

COLLABORATIVE PRACTICE: A Critical Resource for Therapists

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In Fall of 2003, Therapist Magazine published an article entitled “Collaborative Divorce: A Healthier Way.” This 2009 piece is an update of that article, with the purpose of educating therapists about what we need to know for our clients' sake about this remarkable movement and very useful resource.

We all have been involved with families drawn into the confusing forum of Family Law matters- whether divorce, child custody, separation, paternity, domestic partnerships, prenuptial agreements, etc. We all can tell horror stories from watching friends, family and clients become involved with an adversarial system which can make the already tumultuous family situation worse. We witness the damage done to the children in the middle of separation/divorce due to the way issues are handled by their parents and/or the process. We see adults who cannot look back with pride about having handled their separations/divorces or custody matters with dignity and kindness. We see revenge and anger cause terrible and lasting devastation to families in the areas of finances, emotions, and relationships.

We therapists are in a powerful position to help steer clients into better directions with regard to their family law situations. We need to know about ADR (Alternate Dispute Resolution; meaning anything that keeps the process relatively peaceful and not under the rubric, or less under the rubric, of the court system). Even if we are not involved in the ADR processes directly, we are particularly well-suited to encourage our clients to make more informed decisions that can result in much healthier and less stressful ways of handling themselves and their legal matters.

This portion of the article will provide information to therapists regarding how to educate our clients about the various models available to them when they are contemplating divorce or other family law matters. I will place particular emphasis on the collaborative practice model.

The following, in brief, are the options clients have for their family law matters, so that you might give them a broader perspective on their potential choices. If you wish, you might even read to clients from this article, or give them sections of it so that they are better informed. Alternately, you might refer them to someone who you know can educate them more fully about the different models of handling family law matters, if you do not feel adequately prepared to have this conversation. You can certainly give them access to the Resource List attached to this article.

The Models now available for handling Family Law Matters:

1. Litigation

In the litigation model, clients enter into an adversarial system with or without the help of attorneys. The attorneys are trained to be “zealous advocates”, which can pit one person against the other. Attorneys are not trained in handling the emotional issues that are always present in family law matters. The court system is not designed to be friendly to clients or to the families, is frequently overburdened, and may very well fall short of its goal to discover and follow the best interests of children. In general, clients entering the court system are surrendering direct control over their legal matters, yielding it instead to the system. In that system, judges are often asked to make far-reaching decisions for families without any intimate knowledge of the

family's needs. This process can be very costly in terms of money, time, and relationship damage due to the adversarial quality of the system.

Sometimes, however, litigation **is** the appropriate venue for a case. For example, if one of the parties is dedicated to revenge or is otherwise bent on “winning” some aspect of a case, and is not willing to be held accountable to a higher standard, then the other party may have no choice but to protect her/himself in the litigation model. Other examples are cases in which one of the parties is unable to participate in an ADR process; such as an unstabilized substance abuse issue or mental disorder which makes it difficult to think clearly enough to participate in a negotiation process. ADR requires the ability and willingness of parties to work through issues in a way that may be delicate and emotionally demanding. (I say “emotionally demanding” because to work out one's case through ADR takes a lot more hard work. The benefits are tremendous, in part **because** the process takes an investment of time, energy, and care.) These cases aside, however, some people use the litigation model because they are not aware that they have other options. They may think that their original retainer with a lawyer will be the extent of their costs in the family law matter, and not realize the potential for escalating costs. They may also not realize that the court process is inherently adversarial, and think that what they want is their “day in court.” These are people who especially need their therapists to be acquainted with ADR.

2. *The “Kitchen Table Method”*

This model is a do-it-yourself one, which is possible and recommendable when clients are relatively well-informed about their financial situation, have a fairly simple financial picture, experience little conflict, and have no great disparity of knowledge or power between them. Essentially, they sit at the kitchen table and decide how they will handle the issues of their situation, meaning: how they will split their assets and debts, how they will rearrange their living situation, how they will make decisions about their children (if they have any), how they will set up their parenting plan, how they will handle the legal side of their agreements including support issues, etc. It is possible for them to handle the filing and final paperwork themselves, using books or forms available on the Internet or in libraries, or they can hire an attorney, a mediator or a paralegal to help them put their agreements into the right form to become legal court orders.

3. *Mediation*

Mediation usually involves one neutral mediator who is trained in helping families come to agreements on all the issues of their family law matters. Mediators can be lawyers, therapists, or financial professionals, or they may be unlicensed people. At this point, the practice of mediation is not regulated in California, so it is important to make sure one gets excellent referrals. Mediation works best when the parties have some trust in one another, have relatively low conflict and are relatively equal in power or knowledge. The participants must be able to trust the mediator to be fair and neutral. Mediators, by virtue of their neutral roles, cannot give legal advice to either party nor act as advocates for either.

Some mediators are now working in a teamwork model, by adding other professionals as needed, such as coaches, consulting attorneys, or financial experts. The challenge is to make sure that the container needed for the family's issues is big enough and strong enough to manage whatever issues and emotional volatilities may arise. If it is not, and the case falls out, then the family may need to start over. Mediation can be extremely effective, as long as the mediator is skilled, professional, and knowledgeable, and the parties are well-suited for this level of intervention.

4. *Collaborative Practice*

Collaborative Practice is a relatively new model of ADR, using a specific set of rules and guidelines and (in many cases, especially in California) an interdisciplinary team. The goal is to keep families out of court, to cooperate together in making agreements for the family, and to stay child/family-focused. Collaborative teams are particularly well-suited to the challenge of working out difficult and emotion-laden family law issues. The issues of the case: emotional, legal, parental and financial, are addressed by experts specifically trained in those areas, often at a lower rate than the rate charged by the attorney. Collaborative practice is powerful because the synergy of the team supports resolution of the difficulties. (As in mediation, it is important to hire well-trained, highly recommended collaborative professionals.) Clients value having their own advocates (collaborative attorney and coach), while knowing that those advocates are also looking out for the benefit of the entire family. They agree to work with their neutrals (financial expert and child specialist), and to seriously consider their input. Ultimately, the clients are in charge of the outcome. The clients and professionals alike agree to proceed in accordance with specific principles and guidelines that help the process to remain as peaceful and child-centered, or family-centered, as possible.

More about what Collaborative Practice is, and how the process works.

Collaborative Practice, in the family law arena, signifies a process for a separating/divorcing couple to work as a team, using specially trained professionals, to help them resolve their disputes in a respectful way without going to court. It has expanded from Mediation primarily through the use of the “Collaborative Stipulation,” as well as, in many cases, the multidisciplinary nature of the professional team. The Collaborative Stipulation is an agreement signed by the clients and attorneys, stating that if the case ever goes to litigation, the attorneys fire themselves and the clients start over. The purpose of the stipulation is to set up an atmosphere of dedication to peaceful resolution and cooperation for the clients and the professionals. Attorneys work **with** instead of **against** one another, and everyone agrees to work together for the benefit of the whole family.

The benefits of Collaborative Practice are many and broad:

- Family relationships are preserved
- More creative solutions are developed, specifically tailored to the family
- Money, time and stress are likely to be saved over what the same case would cost in litigation
- Families avoid going to court
- The family has more personal control of the process and its outcome
- Emotional concerns are directly and kindly addressed
- The overarching focus is on the well-being of the whole family
- There is more dignity in the process.

The use of the Collaborative Stipulation takes away the threatening, adversarial atmosphere present in most litigated cases, and encourages clients and their teams to continue to find solutions to difficult issues even, and especially, when it feels like impasse. The ability of the team to meet and strategize over the case may be the **best** use of the clients' money.

The International Academy of Collaborative Professionals (IACP) has taken on the task of helping to standardize the process of collaboration. While there are regional differences in the makeup of teams, professionals follow the basic principles of Collaborative Practice. These basic principles, as stated by IACP, are to:

- Negotiate a mutually acceptable settlement without using court to decide any issues for the

clients

- Withdrawal of the professionals if either client goes to court
- Engage in open communication and information sharing, and
- Create shared solutions that take into account the highest priorities of both clients.

Clients agree, by beginning a collaboration, to negotiate in good faith, voluntarily share all their financial information, be transparent and honest with their thoughts and feelings, and act in a respectful manner. Clients must be able to agree to these guidelines and to carry them out, with their collaborative team's help.

The standard professionals needed for the multidisciplinary collaborative team are the collaborative attorneys, coaches and child specialists (licensed mental health professionals), and neutral financial experts (usually CPAs). In some models each client has a coach, and some models use one neutral coach. Each professional has an important role to play in the handling of intricate and multifaceted issues. Each professional needs to be specially trained in Collaborative Practice.

In a way, clients signing up for this process are asking their professionals to hold them to their highest selves at a time when they may be at their worst. We coaches can encourage this ideal specifically by asking family members to create a Mission Statement, either for their co-parenting relationship, for accomplishing their family law matter, or both. Also, keeping any children's photos handy during meetings can help lower the "emotional heat" as parents remember the shared goals they have for their children. This shows how critically important the help of the coaches can be on the team. Attorneys often love the fact that they can identify coaching issues and send the clients off to their coaches when the "heat" rises, and therefore do not have to try to deal with emotional or relational issues for which they are not trained. All of us love to send the clients to their neutral financial expert when financial issues arise, as those experts know precisely how to handle all the financial issues of these matters and how to do so in a trustworthy, neutral way.

I continue to love the teamwork aspect of this process. Learning about one's teammates' needs, experiences, and differing professional requirements has led to increased respect and trust among the team members. When each professional is engaged to do what s/he is expert at, i.e. the finances, emotional issues or legalities, then the clients get specifically the best of what they need in each aspect of their family law matter.

Assessment/screening for the process

You may find yourself in the position of trying to assess with your clients what model is best for them. If you feel prepared to educate them about their options, then please feel free to do so. If you do not, then please do not hesitate to send them to a professional who can help match them to the right model. The decision will be based on the complexity of the case, the degree of conflict in the case, and the clients' values, as well as the clients' mental and emotional states. It is normal for clients to have a lot of emotion about their family law matter; part of the coaches' jobs is to help the clients contain and channel those emotions so that they are managed and do not hinder the process of negotiation. Clients will need to be able and willing to let the coaches help them.

Clearly, some clients will be able to accomplish the collaborative process and others will not. While Collaborative Practice offers the best and strongest container for possible resolution of difficult issues, and for the management of difficult clients, those clients will need to be able to participate fully in the process. Therefore, you will need to watch for these potential red flags:

- a. Serious domestic violence

- b. Clients who are unwilling to be honest and transparent in the process (i.e. hiding money)
- c. Untreated or under-treated mental illness
- d. Untreated or under-treated addiction issues
- e. Clients who remain dedicated to a hostile or victim stance that is not amenable to coaching
- f. Serious Axis 2 issues

If you refer a family to collaborative professionals, those professionals will also conduct an assessment of the clients for their suitability to enter into this kind of process.

Other considerations for therapists

The field of collaborative practice is growing quickly. If you are drawn to the idea of doing this kind of work, there will certainly be room for more therapists to act as coaches, child specialists and case managers on collaborative practice teams. If you enjoy teamwork, are willing to be somewhat directive as a coach, and want to help encourage the concept of collaborative practice, then by all means get yourself some training and join in. You can check with local groups near you to find out what trainings are available. I recommend the CDTT trainings (Collaborative Divorce Team Trainings, at www.collaborativedivorce.com), as those instructors are some of the leaders in the movement and have a great deal of experience both in training professionals and in doing the work itself. You can check as well for trainings on the IACP website (www.collaborativepractice.com) and on the CPCal website (www.cpcal.com). There is likely to be at least one local practice group that you might investigate. It is in meeting and spending time with collaborative professionals that you may be invited to join a team.

What has changed in the Collaborative Practice world since the 2003 article in the Therapist?

I wrote the 2003 article as a divorce coach working within Southern California, as part of one or two ADR practice groups. My experience and knowledge at that time was very cloistered compared with the perspective that I have now. Like most worldwide changes, the Zeitgeist began almost simultaneously in separate geographical places. I did write about Stu Webb, still considered the Grandfather of Collaborative Law. There were other people in various areas of the country and Canada, especially in Northern California, who were expanding on Stu's ideas by creating multidisciplinary teams, designed to help separating/divorcing folks through their family law issues in a better way.

Here is what I can tell you now of the history of this remarkable movement.

- In the late 1980s, Stu Web, a lawyer in Minneapolis, conceived of the idea of what came to be called the “Collaborative Stipulation”--a document which is signed by attorneys and their clients stating that if the family law case ever goes to litigation, the lawyers fire themselves. Of course, this means they are committed to working together to find solutions for both their clients. This revolutionary idea set the stage for a whole new way of doing family law. In 1990, the term and process of “Collaborative Law” came into being. (Strictly speaking, Collaborative Law means two collaborative lawyers using the collaborative stipulation and working with divorcing couples to settle their cases out of court.)
- The concept of Collaborative Law swiftly spread to areas outside Minneapolis. In 1993, Minneapolis lawyers spoke at a national conference in San Mateo County. By early 1994, lawyers in Northern California had begun practicing Collaborative Law.
- Simultaneously, others in California, specifically Psychologists Peggy Thompson and Rodney Nurse, with family lawyers and financial professionals, had begun to design an interdisciplinary model of ADR for divorcing people. Nancy Ross, an LCSW in Northern California, began to

create a working group with Santa Clara lawyers. Nancy became connected with Pauline Tesler, JD, one of the first lawyers to write about and practice Collaborative Law, and Nancy realized how well Collaborative Law fit with her goals. After that, Nancy and Peggy met and the two groups together began to expand the concept of interdisciplinary collaborative law.

- In 1997, several leaders of these practice groups decided to begin forming a larger organization that would overarch and aid all the smaller groups forming everywhere. This group was first called the American Institute of Collaborative Professionals, and specified the purposes of sharing resources and learning how to do this important work. Incorporated in 1999, the AICP held local networking meetings, started a newsletter, and set up annual networking forums.
- At the first annual forum of the AICP in Oakland in 1999, it became clear that a national organization was smaller than the umbrella organization needed to be, since Collaborative Practice was expanding quickly across Canada. So, in late 2000, the group became international, and changed its name in 2001 to the International Academy of Collaborative Professionals (IACP). IACP has grown since then at an almost alarming rate, shown by its current membership of 3,600 professionals from all 50 U.S. states, every province of Canada, and 17 other countries, as of the writing of this article.
- The group uses the term “Collaborative Practice” in order to encompass the differing models of collaboration, and to associate the collaborative model concepts with non-family law areas such as Corporate Law, Estate Planning/Probate, Employment Law, Construction Law, Real Property Law, etc. Collaborative practice is particularly well-suited for use in any Civil dispute, particularly in situations where the involved parties would like to continue working with one another or relating in some other way after successful resolution of the current dispute.
- California also has an umbrella organization for California collaborative groups, called CPCal. Formed in 2006, CPCal stands for Collaborative Practice California. This group has inspired several current task forces, including one which is endeavoring to educate mental health professionals across our state about Collaborative Practice. To this end, you will see a presentation at the upcoming 2009 CAMFT Annual Conference in San Jose, as well as a table in the exhibition hall at the same event. [That presentation, called: “A Good Divorce? How to Assess, Educate, Screen, and Speak With Your Clients About Collaborative Divorce” will be taught on Sunday, May 3, 2009.] Debra Bellings-Kee, MFT, JD, one of the presenters of that CAMFT program, has provided a resource list for therapists which is an addendum to this article for your use. Please print and keep the resource list, as you will find it helpful for your clients.

In Closing

I predict that we will continue to see the movement called “Collaborative Practice” growing and spreading across the globe and into our everyday experience. It is a movement whose time has come, and which makes so much sense for families experiencing family law changes as well as people dealing with many other legal issues. A movement which keeps as its highest goals respect and understanding for the people involved draws the attention of mental health professionals, provides very important resources for our clients, and can only bring good things to the world.