

The Promise of Collaborative Practice for Low-Income Families

by Jane Murphy and Ashley Jones

A few years ago the faculty and some students from the University of Baltimore School of Law's Mediation Clinic for Families were trained in collaborative practice courtesy of the Administrative Office of the Courts. The Mediation Clinic for Families, one of ten clinics in our law school's clinical program, partners with the court system and a variety of legal organizations to provide students with opportunities to practice law under the student practice rule representing clients in mediation. Students are also trained as mediators. Students provide mediation or client representation in child access cases, divorce, foreclosure of the family home, wills, and school conflicts. Students also engage in projects designed to educate communities about what alternative dispute resolution and the advantages it may offer in resolving disputes. Although we've had a primary focus on mediation, we thought it was time our students were exposed to this exciting and expanding area of collaborative practice.

Although we normally have a long waiting list to provide representation in family law litigation in our clinical program, we were surprised by how challenging it was to find clients for collaborative representation. We screened many prospective clients and decided, for a range of reasons, that collaborative would not work. Cases were screened out for a range of reasons—the presence of domestic violence, severe distrust between the parties, and active substance abuse. Even when we found a client who was interested and appropriate, the other party was either unwilling, did not have an attorney or had an attorney who was untrained and unfamiliar with collaborative practice. Despite some frustration, these interviews in which our students explained dispute resolution options to clients and helped them make good choices were rich learning experiences and helped students understand that counseling clients about dispute resolution options is both ethically required and good practice.

Finally, in September, 2014 we began representing a client under a collaborative agreement. The client was screened by the Collaborative Law Project of Maryland; both she and her husband had preliminarily agreed to pursue their divorce with collaborative attorneys. Because this would be the first collaborative case for faculty or students in the clinic, we requested that Meg Oliver, an experienced collaborative practitioner, interview the other party for

possible representation. Having an attorney we both trusted and deeply respected representing the other party was critical in becoming comfortable and confident in this new world of collaborative practice. Meg met that criteria and made it possible for us to “take the leap.”

We are just concluding the case and have the following observations:

Challenges to Collaborative Practice in Low Income Families

Informed Consent. Among the first steps with any potential collaborative client is a conversation in which the attorney describes the collaborative process and makes certain the client understands how it works as well as the benefits and risks of this process as compared to others, including litigation. Our client had contacted the Legal Aid Bureau and other sources of free legal services before she got to the Collaborative Law Project (CLP). Because the CLP was the first and only offer of free legal assistance, we were never certain her decision to proceed with collaborative was a real “choice.” Of course, this is true of many clients who are eligible for free legal services and never really experience the process of interviewing several attorneys and choosing one among many options.

Demands of the Collaborative Process. One of the many benefits of collaborative is the central role played by the clients in leading the effort to reach agreement with the support of their lawyers and other members of the team. This requires the client to devote substantial time, both in meetings with the team and outside the meetings, gathering documents and completing other “homework” between meetings. Time is a precious commodity for all of us but for our clients, hourly wage-earners, each hour away from work during meetings or completing other tasks challenged their ability to pay rent, buy food and otherwise continue to stay afloat. This presented a burden to our client and made us wonder, from time to time, whether traditional lawyer-driven representation would not have served her better. We also knew that getting a divorce judgment as soon as possible was critical to her effort to prevent foreclosure and avoid incurring more debt from her husband's various activities. Our efforts to deal with the myriad of issues raised by both parties probably resulted in a longer process than one in which our client was limited to the issues a court would address.

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Limited Client Resources. Although both lawyers and other members of our team (a child specialist for early sessions and a financial neutral throughout) participated in this case pro bono, we did find that our clients' lack of resources limited our ability to "problem solve" to reach solutions. It was clear to all of us that our clients were unable to pay fines, purchase insurance, conduct appraisals, and pay child support arrearages. They greatly benefitted from the insights of our financial specialist, Don Paris, but he and they were limited by the lack of resources in developing options to resolve problems. Not surprisingly, poverty makes everything very difficult, including reaching an agreement on financial issues in divorce.

Benefits. Despite these challenges, we believe the collaborative process was ultimately a better choice than litigation for our client. She experienced many of the benefits typically experienced by clients in the Collaborative Process: a sense of empowerment from her direct participation in resolving longstanding conflicts with her husband; the insights and advice from legal and non-legal experts; the ability to address a broad range of issues beyond those that a court would address; and ultimately strengthening her relationship with her husband as they continue to co-parent after divorce.

Apart from this general assessment, we offer each of our perspectives on the Collaborative Process:

Ashley: I believe that the Collaborative Process benefits clients like ours because it gives them flexibility, both in time and in resolution. In addition, it affords an opportunity, not available in court, for parties to actually air their grievances with each other and have those grievances addressed. This permits some closure and helps the parties begin the process of moving on. For example, one issue in our case involving a car was extremely important to our client but would likely have not been addressed in court. Our client also worked with her husband instead of against him. This likely would not have happened in a litigation setting, especially given our client's longstanding frustrations with her husband.

For me, as a law student, having a collaborative case was a great learning experience. It was like seeing the divorce process in slow motion. I got the benefit of learning from Meg with her experience and wisdom whereas in a litigation setting we would have been adversaries. We really got to get to what was going to be best for the family in the long run instead of what was going to be best for our respective clients in court.

The presence of shared neutral experts like Don Paris also added a lot. In my opinion the Collaborative Process did more than just settle a divorce between the participants; it resolved long standing issues in their marriage.

Jane: As a long time litigator and more recent mediator, I came to collaborative practice with a good deal of skepticism. I was the one in the training who asked the annoying questions: Isn't this just client centeredness and problem solving—approaches that all good lawyers take? Aren't the ethical issues just too great to overcome? How can you agree to share information? Refuse to litigate if that's what your client wants? And what about the low income families—where do they fit in what looks like a very expensive process?

But I could see that collaborative was here to stay and that many of my former students were leading the way. I also sensed a strong interest in the topic from students when we discussed it in Family Law. Members of various collaborative practice groups had visited an ADR Seminar I teach inspiring students to research and write topics related to collaborative practice. And I had come to see the value of mediation which shared many of the same core values with collaborative practice. So I welcomed the opportunity to work with my student and this client in our first collaborative case.

We definitely benefitted from working with Meg Oliver and Don Paris, two experienced and very skilled collaborative practitioners. And I was struck each time we met with the power of a team of experts working with our clients toward a common goal—resolving problems they had identified together as the critical issues in, not only getting a divorce, but strengthening this family. Most of the families we represent in the clinic have never had the opportunity to work with child specialists or financial experts; these experts can provide valuable support to our clients experiencing severe emotional and financial difficulties at the time of family breakup. I am excited about training a new generation of lawyers in this approach and making it available as an option to low income families who, as much as anyone, will benefit from the promise of this process

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