

# *NEVADA COUNTY COLLABORATIVE PRACTICE GROUP*

## PROTOCOLS

These are the Protocols for the members of the Nevada County Collaborative Practice Group (NCCPG). The outline is of the Collaborative Practice process each of us will follow. This is very important because each member needs to know that:

- \* Every Collaborative Practice client will receive the same information about the Collaborative Practice process; and
- \* All NCCPG members shall adhere to the Collaborative Practice process.

It is agreed that in some circumstances it may not be possible to follow these guidelines exactly, but all members agree to abide by the spirit of these guidelines.

### **I. INITIAL CLIENT(S) CONFERENCE WITH ATTORNEY**

A) Explain the four process options:

- 1) Mediation
- 2) Collaborative
- 3) Arbitration
- 4) Litigation

B) Explain the Collaborative Practice process:

- 1) Review the NCCDPG's Principles and Guidelines - The Collaborative Divorce
- 2) Explain to the client the goals of the Collaborative Practice process:
  - a) Control the process and outcome;
  - b) Create a safe environment;
  - c) Communicate effectively;

- d) Provide full disclosure of information;
  - e) Explore wide range of possible choices;
  - f) Reach solutions acceptable to both participants;
  - g) Maintain control over costs;
  - h) Focus on the needs of the family;
  - i) Achieve closure.
- 3) Explain the members of the team and how they support the collaborative process and the client:
- a) Financial Specialists: gather the financial facts and provide information to assist the parties in negotiating their financial agreements;
  - b) Divorce Coaches or communications specialists: one for each party, assist the parties in communicating effectively with respect for each other in order to achieve the most workable and satisfactory outcome for each of them in their divorce; assist the parties in selecting the Child Specialist(s) - a Child Specialist shall be utilized in all cases where there are minor children;
  - c) Child Specialist(s) serve as advocates for the minor children; work with the children to identify their needs and serve as their voice in the collaborative process.
- 4) Explain the requirement to meet with a Communication Specialist and financial professional before the first Collaborative Practice meeting with the attorneys and other team members.
- 5) Explain that the collaborative team members will talk and share with each other the information that each has learned in order to facilitate the collaborative process.
- 6) Discuss interest-based bargaining - focus is on meeting the interests/needs of each participant and stressing the importance of determining the various interests, prioritizing, brainstorming and packaging in negotiations.

- 7) Confirm your client's wishes to use the Collaborative Practice process.
- C) Give client the Collaborative Practice information packet including:
- 1) NCCDPG's Collaborative Practice Brochure;
  - 2) Alternative Dispute Resolution Method Chart;
  - 3) Ground Rules for the Collaborative Process;
  - 4) A Client's Guide to Alternative/Consensual Dispute Resolution;
  - 5) Principles and Guidelines - The Collaborative Divorce;
  - 6) Collaborative, Mediation and Litigation Models;
  - 7) Collaborative Divorce: A Preparatory Client Survey;
  - 8) Top Ten Things to Remember During a Divorce to Maintain Your Sanity.
- D) Discuss your Collaborative Practice Fee Agreement and Engagement Letter and provide a copy to the client.
- E) Do the following:
- 1) Gather basic statistical information about the client;
  - 2) Ask if there are any domestic violence, substance abuse or mental health issues.
- F) Discuss how to approach the other party to commit to the Collaborative Practice process.
- G) Prior to any party meeting with a Divorce Coach or other professional ensure the execution of the Authorization and Consent Form to preserve all confidentiality prior to the collaborative stipulation execution.

## II. NARRATIVE MEETING

- A) All professionals participating at the first team meeting should take the opportunity to assess whether the parties are good candidates for the collaborative process.
- B) The team should have flexibility in the use of specialists during the collaborative process in consideration of the cost implications to the parties.
- C) Review and commit to the Collaborative Practice process:
  - 1) Personal introductions;
  - 2) Commend participants for agreeing to resolve conflict through the Collaborative Practice process;
  - 3) Review the Principles and Guidelines - The Collaborative Divorce in detail encouraging questions and/or concerns. The team may alternate the review of sections in order to promote interaction;
  - 4) Review the Ground Rules for the Collaborative Process (Expectations of Clients and Attorneys) and the Collaborative Process Lifecycle poster using standardized blow-ups of these in the conference room;
  - 5) Discuss the duties and responsibilities of each participant including good faith and candor;
  - 6) Discuss the selection of team members and the time line for selection;
  - 7) Review the Stipulation and Order Regarding Designation of Case as a Collaborative Law Matter in detail, including a discussion of the confidentiality provisions, including client-to-client communications;
  - 8) Discuss the need for retainers and source of payment for all team members;
  - 9) Reconfirm the Divorce Coaches' participation;
  - 10) Confirm with all team members and parties that the Minutes are to

be sent to all team members and the parties directly. Discuss and agree how Minutes are to be transmitted to each and share addresses. Agree that any modifications or comments relative to the Minutes should be brought up at the next meeting;

- 11) All meeting participants will sign the Principles and Guidelines - The Collaborative Divorce and Stipulation and Order;
  - 12) Identify, discuss and agree on any further expectations of both clients and team members regarding the Collaborative Practice process.
- D) Ask the parties why they chose the Collaborative Practice process and identify elements of a mission statement for the parties.
- E) Develop a mission statement:
- 1) Mission statements will be drafted prior to the first substantive team meeting;
  - 2) Assist the parties in developing a mission statement identifying broad goals of the parties, such as financial security, children's welfare issues, and intentions to preserve an amicable relationship in consideration of the parties' sensitivities including emotional, social and cultural.
- F) Describe the Dissolution process procedurally:
- 1) Describe the contents of the Petition and Summons, including the Automatic Temporary Restraining Orders;
  - 2) Describe the Response;
  - 3) Describe the disclosure requirements and explain the meaning of fiduciary duty, including its duration up to the final agreement and Dissolution. The parties should be made aware of their obligations for full disclosure;
  - 4) Explain that agreements are incorporated into a Judgment form and submitted to the court along with other required disclosure declarations and what they all mean;

5) Explain the time frame for the termination of marital status and the relationship that it has, or lack of relationship that it has, to the resolution of all the other issues.

G) Review time line and check list

### **III. FIRST ATTORNEY TO ATTORNEY MEETING**

A) Exchange anticipated concerns of the parties.

B) Identify expected issues and areas where the parties have already reached a tentative agreement.

C) Agree on any procedures needed to accommodate concerns of the parties.

D) Agree on location, seating, food, length of meeting, facility arrangements and who is to take Minutes of the first meeting, with consideration of what is most likely to be effective in light of each party's needs or concerns.

E) Identify pressing issues.

F) Agree on Agenda and mutual goals for first session:

1) Review Principles and Guidelines - The Collaborative Divorce;

2) Review Stipulation and Order Regarding Designation of Case as a Collaborative Law Matter;

3) Ensure pressing needs are identified in the Agenda.

G) Agree on appropriate strategies for winding up meetings:

1) Summarize agreements;

2) Identify homework assignments;

3) Set date and place of next meeting;

4) Set tentative Agenda for next meeting;

5) Discuss which Specialists would be appropriate to attend the next meeting.

- H) Agree who will be the host for the next meeting. The host will be responsible for reading the Agenda and closing the meeting.
- I) Agree on the discreet signal to use for calling breaks in meetings due to concerns over a participant's non-collaborative conduct.
- J) Discuss the possible cost savings measures such as including an agreement that meetings may be held by teleconference.
- K) Consider whether the complexity and nature of the case would warrant the use of a case manager.

#### **IV. COACHES & PARTIES FIRST MEETING**

Excuse parties so that all professionals can discuss the following:

- a) Importance of Minutes for all meetings;
- b) Importance of professionals conferring after parties are excused;
- c) Mission Statement as homework after narrative meeting;
- d) Keep focus with visual aids such as the Mission Statement, Life Cycle of a Collaborative Process Poster and the Alternative Dispute Resolution Chart;
- e) Agree that:
  - 1) Minutes will be prepared for every meeting and they will be sent to all team members and parties as soon as possible preferably within two (2) business days;
  - 2) Identify who does the Minutes for subsequent team meetings.

#### **V. AT ALL SUBSEQUENT TEAM MEETINGS**

- A) The mission statement should be read by the parties at the beginning of each meeting and the Minutes of the prior meeting should be reviewed and addressed. Using the Minutes from the previous team meeting, remind the parties of their goals developed at the first meeting as modified in

subsequent meetings.

- B) Reconfirm the goals of the parties.
- C) Review the parties' mission statement and continue to refine that statement.
- D) Review status To Do items from previous meetings
- E) Reconfirm that the participants' mutual priorities and concerns are continuing to be addressed.
- F) Identify topics of discussion, questions and any tentative agreements:
  - 1) Assist your client to identify and effectively communicate his or her concerns, goals and needs;
  - 2) Reframe where necessary;
  - 3) Listen actively to all parties so both participants know they are heard and understood;
  - 4) Describe and note disagreements or issues clients want to talk about, or questions clients need to answer so that these items are not overlooked in future meetings;
  - 5) Normalize existence of disagreement.
- G) Identify pressing issues and determine placement on the future Agenda.
- H) Create Agenda for next team meeting.
- I) Ask clients to gather and organize information for next meeting.
- J) Closing the team meeting:
  - 1) Assign tasks necessary to move forward;
  - 2) Discuss Agenda issues and host for next team meeting leaving flexibility for changes;
  - 3) Confirm next meeting date, time, place and participants;

- 4) Confirm understandings and agreements while all participants are present;
- 5) Remind both parties to review the Ground Rules for the Collaborative Process before each meeting;
- 6) Confirm that each team member will include a copy of these Protocols in his or her respective files;
- 7) Prepare Minutes including the mission statement of the parties as the first item;
- 8) Before the final closing ceremony, discuss with the parties their vision of what an appropriate closing ceremony will look like.

**V. PROTOCOLS WITH CLIENTS**  
(Communication with your own client)

- A) At the end of each meeting briefly ask for immediate feedback on the meeting.
- B) If the client calls between meetings, note any psychological process or substantive needs and concerns the client raises and communicate those to the prospective team members as appropriate.
- C) Add client's concerns to the Agenda for future meeting.

**VI. PROTOCOL WITH ALL TEAM MEMBERS**  
(Team member communication)

- A) Prepare and circulate a backup plan for communication if team members' vacations or other conflicts create unnecessary delay or dissatisfaction in the process.
- B) Upon selection of team members, specialists will consult with attorneys as appropriate to obtain information and clarify the scope of services.
- C) Discuss What, When and How to disclose sensitive information to team members
- D) Before and after each team meeting:

- 1) Evaluate the previous session and identify sensitive issues;
- 2) Plan how to improve the next meeting;
- 3) Discuss any conversations you have had with your client before or after meetings;
- 4) Brainstorm possible techniques to break impasse and how to assist clients in the development of options;
- 5) Reinforce roles of team members at next meeting;
- 6) Following each meeting, all team members will communicate by e-mail, phone or in person to discuss issues and potential problems and suggestions on how to address those at the next meeting;
- 7) Any team member can call a case conference at any time;
- 8) Consider sharing past meeting Minutes with new team members as appropriate;
- 9) If any team member feels that anyone on the team is not acting collaboratively they will immediately have a team meeting (without the clients) to discuss possible resolution and, if agreed, this meeting shall not be charged to the clients;
- 10) The team will ensure the Authorization and Consent Form approved by the NCCDPG has been executed by the parties in accordance with section I(G).

## **VII. DEALING WITH IMPASSES OR PROCESS BREAKDOWNS**

- A) If a team meeting reaches a temporary impasse, then take a short break, or end the meeting and reschedule if it is acceptable so that the participants can return to their highest level of interaction.
- B) In the event of a significant impasse which may jeopardize the collaborative process, and to assist in breaking the impasse prior to terminating the process, the team should consider the use of a mentor or other resources, which includes interest based bargaining elements such as determining the parties' various interests, prioritizing them, brainstorming and packaging in negotiations.

- C) If a party desires to leave the collaborative process, a team meeting, including the parties, should be set to discuss the issue and options available to allow the process to proceed, including the use of a mentor or other resources.

### **VIII. HELPFUL HINTS**

- A) If any team member feels that any party or participant is conducting him or herself in a manner not consistent with the collaborative process, then that team member may request a break to discuss the issue through the use of a pre-arranged signal.
- B) Be cautious about language used and use the following as examples:
  - 1) “Acceptable” outcome is more productive than “fair” in referring to the goal of the parties’ negotiations;
  - 2) “Sharing time with our children” is a better description of parenting than “custody” and “visitation”;
  - 3) Using the names of the participants is less oppositional than referring to “opposing” counsel or “opposing” party;
  - 4) When referring to the Collaborative Practice process, it is preferable to describe it as “better” rather than “cheaper”;
  - 5) Encourage use of the first person such as “I feel” or “I believe”, which makes the process go more smoothly than “you never” or “you always”;
  - 6) If the participants are stuck on an issue, discuss “Why are we here?” and “Where does this stalemate fit into the process?”.

### **V. FINAL CLOSING CEREMONY**

- A) The entire team is encouraged to participate.
- B) Implement the parties’ vision of their closing ceremony.
- C) Commend the parties for committing to the collaborative process and show how their mission statement was fulfilled.

- D) Invite participants to provide feedback by completing a brief Collaborative Practice Survey.
- E) Following the ceremony and without the parties present, hold a final debriefing meeting with all participating team members without cost to the clients.
- F) Within sixty (60) days from the Final Closing Ceremony or otherwise closing of the case, the team will meet to discuss the case and complete IACP Survey for submission to the IACP without cost to the clients.