

**Colorado Bar Association**

**10<sup>th</sup> Annual Statewide ADR Conference**

**Coaching Through The Chaos: Getting To Agreements In Divorce**

**Susan Vanderborgh, Esq. and Mandy Walker**

**Introduction**

We all know that no two divorces are the same, that all divorces are difficult and in an increasingly complex world, it's difficult for one professional to have all the answers. The traditional players in divorce – the attorneys, the CPAs and therapists have now been joined by Certified Divorce Financial Analysts, Certified Divorce Lending Professionals, Certified Real Estate Divorce Specialists.

At the same time, growing numbers of people are choosing to navigate their way through the legal process without hiring an attorney, leading to increased use of Alternative Dispute Resolution approaches including mediation and Collaborative Divorce. And we are now seeing divorce coaches who bring a different perspective and can be particularly helpful in high conflict, chaotic divorce situations. ...

**What is a divorce coach?**

Divorce coaching is an evolving profession so there are differences between individual divorce coaches and how they work with clients and what philosophy guides their coaching practices. Generally, coaches work with individuals who are

- evaluating divorce
- going through divorce
- recovering from divorce

You may find some coaches who focus on the recovery aspect and some who focus on the working through the divorce process, for example. Coaches might work with one party or with both parties. When there is an attorney, mediator or collaborative team in place, the coach can be central player on team of divorce professionals although their role and responsibilities will vary depending on the situation, the client's needs and desires and the other professional's experience and interest working with coaches alongside the divorce process.

This presentation is focused on the role of divorce coaching for people who are going through the divorce process and specifically working through the legal process. The way that coaches interface with other professionals in the divorce process is also discussed.

**What are the goals of divorce coaching?**

Since there is no national or state-recognized certification or licensing of divorce coaches, there isn't an agreed upon set of goals and there is likely variance between different coaches. Broadly, coaches are there to assist their clients through the divorce process by providing emotional support and assisting them to make the decisions that are best for them and their family. It is not the coach's role to make decisions for the client but exploring options and brainstorming creative alternatives is often part of the client-coach work.

## **What does a divorce coach do?**

Broadly, the responsibilities of a divorce coach fall into the following areas:

Communications Coach – in this capacity a coach works with the client on what to say, to whom and when to say it. This can cover talking to their spouse about the decision to end the marriage, telling the children, and going public with the decision to family, friends, co-workers, and other key players in their family's life. Communication coaching might include role-playing conversations, identifying possible objections and how to handle them. It can include creating boundaries to avoid on-going conflict and stalled conversations. It can also include identifying best communication methods and even proofing draft emails. In the midst of a high-conflict or particularly chaotic divorce the coach working on communication can help the client identify communication styles or patterns which are contributing to conflict or chaos and work toward learning new ways of communicating.

Some clients come knowing who they need to speak to while others haven't really thought this through and benefit from prompting to identify key players. It can also be about helping the client voice their needs in a way that is productive to resolution, i.e. stating their needs as opposed to a position.

The overall goal of this aspect is to help the client to avoid making knee-jerk remarks that they may later regret, whether that's comments that will be painful for their children or sharing details of the marriage that breaches privacy and may escalate conflict.

When a client is choosing to use Alternative Dispute Resolution as a means toward resolving divorce issues, the coach may help the client prepare an opening statement for mediation or to brainstorm possible responses to specific issues in clear and non-threatening ways. When a coaching client is represented by counsel the divorce coach may work with the client to understand and communicate clearly with his or her attorney and can even assist an attorney helping prepare a client for trial.

Decision Making – in this area a coach helps their client to identify what decisions need to be made and what data is needed make the decisions. Sometimes, this is about telling the client that they don't have enough information on which to make a decision or that they are being unduly pressured into a decision.

This can be about any aspect of the financial settlement or parenting plan and the logistics of transitioning from married to single. This is very client specific – helping the person whose spouse has handled all the household finances is very different from working with the client who's been the major bread-winner. Integral to this element is helping the client to identify their core issues, ensuring that they have legal advice on these issues, that they are aware of other professional resources for topics and that their decisions are being informed by the advice they've received.

The coach may compile spreadsheets to compare different options and their impacts, both in the short term and longer term. This can assist the client in negotiations to articulate their specific needs as opposed positions, increasing the potential for agreement. The goal here is to ensure the client is in a position to make informed decisions that are based on rational reasons rather than emotions. It's also important that the client have a clear understanding why they are making certain decisions – this is what will help them to look back in five, ten years' time and to accept the decisions that were made.

Project Management – many of the decisions that have to be made, have inter-dependencies and if divorce has been filed, then there are also deadlines that have to be met. A divorce coach will help their client understand the necessary order of decisions – e.g. if you know you don't want to stay in the marital home, you can't decide how much to spend on a new home until you have a clear understanding of what you could expect from the equity in your present home and the timing.

With mediation, for example, a coach can help ensure that the client comes to mediation with the information they need such as income information or insurance costs or car value. The divorce coach can help the client understand the overall process, where they are at any particular moment and what comes next. The coach can provide the client with checklists along the way, helping the client to stay on track and to increase their independence.

Once agreements have been reached, the coach can provide the client with step-by-step instructions to ensure that compliance with agreements within the agreed timeframes.

Emotional Support – we all know that the financial decisions and parenting decisions are best made as “business decisions” but our clients often need to vent their emotions to get to this place. The coach creates a safe environment for this.

For some clients, this starts with a discussion about some of the myths around marriage and divorce such as marriage being a lifelong commitment coupled with our abilities to choose a lifelong partner, what we do to make a marriage work, the impact of conflict avoidance on self-worth and how keeping the peace leads to losing oneself.

Using recovery tools, a coach can help to their client understand their grief (for example, how the Kübler-Ross Five Stages of Grief applies to their situation both for them and their soon-to-be-ex), their anger and their sadness and why the marriage ended. This may also involve discussing forgiveness which may cover both forgiving the spouse and the client working to forgive themselves. The coach can help the client understand why what happened or applied to their friend doesn't apply to them. The coach can be the voice of reason and also recognize when more professional expertise may be needed such as for treatment of depression or deep-rooted psychological issues.

In particularly contentious divorce scenarios a client may need additional emotional support to prepare for mediation or to proceed through trial. A coach can assist the client with the possible emotions that may be raised by sitting across the mediation table from the soon to be ex-spouse, or prepare for and then debrief a Court appearance. The Collaborative Model often uses coaches if one or both spouses are emotionally struggling and need additional emotional support to participate more effectively in the group meetings. Attorneys are typically in the role of helping clients with legal issues but often find that until the emotional issues are addressed clients are unable or unwilling to deal constructively with the strategic legal decisions that need to be made.

### **Which Clients Benefit From Coaching?**

To illustrate the type of situations in which coaching can be beneficial, it's helpful to look at some scenarios.

## **Scenario 1: The Power Imbalance**

*Joe is a professional, self-employed with a successful business. Angela does not work outside the home. Joe appears to make the decisions and it was him who initiated the divorce – he already has new partner and has shared that with Angela. Angela has no idea about the household finances and is generally unsophisticated about finances. For the past 15 years, Angela charges everything to a credit card and which Joe pays each month, no questions asked.*

*Joe is keen to avoid using attorneys and says he is committed to a fair and equitable settlement. Angela doesn't want the divorce, is very fearful about the future, and feels her future is dependent on what Joe wants to give her. She doesn't like talking about money and feels guilty taking money from Joe. She doesn't know what to do.*

*Joe suggests they go to mediation and Angela agrees. Angela wants to stay friends with Joe and feels that going to an attorney would jeopardize that. In the past when she has tried to ask Joe for more information, he has gotten angry and withdraws emotionally. She has friends telling her she needs an attorney because Joe is the beneficiary of a trust fund and he should be taking care of her.*

*Angela hires a divorce coach.*

In this scenario the emphasis is on the decision-making support from the coach. The knowledge and expertise that the divorce coach brings helps to level the playing field and assists the client in making decisions that work for her rather than decisions that keep the peace. It can be also be in Joe's interest that Angela is working with a divorce coach since Angela may be better able to make decisions and less likely to be non-responsive.

Angela and her coach can work through the benefits of Angela working with an attorney and whether that's full representation or on an unbundled basis. The coach can help Angela identify her core issues, select attorneys for an initial consultation and then debrief with Angela about those consults. Once Angela has selected an attorney to work with, the coach can help Angela understand the options the attorney is detailing and decide what will work best for her.

The most common situation here is around finances and this is often an indicator of larger power and control issues.

With respect to parenting, the parenting plan often comes as a shock to both parties. Parents rarely have a concept of documenting the logistics of the lives of their children however many parents do quickly grasp it. Decision-making support often means giving guidance on how to incorporate vacation-planning for example, into a parenting plan so it can apply year-after-year rather than just to the present circumstance. It could apply to parenting where one parent has taken on the primary parenting role almost to the exclusion of the other, whether by design or circumstance, such as the parent who travels on business frequently.

## **Scenario 2: The Mental Fog**

*Tom and Mary have been married for twenty-five years. Three years ago, Mary suffered a debilitating accident and since then has been struggling with depression. With their eldest child off to college, Mary has decided she can't stay married any longer and has filed for divorce. With the initial status conference*

*approaching, Mary suggests they go to mediation. Tom agrees with mediation – with the minimum monthly payments to their credit cards, there is no extra money each month and he really wants to avoid spending their very limited retirement assets on legal fees.*

*After the initial status conference Mary says they have another status call coming up but for what she doesn't know. She says they have another hearing scheduled in two weeks and she doesn't know what that's supposed to achieve. The magistrate also scheduled a trial date and Mary says she has no idea why. During mediation, Mary also says she doesn't know if she can do mediation, she doesn't feel she can discuss this, it's just too upsetting and doesn't the court just decide this all, anyways?*

The divorce coach in this scenario is working mainly in the decision-making area but cloaked in emotional support. Project management comes into this because Mary isn't keeping track of deadlines and nor does she appreciate the consequences of missing the deadlines. The coach's challenge here is to get Mary to understand the divorce process, and how she needs to be an active participant while meeting legal process deadlines.

The coach can help Mary to assess the viability of mediation versus litigation and also the cost-benefit analysis of tradition litigation versus unbundled or continuing pro se. Through the production of meeting notes and checklists, the coach can reinforce with the client prior conversations and previously identified goals.

The advantage of a coach working with Mary is that they can work together at Mary's pace without additional pressure from Tom.

Other situations where this might apply – severe depression, traumatic brain injury, hearing impairment, English as a second language.

### **Scenario 3 – The Overwhelmed**

People joke that divorce should qualify for leave under Family Medical Leave and while that's unlikely to happen any time soon, the truth is that transitioning from married to single life can impact every aspect of someone's life and there are often simply not enough hours in the day to handle work, home, family responsibilities in addition to the demands of divorce.

*Alison and Mark have been married for 24 years. Mark works in a senior management capacity for a national corporation while Alison is an independent graphic designer. Her work is often unpredictable and unstable. She enjoys photography and goes away periodically for photography vacations. They have three children the eldest of whom is a senior in high school. Mark has been trying to end the marriage for years but has been fearful of the impact on the children. Now he has concluded that the conflict between him and Allison is more damaging to the children than the potential impacts of divorce.*

*As much as Mark wishes to proceed with divorce, he's struggling with keeping everything afloat – he manages the household finances, he's helping their son apply to college, managing their youngest daughter's chronic health condition which is resulting in unpredictable and frequent absences from school. Alison has not accepted the end of the marriage and is trying to block it but has refused counseling. Alison is very open about their disagreements with the children and often asks the children's opinions about ending the marriage and how harmful it would be on the household finances, and*

*especially on their college education. She routinely share's Mark's emails and texts meant for her, with their children.*

*Mark has retained an attorney but Allison is pro se. He is often confused by the advice he is getting from his attorney, wanting to reduce the conflict for their family and trying to figure out the financial arrangements that would persuade Alison to cooperate. He really doesn't want to litigate the divorce and unlike other times when he's tried to leave, he's now convinced that he has to do this. His own health is starting to suffer and he's struggling to keep up with his responsibilities at work.*

*Mark turns to a divorce coach for help.*

In this scenario, there's a heavy emphasis on project management.

The divorce coach represents an efficient and effective way for an overwhelmed client to quickly gather the information, get organized and to identify the next steps to take. The divorce coach understands that this client needs frequent reminders of the precise next steps as well as the big picture. The coach can help the client uncover issues and concerns that they have not had time to consider or evaluate.

The divorce coach can help the client prioritize the competing demands and identify those that can be suspended until after the divorce. In helping the client to prepare for mediation, the coach can help the client to look at settlement options from their spouse's perspective and to understand what might motivate their spouse to settle.

The key with the overwhelmed client is to break tasks down step by step, giving clear instructions and checking in frequently. The coach can expect text messages and pleas for help and guidance triggered by the actions of the spouse. The coach can be a consistent reminder to take the high road.

Other situations where this might apply – people who are juggling other competing priorities such as aging parents, chronic health conditions, an absentee other parent, any situation where there is little free time or downtime that allows the client to shift priorities or to step back to get a different perspective.

#### **Scenario 4: Consumed By Guilt**

*Bob and Tina have been married for eight years – Bob describes the marriage as so-so since the very beginning. He says they really are like roommates: they rarely argue, communicate only about basic logistics and have been intimate only two or three times in the past year. They have no children. Bob feels guilty for wanting to end the marriage – no one in his family has been divorced and he wonders if he has worked hard enough at this. Yet, he feels that the longer he leaves this, the longer he's stopping both of them from finding someone they can really love. He's doesn't want to argue and wants to divide everything fair and equitably.*

*Bob decides to work with a coach because he thinks he just can't do this on his own.*

In this scenario, the element of divorce coaching that is most needed is Communication and Emotional Support. The coach can help Bob see a way of ending his marriage that is consistent with his values and can also help Bob communicate his message to those who need to know with compassion and kindness. These clients come to coaching often long before any legal consult or mediation has happened.

There is also a tendency of the Consumed By Guilt client to avoid conflict or assuage the guilt by giving away more than what the law provides. The divorce coach can help the client in this situation to be guided by their values rather than their guilt and to explore the reasons for their guilt. Recognizing these may create a pathway to other resolutions.

In assessing alternative settlement options, the coach can help Bob make more objective decisions than his guilt would otherwise provide and therefore avoid a settlement that he would later regret.

### **Scenario 5: I Just Can't Stop Crying**

*Connie and Gary have been married for almost 32 years and by Connie's admission most of those have been struggle. They spent probably 15 years caring for their son who contracted Lyme Disease. Now in his late 30's their son is thriving. He's healthy, about to graduate college and about to be financially independent.*

*Connie and Gary are both retired. She's very active. She likes to hike and bike and is excited about having the time to finally do some fun activities. She takes care of herself: eats healthy, is religious about taking her medication for anxiety and depression and has a wide circle of friends.*

*Gary, on the other hand is a stay-at-home guy. He has no interest in any of the activities Connie does. He's gained a lot of weight over the last 15 years and even though he has diabetes, he makes no effort to eat healthy. In fact, to Connie, it seems the more she tries to encourage him, the more junk food he wants.*

*Connie says they used to have a great sex life but now even that is non-existent. It became clear to Connie that they each had very different ideas about retirement and they were never going to get on the same page.*

*Connie has realized that the marriage is over. She's not sure what that means in terms of divorce or legal process but she just can't stop crying.*

*Connie turns to a divorce coach.*

The priority for the divorce coach in this scenario is on emotional support. Even if the client is already working with a therapist, the coach can bring perspectives focused on the end of a marriage and divorce that can reinforce and expand on what is being covered in regular therapy sessions.

The coach can explore the grieving process and the similarities and differences from the loss of a spouse through death. The coach can also work on self-esteem and helping the client build a healthy aloneness.

As the emotional situation stabilizes, Connie will be ready to explore their legal options and at this point, the coach shifts into more project management and decision-making support.

The temptation is to think that the I Just Can't Stop Crying Client isn't the person who has initiated the divorce but either party can be in this position.

## **Ethical Considerations**

### Coach or mediator?

Obviously, you can't be both a coach and a mediator at the same time. Coaching one party to the extent of a divorce coach would jeopardize a mediator's neutrality and even the concept would likely be unacceptable to the other party.

However, you could be in a situation where you are coaching one party on the parenting plan and the other party wants to discuss parenting and is willing to meet in a three-way session with full disclosure that you have previously worked with one party. This is shifting from coaching one party to coaching/mediating both parties. Question is, can you go back to coaching one party after this?

Coaches also need to be conscious of potential conflicts. A coach may offer a complimentary initial consult and needs to guard against having a consult with both parties unwittingly.

It is possible for both parties to meet with the coach and then to decide jointly which capacity the professional should work. For example, there are many excellent mediators in Boulder but not many divorce coaches. A couple could decide that they would both benefit by one party working with a coach and thus would seek out another professional to be their mediator.

### Communication With Other Professionals

This can be tricky. Most of the time, as professionals we are aware of each other's involvement but we're often not a direct participant in other conversations.

With attorneys, we have to protect the client-attorney privilege which may make it difficult for a coach to sit in on attorney meetings. With a release, a coach can have a direct conversation with an attorney for example to clarify legal options. It is often helpful and more accurate to discuss a proposal or a concern directly with an attorney rather than hear it from a client. When we do this however, we have to be mindful of the fees that the client may be incurring and to ensure that the client understands this when a release is given.

A coach could also participate in mediation sessions, with the consent of the other party and would have to sign the mediation agreement. This could be particularly helpful in Mental Fog scenarios and can be beneficial in helping to move the coached party towards agreement.

Clients often share the work of other professionals, such as their attorney, CDFA, and/or mediator for child support, spousal support projections or parenting plans. In doing so the client needs to ensure that they are not breaching any confidentiality agreement signed with that professional or with their other party.

### Referring Clients To A Divorce Coach

As a mediator, recommendations for one party to seek professional advice are disclosed to both parties and suggesting that a party may want to work with a divorce coach is no different.



## **Why Refer To A Divorce Coach?**

Maintains Neutrality – In the scenarios described the mediator is not likely to be able to give the support the coaching client needs to get to a fair and equitable agreement without jeopardizing their neutrality.

Levels The Playing Field – the skills that a divorce coach brings to the client can help to create balance between the parties and this often facilitates more effective agreements.

Is Seen As Non-Aggressive – for those who are seeking to avoid litigation, who do want to use the ADR track, bringing in a divorce coach is not seen as a hostile or threatening step and may even be welcomed by the party who feels they do not need the help of a coach.

Using the Right Professional – the client is going to get more effective help by using the right professional for the right task. It's probably not cost effective for an attorney, for example to sit down with a client and work out their monthly budget or help them to set up an expense tracking system. Using the wrong professional is both frustrating and costly and can hinder reaching an agreement. Divorce these days is a team effort.

Affordable – Coaching rates are going to vary however rates do tend to be lower than attorney rates. So if a divorce coach charges less than an attorney and is able to help a client communicate more clearly, research and consider options, make decisions, manage the overall project, and provide needed emotional support that is outside the realm of an attorney, working with a coach may be cost effective and reduce overall legal fees.

## **What To Look For In A Divorce Coach**

In many ways this is similar to mediator referrals.

There is no nationally recognized single certification and nor are there any state licensing requirements.

There is the Certified Divorce Coach program and also some life coaching training programs, now have a divorce coach track, such as the Coach Training Alliance. However, as with a mediator, it's important to find a divorce whose skills match the client's needs and who is a good fit with the client's personality.

Having a basic understanding of family law is essential and this is likely to be training over and above any coaching training. Look for a coach whose primary focus is divorce rather than a coach who works on career coaching, life coaching and divorce coaching, for example.

Do ask about peer consultation groups – there are always nuances and it's critical to have other divorce professionals with whom to consult. They don't have to be other divorce coaches, especially given that this is an emerging profession.

Do ask about continuing education – there's always more to learn. Whether it's learning about changes to the domestic relations law, common practices for handling drug or alcohol abuse or effective ways of interacting with clients with different psychological needs, your divorce coach should be increasing their knowledge.

Coaches can work remotely with clients who are geographically distant, in other states and on other countries. The use of video conferencing such as Skype and WhatsApp helps to build connection. The overall knowledge of the legal process helps to still ask the relevant questions and to provide project

management. For some people, having a remote coach is the best option available while for others, it depends on their need for face-to-face connection.

Get to know the coaches who are working in your geographic area – not only will you want to know them before referring potential clients, they can also be a source of referrals for you since they are often talking to people who are considering divorce.

As about the coach's prior experience working with other divorce professionals– has the coach worked with mediators, Certified Divorce Financial Analysts, or attorneys in prior coaching relationships?

If you are referring a client to a divorce coach and are a mediator, attorney or other professional ask the client and the coach how they would like to communicate and/or work collaboratively, or if they keep their role separate from the other professionals involved in the case.