final divorce agreement. Karen drew the agreement, but Paula and Ginny were surprised and even offended by some of the language. Karen could not understand their reaction. This is another example of how important communication between the collaborative attorneys is; if Karen and Paula had discussed the "offending" provision in advance, its harmlessness would have been apparent. At the same time, the disagreement served to show how the collaborative process can withstand differences in interests. The attorneys had committed themselves to constructive resolutions and they were able to discuss the controversy without being defensive. Finally, we were able to line ourselves up again and get the clients ready to sign.

Now, inexplicably, Ginny postponed her signature for what seemed like an interminable amount of time; perhaps her ambivalence about the divorce was showing through. After much prodding (and after daily calls to Karen from Marco), Ginny signed the Agreement. We all realized that, even though the parties had participated in many four-way meetings, one more would have worked wonders in order to explain and execute the Agreement. While Marco was very clear in his desire to have no more meetings, this last one would, in the long run, have saved both clients time, trouble, energy and money, since the Agreement would have been executed immediately.

The case continued to have twists and turns up to the end. At Court, Paula's client, Ginny, gave Karen that big hug, and Marco, who had appeared somewhat subdued during the process, cried. Shortly after the hearing, Marco informed Ginny he was getting remarried immediately, which was a surprise to us all -- perhaps explaining his impatience during the process.

As collaborative lawyers, we spent many hours both during and after the case, trying to understand how the parties' conduct, the collaborative process and our own behavior all fit together. In summary, here's what we learned from this case that we would like to pass along as practice tips:

1. Review the CL Agreement at the first four-way meeting. Going over the Agreement is vital, although some clients may see it as a "waste of time".

Be prepared, and make sure both attorneys discuss exactly how they are going to go over the agreement.

2. Establish protocols regarding how the parties and counsel will conduct themselves during the meetings.
3. Help the clients identify their goals – for example, if we had known that Marco wanted a speedy process in order to perhaps one of Marco's goals would have been speed, and we could have discovered the reasons for his need.
4. Take breaks as needed. Check in with your own client.
5. Debrief after each meeting, both with the client and the other attorney.
6. Summarize each meeting in writing, and make sure everyone understands and agrees that the summary is correct.
7. Treat each person as a complicated whole. Recognize the other spouse and their counsel as people rather than as the opposition.
8. Acknowledge the break-through moments.
9. After drafting a divorce agreement hold a four-way meeting to explain it.
10. Monitor the collaborative process as you go. Reaffirm your own commitment to the process and reemphasize the process with your clients.
11. Give your client a realistic assessment of the likely length and cost of the collaboration process. Do not "sell" CL merely as a cheaper alternative; cost is always a function of the bumpiness of the journey ahead, and the client must be warned.
12. Collaborative law is a new journey for clients and lawyers, even experienced ones (since they often have to un-learn or re-learn their traditional strategies). However, the possibilities are limitless, so be sure to keep watch during the journey!!!