The “Art” of the Four-Way Meeting

by Lynda J. Robbins

In Massachusetts, we have a standard role play demonstration we use in our trainings. In the first part, the lawyers bustle in; one announces forcefully how busy and important he is and how little time he has. He tries to dominate the meeting physically and verbally—interrupting, disagreeing, asserting his viewpoint. His client is hushed into silence as he attempts to control the meeting. The other attorney, of course, responds in kind and everyone is left frustrated and exhausted, even after the brief “skit.” And those of us who have been practicing in the family dispute area for any time know that, while this may be a parody, it is not necessarily off the mark. In the second part of the role play, the attorneys are cordial and courteous and the clients take their cues from them, feeling free to offer thoughts and suggestions and to express concerns and fears. Progress is felt and the parties are encouraged in the open and safe exchange. Again, while our collaborative four-ways do not always progress as well as our second role-play, the different atmosphere creates a forum for hope and progress.

As collaborative practitioners, we are “unlearning” years of training and practice and developing new skills and methods of problem-solving to facilitate our clients in the resolution of their differences. It is easy for us to get caught falling back on old habits. The Paradigm Shift is not a smooth transition, but we have many resources and tools to draw on during the process. This article

addresses some of the techniques and processes that can be used to enhance our four-way meetings.

We do not want to discard all of our “old” tools. For instance, many practitioners are also mediators and the mediation skills transfer nicely to collaborative practice. I encourage anyone who does not have mediation training to take a mediation course. And collaborative skills enhance our mediation practices, also.

One of the benefits of Collaborative Practice is the willingness of fellow practitioners to themselves available, formally and informally, as mentors. The various practice groups also help members by providing “in service” trainings, discussion forums and pooled experience.

Many practice groups have developed protocols, charts and checklists to assist practitioners. They have generously shared these with “soul mates” around the world. While there are many protocols and techniques left to be discovered, we are also saved from having to “reinvent the wheel” each time.

While one of the attractions of collaborative practice to clients is that we help them formulate solutions unique to their individual situations, we have learned that there are some universal truths. Each practitioner approaches the practice in different ways but, if we follow the collaborative process we have learned, we offer our clients the framework to resolve their situations in the best way for them.

Toward that end, the first “lesson” of collaborative practice is: do not be lazy. If we skip steps, we do not establish a firm foundation and the structure of

our negotiations collapses. That said, we do not need to belabor each step. While I find that most clients appreciate the joint reading of the collaborative process agreement at the first four-way, sometimes it is best just to summarize and be sure the clients both "hear" the most important points. At a recent four-way, we started reading the Agreement, one client interrupted with some comments and it became immediately clear that he did not want to read it word-for-word. So, the attorneys shifted into summary mode, the Agreement was discussed and everyone was comfortable signing. In another case, my client expressed her thanks that we had gone over every word because she found it helpful to hear the same agreement in the same room with her husband. So, the second lesson is: be flexible.

Certain ground rules should be clarified while heads are cool. Things like not interrupting, using "I" statements and being respectful may seem simplistic but, later, when things are heated, a simple cue, established at the first meeting may effectively get everyone back on track while saving face. As professionals, we also must resist being drawn into the fray. Maintaining professionalism is critical at all times. If we simply remember to practice common courtesy, and model that for our clients, the process will proceed more smoothly.

It is also useful to have clients express their goals for the process and their family at the first meeting. Again, later, it helps to re-focus everyone by referring back to those goals and examining how the present status helps the parties achieve those goals.

Preparation is also critical. Just as none of us would have gone into Court without doing our homework, neither should we go into a four-way meeting unprepared. Reviewing with our clients and preparing them for what is about to happen is critical to the success of the meeting. We may have done this hundreds of times but most of our clients have never done it before. And, while we hope this will change soon, so far, our clients have not watched collaborative practice on "L.A. Law."

We are all busy and it may seem hard to find the time to meet with our collaborative counterparts but, this is also a step that should not be skipped, even if we have known the other attorney for years and worked with him or her before. Talking together about *these* clients helps us facilitate the meetings. Setting the agenda in advance, deciding on locations and times for meetings, sharing responsibility for taking the minutes and drafting documents are all steps that will enhance our four-way meetings. Skipping any of these steps takes away the foundation and the outcome will suffer for it. Additionally, de-briefing with your client and the other attorney is equally important in facilitating the smooth running of the next meeting. Positive strategies can be identified and reinforced, progress can be commemorated and mistakes can be corrected.

It is also important not to rush the conclusions of any subject before we are ready. Sometimes there are immediate, pressing problems that have to be addressed—a scheduling issue involving the children, a bill or expense for which a deadline looms or a trip that has been long since scheduled. By all means, address immediate problems but try and guide the clients as to the true meaning

of “immediate.” For instance, the Wife may believe that she must get an immediate commitment from the Husband allowing her to remain in the marital home until the children are grown. There may be many reasons for this, including her fear of not being able to afford another home, her insecurities over starting a new life as a single person/single income-earner or her belief that the children need to stay in the house. But, it is probably inadvisable to push that decision too soon. Perhaps an interim agreement for her to remain in the home until the parties agree otherwise will calm the situation. Then the professionals step in to help the parties through the decision making process.

Undoubtedly, at the first meeting, there was a discussion of documents that needed to be exchanged and who would be responsible for what documents. This is part of the important foundation. Additionally, the parties may have agreed to have the property appraised. As each of the pieces of the puzzle fit into place, the true picture of this family emerges.

Ideally, the parties are working with other collaborative professionals in addition to their attorneys as part of a team approach to problem solving. The divorce coaches may be working with the parties. The Wife’s coach to help her sort out her reasons for wanting to stay in the house and why the Husband may be resisting, the Husband’s coach to help him understand the Wife’s concerns and why he is taking his own position with regard to the sale of the property.

In addition, the parties can be working with the financial specialist to evaluate the cash flow, the tax situation and the long-term implications of the property ownership.

At some point, the parties may be consulting with their child specialist to address the true needs of the children whose world may appear to them to be evolving without their consent. The child specialist can help the parents understand what the children are going through and how to assist them through the transition.

As these processes progress, things are learned, information is shared and, when the parties reconvene in a subsequent four-way meeting, these resources help guide the discussions. Perhaps the child specialist has learned that the children do not want to stay in the marital home because of the associations with their parents' arguing. Perhaps the parties discover that selling the house and dividing the proceeds frees them from high mortgage payments while providing funds to purchase two smaller, more manageable properties to be occupied by both parties.

So, to have rushed to a commitment to address certain insecurities, may have locked the parties into a solution that benefits neither and effectively precludes a more fitting agreement. Do not skip steps! Also, note that part of what makes the "art" of the four-way, takes place outside of the four-way.

Of course, getting the parties to the table in the first place may be the first obstacle. In a family law dispute, there is often a sense of broken trust and pain inflicted; sitting together is difficult. Again, the preparation with the client and attorney, the client and coach and discussions between attorneys can help overcome these obstacles. When geographic issues appear to be an obstacle to a four-way, technology can help. Conference calling, video phones and other

tools are useful. Or it may be as simple as always meeting at one attorney's office rather than alternating because that attorney's client needs that added security. If the other client is okay with that, the added expense of having his or her attorney travel can be compensated in creative ways such as having the non-traveling attorney do the drafting of documents.

As important as the process is to the successful completion of the negotiations, the collaborative professionals must always be mindful of the ethics of their underlying profession. Attorneys are bound by client confidentiality and privilege, rules of Court (to which a divorce agreement must be ultimately submitted for approval) and the exhortation to zealous representation. The Paradigm Shift helps us to reconfigure these so that we can satisfy our professional obligations while maximizing the collaborative benefits for our clients. And the duty to the client, the process and the Code of Professional Responsibility can thereby be carefully balanced.

That said, we also have to be careful about how the "law" is introduced into the process. While we do negotiate in the shadow of the law, this is often an opportunity for clients to move beyond "the law" and fashion a solution that meets their needs better than a "cookie-cutter" Agreement. I recently had a collaborative negotiation almost derail because the financial specialist made the mistake of introducing the child support guidelines in a way that caused the Husband to panic. She was able to recover and she alerted the attorneys to the gaffe and we were able to craft, with the financial specialist's help, a creative solution. The

lesson here is that it is important to evaluate the concerns of the parties and tailor the presentation in a way to keep them focused on problem-solving.

And these “surprises” do arise in spite of all the preparation, protocols and coordination. That’s where the second lesson comes in again: be flexible!