

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, and Marco would eventually use this as a basis to claim a greater percentage of the marital home equity. Religion was an important part of their lives, and they practiced their religion in a traditional fashion. The parties had grown apart over the years for many reasons. In addition, Marco perceived that Ginny had a serious alcohol problem. Ginny's alcoholism had possibly led to the loss of her job, and had led to the temporary loss of her driver's license, which impeded her ability to obtain new employment. The family was in some financial distress as a result; however, Ginny was in treatment and making a sincere effort to address her alcoholism. Marco did not focus on Ginny's alcoholism, and was glad she was in treatment, although he was angered by the effect the problem had on the financial condition of the family.

At the time the parties contacted the lawyers regarding divorce, they had already been separated for approximately two years. The separation had been initiated by Marco, who was the one who wanted the divorce while Ginny did not. What was remarkable, however, was that the parties had in many ways continued to act as partners and parents despite the long separation. Marco came to the house almost daily, he often drove their son to and from school, the parties continued their family religious traditions together, and the family even continued to have meals 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 process that was utilized to reach a separation agreement to end their marriage.

Ginny came to Paula for divorce information and was excited about the possibility of the 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; although she was interested, she now had to get the retainer together in order to proceed. A full *nine months* passed before Ginny came back to Paula and was ready to begin. Since financial resources were not plentiful for this family, it had taken $\frac{3}{4}$ of a year for her to accumulate a retainer. 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. .

When Marco first came to see Karen, they explored all the options, including litigation, collaborative law, and mediation. Marco didn't need much "selling" of the collaborative law process and was very interested in collaborative law both for the promise of an amicable solution and the possibility of lesser financial cost. Interestingly enough, and unbeknownst to Marco and Karen, Ginny had already consulted with Paula several months before. Karen knew Paula from the Massachusetts Collaborative Law Council but had never worked with Paula. When Marco then received the letter Paula sent out to him regarding her representation of Ginny and the possibility of proceeding with the case using the collaborative law process, he retained Karen, and Karen called Paula to discuss doing the case collaboratively. Both parties were apparently ready to commit to the collaborative law process.

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 first meeting was awkward. Although Karen and Paula had agreed they would start by going over and signing the collaborative law participation agreement, neither Marco nor Karen knew that Paula was going to review the agreement paragraph by paragraph. The parties had seen the agreement in advance; although both Karen and Marco felt it important to go over the agreement and execute it together, they did not anticipate that the ritual would be done in such detail and that it would take so much time. 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 in this case. Many of them were contentious, especially because of the nature of the clients. They continued to have a hard time separating from each other, and Marco would, in spite of warnings from Karen, show up uninvited at the marital home where the wife and 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. The wife was feeling very put upon during the process, especially because she didn't see the husband providing her with any relief from the children-related demands. The husband would complain that the wife, 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 perceived he stayed too long.

Thus, 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. The attorneys talked about the situation on a fairly regular basis, and one of the big issues for Paula was that she perceived the husband to be a difficult (and, often, even impossible) person. Karen and Paula realized that the collaborative law process demands new lawyering skills that call upon each of us individually to treat the "opposing" client with as much respect as we would treat our "own" client; the spouse who normally can seek refuge behind his adversarial attorney sits around the four-way table in the collaborative process, thereby placing himself and his issues squarely in the face of all involved. Paula felt she had to face her own humanity and decide to either "get over" her personal feelings or mask them well; either choice presented her with a challenge. For Karen, keeping Marco in the collaborative law 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 resolution. He would point to the fact 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 needed to be addressed. Paula and Karen 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 find financial stability even if it meant the sale of the marital home, and that 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 parenting plan until the divorce was final, in effect, he was holding the parenting plan "hostage" till everything else had been decided.)

The parties ultimately did retain 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 new job helped somewhat with the cash flow issues.

It was not until the last meeting, however, that a "breakthrough" occurred. The stumbling blocks to final resolution turned out to be the division of the marital home equity, and, correspondingly, Ginny's need for Marco to be clear about committing to the parenting plan they had devised. When the house was sold in the future, Marco wanted the value of his family's "gift" to him off the top, thus giving Ginny very little equity, in spite of the fact that this had been a long-term marriage to which she had contributed both financially and as a homemaker. Ginny and Paula were open to Marco and Karen's view on a conceptual basis, but asked that Marco and Karen understand and incorporate fairness. The discussion got heated, and the parenting plan was brought up by Ginny again. The parties and counsel decided to take a break.

Something miraculous happened during the break, and when everyone met together, the parties were ready for resolution. The focus became trust and fairness, and the parties and counsel were able to use transparency to get to the parties' real issues. Ginny needed to have faith that Marco would implement the parenting plan, and that he did value her as a person and a mother. She was able to express her feeling that she was hurt by Marco's lack of affirmation of her as contributory parent/partner. Marco needed to recognize Ginny's contribution to the marriage and have a sense of fairness with respect to the division of the house equity, which he was ultimately able to do. Marco was also able to express to Ginny for the very first time that he was embarrassed about his apartment and that, therefore, he had not invited the children to visit him there; he was afraid they would think less of him as a father if they saw his 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.

A safe environment had been created for the parties to express their emotions. There was a moment of release by the parties and both attorneys felt honored to be allowed to witness it. Neither attorney was able to define how that safe place had been created, so they talked later to try to understand the

“breakthrough”. Analyzing the process and what they had done during the process was important to Paula and Karen in trying to understand what skills they had used or should have used at various times during the collaborative law process.

Yet, despite the “breakthrough”, the case wasn’t over. These people had worked hard. They had discussed and compromised and disagreed and agreed. We were all happy that the process had been successful. Now we only had to sign the agreement. Karen drew up the agreement, and Paula and Ginny were surprised and even offended by some of the language in the agreement. Karen could not understand their reaction. Karen and Paula had to have a number of conversations which involved her explaining and interpreting what turned out to be language that, ultimately, worked very well. This is merely 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. Finally, however, we were able to line ourselves up again and get the clients ready to sign. Now, inexplicably, Ginny postponed the execution for what seemed like an interminable amount of time; perhaps her ambivalence about the divorce played a role. Finally, after much prodding (and after daily calls to Karen from her client), Ginny signed the Agreement. We all realized that, even though these folks had had many four-way meetings, one more would have worked wonders in order to explain and execute the Agreement. Even though the husband was very clear in his desire to have no more meetings, this last meeting would, in the long run, have saved both clients time and trouble and energy and money, since the Agreement would have been executed immediately. This practice point – be sure to have a final four-way meeting regarding the Agreement – is an important one.

The case had some twists and turns at the end. At Court, Paula’s client gave Karen that big hug, and Marco, who had appeared less emotional than Ginny during the process, cried after the hearing. Also, some time after the hearing, Marco informed Ginny he was getting remarried immediately, which was a surprise to us all.....this perhaps explains his impatience during the process.

Karen and Paula, (and the clients), learned a lot from this fascinating case.....

- 1st four-way – 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.
- Establish protocols regarding how the parties and counsel will conduct themselves during the meetings.
- Articulate, with the clients, their goals – perhaps one of Marco’s goals would have been speed, and we could have discovered the reasons for his need.
- Take breaks as needed. Check in with your own client.
- Debrief after each meeting, both with the client and the other attorney.
- Summarize each meeting in writing, and make sure everyone understands and agrees that the summary is correct.

- Treat each person as a complicated whole. Attorneys – be prepared to view the other spouse and counsel as people rather than as the opposition.
- Acknowledge the breakthrough moments.
- Meet to explain the divorce Agreement and to execute it.
- Pay attention to the process itself and continue to reaffirm your own commitment to the process and reemphasize the process with your clients.
- Give clients realistic assessments of the time the process may take from beginning to end. When they ask about the price of the process, be honest in your assessment, and do not “sell” the process merely as a cheaper alternative; cost is always a function of the bumpiness of the journey ahead, and the client must be so informed.

Collaborative law is a new journey for clients and for lawyers, even experienced ones (since they often have to “un”learn or “re”learn their traditional strategies); the possibilities are limitless, so be sure to keep watch during the journey!!!