

COLLABORATIVE LAW JOURNAL

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PROMOTING THE NON-ADVERSARIAL PRACTICE OF LAW

Collaborative Law Journal



MASSACHUSETTS COLLABORATIVE LAW COUNCIL, INC.
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PRESIDENT'S COLUMN: *How Are We Doing?*

As we approach the end of 2004, this is an appropriate time to take a look at what the Massachusetts Collaborative Law Council has done, and how we are doing.

In early March we held our first Interdisciplinary Collaborative Law training program here in Boston. The two-day session [Law, Money & Broken Promises: A Collaborative Team Approach To Managing Conflict] was held in conjunction with Suffolk Law School's Center for Advanced Legal Studies. Thanks to the good works of Rita Pollak and her committee, the program was attended by 55 professionals including Accountants, Financial Specialists, Divorce Coaches, Child Specialists, Psychologists and Attorneys. Thereafter, the Board of Directors voted to approve membership in the Council to Allied Professionals [non-attorneys] as Associate Members. As a direct result of this training, we have gained a good number of new Associate Members. We are in the process of preparing for our second such training program on December 3rd and 4th, 2004, which will also be held at Suffolk Law School.

At the end of April, we put on a successful basic training program [Collaborative Law Practice, At the Cutting Edge] in Springfield. The two-day program drew some 20 attorneys from the Western part of the Commonwealth. Our Vice President of Education and Training, Karen Levitt, and her committee, in cooperation with the Western New England College School of Law did an excellent job. As a result, we have opened up the Council's doors to attorneys practicing outside of the Boston metropolitan area and are now a truly statewide organization.

At the end of September, Karen and her committee, in conjunction with the MA Continuing Legal Education, Inc. [MCLE], put on another basic training program [Cutting-Edge Collaborative Law Practice: Resolving Client Conflicts Using Collaborative Strategies] here in Boston. We had some 27 attorneys from all over the State in attendance.

In late May, the Board of Directors held its first retreat of the year. In addition to reviewing and revising our current by-laws, establishing the criteria for qualification to receive funds via the Bette Winik Scholarship Fund, and focusing on what the Council's criteria should be for the coming year, we were able to establish a working Marketing Committee. This committee is actively working to promote the concept of collaborative law, the work of this Council and getting the word out on the IACP Forum. In early November the Board held its second retreat to focus our attention as to what our vision is for the long-term future of collaborative law in Massachusetts.

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Cover Story: Labyrinths are as ancient as collaborative law is new. Both require strategy, patience and determination to resolve complex problems. Our cover symbolizes this synergy by placing the MCLC logo in the center of a labyrinth built into the floor of a French cathedral at the dawn of the 13th century.



THE IACP FORUM COMES TO TOWN

By Lynda J. Robbins

On October 22-24, 2004, the Massachusetts Collaborative Law Council was host at the Westin Copley Place in Boston to the Fifth Annual International Academy of Collaborative Professionals Networking Forum, Paradigms for Peace. The Forum was an opportunity for 400 collaborative professionals from all over the United States, Canada, England and the world to come together and meet each other, learn from each other and further their respective paradigm shifts.

As stated in its mission statement: the International Academy of Collaborative Professionals, IACP, serves members, influences the collaborative community, and benefits the public. It is committed to fostering professional excellence in conflict resolution through Collaborative

The best part of the Forum was the sharing.

Practice. They do this by protecting the essentials of Collaborative Practice, expanding Collaborative Practice worldwide, and providing a central resource for education, networking and standards of practice.

The Forum began with a thought-provoking keynote address (Stu Webb lecture) by Robert Mnookin Director, Harvard Negotiation Research Project, and ended with an inspiring closing message from David Hall, Northeastern University Professor of Law. In the time intervening, there were workshops, discussions and networking. We also got a preview of the new marketing materials and great tips on using them to maximize our practice. The

best part of the Forum was the sharing. Our business section members made great contacts and the discussions continue on developing those aspects of collaborative practice. Learning how other professionals practice and manage their practice groups was enlightening for our members. We can take the best of what we learned and integrate it into our practices and our Council.

This issue of the Collaborative Law Journal highlights some of the workshops and experiences of our members. I hope this piques your curiosity and that you consider borrowing the tapes we have of the Forum workshops and panels. They are available through our Clerk, Roland Turmaine at ronatur@aol.com. We also have tapes from last year's Forum in Vancouver.

Let me conclude by thanking Stuart Robbins, Rita Pollak and the many other Council members who helped make this Forum possible. And by thanking all our members who attended, especially those who took the time to write the articles that follow. I hope to see everyone in Atlanta next year for the Sixth Annual Forum!



Lynda J. Robbins is a director and founding member of the Massachusetts Collaborative Law Council who served as President for the past two years. She practices collaborative family law and mediation in Chelmsford, MA. Lynda can be contacted at (978) 256-8178, or at ljrobbinsesq@verizon.net



IDENTIFYING & HELPING DIFFICULT CLIENTS

Reported by Karen J. Levitt

WORKSHOP: Dealing With Challenging Clients: Who Are They and How Can We Help Them?

MODERATOR: Nancy Ross

PANELISTS: Gay Cox, Deb Johnson, Larry Hance

This workshop presented a fascinating look at the collaborative law process when you have difficult clients who you might otherwise think are not good candidates for collaborative law. It began with a discussion of how to assess a case and a difficult client in terms of appropriateness for the collaborative law process.

Assessing a client begins with making the client aware of the collaborative law process, both its advantages and disadvantages. A collaborative practitioner might agree, for example, to handle the case collaboratively, but not without the use of a team if it is clear that the "difficult client" will require more than the skills of the attorney to navigate the process. A practitioner must try to identify the challenges to be brought by the difficult client, assess those challenges to determine if the collaborative law process is appropriate, and, if appropriate, develop in advance techniques or skills to address those challenges.

The practitioner must also be able to be clear with the difficult client, as to when collaborative law might not be appropriate even if the client has chosen the process as their preferred method of dispute resolution. Difficult clients may be those

who see the process as a way to gain advantage, or who have pre-conditions to the process. These "red flags" as the presenters called them, are often indicators that another model might better serve the client; although it is possible to overcome such obstacles, a practitioner must do so carefully.

The focus of the presentation then turned to setting the stage for the client, when the practitioner becomes "an advocate, an educator, and a guardian of the Collaborative Process." The use of informed consent, building an interdisciplinary team, if necessary, and educating and guiding the client as to what to and not to expect are crucial at this juncture. Difficult clients often have expectations that may not be realistic, and may not be realized by the process. The practitioner must manage client expectations so that the client understands the realities and not the false promises presented by friends, the media, and their own sense of process and outcome. Education and management include the process agreement, behavioral expectation which can be reduced to writing in cases with difficult clients, the use of "road maps" to help clients understand the process and how it works, and having a consistent dispute resolution mechanism when there is impasse.

How does one create a process that addresses and responds to the needs of difficult clients? The presenters described

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various types of clients, for example the "reactive client," the "controlling oppositional blaming client," the "non-compliant client," and the "fragile client." The presenters proposed various methods for dealing with such clients, and all involved recognizing what is happening,

The practitioner must manage client expectations so that the client understands the realities and not the false promises presented by friends, the media, and their own sense of process and outcome.

determining what tools may be necessary to deal with such behaviors like the use of team members (such as a divorce coach, mental health professional, or others), or defining certain strategies with your client or with the other attorney or team members to deal with the problem. The presenters even suggested that you may have to redefine the collaborative law model itself, using caucusing or other such negotiation tools that might seem foreign to the collaborative law process.

The presenters, and their materials, were

excellent. If you have the opportunity to listen to this presentation (the Massachusetts Collaborative Law Council has purchased a set of tapes of all presentations), and to read the materials (with the consent of the presenters I would be happy to send anyone who is interested

a copy), please do so. Collaborative law practice sounds so easy, but as all of us find out when we actually do collaborative law cases, it is no so simple. The information given by

these presenters is invaluable to improving your collaborative law practice when you have that "difficult" client.



Karen J. Levitt is a founding member of the Massachusetts Collaborative Law Council currently serving as Vice-President for Education & Training. She is a solo practitioner with an office in Lowell, MA, and a principal with Centerline Mediation & Arbitration. Karen can be contacted at (978) 458-5550, or at klevitt@karenlevitt.com



“Even if you are on the right track,
you will still get run over if you just sit there.”

Will Rogers



COMMENTARY ON ETHICS

Reported by **Paula H. Noe and Eileen Z. Sorrentino**

WORKSHOP: Living in the Tension Between Commitment to Collaborative Practice and the Ethical Duties of Loyalty + Advocacy

MODERATOR: Pauline Tesler

PANELISTS: Nancy Cameron, Sue Hansen, David Hoffman

David Hoffman presented the basic issues and tensions with a set of Pragmatic Dilemmas that may present the collaborative attorney with ethical dilemmas. He stressed the tension between loyalty to the client and loyalty to the collaborative process. For example, in a collaborative negotiation, is the 50/50 division of assets really “my final offer,” or is it only a parry? Also, if one side decides to seek the advice of an expert outside the collaborative process, is that side obligated to share the expert’s opinion with the other side, or is this “insider” information... work product... and part of the process of educating and advocating for your own client?

David then emphasized that the issue of transparency, so often lauded as inherent in the collaborative process, could also be problematic—how much transparency is wise? And is it always appropriate? And — what about Partisanship? Strategic Bargaining? Distributive Bargaining Styles?

Pauline Tesler, in her article “A Modest Proposal” puts forth a possible solution or perhaps another dilemma to the conundrum facing collaborative attorneys — what is

the role of “THE LAW” in this collaborative setting? As we all know from our practices, it is easy and tempting to focus on THE LAW, and clients are often in need of our assurance that the judge will agree with their side of the story. However, judicial discretion often confounds us and our clients, leading to a no-win situation for everyone. In addition, it is inherently dangerous for us to assert that we know exactly what a judge would do in any given situation. If, for example, the issue in a divorce collaborative case is the amount of spousal support, THE LAW (case law and statutory law) offers many scenarios. Pauline’s question, then, is, “How do we present THE LAW to our collaborative clients (all of them) without foreclosing the possibility of a true client-developed resolution?”

Pauline presents the idea that the collaborative attorneys cooperate in this venture by presenting THE LAW to the clients together. She suggests that the attorneys agree to provide to the clients at a four-way meeting the parameters of the issue of spousal support, that they each do research on the topic and, by means of a pre-conference meeting between the attorneys, share the research they have done in order to reach collegial agreement on the depth and breadth of possible scenarios available to the clients. Then, at the four-way meeting, the attorneys present the possibilities that they have developed from their analysis of the issues and the cases on point. She also suggests that they

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take turns presenting the issues to the parties - for example, if Paula is representing Harry Husband, she presents the spousal support issue in the light most favorable to Winnie Wife, and Eileen, representing Winnie Wife, presents the information most favorable to Harry Husband. Pauline's assertion is that the information comes to the table in the most possible non-adversarial way by using this technique.

Nancy Cameron, in her article "Reclaiming Advocacy," excerpted from her new book *Collaborative Practice: Deepening the Dialogue* (published by British Columbia Continuing Legal Education, 2004), talks about the still important outcome of any case. It is, hopefully, not the only important factor, but still cannot be ignored. In fact, for the client, it may be the most important factor. Few clients focus on the process as much as we do. Perhaps what we need, she suggests, is a new definition of "outcome" for any given case, and this definition must be developed with each individual client. Furthermore, our relationship with the other collaborative attorney is key and unique; not only do we model cooperative behavior for the clients, but we also help define the new advocacy mandated by the practice of collaborative law.

Nancy shared with the audience her newly crafted definition of collaborative advocacy:

- to be steadfast in the comprehensive support of the client;
- to assist in understanding and articulating

the client's short and long term goals;

- to offer necessary support and leadership to enable a client to resolve disputes;
- to honor client process choices and agreed upon values.

Quoting from her article: "As we do more of this work, we will have the occasion when a client tells us that he is willing to leave a piece of his financial entitlement on the table. In the adversarial model, this is a sign of weakness, and as a skilled advocate, this is something we are trained not to condone.... At the very least, 'our adversarial education tells us, ...hold this is your back pocket and use it as a bargaining chip.'

"In the transition from litigators to collaborative lawyers we have much to unlearn."

"At its heart, collaborative practice is a self-determination model. I know what pieces of my life I hold more dearly than money. I know that these pieces are many: my children, my family, my health, my emotional well being, my peace of mind and contentment. I would not trade the time I make for contemplation for money. I would not sell my joy for any amount of money. . . .

"If I have done my job as an advocate well from start to finish, including the necessary attention to process, I will have a relationship with my client that is sufficiently honest that I can rely upon his ability to make a *Continued on next page*



decision that meets his highest prioritized needs. This does not necessarily mean getting the most money, which has been a measure of success we have been comfortable using. The skill that I bring to the new advocacy is what I use to build my comfort level in assisting clients to put together a resolution that will truly work for them into the future on all levels. In the transition from litigators to collaborative lawyers, we have much to unlearn. The way we define ourselves changes. How we do our task changes, and the shape of our practice will change."

Sue Hansen, in responding to Pauline Tesler's question about the role of THE LAW in a collaborative setting, believes that the lawyer has an absolute obligation to educate the client about the state of the law. It is the lawyer's obligation to help clients decide, guided by a full knowledge of the law. The difference between the role of the law in the collaborative process and litigation, however, is that the law is used as information-one piece of data-not as a weapon in the debate.

One way to expand the discussion of the law-in effect, expand by box-is by looking

Collaborative lawyers cannot detach from the outcome, but we can slow down and educate clients and have clients in the dialogue on how to reach an outcome.

at the law of other jurisdictions. This frees the client and the lawyers from the tyranny of the law and prevents the negotiators from giving the law of the particular

jurisdiction undue weight. If, for example, clients understand that child support guidelines vary across jurisdictions and are set by a political process, they are much less likely to feel bound by the number on the guidelines worksheet and more open to considering other approaches.

Collaborative lawyers cannot detach from the outcome, but we can slow down and educate clients and have clients in the dialogue on how to reach an outcome. Sue proposes that we look at collaborative law as an educational process in which the lawyer provides education, support and options and assists the client to reach their own decision. The lawyer does not drive the result and does not tell the client what their best result is.

Conclusion Collaborative lawyers live in a three-way tension among advocacy for the client, and loyalty to the collaborative process and creating and maintaining a collegial relationship with our collaborative colleague. In our enthusiasm for the process, we can never lose sight of our duty of loyalty to the client.

Collaborative law does not change our goal: To provide the most steadfast support for our client. It does change the means of attaining the client's ends and the way we identify those ends. That description, however, raises more questions than it answers. We will continue to balance on the knife's edge of our sometimes competing

obligations and commitments, balancing ethical duties to the client and contractual duties to the process. As acceptance for the

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collaborative process grows in the legal community, there will be ongoing discussion and debate around this issue, and through that dialogue the collaborative process will continue to develop and mature.

Collaborative lawyers live in a three-way tension among advocacy for the client, and loyalty to the collaborative process and creating and maintaining a collegial relationship with our collaborative colleague.



Paula H. Noe is a founding member and President Elect of the Massachusetts Collaborative Law Council who practices collaborative family law in Brookline, MA. She represented the husband in the precedent-setting custody of frozen embryos case, *AZ v. BZ*, which was ultimately decided by the SJC in her client's favor. Paula can be contacted at (617) 277-0899, or at phnoe@aol.com



Eileen Z. Sorrentino is a collaborative attorney and mediator in Springfield, MA, and a board member of the Massachusetts Collaborative Law Council. She practices in the areas of collaborative family law and mediation and represents small businesses and non-profit corporations. She can be reached at (413) 737-0260 or at ezs@eganflanagan.com.



EXPANDING THE PIE, CLOSING THE DEAL

Reported by Dawn Ide Austin

WORKSHOP: Expanding the Pie, Closing the Deal: Integration of Interest-Based Negotiation Skills and Narrative Mediation Principles and Techniques.

MODERATOR: John McElwee

PANELISTS: Karen Levitt, Gerald Monk, Chip Rose, Victoria Smith

The agenda for this workshop included an overview of interest-based negotiation, presenting interest-based negotiation to the client, discussing "the law," narrative mediation, and questions.

Chip Rose's presentation was focused on interest based negotiations. Among other things, he stressed the need for attorneys to strike a balance between empathy, i.e.,

understanding the other side's needs and interests without necessarily agreeing with them; and assertiveness, i.e., advocating for one's own needs and interests.

My main recollection was the discourse by Gerald Monk on the use of narrative ideas. I was struck by the concept that as divorce lawyers we often hear one spouse telling "stories" about the other that are overwhelmingly negative. Gerald Monk emphasized the potential benefits of eliciting tales that are not so readily told. He encouraged us to seek out stories that provide a flavor of what was good during their marriage, or even while they were courting. Once shared by the clients, these positive recollections can remind them of



better times, and foster the hope of negotiating their differences in a less contentious context.

The place of "the law" in collaborative cases was illustrated by Karen Levitt's presentation of a case gone awry because the attorneys did not have a clear concept of when and how to present the law. The case involved the issue of custody of the wife's child from a prior marriage where the biological father was deceased and the current husband had not adopted the child. Both the wife and the husband ultimately wanted custody of the child. Compounding

The place of "the law" in collaborative cases was illustrated by a case gone awry because the attorneys did not have a clear concept of when and how to present the law.

this case was the difficulty of knowing HOW to present the law when the facts raised issues where the law itself is unsettled. Nevertheless, Karen's point was well taken that the differing interpretations of the two attorneys that was aired in each four-way meeting simply made matters worse. I would have found more dialog on this subject helpful.

Victoria Smith emphasized the importance for clients to have a sense of "what if we

litigated" early-on in the negotiations. My feeling was that in a very short time an experienced lawyer should be able to present fairly definite answers to client's "what-if" questions when the issues raised concern basic legal matters. A lawyer can even elaborate for a few more minutes to say what would probably happen and after that. Beyond that however, a mini-law course may be necessary to enlighten clients.

This was an absorbing workshop, and as always, one wished that it could last for two or three days. I attended this session

wondering how this huge topic could be presented in one and a half hours. It obviously couldn't. However, the major points that were highlighted by the presenters in combination with the excellent!!! materials they distributed to attendees gave us the tools to do just what their catchy title promised.

Dawn Ide Austin is a founding member and director of the Massachusetts Collaborative Law Council. She is a trained divorce mediator who has practiced family law in Dedham, MA, for over twenty years. Dawn can be contacted at (781) 326-9309, or at diaustin@aol.com.



"What kind of victory is it when someone is left defeated?"

Mohandas K. Gandhi



WHO ARE THESE GUYS?

Collaborative Business Lawyers Focus at IACP Forum

Reported by Michael A. Zeytoonian

Even at 7:30 in the morning, there is strength in numbers and in connecting with colleagues. Collaborative lawyers and professionals from around the country and beyond who are working to apply Collaborative law to business and employment situations drew ideas and support from each other on several occasions during the IACP Forum. The first of these occasions was Saturday morning, October 23, 2004, as over 30 collaborative professionals – largely lawyers whose practice area is one other than family law -- met during a Breakfast Jam session at the Westin Hotel in Boston.

MCLC President Stuart Robbins greeted lawyers coming from Texas, Arizona, Minnesota, California, Georgia, Wisconsin, Louisiana, Florida, Virginia, Connecticut, Illinois, New York, Washington, Toronto and London. MCLC Business law co-chairman Michael Zeytoonian outlined the dual purpose of the morning session: 1. to give business collaborative lawyers an opportunity to meet, get to know each other, exchange ideas and get a sense of how and where the applications of collaborative law to business situations are developing; and 2. to discuss approaches to marketing and promoting the idea of business CL applications.

Elizabeth Ferris of Ferris Consulting, who is spearheading the IACP's marketing campaign, graciously agreed to moderate the exchange of ideas and progress. She framed the discussion and exchange of information within the context of

marketing. After giving a quick marketing primer, Ms. Ferris set the tone for the discussion by urging that the group focus on defining its value, determine how to communicate that value with those who would benefit from that value given. In requesting that each geographic area representative give a summary of where that group is in its progress, she also urged participants to determine where they wanted to go and start working on how to get there through strategic marketing planning.

While time constraints didn't allow all groups represented to give their input, some excellent ideas came from several groups including the Texas Collaborative Law Council. Stacey Langenbahn of Irving, TX shared some of the efforts being pursued in Texas, including efforts to introduce legislation including collaborative law in the ADR statutory scheme. She also shared some of the materials the Texas CLC has been developing including a Proposed Participation Agreement and a protocol for applications of Collaborative Law. Collaborative practitioners from several cities weighed in on the seminal issue of disqualification of counsel and the process of succession to litigation counsel in the event the collaborative process fails.

Before concluding, the session set out some action points and potential market audiences for further efforts. A bridge conference call dedicated to further discussion of *Continued on next page*



marketing business applications was scheduled for November, and a small ad hoc committee was formed for follow-up purposes.

The exchange of ideas in the morning jam session ignited enthusiasm for promoting business law applications of collaborative throughout the day. Later Saturday afternoon, business professionals gathered during one of the workshops focusing on collaborative law in business law contexts. Panelists Doug Reynolds (Newton, MA), Brad Hunter (Regina, Saskatchewan, Canada) and Gaylene Stingl (Milwaukee, WI) all offered suggestions and ideas for building upon and further thought. On Saturday evening, one of the dine-arounds

was also dedicated to business law professionals. Fire and Ice restaurant was a great setting for further building of the camaraderie amount the new-found colleagues from California to England.



Michael A. Zeytoonian is a partner at Hutchings, Barsamian, Cross & Mandelcorn, LLP in Wellesley, MA. His practice focuses on employment law, mediation and litigation. He is a member of the Massachusetts Bar Association (labor & employment and litigation sections), the Massachusetts Academy of Trial Attorneys and the Board of Directors of the Massachusetts Collaborative Law Council. He can be contacted at (781) 431-2231, ext. 247 or at maz@hblattys.com.



"RESOLVED" Collaborative Practice Week Proclaimed!

By Stephen M. Linsky

On October 12th and October 18th, in three separate ceremonies at Newton City Hall, Cambridge City Hall, and the State House, members of the Massachusetts Collaborative Law Council joined with other community-based attorneys, health and financial professionals to kick-off the first-ever Collaborative Practice Week.

The purpose of Collaborative Practice Week was to raise public awareness of the Council, collaborative practice in general, and events occurring later that week, specifically, the gathering of the International Association of Collaborative Professionals.

Proclamations and Resolutions enacted by the Governor, the Massachusetts House of Representatives and Senate, and the cities of Newton and Cambridge were presented

to the Council by local mayors, city councilors, and state representatives, who, in turn, received honorary certificates of membership from Council President Stuart Robbins.

Local officials participating in these events included Newton Mayor David Cohen, Cambridge Mayor Michael Sullivan, Newton Board of Aldermen Member Stephen Linsky, Cambridge City Councilors Henrietta Davis and Marjorie Decker, and State Representatives Kay Khan and Anne Paulsen.

Stephen M. Linsky is a partner at The New Law Center, LLC in Newton, MA, and a founding member of the Massachusetts Collaborative Law Council. Steve can be contacted at (617) 969-9610, or at Slinsky@TheNewLawCenter.com.



The Commonwealth of Massachusetts



A Proclamation

By His Excellency

GOVERNOR MITT ROMNEY

2004

- WHEREAS:** The practice of Collaborative Law represents a growing movement in the legal community and related professions involving specially trained lawyers and allied professionals engaging in a multi-disciplinary approach to the resolution of conflict without resort to adversarial processes; and
- WHEREAS:** The formation of the Massachusetts Collaborative Law Council evidences the growth of collaborative law practice throughout the Commonwealth; and
- WHEREAS:** Collaborative Practitioners provide clients who are parties to a dispute the opportunity to fully discuss, understand and develop their own solutions by upholding the principles of self-determination and informed consent; and
- WHEREAS:** Throughout the Commonwealth, consumers and providers of collaborative practice services will celebrate the week of October 18th through October 24th, 2004 as "Massachusetts Collaborative Practice Week" with events highlighting the numerous and varied uses of Collaborative Practice; and
- WHEREAS:** The promotion of Collaborative Practice is in keeping with the commitment to promote and employ forms of Appropriate Dispute Resolution to the greatest extent possible within the executive offices of state government through the issuance of Executive Orders and other available means,

NOW, THEREFORE, I, MITT ROMNEY, Governor of the Commonwealth of Massachusetts, do hereby proclaim the week of October 18th through 24th 2004, to be

COLLABORATIVE PRACTICE WEEK IN MASSACHUSETTS

and urge all the citizens of the Commonwealth to take cognizance of this event and participate fittingly in its observance.

Given at the Executive Chamber in Boston, this eighteenth day of October in the year of our Lord two thousand and four, and of the Independence of the United States of America, the two hundred and twenty-eighth.

Mitt Romney
MITT ROMNEY



By His Excellency the Governor

William F. Galvin

WILLIAM F. GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS



The Massachusetts State Senate



Resolutions

RECOGNIZING THE OBSERVANCE OF COLLABORATIVE PRACTICE WEEK.

WHEREAS, CONSUMERS AND PROVIDERS OF COLLABORATIVE PRACTICE SERVICES WILL CELEBRATE THE WEEK OF OCTOBER 18 THROUGH OCTOBER 24, 2004 AS "MASSACHUSETTS COLLABORATIVE PRACTICE WEEK" WITH EVENTS HIGHLIGHTING THE NUMEROUS AND VARIED USES OF COLLABORATIVE PRACTICE; AND

WHEREAS, THE PRACTICE OF COLLABORATIVE LAW REPRESENTS A GROWING MOVEMENT IN THE LEGAL COMMUNITY AND RELATED PROFESSIONS INVOLVING SPECIALLY-TRAINED LAWYERS AND ALLIED PROFESSIONALS ENGAGING IN A MULTI-DISCIPLINARY APPROACH TO THE RESOLUTION OF CONFLICT WITHOUT RESORT TO ADVERSARIAL PROCESSES; AND

WHEREAS, THE FORMATION OF THE MASSACHUSETTS COLLABORATIVE LAW COUNCIL EVIDENCES THE GROWTH OF COLLABORATIVE LAW PRACTICE THROUGHOUT THE COMMONWEALTH; AND

WHEREAS, COLLABORATIVE PRACTITIONERS PROVIDE CLIENTS WHO ARE PARTIES TO A DISPUTE WITH THE OPPORTUNITY TO FULLY DISCUSS, UNDERSTAND AND DEVELOP THEIR OWN SOLUTIONS BY UPHOLDING THE PRINCIPLES OF SELF-DETERMINATION AND INFORMED CONSENT; AND

WHEREAS, COLLABORATIVE PRACTICE SUCCESSFULLY RESOLVES A WIDE RANGE OF DISPUTES, INCLUDING THOSE INVOLVING BUSINESSES, FAMILIES, AND COMMUNITIES; AND

WHEREAS, COLLABORATIVE PRACTICE WEEK PROVIDES A SPECIAL OPPORTUNITY TO INCREASE PUBLIC AWARENESS OF COLLABORATIVE PRACTICE; AND

WHEREAS, THE PROMOTION OF COLLABORATIVE PRACTICE IS IN KEEPING WITH THE COMMITMENT TO PROMOTE AND EMPLOY FORMS OF APPROPRIATE DISPUTE RESOLUTION TO THE GREATEST EXTENT POSSIBLE WITHIN THE OFFICES OF STATE GOVERNMENT AND THROUGHOUT THE COMMONWEALTH; NOW THEREFORE BE IT

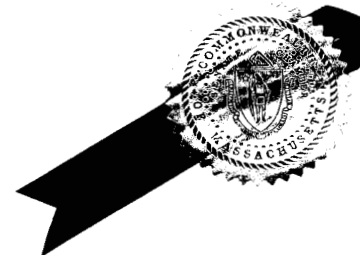
RESOLVED, THAT THE MASSACHUSETTS SENATE JOINS WITH THE MASSACHUSETTS COLLABORATIVE LAW COUNCIL IN OBSERVING THE WEEK OF OCTOBER 18 TO 24, 2004 AS COLLABORATIVE PRACTICE WEEK AND URGES CITIZENS OF THE COMMONWEALTH TO TAKE COGNIZANCE OF THIS EVENT AND PARTICIPATE FITTINGLY IN ITS OBSERVANCE; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THESE RESOLUTIONS BE TRANSMITTED FORTHWITH BY THE CLERK OF THE SENATE TO THE MASSACHUSETTS COLLABORATIVE LAW COUNCIL.

SENATE, ADOPTED, OCTOBER 14, 2004.
Robert E. Murray
PRESIDENT OF THE SENATE

William F. Walsh
CLERK OF THE SENATE

OFFERED BY:
Cynthia Stone Creem
SENATOR CYNTHIA STONE CREEM





President Stuart B. Robbins displays the Cambridge Resolution

Front row l-r: Cambridge Mayor Michael A. Sullivan, Marjorie C. Decker, Cambridge City Councilor, Massachusetts Collaborative Law Council (MCLC) President Stuart B. Robbins, Cambridge City Clerk Margaret Drury, Cambridge City Councilor Henrietta Davis, Jody Sammons, Cambridge Dispute Settlement Center (CDSC) Outreach Coordinator, and Myra Gordon, Boston Bar Association, Boston Municipal Court ADR coordinator.

Back row l-r: Joyce Kauffman (Cambridge MCLC member), Lynda Robbins (MCLC past president), Gail Packer (CDSC Executive Director), Joanna Bunker Rohrbaugh (Cambridge MCLC member)

Photographed by Stephen M. Linsky on Oct. 18, 2004
in the Council Chambers of Cambridge City Hall.



CCM-101



City of Cambridge

R-36.

IN CITY COUNCIL

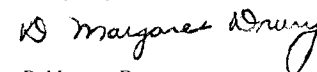
September 20, 2004

COUNCILLOR DAVIS
VICE MAYOR DECKER
COUNCILLOR GALLUCCIO
COUNCILLOR MAHER
COUNCILLOR MURPHY
COUNCILLOR REEVES
COUNCILLOR SIMMONS
MAYOR SULLIVAN
COUNCILLOR TOOMEY

- WHEREAS: On October 22-24, 2004, the International Academy of Collaborative Professionals (IACP) will hold its 5th Annual Networking Forum "Paradigms for Peacemaking" at the Westin Copley Place Hotel in Boston; and
- WHEREAS: This conference will be hosted by the Massachusetts Collaborative Law Council, an organization of legal and allied professionals; 400-500 practitioners from the United States, Canada and Europe will attend; and
- WHEREAS: The forum is dedicated to exploring the many ways that conflict can be managed in the domestic realm, the business world and the larger community using the collaborative process; and
- WHEREAS: The forum will highlight the practice of collaborative law, which shifts the focus from the adversarial system, where the courts or other tribunals determine the outcome after a combative litigation process to a cooperative and respectful problem-solving approach, where each party retains counsel specially trained in collaborative law to assist in achieving settlement; and
- WHEREAS: Resolution is achieved by joint problem-solving, seeking to satisfy each party's underlying interests in a process, committed to information sharing and settlement from the onset; now therefore be it
- RESOLVED: That the City Council go on record declaring the week of October 17-23, 2004 as Collaborative Practice Week in Cambridge; and be it further
- RESOLVED: That the City Clerk be and hereby is requested to forward a suitably engrossed copy of this resolution to the Massachusetts Collaborative Law Council on behalf of the entire City Council.

In City Council September 20, 2004.
Adopted by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk.

A true copy:
ATTEST:-


D. Margaret Drury
City Clerk



Commonwealth of Massachusetts
City of Newton



Proclamation

- Whereas, the practice of Collaborative Law represents a growing movement in the legal community and related professions involving specially trained lawyers and allied professionals engaging in a multi-disciplinary approach to the resolution of conflict without resort to adversarial processes; and
- Whereas, the formation of the Massachusetts Collaborative Law Council evidences the growth of collaborative law practice throughout the Commonwealth; and
- Whereas, Collaborative Practitioners provide clients who are parties to a dispute the opportunity to fully discuss, understand, and develop their own solutions by upholding the principles of self-determination and informed consent; and
- Whereas, Collaborative Practice successfully resolves a wide range of disputes, including those involving businesses, families, and communities throughout the City; and
- Whereas, throughout the City and throughout the Commonwealth, consumers and providers of collaborative practice services will celebrate the week of October 18th through October 24th, 2004 as "Massachusetts Collaborative Practice Week" with events highlighting the numerous and varied uses of Collaborative Practice; and
- Whereas, Collaborative Practice Week provides a special opportunity to increase public awareness of Collaborative Practice; and
- Whereas, the promotion of Collaborative Practice is in keeping with the commitment to employ and advance forms of Appropriate Dispute Resolution to the greatest extent possible within the offices of city government;
- Now, therefore, I, David B. Cohen Mayor of the City of Newton, do hereby proclaim

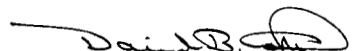
October 18th through October 24th, 2004

Collaborative Practice Week

In the City of Newton

and urge all citizens of the City to take cognizance of this event and participate fittingly in its observance.




David B. Cohen
Mayor



THE USE OF HEALING RITUALS IN DIVORCE: TWO IMPRESSIONS

By Eileen Z. Sorrentino and Shel J. Miller

Editors Note: Immediately preceding her participation as a panelist in the IACP Forum, Marilyn Beloff, Ph.D., led an all-day workshop at the Boston Law Collaborative entitled *Changing the Culture of Divorce: A Training in the Use of Healing Rituals*. Its aim was to teach how rituals can provide a safe space for people in divorce to face the death of their marriages, mourn its losses, restructure their families, make vows for continued loving parenting, and celebrate new beginnings. Following are the impressions of two participants in Dr. Beloff's all-day workshop.

EILEEN'S IMPRESSIONS: We have all stood with our stunned and bewildered clients outside the courtroom after a very brief hearing on a 1A divorce. Many of us prepare them for the letdown. They ask, "Is that all?" Sometimes they just stand there and cry. What is missing from this divorce process? Our civil process leaves clients betwixt and between, feeling neither married, nor single - just feeling bereft. We have no ritual in our secular world to help divorcing people sever their psychic connection to one another. Their pain and guilt often leaves them in a limbo state between marriage and divorce. Nothing in the civil divorce process helps them recognize and draw emotional boundaries. Divorcing couples need more help, including a way to let go of their dreams and move forward.

Marilyn Beloff has devoted herself to addressing this need. Inspired by the end of her own twenty-two year marriage and her own deep need for a meaningful ritual to set her free and allow her to go forward, Marilyn has made divorce ritual the subject of her Ph.D. dissertation and the focus of her professional life.

At the time of her own divorce, the only ritual Marilyn knew of was the Get, a Jewish ritual as ancient as Deuteronomy. Although she describes herself as not an

observant Jew, she knew she needed more than a civil divorce before she could move forward in her life. In the orthodox Jewish tradition, the end of a marriage is a tragedy mourned by the Lord, but one that is necessary — a sacred obligation — when the sacred connection between the husband and wife has been severed. The Get requires no grounds-only agreement that the marriage is over. There is no blame or fault in this ancient, non-adversarial, consensual process. Although either the man or the woman can request a Get, its essence is the releasing of the wife by the husband so that she may be free.

Unlike the ancient ritual, the rituals that Marilyn creates with divorcing couples are egalitarian in that each party grants the other freedom, release, forgiveness and blessings for the future. The parties forgive themselves as well as their partners and release each other from mutual expectations. They solemnly promise to uphold the terms of their divorce agreement. If there are children, they pledge to create a new relationship in which they can continue to be parents together with the focus on creating the best future for their children rather than on their past conflict.

A divorce ritual is effective in helping participants create and understand



boundaries. It addresses an inability to detach in a way that goes beyond the legal divorce. The "niceness" of the collaborative law process can lead to obsession with the other party, preoccupation, even violence. Unclear boundaries and repeated cycles of

We have no ritual in our secular world to help divorcing people sever their psychic connection to one another.

reconciliation are difficult for parents and children. The visceral experiences of a divorce ritual in which all the senses are engaged elicit the deep pain of the ending and leave the participants open to transformation. Fully embracing the pain of the ritual can lead to rebirth. A divorce ritual draws a bright line between the past and the future. Within the ritual the participants acknowledge that each is now independent of the demands and interference of the other, that each has a home that is not open to the other except by invitation, that each has an independent life that requires neither explanation nor consent.

The emotions around divorce rituals are powerful and similar to what one feels at a funeral. At a funeral the death is blessed and mourned, and the life now ended is celebrated. At a divorce ritual the life of the marriage is cherished and honored, the pain and grief of the end of the marriage are acknowledged, and the life ahead is welcomed. The ritual is painful and wrenching for participants and observers.

In addition to the divorcing couple, participants in a divorce ritual include an

"elder" who helps the participants create their own meaningful ceremony and who conducts the ritual. It also includes witnesses, who are individuals with deep connections to the parties and, ideally, with their lives prior to the divorce. The couple's children and other family members and friends may or may not be present, as the couple chooses. Each divorce ritual begins with the parties' acknowledgment that the marriage is over, freely given, and that they are participating in the ceremony willingly, without duress. They express their intentions to give and accept freedom and release. Only then does the ritual proceed through the steps Dr. Shel Miller describes in the next article.

The divorce rituals created by Marilyn can easily be adapted to a religious or secular orientation. The elder, who leads and directs the ritual and whose presence brings weight and authority to the ceremony, could be a rabbi, a priest, a minister, a lawyer, a judge, a counselor or a friend. The elder elicits and holds their pain and leads the couple through a ceremony that helps them absolve each other of the guilt associated with the end of their marriage.

Not every divorce ritual works. In doing research for her dissertation, Marilyn interviewed participants in traditional Get rituals to elicit what made the ritual hurtful or helpful. Some of her conclusions follow.

What was hurtful?

- rituals in which women have no say in the process, where men control the process and



outcome, when women are made to feel humiliated, disenfranchised or powerless;

- rituals in which the elder who officiates has only professional or rote interest in the process or the participants or the ritual;

- rituals in which the intention of participants is anything other than the genuine desire to heal and be healed, to release and be released to a life where each is free to love more completely.

What was helpful?

- the use of ritual embellishments within the ritual-the more ritual embellishment, the more visceral, physical and mythical, the more powerful the ritual;

- having an elder officiate who knew the participants as part of a married couple, empathized with their pain at the death of the marriage and was psychologically supportive during the ritual;

- having faith in the power of the ritual;

- entering into the ritual with the pure intention of bringing a psychological end to the marriage, to do so with love, respect and dignity for both the partners who are facing the end of their marriage;

- incorporating meaningful symbols from the participants' faith tradition, family, history or spiritual backgrounds which

The rituals that Marilyn creates with divorcing couples are egalitarian in that each party grants the other freedom, release, forgiveness and blessings for the future.

would add to the mythical and spiritual component of the ritual;

- having witnesses who are well known to and supportive of the participants and the ritual;

- openness to spiritual experience;

- psychological mindfulness.

Marilyn Beloff has identified a pressing need and offers a powerful antidote to the spiritually empty process of civil divorce. She has given all participants in collaborative divorce a special gift.



Eileen Z. Sorrentino is a collaborative attorney and mediator in Springfield, MA, and a board member of the Massachusetts Collaborative Law Council. She practices in the areas of collaborative family law and mediation and represents small businesses and non-profit corporations. She can be reached at (413) 737-0260 or at ezs@eganflanigan.com. For those interested, Marilyn Beloff, Ph.D. can be reached at tikkunolam@telus.net.

Continued on next page



“There’s small choice in rotten apples.”

William Shakespeare



SHEL'S IMPRESSIONS: Since I have been thinking about the need for divorce rituals for many years, I was delighted to participate in a workshop and prepare for it the night before with my co-role players. It was a privilege to meet Marilyn Beloff and the other participants, as a sense of spirituality and caring emanated from all.

The emotional divorce does not easily happen in sync with the legal, economic and social or community divorce process.

Furthermore, Marilyn really knows her stuff, given her training in what she calls depth psychology and what I call existential approaches to psychology along with her experience in and research about healing ritual for the separated and divorced. She could be the first secular rabbi, priest or minister in Canada, and clearly has found her calling as a true personal counselor.

She taught us how to create a blessing a memorial service for the metaphysical death known as divorce. Such a service allows us to reduce the shame and fear associated with such loss.

Starting from the concept of the traditional Get (the "granting of a bill of divorce by the husband") in Orthodox Jewish religion, and after telling her personal story and a review of the literature, Marilyn explained the basic stages of an archetypal healing ritual: Separation, Limen and Re-aggregation.

Separation By separation she refers to the need to move away from the mundane world and add elements to a ritual that create a sacred, solemn space. We used

props to create an atmosphere of solemn healing, such as special shawls or other garments, candles, wine (which symbolizes spirit and transformation), photos or the marriage certificate which were torn and burned, and music. Each of these objects were chosen by and had meaning for the partners of the former marriage. The ritual enactment is made more visceral by the use of ethnic, religious, spiritual, cultural or family symbols. The elder often starts cutting the marriage certificate or a special cloth, which are then torn fully asunder by the ex-partners.

Limen Limen means "threshold" and involves the notion that this ritual must bring forth a visceral experience that puts one into the sacred space with a sense of spirituality or alerted states of consciousness. It is in this emotional space with open heart that the partners offer to give release and freedom to one another. This is a transformational release because one is stating that the other is officially free to go forth in the future, free of any bonds of obligation to the ex, free of expectations and free to create a new life with whomever they choose. The partners in our role play chose to read a special prepared statement letter of "truth" and of forgiveness to one another, and together they addressed the fears and needs for reassurance in their children who, depending on their ages, might or might not have been present. By stated intention, all are almost magically pulled toward a sense of closure. The letters are prayer-like. They might express the wisdom of Rabbi Schachter Shalomi or the sentiment of the



Buddhist prayer of loving kindness.

Re-Aggregation By re-aggregation, Marilyn suggests moving out from the sacred space back to the everyday world and the immediate future needs of all participants in the process.

The elder, as played by Marilyn, provides instruction over a number of hours to the participants to help them plan their ritual. She helps them choose pertinent witnesses, who may be long-time family friends who are able to be present at the ritual in an emotionally supportive way to the whole family. These witnesses generally help take note of the many positive experiences they have had together over the years and offer their help in maintaining continuity by pointing to their interest in staying connected in the future.

Following Jung, who said, "There is not birth of consciousness without pain," Marilyn reminded us that suffering, loss and death can lead to rebirth. At one of the workshops on Advocacy versus Empathy at the IACP Forum, reference was made to the "initial trauma of divorce" and the awareness that people need to emerge from the shadows before they can make wise

decisions about their future needs in the legal process and fully function under the strictures of a four-way agreement. Divorce rituals may be the most efficient path to achieving such an end for those couples struggling through the legal divorce. As we all know, the emotional divorce does not easily happen in sync with the legal, economic and social or community divorce process.

Our group watched and created three different role-play scenarios. And I think it is fair to say that we all were emotionally touched on a very personal level. I was left with the sense that what might have taken months to resolve in psychotherapy was much more efficiently created in a divorce ritual, the planning and execution of which might take six to eight hours over a short, concentrated time period.



Shel J. Miller, Ph.D. is an executive, family & divorce coach, and a member of the Massachusetts Collaborative Law Council. As a child and family psychologist, he works with families in all stages of marital preparation or conflict. Dr. Miller can be reached at (617) 731-9174 or at ShelMiller@rcn.com.



THE NEW LAW CENTER IS HAPPY TO ANNOUNCE THAT...

**R. Paul Faxon has joined us as a Member
Kathleen P. Miller has joined us as Of Counsel
& we've moved into new space on the 5th floor.**

The New Law Center, LLC
288 Walnut Street
Newton, MA 02460
(617) 969-9610
www.TheNewLawCenter.com

TNLC: IMAGINE LIFE WITHOUT LITIGATION



A TEXTBOOK CL DIVORCE: Or, CL Looks Easy When the Clients Totally 'Get It'

By David A. Hoffman and Paula H. Noe

On paper Collaborative Law ("CL") certainly seems like an idea whose time has come — it is such an obvious improvement, in appropriate cases, over the ordinary way most disputes are handled, especially divorce cases. And yet in real-life CL cases, the road is often rocky.

For that reason, at almost every stage of the CL negotiations that led to the divorce of our clients Mary and Arthur, we were pinching ourselves, wondering how this case could be going so smoothly. And now that the case is concluded, we thought it might be worthwhile reviewing the elements that contributed to our clients' success with the CL process. (We have changed our clients' names, of course, for this article.)

First, Mary and Arthur both wanted the divorce. Mary came to that conclusion about six months before Arthur, but it took her that full six months from initial interview with Paula until she decided to pay a retainer and go forward. By the time the CL process began, both were on the same page. In our view, this can often be a critical component that affects the pace and level of cooperation in a negotiation.

Second, our clients are both exceptionally well-organized and financially-savvy people — more so, perhaps, than their

lawyers. They readily assembled the necessary financial information, and Mary organized it into a series of spreadsheets. After negotiating a moderately complex parenting schedule, Arthur organized it into a computer-readable calendar that each of them can email or print out as needed.

Third, Mary and Arthur had similar values and goals. Both are experienced computer professionals with good incomes, and both are very devoted to their children. They respect each other as people and are both very confident in each other's abilities as parents. Unlike many of our clients, Mary and Arthur were very successful at saving money, and therefore their finances were in good shape. In short, they had the material and emotional resources needed to make the transition from marriage to divorce — to a far greater extent, in fact, than 90% of the clients with whom we work.

The level of trust reached such a point that our clients began sending emails to all four-participants in the process, and we (as counsel) consented to direct four-way communications via email.

Finally, they communicated effectively, collaboratively, and in a focused way. Our four-way meetings went smoothly because our clients were comfortable sticking with the agenda for each meeting. They kept their promises in the CL process, and completed their homework (such as data



gathering) on time or ahead of schedule. Arthur moved out of the marital home, as agreed, and then cooperated with Mary when she refinanced the mortgage on that home. At no time in any of our five four-way meetings, or in the preparation for them, did either Mary or Arthur get involved in accusations or other incivilities; indeed, they were so completely focused on resolution, in spite of some inevitable differences of opinion regarding money or children, that we were simply astonished by their efficiency.

With all of this resourcefulness, cooperation, and mutual respect coming from our clients, one might wonder how we, as counsel, added value, if at all. Our view is that the CL process created a safe container in which Mary and Arthur could take the risk of trusting each other. They knew, from the start, that their two lawyers liked and respected each other but at the same time could and would maintain appropriate professional boundaries. They knew that each of them would have opportunities for separate consultation with counsel, but in reality they did almost all of the work in four-way meetings.

The level of trust reached such a point that our clients began sending emails to all four-participants in the process, and we (as counsel) consented to direct four-way communications via email. The feeling of safety that was created by the process came, in part, from adhering to practices

The feeling of safety that was created by the process came, in part, from adhering to practices that have become customary in CL: taking turns meeting at each other's offices... and alternating in the preparation of a memo summarizing the discussions at each meeting.

that have become customary in CL: taking turns meeting at each other's offices (though many of the meetings were on David's turf because it was more convenient for the clients) and alternating in the preparation of a memo summarizing the discussions at each meeting. We gave our clients" a separation agreement checklist, which helped us structure the negotiations. One of us drafted the Separation Agreement; the other edited. Paula prepared the papers to be filed in court. The division of labor felt balanced, and the clients felt they knew what to expect.

Mary and Arthur might have had a very amicable divorce even without CL — we will never know. However, it is clear, we believe, to all four participants, that CL gave these clients a supportive framework to keep their process on track. Their two young children will benefit from the wise decision these two parents made to collaborate.



David A. Hoffman is an attorney, mediator, and arbitrator at Boston Law Collaborative, LLC, and a founding member and director of the Massachusetts Collaborative Law Council.

Continued on page 26



RESOLVING REAL ESTATE DISPUTES: The Case for Collaborative Law

By R. Paul Faxon

Approximately 90 percent of all civil litigation eventually settles out of court – literally and figuratively – often on the steps of the courthouse, usually years and hundreds of thousands of dollars later. Traditional litigation can eliminate potential settlement options, skewer relationships and become an end unto itself. As commercial real estate professionals who have been involved in litigation well know, it usually proves expensive and inefficient; often a Pyrrhic victory that can cost “winning” litigants precious project time, undermine company viability or erode critical business relationships.

There is a better way. Commercial (and residential) developers, lenders, landlords, contractors and related professionals need to examine their process options for resolving disputes both at the inception of the venture and when a dispute actually arises. All too often, parties reach for the “scorched earth” litigation option when a form of alternative dispute resolution, or ADR, would better serve all concerned. Even parties who consider ADR often tend to focus on just one of two options: arbitration or mediation. In binding arbitration, a private neutral, such as a retired judge, imposes a final judgment on the disputants after a private proceeding. In

An emerging, powerful practice, collaborative law provides the vehicle for the parties in conflict.

mediation, a neutral mediator tries to facilitate a voluntary settlement between the parties. While both these processes can prove to be the best option in certain types of conflict, a developing method of ADR known as collaborative law offers a superior choice in a wide range of situations.

Collaborative law, initially rooted in the realm of settling family disputes, is being introduced in a range of commercial situations, including resolving real estate conflicts. An emerging, powerful practice, collaborative law provides the vehicle for the parties in conflict, supported by their respective legal counsel, to build workable solutions to some of real estate’s most difficult disagreements in development, construction, finance, landlord/tenant relationships, restructuring of real estate entities and permitting.

Simply defined, collaborative law is a process whereby each party to the dispute, and each attorney, consents in an enforceable agreement to initially attempt to settle the conflict without litigation in a confidential series of meetings in which both clients are present and actively involved. The parties promise to take a reasoned stand on every issue, to keep discovery informal and cooperative, to negotiate in good faith and to retain any necessary experts jointly. The final and critical component of the collaborative law agreement



provides that either party, at any time, may give notice and terminate the collaborative process, but then both attorneys and their firms must withdraw from all future representation.

A New Paradigm

That both parties and their respective attorneys agree up front to negotiate, instead of litigate, and replace lawyers if they head to court, sets up a radically new dynamic, a fundamental change of mindset among all concerned. The focus shifts from adversarial to problem solving. Rather than jousting for position, attorneys and clients are motivated to search for mutual interests and real solutions in a spirit of cooperation.

Collaborative law is especially appealing to those real estate professionals and entrepreneurs who prefer to actively participate in shaping the settlement. There is no third party involved; no judge, jury, arbitrator or mediator. Clients are empowered to craft the best solution, drawing upon their own expertise and industry knowledge, and are not subject to a third party imposing a decision. Certainly, clients can seek expert testimony but there is no battle of the experts, which saves time and money. In short, collaborative law is an open, creative and more mutually satisfying process – with better long-term chances for permanent success – because the clients are fully engaged and vested in the deal that is cut. Yet the clients have not relinquished the right to their own legal advocate or, if a

private resolution is not reached, civil litigation or even another form of ADR.

Some of the more attractive incentives for employing collaborative law include:

One such commonly held misconception allows that collaborative law only works if you “love” the other side.... The process can work even if both parties mutually dislike one another.

- **Expeditious resolution:** In today’s real estate arena, money is time and time can’t wait. Clients can’t control the scheduling in a civil court system, which can grind on for years. Collaborative law will, in all likelihood, result in a much quicker settlement. The process promotes “sooner-better” outcomes in response to today’s time pressures, reducing lost opportunity costs, distraction and associated stress.

- **Continuing relationships:** It’s a small world and burning bridges is not good for anyone’s business. The collaborative law process can help clients preserve, or even enhance, important relationships. To be sure, clients can engage in collaborative law with those whom they don’t know, but where the parties in a dispute have a relationship, the collaborative process can keep important associations and affiliations intact.

- **Judicious privacy:** If clients have a particular need for privacy in their dispute resolution, then collaborative law is the best approach. *Continued on next page*



Collaborative law is especially appealing to those real estate professionals and entrepreneurs who prefer to actively participate in shaping the settlement.

The process ensures complete confidentiality. It is not a public record, nor does it set a precedent.

Conversely, there are certain legal cases and situations that do not lend themselves particularly well to dispute resolution via collaborative law. If a client needs an immediate injunction or wishes to use litigation as a club to intimidate or obfuscate, then collaborative law would not be in their best interests. There are players with deep pockets who embrace the expense and delay of litigation because it serves a greater purpose of maintaining a certain status quo. Also, clients who are unwilling or unable to participate in the settlement process would not make the best candidates for collaborative law. Lastly, the use of collaborative law in resolving business disputes is a developing form of ADR and may require an education process for both parties and attorneys.

Pioneering Approach A growing group of lawyers in Massachusetts, members of the Massachusetts Collaborative Law Council (www.massclc.org), are committed to resolving legal conflicts without litigation through collaborative law. This not-for-profit organization has taken a leadership role in moving collaborative law into the business-resolution context, and in training an increasing number of attorneys and allied professionals in this conflict-

resolution solution.

This state law council and its practicing attorneys are working to promote the collaborative process and dispel the myths. One such commonly held misconception allows that collaborative law only works if you “love” the other side. Indeed, not love, but a driving desire to reach an efficient, effective, beneficial solution is the only real requirement for success. The process can work even if both parties mutually dislike one another. Also, there’s a sense out there that real men and women litigate, preferring to step into the legal arena and duke it out until death. Fortunately, certain decision makers are beginning to realize that there are cases where collaborative law serves their interests best.

And what of the attorneys who are promoting the collaborative law process? Doesn’t a quicker resolution, without juicy litigation, hit lawyers squarely in the wallet? In fact, those of us practicing collaborative law welcome the opportunity to be creative thinkers and problem solvers, happy to lay down our adversarial arms. Business is more satisfying, clients are better served and, at the end of the day, happier clients are quicker to return and refer new business. They appreciate attorneys who are able to effectively facilitate their business goals in a legal context and who value the synergy that a true partnership with a client can create.

In keeping clients central to the process, and by focusing on a better outcome through positive negotiations, collaborative



law generates “win-win” solutions for all parties involved.



R. Paul Faxon is a partner at The New Law Center LLC, in Newton, MA, where he represents developers, contractors, landlords and lending institutions in resolving commercial real estate disputes. He is the

treasurer and a member of the board of directors of the Massachusetts Collaborative Law Council. Paul can be contacted at (617) 969-9611, or at PFaxon@TheNewLawCenter.com. This article first appeared in the June 14th, 2004 issue of *Banker & Tradesman*, a Massachusetts real estate, banking and commercial weekly established in 1872.



“The entire legal profession –
lawyers, judges, law teachers –
has become so mesmerized with the stimulation
of the courtroom contest that we tend to forget
that we ought to be healers –
healers of conflicts”

**Former Chief Justice Warren E. Berger,
United States Supreme Court**



A Textbook CL Divorce...

continued from page 22

He is also chair of the ABA Section of Dispute Resolution. David can be contacted at (617) 439-4700, or at DHoffman@BostonLawCollaborative.com



Paula H. Noe is a founding member and President Elect of the Massachusetts Collaborative Law Council who practices collaborative family law in Brookline, MA. She represented the husband in the precedent-setting custody of frozen embryos case, *AZ v. BZ*, which was ultimately decided by the SJC in her client’s favor. Paula can be contacted at (617) 277-0899, or at phnoe@aol.com



PRESIDENT'S COLUMN: How Are We Doing?

continued from inside cover

In July, our Summer, 2004 Collaborative Law Journal [vol. 2, No. 1] was released. It featured many informative articles and included the Council's tribute to Bette Winik. The Journal was made available to those collaborative professionals who attended the IACP Forum in October. Our thanks and appreciation to the co-editors, Lynda Robbins, Daniel Candee and Les Wallerstein, for an outstanding publication.

In early October, Doug Reynolds, Jessica Block and Paula Noe presented a seminar [Application of Collaborative Law] at the Family Firm Institute's Annual Conference here in Boston. On November 18, 2004, Jessica Block, Paula Noe, Doug Reynolds and I presented a workshop [Collaborative Law for Construction Disputes] at this year's Build Boston conference. Build Boston is the nation's largest regional trade show and convention celebrating its 20th. Anniversary.

Between October 22nd and 24th, our Council hosted the Fifth Annual IACP Forum [Paradigms for Peacemaking] in Boston. The Forum drew close to 400 collaborative professionals from throughout the United States, Canada and Britain. Rita Pollak and I were the Co-chairs. Thanks to Rita's hard work, with the assistance of various Council members, this year's Forum was a success, and the largest one yet. Karen Levitt, Daniel Finn, Cathy Heenan, David Hoffman, Doug Reynolds, Rita and I participated in various workshops that were offered during the Forum.

Training is a vital element in the continued growth of our Council as well as fostering the concept of the practice of collaborative law in Massachusetts. The numerous Council members who have been continuing to volunteer and offer their time and services to these programs are due a big thank you, as they have provided a significant impact in the training of our members.

Our web site, www.massclc.org, is the Council's showcase to the to the world. Lynda Robbins, since retiring as our second president, has spend countless hours in maintaining the site. I want to acknowledge her extraordinary work and invaluable support in overseeing the web site.

I believe that there is a saying that goes something like this: "if you take a little bit, then

Training is a vital element in the continued growth of our Council as well as fostering the concept of the practice of collaborative law in Massachusetts.

add a little more and then more, you have a lot." Today the Council numbers some 121 members statewide and we are in strong financial



condition. I think we are doing pretty well, but we still need to grow and continue to spread the concept of collaborative law. So

in the coming year let's all try to do a little more. To everyone who has done a lot or just a little, thank you very much and do keep up the good work. For those members who have time and want to be more active within the Council, please contact me or any of our Board members. This is your Council and your individual involvement is always welcomed and will be most appreciated. I would note that in addition to our quarterly general membership meetings, the Board of Directors meet monthly and these sessions [usually held on the second Thursday of each month] are open to the general membership. Your participation at these meetings is welcomed and encouraged.

I look forward to seeing everyone at our Holiday Party on December 9, 2004 at the Crowne Plaza Hotel in Natick.



Stuart B. Robbins is the president of the Massachusetts Collaborative Law Council. He is an attorney and the Managing Principal of BostonSolv, a dispute prevention and resolution firm. He can be contacted at (617) 423-0022 or at robbins@bostonsolv.com.



BENEFITS OF MCLC MEMBERSHIP

Collegiality: Share and develop ideas about the emerging field of collaborative law with a unique and highly qualified community of lawyers and allied professionals.

Marketing: Enhance your web-presence by advertising your qualifications and specialties on MCLC's web-site. Offer MCLC brochures and promotional materials to prospective clients.

Cases: Increase referrals by networking with collaborative colleagues.

Mentoring: Experienced members are available as co-counsel or advisors on new or difficult cases.

Member Meetings: Hone your skills at quarterly seminars and workshops on the latest collaborative law practices and techniques.

Collaborative Law Journal: Receive printed editions of MCLC's premier publication.

JOIN MCLC ONLINE AT WWW.MASSCLC.ORG



ANNOUNCEMENTS

A COLLABORATIVE TEAM APPROACH TO MANAGING CONFLICT Law, Money & Broken Promises December 3rd & 4th, 9:00 AM - 4:30 PM

Co-sponsors: Suffolk University Law School and
the Massachusetts Collaborative Law Council
Location: Suffolk University Law School, Boston, MA
Information: www.law.suffolk.edu/academic/als

Collaborative law is a new approach to the practice of law that could change your perspective on practice. Currently, the most common use of collaborative law is in divorce cases, but it is also applicable to the break-up of family-owned businesses and other business situations. This conference brings together attorneys, mental health providers and financial advisors to learn about the collaborative process, develop relationships, and learn how to work together as a team. Come and learn about this new way to connect with your colleagues and to better serve your clients.

MASSACHUSETTS COLLABORATIVE LAW COUNCIL'S ANNUAL HOLIDAY PARTY Thursday, December 9th, 5 - 8 PM

Crowne Plaza Hotel, Hamilton Salon Room
1360 Worcester Road (Rt. 9), Natick, MA

Hors d'oeuvres and open bar with beer & wine!
All MCLC members and their guests are welcome!
Please RSVP to Daniel Candee at Danielcandee@aol.com

Directions: Mass. Pike to exit 13 (Natick-Framingham). After toll bear right (to Route 30 West "Framingham"). Take Route 30 to second light (about 1,000 yards). Turn left at second light onto Ring Road. (Ring Road is not marked, but it is the outer road of Shopper's World Mall). Go 300 yards. Turn left onto Route 9 East (towards Boston). The Crowne Plaza Hotel (508-653-8800) is 100 yards on right hand side.

MASSACHUSETTS COUNCIL ON FAMILY MEDIATION

Founded in 1982, MCFM is the oldest professional organization in Massachusetts devoted exclusively to family mediation. For more information or to find a mediator near you, please visit www.mcfm.org



HONORÉ DAUMIER (1808 – 1879)

Honoré Daumier was a French political cartoonist who penned thousands of satirical drawings. Amongst his most famous lithographs were the *Lawyers and Justice* series, published in a Parisian newspaper, *Le Charivari*, per the sample below.

November 12, 1851



Lawyer — The case is coming along nicely, we're making rapid strides!
Client — That's what you told me four years ago; if we keep striding on much longer I shall be barefoot before we get there!...



EDITORIAL POLICY

Editors: Lynda J. Robbins & Les Wallerstein

The Collaborative Law Journal invites the submission of all types of articles, notes and letters regarding collaborative practice. These include original articles, case studies, legal and legislative updates, ethical questions, news items, commentaries, controversies, practice tips, practitioner profiles, book reviews, letters to the editor, and notices of regular meetings and upcoming events. The CLJ also seeks quotes, graphics and topical cartoons. In addition, the editors encourage readers to bring to our attention articles published elsewhere for possible republication in the CLJ.

Any topic relating to Collaborative Law in the broadest sense is relevant. This includes all forms of dispute resolution such as mediation, arbitration, and traditional law, as long as the author shows how the subject matter affects, informs or is otherwise related to the practice of Collaborative Law. Since privacy is a paramount concern, all contributions must scrupulously safeguard client confidentiality.

PLEASE EMAIL ALL SUBMISSIONS

Lynda at ljrobbinsesq@verizon.net

Les at wallerstein@sociallaw.com



Bette Winik was one of the pioneers of collaborative law in Massachusetts. As a lawyer, mediator, and founding member of the Massachusetts Collaborative Law Council, Bette was devoted to cultivating cooperative solutions to conflict. Her humanity, skill, and dedication to helping families resolve their differences collaboratively inspired enormous respect from clients and colleagues.

The Bette Winik Scholarship Fund honors her work by providing financial assistance to people with limited resources who wish to participate in collaborative law education and training. It is managed by the Massachusetts Collaborative Law Council. Please mail contributions to R. Paul Faxon, at The New Law Center, LLC, 288 Walnut Street, Newton, MA 02460, with checks payable to NE-ACR/Bette Winik Scholarship Fund. To apply for a scholarship please contact Paul at (617) 969-9611, or Pfaxon@TheNewLawCenter.com.

ALL CONTRIBUTIONS ARE TAX-DEDUCTIBLE



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