

CINCINNATI ACADEMY
OF COLLABORATIVE PROFESSIONALS

A ROADMAP for COLLABORATIVE PRACTICE

A basic guide for practicing the Collaborative way when interacting with your clients

PREAMBLE

Collaborative Practice is a process for resolving family law conflicts through principled negotiation. Parties employ Collaborative attorneys who support them in reaching a settlement outside the adversarial process of Court imposed resolutions.

The parties, not the attorneys, are responsible for the ultimate outcome. The attorneys support the parties in the parties' attempt to reach their best and highest interests, recognizing that a solution arrived at through active input and participation by both parties is greater than either party could generate on his/her own.

The suggested procedures outlined herein are intended as a roadmap for the sake of consistency. Nonetheless, the procedures should not be utilized inflexibly, since the process needs for each family will vary depending upon their circumstances.

- I) **APPLICATION OF THE PROFESSIONAL RULES.** These Procedures are subordinate to the Ohio Code of Professional Responsibility.
- II) **BEGINNING THE PROCESS: THE ATTORNEY CLIENT RELATIONSHIP**
- A) Initial Interview With Client
- 1) Invite the Client to describe his/her circumstances and concerns. The Collaborative Attorney should actively listen to the Client.
 - 2) Explain the **process options**, discussing with clients the pros and cons of each process:
 - (a) Collaborative Process, which may include the use of:
 - Mental Health professionals to serve as family or child specialist

- Financial professionals to assist with issues concerning asset valuation, cash flow, and financial planning
 - Facilitative professionals serving as communications specialists to assist the participants in reaching agreement
- (b) Mediation:
- With Collaborative Attorneys participating in the process
 - With litigation attorneys participating in the process
 - Without attorneys participating in the process
- (c) Conventional representation/negotiation; and
- (d) Litigation.
- 3) Explain the Collaborative Process:
- (a) Review the Collaborative Contract.
- (b) Tell Client the goals of the Collaborative Process:
- Create a safe environment
 - Communicate effectively
 - Provide full disclosure of facts
 - Explore wide range of possible choices
 - Reach solutions acceptable and fair to both Clients
 - Keep Clients in full control of the process
- (c) Explain the roles of the attorneys to the Clients:
1. Collaborative Attorneys are trained in conflict management and guided negotiations, including keeping the environment for negotiations safe and civilized
 2. Clients are experts in facts and needs, responsible for assisting with the generation of options, and responsible for all ultimate decisions
- (d) Explain that the Collaborative Attorney must withdraw if litigation is to be initiated or the client engages in fraudulent conduct that is concealed and un-remedied.
- 4) Determine whether the matter is suitable for Collaboration. For example, the Collaborative Attorney will discuss with the Client and consider relevant factors to assess whether the Collaborative Process is appropriate, including whether:
- Client or other party has “hidden agenda,” ulterior motives, or seeks to use the Collaborative process to gain an unfair advantage

- Client or other party has mental health or chemical dependency issues which would hinder the process
 - History of physical violence or emotional abuse, which would make power imbalances difficult to address in the Collaboration process.
- 5) Deliver to Client the Collaborative Contract and refer the client to the CACP website link.
 - 6) Discuss the use of mental health professionals, financial professionals, facilitative professionals and/or other professionals to assist Clients.
 - 7) Inform Client of importance of preserving property during the Collaboration, and remind the Client not to act unilaterally.
- B) Preparing A Client For the First Group Meeting
- 1) Review the Collaborative Process with the Client.
 - 2) Review the Collaborative Contract with the Client and the Guidelines in Exhibit B to the Contract.
 - 3) Review what is important to Client and Client's concerns and what Client thinks might be important and of concern to the other party.
 - 4) Discuss agenda for first group meeting. Focus client on information gathering needs for initial phase of the Collaboration.
 - 5) Urge Client not to negotiate prematurely. Remind Client that any discussions outside the group meeting must be by mutual agreement of the parties.
 - 6) Encourage Client to avoid forming positions and to delay developing specific solutions until all information has been shared and all options explored at group meetings.

III) BEGINNING THE PROCESS: THE ROLE OF COLLABORATIVE ATTORNEYS AND OTHER FACILITATORS OF THE COLLABORATIVE PROCESS

- A) Commencing the Case
- 1) At the outset of the Collaborative case, Collaborative professionals meet or talk by telephone, in order to:
 - (a) Introduce themselves to one another and establish a foundation for a good working professional relationship throughout the case

- (b) Reaffirm the requirement of full disclosure of all legally relevant facts and matters regarding the case
- (c) Discuss and agree on an agenda for the first group meeting
- (d) Identify issues or matters unique to each Client in the process, such as:

Emotional/Physical issues

- Anxiety/anger
- Depression/mental illness
- Chemical dependency
- Physical, verbal or emotional abuse
- Involvement of third parties

Learning Styles/Process Needs

- Need to move slowly or quickly
- Need for more or less professional assistance to understand relevant facts and issues

Practical Matters

- Payment of fees – financial resources of each party to do so
- Restrictions on either party affecting time and place for four way meetings
- Use of coaches, child specialists, financial consultants, or other allied professionals

- (e) Identify pressing issues or needs of each Client, such as:
 - Need to establish parenting arrangements
 - Need for financial support
 - Need for exclusive occupancy of home

A pressing issue or need is a matter that must have a temporary solution to permit the parties to carry on until the next four-way meeting. It is not intended to be anything other than a temporary solution.

- (f) Identify issues and matters not in dispute

IV) GROUP MEETINGS

A) First Meeting

- 1) Collaborative professionals introduce themselves to the other party at the first meeting, and permit/facilitate **establishment of rapport** among all participants.

- 2) Collaborative professionals co-lead the first group meeting to establish processes and goals relevant to Collaborative Process:
 - (a) Commitment to the Collaborative Process
 - Review and sign the Collaboration Contract
 - (b) Commitment to effective communication. Collaborative professionals encourage Clients to adhere to the following:
 - Identify, recognize, and respect process needs of each party
 - Recognize futility of arguing
 - Speak only for yourself
 - Listen actively
 - Avoid language that is critical, judgmental, or accusatory
 - Focus on the future and not on the past
 - Commit to fullest development of choices and alternatives
 - Be effective – evaluate whether your statements and behaviors are moving you closer to meeting your desired goals and interests
 - Take responsibility for your feelings, interests, and choices
- 3) Explain the steps of the Collaborative process:
 - (a) Fact and information gathering
 - (b) Determine Clients' goals and interests
 - (c) Develop options
 - (d) Negotiate solutions
- 4) Encourage Clients to address any pressing issues and work out temporary agreements:
 - (a) Identify pressing issues as narrowly as possible
 - (b) Document the temporary agreement
- 5) Commit to complete and full disclosure. This includes volunteering information not specifically requested when that disclosure is important to understand the circumstances present in the family.
- 6) Assign “to do list” for next meeting, including setting dates for completion as appropriate.
- 7) Establish agenda for next meeting and agree on drafting agreements, preparing minutes (if applicable), and work assignments.
- 8) Establish date, time, and place for next meeting.

B) Subsequent Meetings — Identification And Resolution Of Issues

- 1) Fact Gathering. Each party is entitled to and is responsible for making ongoing full disclosure of income, assets & debts, and other important information.
 - (a) A party or Collaborative Attorney who does not wish to make a particular disclosure states that desire explicitly. The other side has the option of terminating the Collaboration.
 - (b) The parties are free to request additional documentation, engage in other investigative procedures, or request a sworn statement of income, assets & debts, if deemed necessary to establish a base of information on which both parties feel comfortable making decisions on financial issues.
 - (c) Collaborative Attorneys assist Clients with preparing spreadsheets, locating and engaging appraisers, financial professionals, child specialists, parenting consultants, and other allied professionals or neutral consultants whose assistance would facilitate the gathering, organizing, and analysis of information related to the parties' property and the needs of their children. [See Practice Protocols for CACP].
 - (d) Each participant takes the initiative to point out and correct any misunderstandings or errors occurring during discussions, in summaries, or in proposed financial paperwork which would affect the decisions the parties need to make.
- 2) Identification of Goals and Interests. The Collaborative Attorney:
 - (a) Assists Clients with effectively communicating their own concerns, needs, motivations, goals and intentions
 - (b) Assists Clients with understanding the other party's concerns, needs, motivations, goals and intentions
 - (c) Assists Clients to identify common concerns, interests and goals
 - (d) Assists the parties in differentiating between bargaining positions and fundamental interests

C) Development and Evaluation of Settlement Options.

- 1) Upon completion of the exchange and organization of all relevant information, assist parties develop and state all possible options for settlement of issues
- 2) Assist the parties with:
 - Analyzing how options meet Client goals
 - Assessing whether each option is realistically achievable

D) Negotiation of the Settlement.

- 1) A core value of the Collaborative Process is to develop a global settlement of all issues
- 2) Assist Clients to determine which options best meet both parties' interests and common goals, and produces the best possible outcome for both parties and children of the marriage

E) Subsequent Group Meetings - Management of Meetings.

- 1) Manage the group meetings to avoid anxiety and conflict, to build client competency and confidence, and to achieve success in negotiations by:
 - (a) Planning and agreeing on an agenda in advance of each meeting
 - (b) Refraining from bringing an issue to a meeting that is not on the agenda
 - (c) Normalizing the existence of disagreements if any arise
 - (d) Assuming the responsibility for the pace, tone, and sequence of matters discussed at four way meetings
 - (e) Modeling the use of problem-solving techniques in meetings with Clients
 - (f) After the meeting, evaluating together what the attorneys can do to make the next step of the process efficient and effective
 - (g) Communicating any concerns regarding the previous meeting
 - (h) If impasse occurs, identifying circumstances that led to the impasse, and brainstorming ways to break impasse which can be presented to Clients, such as:
 - Referring Clients to family relations specialists, financial specialists, child specialists, or other appropriate allied professionals
 - Partial settlement
 - Mediation
 - Early neutral evaluation
 - Moderated settlement conference
 - Securing the opinion of another attorney or panel of attorneys
 - An interview with a litigation attorney
 - (i) Planning agendas to build on successes.

F) Subsequent Group Meetings - Communication. To Facilitate Effective Communication:

- 1) Attorneys:
 - (a) Are at all times polite, courteous and punctual
 - (b) Speak directly with participants about perceived non-collaborative behavior
 - (c) Listen actively

- (d) Use clear, neutral language in speaking and writing, and avoid offensive or provocative conduct, such as cross-examination
 - (e) Listen to criticism non-defensively
 - (f) Avoid assessment of blame
 - (g) Never threaten to terminate the Collaboration. If there is a genuine likelihood of termination, the Collaborative Attorney should advise the other attorney of this prospect
 - (h) Avoid use of pressure, threats of any kind, or unilaterally imposed deadlines
 - (i) Model effective problem-solving communication with the other Collaborative Attorney
 - (j) Model a commitment to honesty, dignified behavior and mutual respect
- 2) Clients: As needed in a group meeting, a Collaborative Attorney facilitates the effective communication of both parties by:
- (a) Providing each party with an opportunity to appropriately describe his/her own needs, motivations, intentions and goals
 - (b) Allowing the process needs of each party to be met
 - (c) Encouraging each party to allow for (a) and (b).
- G) Subsequent Meetings - Use of Neutral Consultants
- 1) Joint Engagement. Unless otherwise agreed the parties should jointly engage all experts as Neutral Consultants.
- (a) The Neutral Consultant should be informed that s/he is being retained by both parties and should use care to avoid any appearance of partiality.
 - (b) The scope and terms of the Neutral Consultant's engagement, including fees, should be in writing, signed by the Clients, attorneys and Neutral Consultant.
 - (c) The parties agree in advance on responsibility for payment of the Neutral Consultant's fees. The fees should be paid promptly.
 - (d) All documents submitted to the Neutral Consultant and any report or work product of a Neutral Consultant should be made available to both Clients and attorneys in the Collaborative process.
 - (e) If the Collaborative Law process terminates and the matter proceeds to litigation, a Neutral Consultant may not testify unless the parties and the Neutral Consultant agree in writing to the contrary.

H) Subsequent Meetings - Transparency of the Process

- 1) The Clients with both attorneys present, discuss their goals, needs, desires, concerns and uncertainties about legal and/or practical issues.
- 2) Attorneys and Clients are honest and candid about what each is doing and why they are doing it. No participant (attorney or Client):
 - (a) Has a hidden agenda;
 - (b) Engages in secret tactical maneuvering; or
 - (c) Takes advantage of misunderstandings or errors.
- 3) All complaints are aired promptly.
- 4) If any participant has a concern about any aspect of the Collaborative Law process, the participant raises the concern openly and directly during a conference to prepare for a group meeting or during a meeting.
- 5) All participants respond to emotional issues kindly and directly and work to maintain the privacy, respect and dignity of all involved. Parties acknowledge that the Collaboration is not intended to be counseling or therapy, and agree to seek the services of an allied professional when counseling or therapy is needed or desired.

V) **EARLY TERMINATION OF THE COLLABORATION AND FUTURE ADVERSARIAL MATTERS**

- A) The Collaborative Attorney should inform the Client that the Collaborative Process is voluntary and that the Client may terminate the process at any time and for any reason.
- B) The Collaborative Attorney should inform the Client that the Collaborative Attorney will withdraw from representation of the Client, without providing a reason to the other Collaborative Attorney and Client, if the attorney learns the Client has or intends to violate the Collaboration Contract in a manner that would compromise the integrity of the Collaborative Process.
- C) In order to terminate the Collaborative Process, the terminating party must give the other party and both Lawyers written notice of the termination.
- D) If the Collaborative Process is terminated for any reason, both Collaborative Attorneys must withdraw from the case. This requirement is not applicable when one Client replaces his/her original Collaborative Attorney with another Collaborative Attorney; in this situation, however, a new Collaboration Contract must be signed.

- E) If the Collaborative Process is terminated for any reason, each Collaborative Attorney will help his/her Client make an economical and orderly transfer to new counsel.
- F) Once the Collaboration is terminated, neither party may take any action in the Court system until 30 days after they have made written notice to terminate the Collaboration, unless there is an emergency requiring immediate action before the 30 day period expires.

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