

**Protocols of Practice for CPEB  
Mental Health Professionals Involved  
in Collaborative Family Law.**

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**COLLABORATIVE PROTOCOLS**  
*For*  
**COACHES**

**INTRODUCTION**

The following protocols create a uniform map for Coaches to follow and Attorneys, Financial Specialists, and Child Specialists to be aware of. This map will ensure that each potential Collaborative client receives the same information about the Collaborative Process. It also ensures that some degree of useful uniformity will exist among Collaborative Practice Team members.

Each case will have its own nuances as to how the team is formed, e.g. clients coming through an Attorney's door, Coach's door, Financial Specialist's door, etc. These factors will be considered by each professional allowing him or her to follow his/ her own professional ethics when creating and maintaining the Collaborative Process. It is hoped that any variation from these guidelines would be arrived at through mutual agreement.

Central to the Collaborative Process is the multi-disciplinary Team which educates the clients, enabling them to make informed decisions, and supports the parties to operate out of their best and highest interests. If solutions are created through the active input and participation of the whole Team, then the solutions arrived at will be greater than parties could accomplish on their own. This process allows clients to consider options without the constraints imposed by a traditional legal proceeding, and gives to the clients the ultimate power and responsibility for achieving a settlement.

## **BEGINNING A CASE**

When a client's initial introduction to the Collaborative Process begins with a Coach--prior to meeting with a Collaborative Attorney--the following tasks are important to consider: A coach should explain the dispute resolution options, begin to assess the client's suitability for Collaborative Divorce, as well as begin to establish a trusting rapport. If a client is referred by an Attorney, the Coach may not need to explain dispute resolutions options, however, it would still be important to go over confidentiality and transparency issues to ensure informed consent.

### **1. DETERMINING IF CLIENTS ARE READY FOR COLLABORATIVE PROCESS**

- Explore with clients their intentions regarding their marriage or partnership:
  - Is client seeking couple's therapy?
  - Do both partners/spouses believe there is potential for the relationship to work?
  - Have attorneys been hired?
- Refer to mental health or medical professionals if appropriate

### **2. ENSURING INFORMED CONSENT, PART I**

Explain dispute resolution options:

- Kitchen Table: Parties generally resolve all issues by themselves and do paperwork by themselves. One or both might consult with an attorney for an hour here or there, but the bulk of the work is generally done by the parties on their own. Resources: There are a number of self-help books and other resources available to pro per parties. Additionally, each family court provides a Family Law Facilitator's Office where pro per parties can obtain assistance in completing paperwork. Many bar associations provide free and low fee legal assistance to pro per parties who meet certain economic requirements.
- Mediation: This is a process wherein the parties elect to meet with a mutually selected impartial and neutral professional who can assist them in negotiating a family law resolution. The mediator does not represent either party and generally does not provide legal advice, although the mediator may do some legal education. Mediation leaves the decision-making power to the parties, rather than to the attorneys, experts and judges. The mediator does not decide any of the issues for the parties or determine what terms are "just." The mediator's role is to assist the parties in arriving at a solution that reasonably meets each party's respective goals and needs. The law is not irrelevant in mediation, but it is usually just one factor used in the parties' decision-making. There are often other principles and standards that the parties use in determining their solutions that may be more powerful than the law.

Parties often elect to each retain an independent attorney to consult with during the course of the mediation process. They can also work with coaches and a financial professional as part of the mediation. Generally, the mediator and the parties meet together without the attorneys present. Occasionally, the parties and the mediator may decide to conduct the mediation with the consulting attorneys present to assist. Mediators may meet with the parties together in 3 way meetings or may meet with each party individually if 3 way meetings turn out not to be productive.

- Collaborative Practice: Collaborative Law, also referred to as Collaborative Practice, is a process for parties dealing with marital dissolution and other family law matters, working with trained professionals as a team to resolve disputes respectfully and fairly without resorting to court intervention. The collaborative model is distinguished from traditional litigation by the following essential core elements which are set forth in the contractual agreement that the parties and the collaborative professionals enter into at the outset of the case: to negotiate a mutually agreeable settlement without using the court to decide any issue; to engage in open communication and information sharing with full disclosure; to search for and create shared solutions that take into account the important goals and priorities of both parties; and, for all professionals involved in the case to withdraw if either party leaves the collaborative process and proceeds to go to court.

Thus, a hallmark of the Collaborative Practice process is that agreement is reached through discussion, negotiation and compromise without the financial and emotional cost, aggravation and uncertainty of adversarial litigation in court.

- Cooperative Representation-traditional negotiation: Parties may choose to each retain attorneys to assist them in reaching a settlement. The attorneys and the parties attempt to work cooperatively to reach a mutually agreeable solution. Generally, that solution is based on the predictions of what a court would do, so the law is the relevant guiding principle, as opposed to either party's needs and interests.
- Traditional Litigation: Litigation refers to the process by which a matter is brought into a formal court setting where the outcome is often determined by a judicial officer, such as a judge or commissioner, after reviewing legal briefs and pleadings and after hearing oral argument at a court proceeding. In the traditional family law litigation model, each party is represented by an attorney and most issues are brought before the court through motions and court trials. The traditional litigation model is adversarial in that each party asserts positions, states claims and seeks to achieve a result

which is most beneficial to him/herself without regard to the other party's interests.

Explain the roles of Collaborative Team Members:

*Financial Specialists* gather the financial facts and provide information to assist the parties in looking at how different possible financial settlements will impact the futures of both clients. Educates one or both clients about the important aspects of decisions made at this time and fills in understandings that may be missing by one or the other party.

*Divorce Coaches/Communication Specialists*: one for each client who assist the clients to manage their emotional response to the divorce, laying a foundation to communicate effectively with each other to achieve the most satisfactory outcome for their divorce and to achieve effective co-parenting communication as well as parenting plan

*Child Specialists* bring to the collaborative meetings the needs and voices of the children and provide this information to the Divorce Coaches and the parents to assist them in the development of a plan for parenting. Supports the child through the divorce assisting them to make the difficult transition with as much ease as possible.

*Attorneys* assist clients to develop creative options to meet their needs. They are trained in conflict management and guided negotiations, including keeping the environment for negotiations safe and civilized.

*Clients* are experts in facts and needs, responsible for assisting with the generation of options and responsible for all ultimate decisions made in the process.

Explain team communication and confidentiality:

The members of the Team will share with each other information each has learned in order to facilitate the collaborative process.

Explain Withdrawal / Termination of a Collaborative Case

The Coach should inform the Client(s) that because the Client(s)' participation in the Collaborative process is voluntary, the Client(s) may terminate the Coach's engagement at any time and for any reason.

A Coach will terminate his/her professional relationship with Client(s) when it becomes reasonably apparent that the

Client(s) is no longer in need of services, is not benefiting from the services, or is being harmed by continued service.

### 3. ASSESSING SUITABILITY AND ESTABLISHING TRUST

*Assessment* is necessary to determine the client(s) suitability for Collaborative work. This requires the Coach to make judgments about the client's current emotional state, personality features that could interfere with a Collaborative Process and special circumstances that might limit the client(s) ability to participate in a Collaborative framework.

*Assessment should include:*

- Current level of anxiety and/or anger
- Current level of trust—each client's ability to keep agreements
- Ability to tolerate anxiety without acting out
  - Hx of domestic violence—may be a counter-indicator
  - Hx of substance abuse—if recent may be counter-indicator
- Allegations of abuse that require investigation by a third party
- Ability to acknowledge partner's point view—if limited a counter-indicator
- Any beliefs that might inhibit Collaborative discussions such as
  - Over emphasis on using the law as a measure of "equity"
  - Ideas that this process is "inexpensive"
- Secret agenda involving power—belief that the process will give client an inherent advantage

*Establishing Trust and maintaining the Collaborative "stance"* is an ongoing process fundamental to any collaborative relationship. Developing this trust begins with the first client contact and builds as time goes on, and the way in which one elicits information is crucial to this process. While every Coach develops this ability in a unique fashion according to his personality and experience, certain relevant points should be emphasized:

- The questioning process must model the kind of empathic curiosity that is the *sin qua non* of a successful Collaborative effort
- Positive reframing often highlights a client's unacknowledged strengths
- Taking too much control of the process undermines creative possibilities
- Communicating frequently with the client about how the process is unfolding allows for necessary feedback

**4. INITIAL CLIENT PHONE CALL (WHEN REFERRED FROM COLLABORATIVE ATTORNEY).**

Explore client expectations and knowledge of Collaborative Process

- What is client's understanding of the Collaborative Process?
- What is client's understanding of the coaching process thus far:
  - Required or optional?
  - Role of Coach?
- What other information does the client want or need?
- Is first meeting an interview or the first coaching session?

**5. INITIAL CONTACT WITH REFERRAL SOURCE**

Acknowledge and confirm preliminary referral information

- What has referral source told client about:
  - How a team works together, i.e. the need for team communication, 6 ways, etc.
  - Sequencing of meetings and tasks in the collaborative process
  - The role of Coach
  - The next step(s) after meeting with the Coach
  - What materials has the client been given?
- What information does referral source especially want coach to know prior to first meeting with client (within limits of confidentiality).
- What is current status of case, e.g. what team members have been included; how many meetings have been had with client or clients; other pertinent case information.

**6. INITIAL COACH MEETING(S) WITH CLIENT(S): CLARIFYING ISSUES/ SETTING AGENDA**

The Coach's role is fundamentally one of helping the client clarify his/ her thinking and to facilitate clear communication. In addition, the Coach will help the client stay focused on "win-win" solutions by encouraging the client to "hear" his or her spouse's point of view. Other agenda items include:

Ensuring Informed Consent, part II

- Explain confidentiality and limits of confidentiality. Coach clarifies the concept of "transparency" and its importance in the Collaborative Process.
- Explore and further explain in detail how the Collaborative Process works. Goal is to educate and eliminate any misunderstandings client may have, e.g. divorcing through Collaborative Process is relatively inexpensive.
- Coach will have a client sign a collaborative agreement and Coach's own waivers and consents.

Continuing assessment and discussing potential roadblocks to collaborative success

Telling of clients' marriage and divorce story. This process is not only for the Coach to gather information about the client, but to continue the establishment of trust and a working alliance through the client's experience of the Coach's empathic listening.

Relevant questions include:

- What brought the couple together and how did they make the decision to marry?
- What were the best parts of their relationship?
- What were the challenges?
- How did they decide to have children?
- What has been client's general experience of separation?
- What do the clients want for their children during the divorce process and beyond?
- When they are at their best how do they handle disagreement with each other?
- What worked best to resolve differences during the marriage?
- How would they like to feel about their behavior when they look back on the divorce 5 or 10 years from now?
- What does the client think might be the challenges of moving successfully through the family change process?
- What would a successful process look like for them?

Exploration of how children, if any, are dealing with the divorce and any special needs they might have. Areas of interest the coach may cover include:

- What have the children been told about separation/divorce?
- How are the children doing?
- What is current time share and how well is it working?
- How are they reacting to the divorce or separation?
- How do family members and other third parties (e.g. extended family; other "parental figures"; etc.) interact with each other?
- What are the differences in their parenting styles?
- What are their particular parenting concerns?

Naming issues that might interfere with Collaborative Process, including issues working with:

- The other spouse
- The attorney(s)
- Other specialists on the team
- Any sensitive and relevant items that the client may be reluctant to bring into the process, and how these will be addressed, stressing the importance of "transparency."



Exploring additional items of style and strengths:

- How are emotions and conflict expressed in the family?
- What are client's strengths and outside support systems?
- What personality characteristics may interfere with the Collaborative Process?

Preparing for the first 4-way meeting between clients and Coaches:

- Identify and explore specific pressing issues that need to be addressed in the first 4-way coach meeting.
- Explain how the Coach will function in the 4-way meetings with the client, spouse, and spouse's Coach
- Prepare with client how best to address his/her anticipated vulnerabilities (e.g. emotional triggers), and to consider where he/she might get "stuck"
- Have client predict his/her spouse's vulnerabilities (e.g. emotional triggers), and where he or she might get "stuck"
- Create agenda with client
- Discuss possible agenda items with other Coach
- Email clients with proposed agenda items for them to review and comment on before the 4-way a few days prior to meeting

*Because participants often hear and remember meetings differently, minutes are a crucial record of what was discussed, what was agreed upon, and what remains in dispute. The wording is especially important in that each participant must feel his/her position is accurately and positively reflected. In addition, well-worded minutes often help clients see not only their own positions better, but also allow, outside the emotionally charged context of a meeting, the empathic consideration of their partner's position.*

## **7. SECOND CONTACT WITH REFERRAL SOURCE (IF CLIENT HAS HIRED COACH)**

Inform referral source of Coach's assessment of client /couple challenges and strengths, and initial thoughts about how to proceed with the best possibility for success.

Begin to discuss road map of case

## **8. THE FIRST COACHES MEETING (TELEPHONE OR FACE TO FACE):**

Coaches learn about the other spouse's experiences and family system

Coaches discuss client and family strengths

Coaches review clients' concerns, reaffirming or expanding agenda as needed

Coaches discuss need for Child Specialist (see Child Specialist Protocols).

## 9. FIRST PROFESSIONAL TEAM MEETING

### Introduction of Team Members

- In person is strongly recommended
- Meeting can include all Professionals currently on case, but minimally includes both Attorneys and Coaches

### Assessment of the case

- Discuss the structure needed to best proceed with the case
- Discuss couple's financial and psychological situation
- Discuss potential obstacles and how the team can best work with them
- Discuss billing policies and practice issues
- Begin to develop a "roadmap" the case might follow
- Set agenda for flow of case including
  - Next client meeting(s)
  - Introduction of Child Specialist (if not already in place)
  - Introduction of Financial specialist (if not already in place)

### **Discuss the monitoring of Team Process**

*Monitoring Team Process involves attending to a team's unexpressed conflicts that may be affecting team process. These can involve differences of opinion about collaborative method, mistaken assumptions as to motives, difficulties tolerating anxiety of negotiations, and conflicts arising out of couple dynamics. There are early and ongoing methods of ensuring that a team works effectively.*

#### *Early:*

- Meet as a team—face to face—to create team trust/safety
- Establish team communication patterns/rules/expectations and follow through on them
- Consider how to charge for team discussions and acknowledge that they are crucial to the collaborative process.

#### *Ongoing:*

- Periodically explore the way a couple's dynamics may be affecting functioning and team trust/safety.
- Managing anxiety should be an important part of this consideration.
- Avoid framing a discussion in a way that questions other team members' commitment to the collaborative process
- Consider substantive questions as containing complexities that may involve important team process issues. These need to be uncovered at the same time as the actual questions about techniques and client suitability are being addressed

A case is likely to reach a point of impasse. Attending to team cohesiveness at these times is crucial to avoid acting out, at the team level, the couple's sense of failure and frustration. In general, the whole Team is

responsible for monitoring the process, but the Coach plays a crucial role in ensuring that these often unconscious emotional dynamics are not neglected.

## **CONTINUING CASE PROTOCOLS**

### **1. ON-GOING COACH/CLIENT MEETINGS**

Continue to work on trust and working alliance:

- Increase understanding of client's needs and wants
- Continue to model empathic curiosity
- Highlight client's strengths through positive reframing

Develop clients' goals for post-divorce life:

- Explore with client his/her vision and goals for life after divorce. What is client looking forward to and wanting for:  
Self?  
Co-parenting relationship?  
Family?
- What worries client most?

Work with client(s) on communication skills:

- Expressing self non-defensively, one topic at a time
- Listening non-defensively
- Listening for understanding: being curious
- Making any assumptions explicit
- Confirming what was heard/understood
- Stating wants clearly

Develop plans for times when client is triggered by spouse:

- What issues or communication style of spouse are likely triggers?
- What issues or communications style of client are likely to trigger spouse?
- What will be helpful at those times?

Explore the needs of the children (ongoing) and

- Begin to discuss creation of parenting plan  
Explain to client that a parenting plan is a document that describes the default solution to situations that arise in the raising and co-parenting of children. The parenting plan may be as detailed or brief as the parents deem necessary. Even once the parenting plan is completed, parents can deviate from it by mutual consent. This document may or may not be filed with the court at the discretion of the parents and their attorneys

## 2. FIRST COACH 4-WAY

Beginning the meeting:

- Introduce agenda
- Have couple list items to be covered and prioritize
- Begin Working on Mission Statement

Mission Statement should clarify personal as well as parenting goals and often includes:

- A description of a desired co-parenting relationship that best benefits the children
- A statement of mutual respect towards each other including acknowledgment of each others contributions to the marriage and family
- A commitment to open, direct, and non-defensive communication with each other
- Discussion of children's education
- Discussion of how the children will participate in the decision - making about their lives
- Some goals for managing relationships with extended family
- Some goals for how major life passages will be shared with children

Create agenda for next coach 4-way

Each Coach should debrief his/her client as soon as practical after the 4-way so as to determine:

- In what way the meeting was useful?
- What emerged from the meeting that was important?
- What interactions worked best?
- What was challenging?
- What did client notice, learn, and appreciate that he/she did not know before about himself/herself; about spouse; about their interaction?
- What issues if any require the Coach's advocacy?

Coaches should debrief with one another after the 4-way to describe and clarify:

- Impressions of each client's experience of meeting?
- Each Coach's experience of other spouse?
- Each Coach's sense of dynamics between spouses?
- Agenda for next 4-way

Coaches should give feedback to each other regarding their experience working together including:

- Pros/cons
- What they each would like to maintain and/or do differently

Coaches should jointly decide to:

- Create minutes of meetings for clients and Team
- Call Team conference if necessary
- Include other Team Professionals as necessary

### **3. THE COACHES SCHEDULE SUBSEQUENT INDIVIDUAL, 4-WAY, 6-WAY, 8-WAY, MEETINGS AS NEEDED.**

Coaches prepare Clients for subsequent larger meetings by:

- Anticipating emotions that will accompany agenda items
- Working with Client to anticipate how he or she will feel, think, and act in next meeting
- Assisting Client to:
  - Be in touch with his or her experience of the issues
  - Communicate feelings and thoughts clearly to spouse
  - Develop language using non-defensive speech
  - Hear other spouse's experience of issues

### **4. WITHDRAWAL / TERMINATION**

- The Coach should inform the client(s) that, because the client(s)' participation in the Collaborative process is voluntary, the client(s) may terminate the Coach's engagement at any time and for any reason.
- A Coach will terminate his/her professional relationship with client(s) when it becomes reasonably apparent that the client(s) no longer need the Coach's services, is not benefiting from the services, or is being harmed by continued service.
- If, after reasonable coaching, the client refuses to reveal material information or prohibits the Coach from communicating to other participants, information the Coach deems relevant to the case, the Coach may withdraw from the case.
- A Coach may withdraw from a Collaborative case by providing three business days' written notice to the client(s) and the Attorney(s). Notice of withdrawal of a Coach does not necessarily terminate the Collaborative process and the client(s) should be given an opportunity to engage another Coach.
- A Coach will withdraw from a case if the Collaborative process terminates prior to settlement.

## **5. SERVICES OUTSIDE THE COLLABORATIVE ENGAGEMENT**

Generally, the role of Mental Health Professionals ends when the Collaborative process is successfully completed or terminates. However, one or both parties may wish to continue a relationship with the Coach if the process ends. In this regard it is generally agreed that a Coach will not serve in any role other than that of Coach with a client following the conclusion of the Collaborative process.

### ***NOTES ON BRINGING THE COLLABORATIVE PROCESS TO A CLOSE:***

Clients, Coaches, and the rest of the Professional Team work together to determine when the coaching process is complete. The completion of the parenting plan sometimes signals the end of the coaching process; for others, it will be the reduction of conflict and the clients' successful ability to finish negotiating their divorce settlement. As Collaboration moves forward, the clients generally begin to have more constructive discussions regarding their family on their own time, outside the forum of the coaching 4-ways. Sometimes e-mail communication acts as a step between the 4-ways and face-to-face discussions. For some clients, face-to-face discussions may not ever seem likely and agreed upon alternative methods will have to be found

It is very useful for both the client and Coach to meet individually to debrief the process once the final documents are signed. Reviewing the process can consolidate changes the client has worked hard for and can give the Coach the opportunity to learn what the client believes was useful in the process. Finding out what the client did not find useful is also a good idea. The nature of the Coach's future availability can also be discussed at this time.

As the children move through developmental transitions, the family changes and 'life happens', the clients may choose to return to the coaching forum to discuss new issues and to resolve new disputes if agreed upon by all parties in the final agreement. Although Coaches do not act as therapists to their clients subsequent to the signing of the separation agreements, they can be available to them at any time in the future within the more limited confidentiality agreement of the coaching process. Future work would continue to focus on the now former spouses, children and the two-household family, and the basic assumptions of the Participation Agreement, minus the lawyers' involvement, would still hold.