

Attorney-Client Preparation

As an attorney:

- Meet with the party in person at least once after the party has chosen Collaboration to prepare for the initial team meetings
- Make efforts to ensure that the party is committed to the Collaborative Process (see below)
- Make sure the party is fully informed of choices of procedures (kitchen table negotiation, mediation, traditional negotiation, litigation)
- Make sure the party understands the risks and consequences if Collaboration fails, particularly, the attorney's disqualification from representing the client in contested litigation on the same or similar matter
- Determine if there is domestic violence or coercive control in the parties' relationship and, if so, whether the attorney reasonably believes that the party's safety can be protected in the Process and that the Collaborative Process is appropriate (in Maryland and D.C. as required by the UCLA)
- Find out if there is anything that the party does not want to reveal in Collaboration and play out step by step with the party how each process would or would not impose disclosure requirements and address the consequences of ultimate disclosure or discovery of the "secret". Also, discuss with the party the consequences of maintaining the "secret" from the other party and the children
- Confirm that the party is willing to commit to the principles of Collaboration, including but not limited to transparency, full disclosure, not taking advantage of mistakes, listening to the other party, considering the other party's needs and the needs of the family, refraining from taking positions, speaking up for his/her needs, refraining from "going along to get along," giving up litigation and court-based negotiations such as posturing and hidden agendas
- Prepare the party for the meeting structure: a "container" or safe place to discuss issues with the other party in the presence of professionals committed to resolve issues in the interests of both parties, use of an agenda and flip chart, minutes and debriefing after each meeting
- Find out if there are any pressing issues and help the party determine if bringing these issues up at this juncture is beneficial to the party and the process.
- Review the Collaborative Participation Agreement with the party (provide the contract to the party in advance of the meeting)
- Go over the ground rules for communication (see Appendix D): listening, treating the other with respect, not interrupting, etc.
- Prepare the party for the procedure for each meeting: quick phone call before each meeting to update, follow up phone call after each meeting to debrief, circulation of an agenda before each meeting, sticking to the agenda, discussion of issues only in the meetings, use of flip chart, and minutes, etc.
- Prepare the party for behavior that may be surprising, *e.g.*, you will be nice to the other party and his/her attorney, you will not "fight" for the party, you will support resolution that meets the needs of both parties

- Discuss the attorney's different role as an advocate in Collaboration: to support the party in a resolution that meets the needs of both parties, to make sure the party has the information to make informed choices, and to assist the party in expressing his/her needs
- Assist the party in preparing long range goals and explain the difference between future goals and specific proposals
- Ask for tips about the other party: how to appeal to his/her better nature, how to tell if he/she is upset
- Give the party permission to correct you during the meeting
- SLOW the party down. Explain the process and the frustrations of the early process stages. Explain the stages of signing the contract, identifying goals, listing questions to be resolved (framing issues), gathering information, generating options, evaluating, and resolution.
- Develop "process anchors" by telling the party the essentials of the process so that later when impasse or difficulties occur, the team can refer back to the process anchors
- Ask your party about his/her greatest fears about the process and discuss them and how to handle them
- Advise the client that you may have to withdraw if the client refuses to disclose important information or otherwise undermines or takes unfair advantage of the process
- Ask the party what will be hard for him/her in the process
- Explain emotional flooding and develop strategies to handle difficult emotions (attorney may want to enlist help of coach)
- Review the expected agenda: introduce the team, review the Collaborative Participation Agreement, discuss questions about the Participation Agreement or the process, sign the Participation Agreement, discuss goals, discuss any pressing issues, confirm all team members are in place, set future meeting dates
- Discuss the expense with the party
- Review *Collaborative Law, Achieving Effective Resolution in Divorce Without Litigation*, 2d ed. by Pauline Tesler, pp. 97-117