Ten Years of Collaborative Law in Vermont: From Two-Lawyer Model to Interdisciplinary Model

September 27, 2013
Lake Morey Resort
Fairlee, VT

Faculty:

Julia Gresser, LICSW
E. Darby Herrington, Esq.
Alan Rome, Esq.
Phyllis Rubenstein, Esq.
Collaborative Law has been used to resolve family law cases in Vermont for 10 years. The history and progress of Collaborative Law in Vermont will be reviewed. We will describe the roles of the professionals in the interdisciplinary model, in which lawyers, mental health professionals and financial planners are part of the professional team. We will explore recent experiences with the interdisciplinary model, focusing on case studies. The material presented at the CLE will be appropriate for professionals with collaborative law training as well as those who want to learn about it.

Speakers:

Phyllis Rubenstein, J.D.; Alan Rome, J.D.; Julia Gresser, LICSW; and others to be announced
AGENDA

1. Introductions

2. Collaborative Law in a Nutshell
   a. Two-Lawyer Model
   b. Interdisciplinary Model
   c. Role of Professionals

3. A Case Study: Mark and Andrea
   a. Mock Meeting: Lawyers and Mental Health Professional Pre-Brief before second full-team meeting
   b. Discussion of Mock Meeting

4. Panel Discussion: Common Challenges faced by the Collaborative Professional
   How to screen clients to determine if collaborate divorce is right for them?
   What makes a good collaborative case?
   What do you do when you hit a road block due to the behavior of a client?
   a member of the professional team?
   What lessons have we learned?
   What best practices do we want to develop in the next 10 years?

5. Questions and Answers
I. OVERVIEW OF COLLABORATIVE LAW

A. History and Development:

The collaborative law process was developed in the early 1990’s by Attorney Stu Webb of Minneapolis, Minnesota. In the late 1980's, after Stu had practiced civil and family law for about 25 years, he considered becoming a psychologist and began taking courses. Those courses led him to think about a better way to practice law. He started experimenting with the four-way settlement model in family law cases. Through trial and error, he realized that the model would only work if the settlement lawyers withdrew from a case that turned adversarial. Stu asked other family lawyers to use this model. Collaborative law spread quickly from a few lawyers in the Twin Cities to lawyers in California, Massachusetts, Texas, New York, Georgia, Ohio, as well as Canada and other countries.

There are currently collaborative practitioners in almost every state and 24 countries and its use has expanded from family law to areas of civil practice such as business conflicts, labor relations, landlord-tenant and probate matters. It is applicable in many areas of law, as it utilizes analysis and reasoning to solve problems, generate options and create a positive context for settlement. For the past many years, the collaborative model has shifted from a collaborative team consisting of the clients and their lawyers, with neutral professionals as needed, to a team which included from the outset mental health professionals and often financial planners.

Collaborative law was introduced in Vermont in 2002 using the original model of the team. Lawyers have used the process primarily in family law cases. The newest development in Vermont has been the shift in collaborative practice from the lawyer only professional team with neutrals as needed to a team which includes mental health practitioners and financial neutrals from the outset. A two-day training was held in Montpelier in April, 2012, to educate lawyers, mental health professionals and financial planners on how to develop and work together in the collaborative team.

B. Definition:

Collaborative Law is a sophisticated method of dispute resolution in which each client is represented by a specially-trained collaborative lawyer for the sole purpose of resolving conflict through negotiation without court intervention. The lawyers and other professionals on the team use negotiation and communication tools and techniques designed to meet the interests and needs of the clients. During a series of team meetings, the clients identify their goals, interests and needs, exchange information, brainstorm options, evaluate alternatives and ultimately formulate agreements.

A key component of the process is the written participation agreement among the team members that if the matter comes to impasse, the lawyers and other professionals are disqualified from participating in any ensuing adversarial proceedings. This provision creates the environment where clients can fully and freely communicate.
with each other and encourages clients and professional team members to explore all possible options and reach amicable, and often creative, resolutions.

2. MULTI-DISCIPLINARY TEAM (adapted from D.C. Metro Best Practice Protocols and materials from the Collaborative Practice Interdisciplinary Training, including MA Protocols (April, 2012)

   The full multi-disciplinary team consists of the clients, their lawyers, a financial consultant, either one neutral mental health professional (divorce coach) or two mental health professionals (divorce coaches) and a child specialist. It is generally accepted that different jurisdictions and/or different family situations call for either the one neutral mental health professional or the two mental health professional approach. In Vermont we are primarily using one neutral coach. However, we recognize that whether one or two coaches is used in any particular case should depend upon the needs of the clients. In a multi-disciplinary approach the roles of the professionals are as follows:

   **Collaborative Team** - A group of interdisciplinary professionals are engaged by the clients to facilitate the collaborative divorce process. Roles for a full team model are two attorneys, one or two divorce coaches, one child specialist and one financial neutral.

   **Collaborative Lawyer** - The collaboratively trained lawyer is engaged by a client for the limited purpose of assisting that client in reaching an agreement with the other spouse or partner through the collaborative process. The collaborative lawyer’s role is controlled by the engagement agreement and the collaborative participation agreement. As provided in the collaborative participation agreement, the collaborative lawyer will not represent the client in any litigation other than an uncontested divorce and/or presenting the clients’ stipulation to the Court and, if the Uniform Collaborative Law Act is passed in a jurisdiction, in limited emergency situations.

   The lawyer guides his or her client through client-centered, interest-based settlement meetings. While providing advice, education and guidance, the lawyer keeps his or her client focused on the goals, interests and needs the client identified and takes into account the needs of the spouse/partner and the family as a whole. The lawyer refrains from using adversarial techniques. The lawyer models interest-based negotiation skills, demonstrates accountability, cooperates and facilitates full financial disclosure and brings a perspective of common sense and reality to the table.

   **Collaborative Divorce Coach** - In the two divorce coach model, the collaboratively trained mental health professional is engaged by each client to support the client through the process, to help deal with emotions which block resolution of issues, to aid in strengthening communication among the clients and other team members, and, when there are children, to work in developing a parenting plan. In the one divorce coach model, which is the model used in Vermont to date, the one neutral coach acts as a neutral in supporting the process as described. (Jurisdictions primarily using the
neutral coach, find the role of the neutral to be a critical piece of the process).

In either the one or two coach approach, the coach models and teaches effective communication, facilitates positive communication between and among the clients and the team, helps clients access their strengths and resources, provides tools for managing intense feelings, helps contain and manage conflict and creates and holds a vision for the future based upon the goals identified by clients.

Coaching is not therapy. The therapist focuses on the clients' history and the past, makes a diagnosis, is aware of incidences of transference/counter-transference, etc. Information disclosed in therapy is confidential. The coach does not do those things. The coach assesses the emotional and situational needs of the clients and the "triggers" which may de-stabilize the negotiation process. The coach focuses on the future and the resolution of differences by identifying problems and obstacles. Information disclosed in coaching is not confidential.

At meetings, the coach guides the communication process by watching for non-verbal communication and helping to manage client behavior and emotion. The coach brings to the meetings his or her knowledge of family systems and the psychology of divorce.

Child Specialist - The collaboratively trained mental health professional is engaged by both clients for the specific and limited purpose of advocating for the child during the divorce process, and, in order to aid in developing an appropriate parenting plan, providing direct information to the team members from the child about the child's needs. The child specialist does not make any recommendations or actively participate in the development of the parenting plan.

Financial Neutral - The collaboratively trained financial expert is engaged by both clients to aid them in gathering information about and documentation of financial assets, liabilities, income and expenses. The financial neutral clarifies inconsistent or unclear information. The financial neutral creates a balance sheet of assets and liabilities, provides tax analysis, cash flow and net worth projections analysis for various scenarios. The financial neutral educates the clients and the team about potential financial and tax issues, assists the clients in developing and evaluating financial options and helps reduce uncertainty about the future.

The financial neutral does not make product sales or engage in post-divorce relationships which would conflict with the collaborative process. The financial neutral helps the clients generate and evaluate options but does not make specific recommendations. The financial neutral does not provide legal advice or address mental health issues.
3. GETTING THE PROCESS STARTED

In Vermont, the process usually begins with one client consulting with a collaboratively trained lawyer. That client provides his or her spouse with information about collaborative law, including a list of collaboratively trained lawyers and asks the spouse to use the collaborative model. Or the lawyer may write a letter to the other spouse or the other spouse’s lawyer, asking whether the other spouse is willing to participate in the collaborative process. In other jurisdictions, the initial contact may be with a mental health professional or financial planner rather than the lawyer.

A. CREATING THE TEAM

Lawyer

It is the responsibility of each lawyer to provide complete information about the collaborative process to his or her client, including the nature of the multi-disciplinary team, the requirement of full disclosure of all relevant information and the disqualification clause. The lawyer must provide sufficient information so the client is aware of the rights and remedies not available in collaborative law and the lawyer must screen his or her client for fitness to the process. Once it is established that the client is retaining the lawyer for a collaborative divorce, the lawyer and the client enter into a specially-worded engagement letter, contains the disqualification clause.

At the outset, the lawyer must help the client identify goals and educate the client about interest based negotiation (rather than taking a hard-lined position), as well as the law and the range of choices. The lawyer should provide a roadmap for the process and review the participation agreement. The lawyer will confer with the other spouse’s lawyer and the lawyers will recommend coaches and financial neutrals for the clients to meet and hire.

Neutral Coach

The coach meets with each client individually the first time. The coach must educate the clients as to the coaches role as a neutral, discuss transparency and explain that coaching is not therapy. The coach hears each client’s story and helps the client identify goals for the process. The coach listens for client’s strengths/resources and identifies concerns, “hot buttons” or “triggers.” The coach reviews the engagement letter with the client.

Financial Neutral

The financial neutral should be part of the team from the beginning. The financial neutral will have initial contact with the clients either by phone or in person to provide an overview of his or her role. The financial neutral also explains the requirement of voluntary disclosure and the need for transparency. The financial neutral will describe the types of information typically needed and identify who will provide the information
and should review the concerns of each spouse/partner and ascertain the financial neutral’s objectives at the start. The financial neutral reviews the engagement letter with the clients.

**B. TEAM MEETINGS - Getting Started**

1. **Initial Team Phone Call**
   - Discuss how each team member approaches collaborative process
   - Discuss how each team member views his or her role and roles of others
   - Discuss communication styles – feedback, e-mail/phone, etc.
   - Coach and financial neutral educate team members about information gleaned from clients
   - Prepare Agenda for First Full-Team Meeting

2. **First Full-Team Meeting**
   - Review, discuss and sign participation agreement
   - Discuss role of lawyers and neutral role of coach and financial planner -
     - Develop guidelines for communication with neutrals outside of Full-Team meetings
   - Review roadmap of process
   - Clients identify goals
   - Identify short term/time sensitive issues
   - Identify information to be exchanged
   - Schedule meeting between clients and financial neutral
   - If children involved, discuss whether clients wish to meet with coach to develop parenting plan or whether there is need for child specialist
   - Create Agenda for next meeting
   - Schedule subsequent meetings

3. **Debrief First Full-Team Meeting**
   - Collaborative lawyer and client Team

4. **Distribute minutes after each Full-Team Meeting**

5. **Prepare for Next Full-Team meeting**
   - Attorneys and clients pre-brief
     - Check in with client - update, concerns, etc.
     - Review tasks and homework
     - Review Agenda for next meeting
     - Answer client’s questions
Team pre-brief

- Share concerns and updates regarding clients
- Develop Strategy to address upcoming issues
- Review/revise Agenda

6. Subsequent meetings

Partial-Team or Off-Line - Clients meet with financial neutral, coach and/or child specialist as planned in a Full-Team Meeting

Full-Team
- Review minutes
- Discuss if anything has occurred since the last meeting that needs to be addressed
- Review homework completed
- Follow the roadmap
- Set agenda for the next meeting
- Assign homework if appropriate
- Close each meeting by confirming positive achievements and understanding of the next steps

Process continues as clients gather and exchange and evaluate information, brainstorm and resolve all issues regarding children, property, debt, etc. Once agreement is reached on all issues, the lawyers draft the necessary documents. At a final meeting, documents are reviewed and signed. The professionals discuss the progress the clients made and review the important points in the process (preserved relationship, etc.). The clients are invited to share their experiences with the collaborative process.

Bibliography


International Academy of Collaborative Professionals (IACP)  
[www.collaborativepractice.com](http://www.collaborativepractice.com).
AGENDA

(SAMPLE)

Mark Jones and Andrea Jones
Second Joint Meeting
October 2, 2013

9:30-11:30am at the office of Alan Rome in Montpelier

I. Identify goals

II. Identify time-sensitive substantive concerns

III. Discuss information exchange

IV. Create agenda for next meeting

V. Next joint meeting: October 15 at 9-11am

Attorney-Client Debriefs: 11:30-11:40

Team Debrief: 11:40-11:50
FACT PATTERN

Mark and Andrea have separated after thirteen years of marriage. Mark is 54 and Andrea is 46. They have two children, Grace, 12 and Cole, 8. About four months ago, Andrea told Mark she wanted a divorce and asked him to move out. About a month before their separation but after several months of troubling health problems and symptoms, Mark was diagnosed with Multiple Sclerosis.

Both Andrea and Mark have had careers during the marriage. Mark has been a commercial airline pilot for twenty-four years, most recently earning $160,000 per year, but his diagnosis and symptoms have forced him to give up his flying career. Mark’s has a sizeable retirement and investment portfolio, due in part to receiving a very large inheritance from his father five years ago. Andrea has been the school librarian at their kids’ school for the last 10 years and earns $34,000 per year. She has been the primary caregiver for the children.

Mark does not want to get divorced and has repeatedly asked Andrea to go to couples’ counseling. Andrea finally agreed to go and they have been to two sessions. Mark has not agreed to move out of the home. Instead, he suggested they split their time with the kids at the marital home one week on, one week off. Andrea reluctantly agreed to a temporary house-sharing arrangement but only on the condition that Mark agree to move forward with the divorce.

About two months after they separated, Andrea told Mark that she was seeing another man. Mark has no proof but he believes Andrea was seeing this other man before their separation. Andrea has neither confirmed nor denied this but told Mark she wants him to move out of the house for good. Mark told Andrea that he does not want the other man around his kids. He feels it is too soon to introduce them to him and they are not ready to handle their mother being in a new relationship. Mark is continuing to refuse to move out. After much discussion, Andrea agreed with Mark that the kids are most important and that maintaining stability for Grace and Cole is their main goal.

Both initially presented to their respective attorneys as enthusiastic about Collaborative Law and their ability to work collaboratively. The two attorneys conferred and discussed their concerns. They gave the parties several names of mental health professionals and together, the parties selected their mental health professional. The MHP interviewed the couple together and then each person separately before the first five-way meeting. The MHP felt some discomfort and concern about Mark’s emotional functioning due to his illness, loss of career and reluctance to get divorced. The mental health coach discussed these concerns with the attorneys. The attorneys also expressed their concerns, but, in view of the couples’ positive attitude about the CL process and their shared commitment to preserving stability for the children and keep things between them civil, the Team decided to take the case.

Current Status: The first joint meeting, which was an hour long meeting, is complete. The Participation Agreement and Addendum have been signed. The Roadmap has been reviewed. No interim agreements on any substantive matters have yet been made or discussed. The second joint meeting is scheduled for next week. The Team is about to begin their pre-brief in preparation for next week’s joint meeting.
COLLABORATIVE LAW PROCESS
MENTAL HEALTH COACH’S INITIAL MEETING WITH CLIENTS

Part 1
Information for Clients

1. Communications and transparency:
   a. Relevant information will be shared with all Team Professionals in order to advance the process.
   b. Coach does not keep secrets - explain why.
   c. Clarify difference between confidentiality (as in therapy relationship) and transparency (required in Collaborative process).

2. Describe role of coach on the Team (facilitator and neutral):
   1. To inform Team members of relevant information obtained in client interviews.
   2. To Participate in conference calls and prepare for Team meetings.
   3. To attend all Team meetings.
   4. To provide feedback on the agenda.
   5. To de-brief with the professionals after all Team meetings.
   6. To review and/or edit the minutes.
   7. To communicate “off-line” with the parties, as needed.

3. Explain that the Coach is a mandated reporter.
COLLABORATIVE LAW PROCESS
MENTAL HEALTH COACH’S INITIAL MEETING WITH CLIENTS

Part 2
Gather information from each client:

1. Your story:
   a. What has your marriage been like in recent years?
   b. What has brought you to the point of divorce?
   c. How have you handled differences and disagreements during your marriage? And what didn’t?
   d. What has been positive in your marriage (what parts worked well)?
   e. How well are you and your partner currently communicating?
   f. What aspects of your communication would you like to change or improve as you move through this process?

1. What really matters to you most as you look ahead?

2. What are your short and long term goals?
3. What are your resources and strengths for dealing with conflict?

4. What are the issues or interactions that trigger you (hot buttons) and what might I do to help you to manage your reactions when you get triggered?

5. What are your needs and concerns regarding the Collaborative Process, for example – timing, pacing and individual style/needs re: processing?

6. What might be other issues/concerns that might impact the Collaborative Process, such as domestic abuse, substance abuse, health or mental health issues for you or your partner?

Part 3

Wrap Up:

1. Coach works within the scope of her expertise and does not give legal or financial advice.

2. Coach can remain a resource in connection with decisions made in the Collaborative Case, but may not provide therapy to any party or to any members of the parties’ nuclear family.

3. Go over the Collaborative Coaching Contract.

4. Coach may work with clients to develop a parenting plan “off line”.

5. Coach provides “off-line” communications with clients as needed.