

What Language Do You Speak? Strengthening the Lawyer – Mental Health Professional Relationship

Gerald Monk, Ph.D Linda Solomon, LPC, LMFT

Introduction

With the increasing involvement of coaches and mental health professionals (MHP's) in the collaborative movement, there are greater opportunities for lawyers and mental health professionals to work effectively in collaborative teams. Research on collaborative practice and collaborative divorce has demonstrated that collaborative teams that include financial specialists, MHP's and lawyers can be exceedingly effective as they introduce a diverse range of complimentary skills that will be helpful to a couple who is divorcing and their family. Lawyers and MHP's report that they appreciate the contributions (and unique skill set) of their fellow professional. Some collaborative practitioners have reported they have learned a lot from colleagues, in other disciplines, watching them engage with their mutual clients.

While much enthusiasm remains among a large proportion of collaborative practitioners regarding the value of lawyers, MHP's and financial specialists working together, many of these practitioners have also experienced stress, conflict, misunderstandings and confusion in learning how to work collaboratively. For example, McFarlane's (2005) preliminary research on the working relationships between lawyers and mental health professionals showed challenges, misunderstandings and misgivings about how lawyers and MHP's can effectively collaborate. Her research describes examples of lawyers and MHP's participating in the same meetings with clients and yet not hearing or understanding the same message relayed by clients. In fact, many of us can probably think of numerous examples of lawyers and MHP's not listening and understanding the same information from clients; possibly from common experiences in litigation. We have, quite possibly, also had the experience of talking past each other. (By the way, is it possible that this very type of miscommunication may be present in some marital relationships? It stresses the importance of the team members modeling effective communication.)

Purpose

This short article explores how lawyers and MHP's are trained to speak and process information in different languages. That is, by the way, one of the "gifts" this process can bring to clients. We have two (and three, including FP's) different pairs of glasses looking at the matter. If the difference is not acknowledged, or honored, it can also become one of the obstacles in the process. We discuss the implications of how different professional languages shared in collaborative meetings can produce challenging obstacles. We also discuss strategies that may help to forge a common language, which ameliorates some of the problematic tensions produced by previous training and professional experience. We propose that team members, from different disciplines, will benefit from learning the other's language and make more progress in

forging or constructing a common vernacular. We concentrate on identifying the obstacles that impede and the resources that strengthen an effective working relationship between the MHP and the lawyer. It should be noted that we believe FP's, as well as lawyers and MHP's, also are trained to speak "another language." Based on our training as MHP's, we have chosen to focus only on that discipline in this article. We clearly believe that a similar article can be written in regard to the "language" of the FP and the impact on the other professionals.

Open vs. defensive posture

Mental health professionals and lawyers are trained in principles and practices that are, in many ways, in complete contrast and contradiction. In fact, if lawyers and MHP's were in direct alignment with their original training, it is sometimes hard to imagine that these two professional groups could effectively work together at all. For example, many lawyers report that their training taught them to be mistrustful of the intentions of colleagues. Living in an environment where many feel the presence of imminent litigation, lawyers are taught to practice conservatively and employ a range of measures to reduce possible vulnerability and risk. In most professional environments, they are trained to go on the offensive, or, prepare to defend against fellow lawyers and individuals who are not supportive or on the same side as their client(s). We are all familiar with the lawyer who uses strident language, acts tough and has a defensive posture in his/her deliberations with opposing clients and counsel.

In a collaborative meeting with lawyers, MHP, and clients several years ago, the MHP observed the following: Wife's lawyer looked at husband and said "Sir, I am asking you to give me specific information on the accounts. You are not complying. I will ask you the question again." Wife's lawyer had her pen pointed at husband while making this statement. The MHP, working as a neutral in the process, immediately had a sense of being in a courtroom and watching someone on the stand being questioned. It should be noted that a judgment call occurred at that time. It involved when, and how, to give feedback to wife's lawyer. The MHP made a decision that feedback needed to be given instantly as ongoing questioning in that manner and tone of voice could be quite detrimental to the process. The MHP asked for a break and had a private discussion with both lawyers; respectfully sharing that the last comments appeared to be in "litigation language and tone of voice." The lawyer appeared grateful for the feedback. The MHP had to give some thought as to an appropriate way to give that feedback to the lawyer. The thought process was "How can I say this in a way that she can hear me? I do not want to focus too much on how I felt when she said it, but need to give something specific and constructive." A second example occurred in a similar setting, with lawyers, clients, MHP's and an FP present. Wife was requesting temporary monies to fund a new business venture. Husband's lawyer looked at her and asked, "Do you have a business plan? What is it?" Many of you may read this and think it is an appropriate question. Yes, it may be! Unfortunately, the tone of voice was quite direct and carried a subtle message indicating she may not be informed enough to start her own business. Client picked up on that and reported to her lawyer, after the meeting, that she felt insulted by that question. The MHP was asked to give some feedback to the team at that point. What was shared as feedback to lawyers was to remember the difference between open-

ended and closed questions. It was suggested that a useful skill, in collaborative meetings when questioning clients, is to focus on open-ended questions. Examples of this may be: Tell me more about your business. If your business is a success in five years, what will it look like? Hopefully, those questions may elicit the same information, but will potentially acknowledge the client and her competence, as opposed to giving a message that she may not be prepared for this venture.

Mental health professionals, on the other hand, are often taught the opposite. We are instructed that, in order to be effective, we should have an open posture in our dealings with others. Client-centered therapists, in particular, are trained to seek to establish trust with clients and colleagues, be empathetic, vulnerable, understanding and appropriately disclosing. Most therapists are trained to believe that a genuine, honest, open and trust inducing approach to working with others is essential to be an effective change agent. MHP's, working in the collaborative process, are also challenged to utilize the above training while keeping in mind that we need to keep the client(s) focused on moving forward in the process. Lawyers have reported, at times, that MHP's seem too focused on "therapy" instead of coaching skills that will benefit the process, as well as client(s). An example of this, reported by a lawyer, is the following: An MHP, who was newly trained, attended a collaborative meeting with lawyers and clients. When asked if the meeting went well, the lawyer (who has worked with several different coaches) responded, "She spent 10-12 minutes helping the client identify what her anger was about and who she was reminded of from her past. We were all sitting there, not knowing what to say. It seems like a lot of money was spent paying all the professional's fees while the client figured out why she was angry."

The above information and examples clearly speak to part of the paradigm shift that is necessary for each discipline in this work. The lawyers are working on how to ask, not tell, their clients. (How to be advocates, while not as directive as may be required in litigation) The MHP's, trained as therapists to utilize some of the skills mentioned above, continue to work on how to utilize all of our skills while working with all involved toward a concrete solution.

Expert knowing vs. Curious exploration

Lawyers gather tremendous status with clients and professionals of other disciplines because of their knowledge of the law and its applications. Thorough legal analysis and intellectual rigor is praiseworthy in the graduate training of lawyers. This training often encourages lawyers to place law as the reference point to guide their interventions. The emphasis on content knowledge of the law in lawyer-client interactions reinforces the role of lawyer as expert. Training as a courtroom advocate can reinforce the sense of being at center stage of a conflictual process designed to assist the client's interests. Lawyers can be comfortable speaking with conviction, certainty and a persuasive authority that can significantly impact client and collegial interactions. Sometimes this stance, if allowed to dominate, can alienate team members or cause a premature push to resolution without grappling with unsurfaced and problematic issues.

Several years ago, when colleagues in Texas were just beginning to move from lawyer-only work to teamwork, a lawyer (who had spent many years in litigation) looked

at the MHP (while clients were present) and told her (did not ask her) to take the meeting notes. This function is clearly not one for an MHP to handle in a meeting, as he/she needs to focus on the non-verbal behaviors, as well as verbal behavior. Having one's head down, taking meeting notes, will not allow for that to occur. Again, the MHP had to make a quick decision. Should the task be accepted at the moment? Should discussion be held, outside the room, with lawyers? In other words, is this a "big deal" or something to let go? The MHP was able to recognize that, spending years as a litigator and being new to MHP involvement at all, this could be a very innocent request; not meaning to give a negative connotation to the MHP's role. There was also recognition that being told, not asked, did not necessarily mean disrespect for the role or the person. The MHP also recognized that it was very important to respond assertively, clearly, and respectfully to the lawyer. Based on that, the response was something to the effect of saying that she would be glad to find one of his legal assistants to help with the meeting notes if that is needed.

McFarlane (2005) reported on data that showed how lawyers can struggle with allowing clients to generate their own ideas about how to proceed and find it difficult to restrain themselves from giving their own advice on occasions when the clients are asked to brainstorm ideas about how to address a particular situation. In general, with observing collaborative teams for several years, it appears that all of the professionals need to remind ourselves that we are there to empower the clients to brainstorm options; not tell them what to do. It is a topic that offers teams the opportunity to coach one another during debriefs, as a reminder. There is also an awareness that lawyers are always challenged to look for new language in their work as collaborative advocates, rather than as litigators.

Many therapists are trained to be client centered. We gain kudos and are rewarded in our training to view clients as possessing unutilized resources that can be used to solve their own problems. The emphasis in training for many therapists is to trust and empower clients where possible and help client find their own answers. Therapists are taught to avoid too much explicit advice giving. There is an acknowledgment among therapists that 'if I tell you what to do, you will do whatever you want anyway.' Good therapists are often recognized as those who demonstrate high quality listening so we can ensure we understand the issues and let the client know that he/she is heard. Open and curious questioning is viewed as a strength, while the ability to track how clients are processing information is seen as vital to gain meaningful information about how to proceed. Allowing the clients to be in the forefront of the process of addressing their issues is seen as a strength by many in our profession.

Therapists may view content knowledge of the law as being less important than the process knowledge required to attend to the nuances of the case in hand. This can lead to MHP's failing to pay attention to the necessary content details of the case that will be important to reach a settlement. A metaphor for this might be to visualize the divorce process as a football game. The lawyers are trained to efficiently move toward the goal line....Divorce Decree.....TOUCHDOWN! The MHP, who has worked as a therapist prior to the collaborative role, is trained to sit down on the 22-yard line with a client who is upset. We will sit there with the client, look for Kleenex, and facilitate a safe place for

the client to feel all the feelings that may be bubbling around at the moment. We may also spend time connecting those feelings to something in his/her past to help gain more clarity. The goal line, as a therapist, is not necessarily that place way down the field. Rather, it is helping the client to learn something about what he/she is experiencing at the moment and why it is touching on so many emotions. It is probably not the most effective use of client's time, money and energy to pay several professional's fees while the MHP is sitting, for some period of time, on the 22-yard line. It is, therefore, a judgment call as to when to sit on the 22-yard line and for how long. It is also important for the MHP to recognize that we are moving toward the goal line (in the collaborative process) and to utilize coaching/communication skills that will help that occur.

McFarlane presents data that shows there can be power struggles in the collaborative team that center around who has control of the process. Other struggles relating to power and control include the hierarchical discrepancies that are often present because of differentials in professional fees of lawyers and therapists. This speaks, even more, for a need to understand the other's language, motivators and training. It is very important, as team members, to talk about the following:

Is there one team member in control of meetings? What if one team member is using language or behaviors that give the message of wanting to control the process? What is the responsibility of other team members in that case? Is there a necessity, at all, for any team member to be in control? What message is this giving to the clients? What are we modeling for the clients? It can be very easy, as team members, to focus only on the content of the process. The issue of who, if anyone, is in control is one that can have a negative impact on the process if it is not addressed in a constructive manner.

Obstacles that must be addressed to produce effective teamwork

The different forms of training and experience shaping the collaborative professional's behavior do produce some systematic patterns of relating that may diminish the influence and impact of the collaborative team's work. For some lawyers, it can be a challenge to let go of some of the power, prestige, expert knowing, and the safety of the hierarchical structure that accompanies litigation and court advocacy in conventional practice. These environments also put tremendous pressure on lawyers to compete and practice defensively with one another to gain victory in the traditional court setting. Moving from a competitive culture to a collaborative one is difficult and we have a great respect for those lawyers are very committed to doing so to work in the collaborative process! Thus, lawyers who have worked very hard to be effective advocates in the litigation process have the potential to verbally "push" other members of the collaborative team to prove that their client's interests and concerns are more valid than the divorcing spouse and other family members. (In fact, isn't this the risk and challenge for all of us in collaborative work? That is believing that the story the client tells us is 100% reflective of what actually happened; as opposed to believing that we are hearing that client's story of what happened) Effectiveness in a team is gained by moving from a competitive, defensive, protective orientation to a collaborative, open and wise risk-taking stance. If we are going to work effectively as teams, it is crucial that we

continually communicate (often in our different languages) to keep the process, and ourselves; open. In addition, employing an exclusive expert knowing and controlling stance often shuts down prospects for closely attending to the dynamics unfolding between the divorcing couple and team members. (It should be noted that the potential to move into this stance is not present just for lawyers. Any team member has the potential to become somewhat embedded in a stance. It is our job to debrief with other professionals and learn how to talk about this so it does not have a negative impact on the clients or their process.) The challenge is to continue to honor the important role that knowledge of the law has in informing the lawyer's interventions while at the same time being open to the client's needs and the changing nuances of the divorcing couple's needs.

Many MHP's have obstacles that constrain their effectiveness in a collaborative team. New coaches to collaborative teamwork can begin with a naïve expectation of quickly gaining mutual empathy, openness and trust with and between collaborative team members and/or the couple. For the reasons we have discussed above, when this is not fulfilled, it can leave MHP's disheartened and even feeling betrayed by the process. This may lead them to become silent, alienated and disengaged. Coaches trained in individualistic psychology models may not grapple with the important systemic dynamics of divorce. Mental health professionals can also struggle to make clear distinctions between therapy and acting as coach as they transition from individual client centered work to a focused perspective on a present and future based orientation. MHP's may be so locked into client-centered practice that they can fail to attend to sufficient structure, goals and guidelines required by collaborative practice to move the process along. Their challenge is to transition from one-on-one work with clients to managing competing team agendas. Perhaps the biggest challenge for MHP's to work as productive and potent team members is to not be intimidated by lawyers who behave in authoritative, assertive and directive ways which sadly leads to their own failure to act in helpful ways to their clients and to the team. (It is often been expressed by lawyers that they need/want the coaches to be assertive and not "too focused" on therapy. In addition, many coaches who are new to collaborative work have stated they experience a sense of discomfort and intimidation based on previous interactions with the same lawyers as litigators.)

Resources available to collaborative team members

In a few short years, while working as team members, lawyers and MHP's have made considerable progress in learning to understand one another's language and to seek ways to work more effectively together. As the disciplines work together more and more, there is not only more of an effort to "understand" the other's language, but an appreciation and respect for the other's language and contribution. Great news for the families who utilize this process, by the way! Let's consider some of the progress that many collaborative teams composed of lawyers, financial specialists and mental health professionals have made.

Many of us have made a paradigm shift so we can see and acknowledge the value of the other discipline's participation in the process. In most instances, there is a desire to understand the other's role and their colleague's potential contribution to the process. Lawyers and MHP's asking and learning from the other demonstrate this on a daily basis.

Illustrations of this behavior include an openness to participating in team debriefs, asking for direct feedback on his/her behaviors as a team member and including the other in team communications regarding client issues. Sincere efforts have been to move from interactions that are dominated by authoritative advice giving to the development of a curious posture about relevant issues that need to be understood. In addition, the MHP's strive to be consistently aware that they are not serving in the role of the client's therapist.

Professionals who choose to work in teams need to be commended! Let's start there. Why? Wouldn't it be so much easier to do what you have always done? To work with members of your own discipline who do "speak your language?" You can then avoid the necessity to learn a new way to communicate with the other disciplines. Those in this work have obviously decided it is important enough to offer a quality process to client families that they are willing to stretch themselves to learn about, and work with, other disciplines. We want to offer some basic, but important, suggestions for continuing to work on the language difference.

Striving for common understandings

- Strive to Listen – listen – listen and be present and ensure client and team members know they are heard. This can be as simple as asking that no one interrupt in a meeting to checking in with clients and asking if they feel heard. In addition, team debriefs are crucial to determine if all team members are feeling heard and have a sense of contribution to the process.
- Build good relationships with all participants where possible to facilitate change. The most effective collaborative meetings, (with clients, lawyers, MHP (s) and FP), are those in which an observer would see everyone talking to everyone. The client(s), in addition to interacting with his/her advocate, is talking openly with everyone in the room.
- Don't dominate all interactions with advice and answers. It can be so easy, for any of us that have substantial experience in our fields, to want to tell the clients what to do. The question to ask ourselves is are we helping or hurting them if we don't enable them to seek their own options; if not answers.
- Clients have unutilized resources to solve their own problems. Often, in team debriefs, there has been discussion about a creative solution that no team member had thought about prior to that moment. Why? There was space created for clients to brainstorm options.
- Trust and empower clients where possible and help client find their own answers.
- Help clients develop insight.

- Whenever possible be empathetic, open, disclosing and willing to share information. This will also serve as effective modeling for the communication skills we hope the couple will use with one another and their children.
- Confront and challenge and respond to contradictory emotion and content with immediacy.

Speaking different languages is a given since we are bringing three professions together to help families. It is often so much easier to talk about, and focus, on the words/actions exchanged between husband and wife, rather than ourselves. This work is complex, to say the least, if we wish to offer the best possible service to clients. One of the ways you can excel as a professional is to pay attention to the impact of your language on the other disciplines, as well as the clients. Ask for feedback . Ask other team members to make suggestions as to how you can be more effective verbally. Yes, that is a risk. It is also a risk that carries great rewards: Being a skilled collaborative team member and the ability to learn from two other disciplines on a daily basis.