



COLLABORATIVE
PRACTICE

Resolving Disputes Respectfully

COLLABORATIVE PRACTICE:

A Better Approach to Conflict Resolution

Collaborative Practice Introduction

- What is Collaborative Practice?
- How does Collaborative Practice work?
- When will Collaborative Practice work?
- Where will Collaborative Practice work?
- Why Collaborative Practice ?

What is Collaborative Practice?

Definition: Collaborative Practice—A dispute resolution practice in which:

- settlement-by-agreement is intentionally pursued as the positive outcome of legal representation;
- cooperative practices replace adversarial techniques and litigation; and
- the parties actively participate in all negotiations necessary for resolution.

What is Collaborative Practice?

Collaborative Practice Framework

- Lawyers disqualified from litigation
- Clients delay or suspend litigation
- Each client has independent counsel and actively participates in negotiations



What is Collaborative Practice?

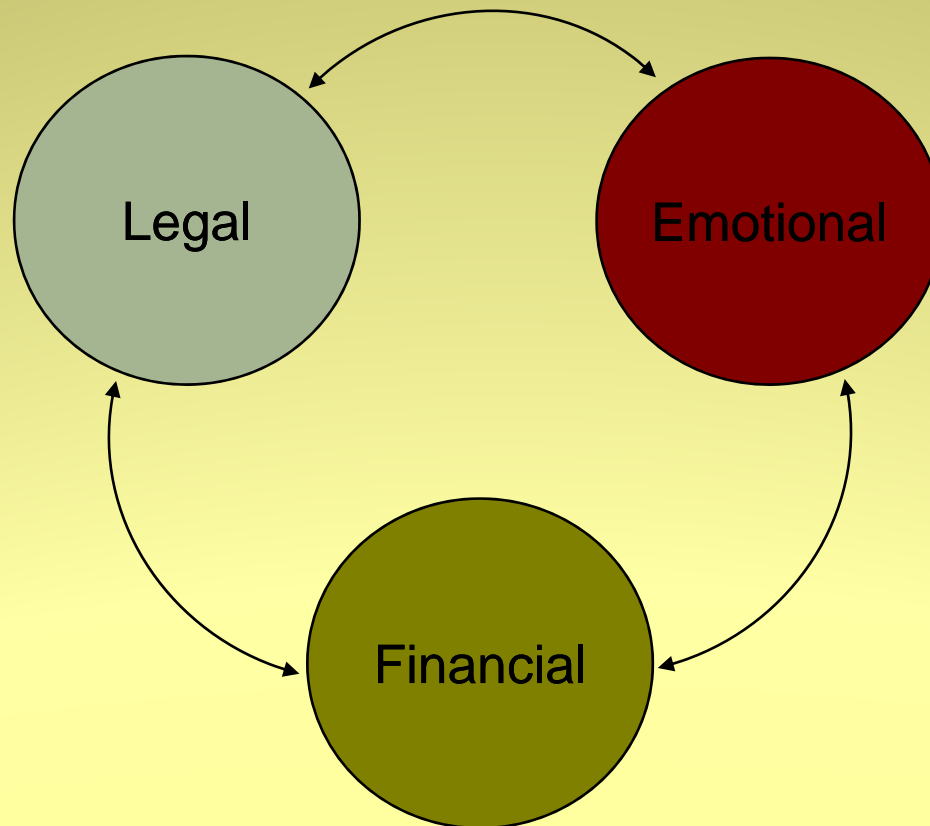
Collaborative Practice Framework (cont.)

- Discovery is willing, complete and timely—no “hide the ball”
- Experts are jointly retained—and disqualified from litigation (unless parties agree otherwise)
- Goal is to reach written agreement on all elements with participation in good faith in the process



What is Collaborative Practice?

Collaborative Practice: Recognizing the Need For a Team Approach



How Does Collaborative Practice Work?

Participatory Meetings

- **Preparation**
 - *Agenda*
 - *Place*
 - *Food*
 - *Attire*
- **Conduct**
 - *Modeling behavior*
 - *Parties are central*
 - *Expecting and handling emotion*
- **Follow-up**
 - *Homework*
 - *Minutes of meetings*
 - *Prepare for next meeting*



How Does Collaborative Practice Work?

Participatory Meetings



- Focused on envisioned futures
 - *Interests*
 - *Goals (short and long term)*
 - *Needs*
- Negotiating Transparently
- Managing the process
 - *Privacy*
 - *Pace*
- Working cooperatively
 - *Obtaining information*
 - *Exploring options*
 - *Problem solving*
- **Never giving up!**

How Does Collaborative Practice Work?

Collaborative Interdisciplinary Team



- Focused on needs?
 - *Financial*
 - *Coaching*
 - *Consulting*
- Common purpose—Best results for all
- Leveling the playing field
- Supporting all participants and stakeholders
- Achieving efficiencies
- Acknowledging mutual interdependence
- Modeling teamwork
- Non-aligned team members

How Does Collaborative Practice Work?

Collaborative Practice: Communication Reality

Focused

Real Time

Dynamic

Clarity



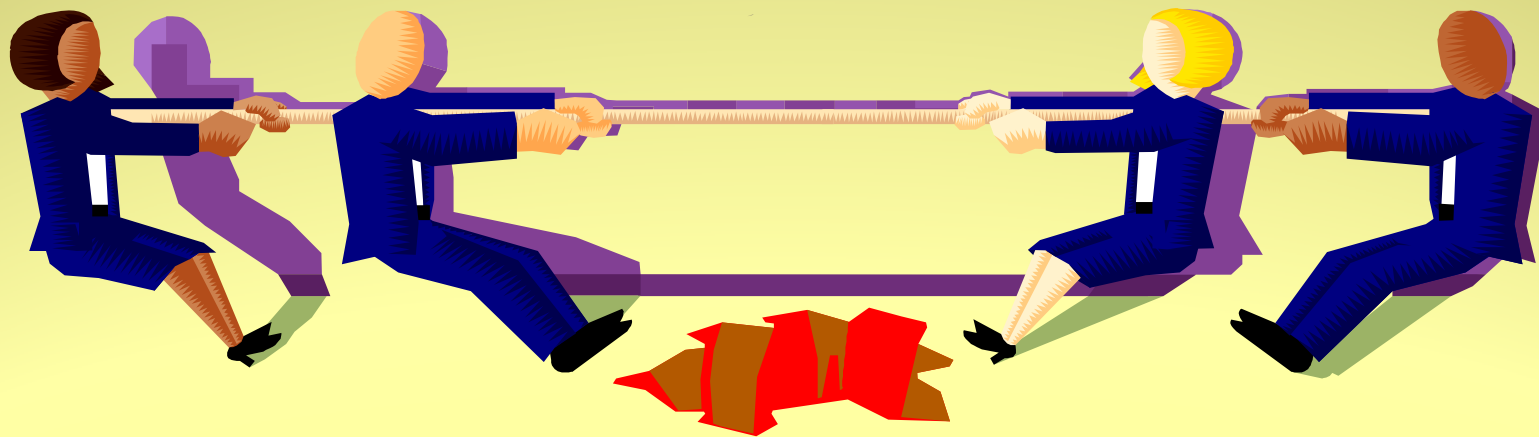
How Does Collaborative Practice Work?

- Sign Participation Agreement
- Develop interests, concerns and goals
- Address immediate concerns
- Gather necessary information
- Brainstorm possible solutions
- Select mutually acceptable solutions



How Does Collaborative Practice Work?

Adversarial Practice *Problem Solving Reality*



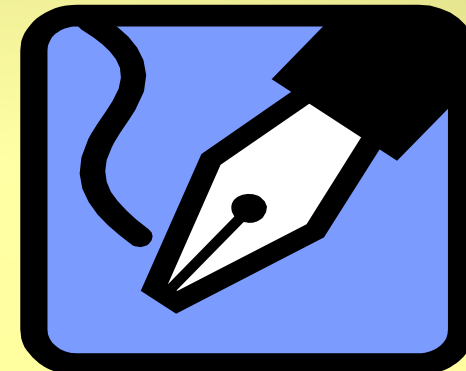
How Does Collaborative Practice Work?

Collaborative Practice
Problem Solving Reality



Participation Agreement

- Setting the ground rules and expectations
- Defining and limiting the engagement of the lawyers
- Explaining the expectations about confidentiality, voluntary disclosure and “opting out” of the adversarial court system while in the collaborative process



When Will Collaborative Practice Work?

- When the clients want control over outcome and are willing to participate
- When a continuing relationship is desired or required
- When resources matter
 - \$\$\$\$
 - *Time (in each day)*
 - *Energy (distraction, stress and lost opportunities)*
- When time (elapsed) matters
- When privacy matters
- When you can't get what you need in a court

Where Will Collaborative Practice Work?

- **Family law**
 - *Divorce*
 - *Guardianships*
 - *Child protection*
- **Special Education**
- **Estate Contests**
- **Employment Disputes**
- **Family/Closely-held business disputes**
- **Real Estate Disputes**
 - *Construction*
 - *Development*
 - *Boundaries*
 - *Landlord/Tenant*
 - *Permitting*
 - *Finance*



Where Will Collaborative Practice Work?

- **Regulated Industries**
 - *Financial services*
 - *Utilities*
 - *Healthcare*
 - *Insurance*
 - *Environmental law*
 - *Transportation*
- **Customer/supplier disputes**
- **Insurance disputes**
- **Intellectual property problems**
- **Business torts**
- **Securities disputes**
- **Troubled loans**
- **Non-profit disputes**
- **Inside schools**
- **Professional Practice Breakups**
- **Partnerships**
- **Franchises**



Attorney's Role in the Collaborative Process

To Advocate Collaboratively

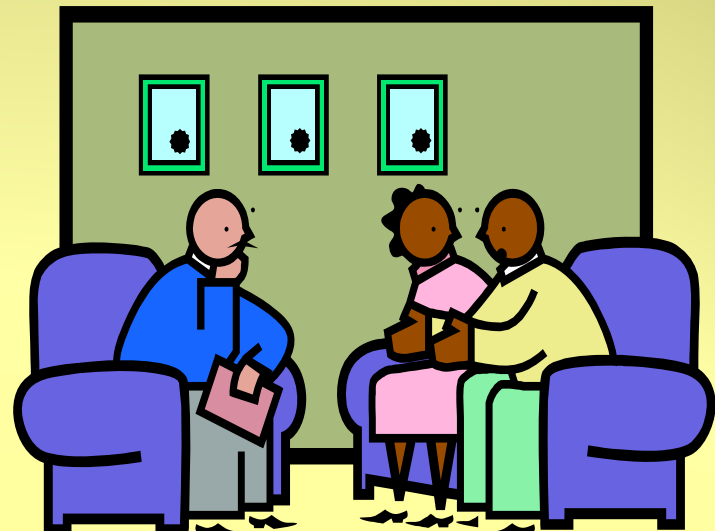
- Represent the individual clients, while maintaining goals of the collaborative process
- Educate and counsel clients about legal issues and settlement options
- Work collaboratively with the other lawyer
- Help clients articulate interests and reach agreements that meet their needs
- Prepare legal documents and settlement agreement



Mental Health Specialist's Role in the Collaborative Process

Licensed Mental Health Professional

- *Coach (Case Manager)*
- *Child Specialist*



Coach Defined

Coach VS Therapist

- *Not treating*
- *Spirit of partnership*
- *Helping through the collaborative process*
- *Getting through the obstacles*



Coach's Role

- Help make the process of divorce amicable
- Healthy communication skills
- Lower anxieties
- Identify priorities while expanding options
- Identify concerns
- Focus on present and future
- Help develop co-parenting skills
- Help parents develop a parent plan



Coach's Role as Case Manager

- Organize the process and keep it moving
- Schedule meetings
- Prepare agendas and summaries of the meetings
- Address issues before they become serious, including missed deadlines
- Both coaches discuss who will take on role of case manager



Child Specialist

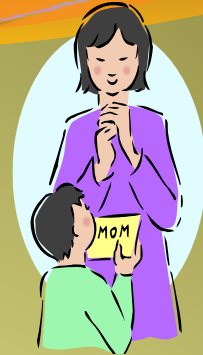
- Serves the Collaborative Team as an independent and neutral representative of the child/children's needs.
- Process allows children...
 - *to be listened to about their experience*
 - *to understand what is happening to their family*
 - *an opportunity to ask questions*
 - *clarification about the changes in their lives/family*
 - *to receive support and comfort*
 - *a voice in the divorce process*



Child Specialist

Allows parents...

- *to have new information to help them make better decisions as they make important lifetime decisions*
- *and/or validate that they are on a healthy path in their divorce process*
- *an opportunity to consider the special needs, concerns, and perspectives of each child*
- *to discuss anticipated difficulties inherent in co-parenting through the divorce process and beyond*
- *to receive any recommendations, suggestions, or information that may help them when developing their Parent Plan with their coaches*



Financial Specialist's Role in the Collaborative Process



Help Clients Reach Durable Agreements

- Provide the information needed for clients to become educated about the financial consequences of various settlement options
- Mediate/Facilitate the decision-making process
- Financial Neutral providing a safe and comfortable setting to better facilitate making financial decisions for the divorcing couple



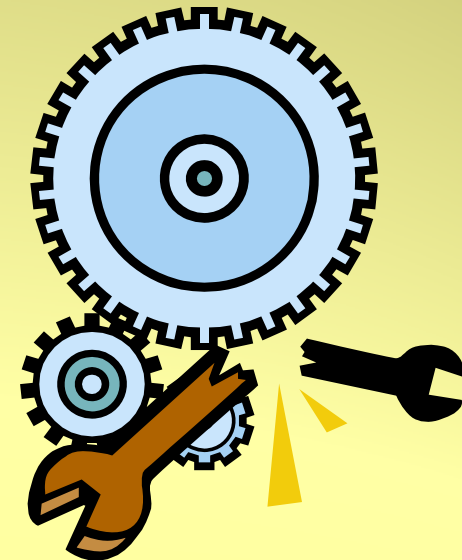
Financial Specialist's Objectives/Tasks



- Gather and organize information
- Educate/equalize imbalance of power to make decisions
- Deal with road blocks – Coordinate with Coach
- Manage financial expectations of clients
- Identify and evaluate tax consequences
- Assist clients with developing budgets
- Develop current and future cash flow analyses
- Illustrate long-range financial projections
- Create options
- Confer with Attorneys

Breakdown in the Collaborative Process

- **Voluntary Termination**
- **Abuse of Process**
- **Resort to the Courts**
- **Assistance in Transition**

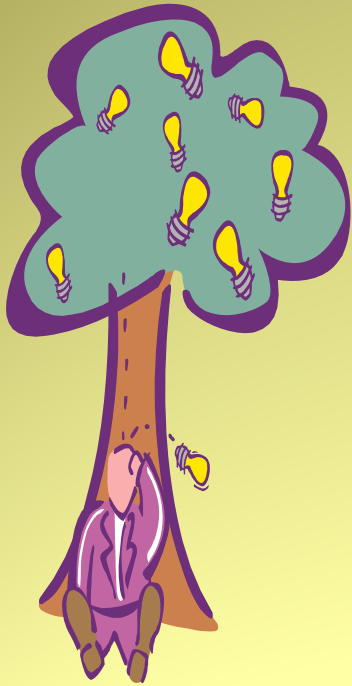


Ethics

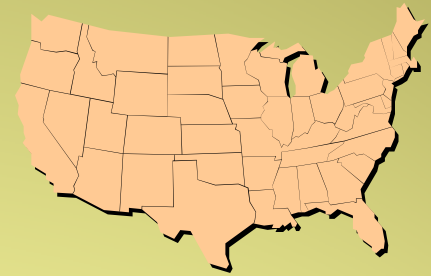
- **Zealous Representation**
- **Informed Consent**
- **Confidentiality**
- **Each Discipline's Ethics**



Collaborative Practice History



- **Stuart Webb's Story**
- **West to California**
- **Across North America and around the globe**
- **A Practitioners Movement**



Collaborative Practice “Paradigm Shift”

From

Adversarial
Past
Facts
Blame
Win/Lose

To

Cooperative
Future
Relationships
Impact
Win/Win—
Restructuring
Relationships



DISPUTE RESOLUTION ALTERNATIVES

- Collaborative Law/Practice
- Pro Se
- Mediation

- Arbitration
- Litigation



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Acknowledgments

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