

Collaborative Divorce, Limited Representation Contracts and Ethical Issues

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“How did we as attorneys develop such a narrow view of a client’s interests that we could imagine we were satisfying our duty of zealous representation by insisting that our legal work must focus solely on maximizing quantifiable goals, even marginal economic gains, at the cost of lifelong damage to ongoing family relationships that will continue long after the legal process has ended.”



COLLABORATIVE
PRACTICE

Resolving Disputes Respectfully

Collaborative Law

- Dispute resolution process
- Agreement not to litigate
- Honest exchange of information
- Acknowledgement of parties long term interests



Collaborative Practice

- Team approach
- Financial Professionals
- Mental Health Professionals



Disqualification

If there is a decision to litigate or a threat of litigation:

- Collaborative counsel cannot represent the party in court
- The neutral financial experts cannot be used in litigation
- Information obtained in the collaborative process cannot be used in litigation



Collaborative Agreement

- Agreement as contract
- Agreement as court order



Stages of Collaborative Representation

- Four Way Conferences
 - Sign collaborative agreement
 - Discuss of substantive issues
 - Set future meetings



Stages of Collaborative Representation

- Pre-meeting planning:
 - Manage agenda early to control process
 - Discuss “hot button issues”
 - Discuss neutral financial person or mental health coaches



Challenges for lawyers in collaborative representation

- New Tasks
- Transforming your skills as a lawyer
- Self Awareness
- Understanding Our client
- Expanding advocacy
- Expanding communication styles



Challenges for lawyers in collaborative representation

■ New Tasks

- Develop awareness of difficult emotional issues which may effect quality of settlement
- Help manage resolution of difficult issues
- Work with client in focusing on long term goals and interest
- Educate client about interest based bargaining



Challenges for lawyers in collaborative representation

- Transforming your skills as a lawyer
 - Self awareness
 - Understanding our client
 - Expanding traditional notions of advocacy
 - Expanding communication styles



Ethical Considerations

- Limited Representation
- Duty of Zealous Representation
- Confidentiality



Limited Representation

- The client must provide informed consent
- The Limitation must be reasonable



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Limited Representation

- Comment to the ABA Model Rule of Professional Conduct Rule 1.2:

“.....A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.”



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Duty of Zealous Representation

- "Zealously has been removed from the ABA Model Rules of Professional Conduct
- Advocacy takes on a more expansive meaning
- Collaborative lawyers fulfill traditional legal duties
- Duty to Correct Errors of the other side



Duty of Zealous Representation

- Advocacy takes on a more expansive meaning
 - Recognition of client's non-financial interests
 - ABA Model Rule 2.1: Lawyer as Advisor



Duty of Zealous Representation

- Collaborative lawyers fulfill traditional legal duties
 - Voice for the client
 - Speaking client's positions clearly
 - Reality check for the client
 - Advising clients of legal rights and obligations



Confidentiality

Rules of Professional Conduct

vs.

The Collaborative Agreement



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Confidentiality

Rule 1.6(a) of the Model Rules of Professional Conduct provides,

“A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).



Confidentiality

Collaborative Family Law Agreement:

“The parties and attorneys acknowledge and understand that honesty and the full disclosure of all relevant information is an integral factor in the success of a Collaborative Law case.”

The Principals and Guidelines for the Practice of Collaborative Law:

“We agree to give full, honest and open disclosure of all information, whether requested or not.”



Confidentiality

- The Collaborative approach is not in conflict with Rule 1.6(a)
 - In a collaborative case the lawyer needs the client's consent to disclose and information
 - Lawyer may need to withdraw
 - Mandatory disclosure rules



Malpractice Considerations

- Contact malpractice carrier
- To date no collaborative lawyer has been sued for malpractice
- Collaborative lawyers at lower risk for malpractice

