

Collateral Professionals and Collaborative Law

In the collaborative model, eventually the other experts, professionals will be considered equal partners in the process. That will probably take a while.

One thing that you can do to pursue your professional development as a collaborative professional is to educate lawyers, who might be in a position to retain, as to what you can bring to a collaborative case. What benefits can you bring to a divorce/family law case? Is there a way to quantify this benefit? For example, a career counselor might be able to make a case that with 10 hours of career guidance the average person can increase his or her salary by 10%, which is a cost benefit. One way to get this information out to lawyers is to write for the NW Collaborative Divorce/Law newsletter.

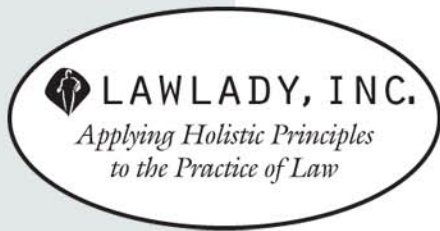
The professional can act as a de facto mediator. Often times, when the two parties come to a neutral third party expert, they bring their hot button issues with them. If you can keep the couple communicating, while giving them a forum to voice their feelings, you are aiding in the dissolution process. You will feel more secure doing this, if you master a few of the language techniques such as reframing; acknowledging; caucusing; having people take a breathe; or getting a drink of water or walking around to discharge built up stress. Mediation skills will further develop your niche service as a collateral professional to divorce/family law collaborative law cases.

Use of Collateral Professionals

One benefit of the collaborative divorce process is the retention of one expert, not two. Any expert hired should be granted immunity from being called at trial, or as serving as one party's expert, should collaboration fail. This point should be made in your expert's fee agreement with the client. The expert should be neutral and avoid giving any appearance of preferring one side over the other.

Your language and body language will be important to conveying your neutral position. Are you turning to face one client more often? Do you tend to sit closer to one client? Do you nod, smile and agree with one spouse over the other spouse? Examine your feelings. Do you like one person more than the other? Can you stretch yourself a bit to find someone likable about the other spouse? Asking questions of the less vocal spouse can be a way to balance the group dynamics and to make sure that both parties are treated fairly.

Assume you have a bias and then look for ways that it slips out. We all have biases. How can we catch ourselves in this subconscious behavior? Be a sleuth.



The number of supplementary professionals that will be active in a divorce or family law case depends on the unique circumstances of the couple. Here are potential members of a collaborative team.

◆ **Gender Balance**

When selecting experts, the team needs to be sensitive to gender. A party might feel uncomfortable if all the professionals in a case are of the same gender. Gender diversity can be helpful and avoid having one party feel overwhelmed by the opposite gender.

◆ **Child Advocate.**

A child advocate gives the child(ren) a stronger voice. The child advocate's role is to meet with the child(ren), parents, and other important people such as teachers, neighbors or relatives. The advocate does not prepare a written report, but works informally with the lawyers and parties to educate the family about child development, to speak on behalf of the child, and to smooth the divorce transition for the child by being the child's confidant. The advocate can help the parent's negotiate terms of the parenting plan. The advocate might feel private meetings with each parent would be most helpful, or prefer to report findings at a five-way meetings with the lawyers and both parents.

◆ **Financially Oriented Professionals.**

The other experts retained in collaborative cases are the same experts retained in a traditional case, such as business evaluators, appraisers, accountants, and realtors. These experts are asked into a divorce case to give opinions about valuation of assets, costs of other financial options. Lawyers contribute knowledge of legal issues and how the law applies in the case. They are not always expert in taxation issues, how to evaluate family businesses or the likely cost of selling the home. With financial planners and accountants, they can run spread sheets to show how the assets will be depleted over the years given various hypothetical situations. The experts can determine the present value pensions to that the parties have an accurate number to use when evaluating how to distribute the family wealth.

When these financial experts work with a couple, the first phase will likely be gathering background information, collecting financial statements, profit and loss statements or looking at the actual property. Both parties should be consulted and given an opportunity to establish a relationship with expert, to make an independent assessment of the expert's sincerity, skill and trustworthiness, and to provide information they believe is relevant. A joint meeting is advisable, unless there are compelling reasons not to meet jointly. Frequently, one spouse's knowledge of issues will lag behind the other spouse. It is often the case that the expert will have a follow up one-on-one meeting to bring the less knowledgeable spouse up to speed.

It is important for the financially focused expert to refrain from telling the clients what to do. That is for the client to decide. The expert's key duty is to point out areas of concern, information that the client may not be aware of, and to offer a sampling of different suggestions about how issues could be decided.

◆ **Vocational Experts.**

There are career professionals who help people map a course for improving their career. This expert can act as a motivator and coach to keep a person committed and on track during the job search phase. The vocational expert can address sensitive issues such as "What is a likely wage a person could expect to earn doing a particular type of work." This type of question is helpful in sorting out maintenance and child support issues. Most likely this type of professional would work with only one spouse at a time, and perhaps make a report to the group as to his or her conclusions and helpful insights. Once again, this expert, although facilitating one client's career goals, often times the expert's opinion can sway the parties choice about maintenance and child support. So the expert should not have an agenda of reaching conclusion that will help one spouse "prevail" over the other party. In collaboration the goal is to reach win/win results and this happens by the parties hiring one vocational expert, rather than to, to address the return to work issues.

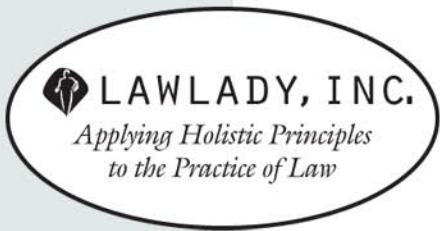
◆ **Divorce Coaches for the Parties.**

A divorce coach's role is to help a party mentally prepare for the rigors of four-way meetings. Each party sees his or her own coach. The coaches might teach the clients stress management techniques or communication skills that will facilitate harmonious interaction. The coaches can step in to facilitate if the client has trouble communicating with his or her lawyer. Sometimes, if emergency conflicts arise, the coaches can step in and attend a four-way meeting with the two clients and two coaches to work out emotionally volatile issues. Coaches can act as motivators to keep clients in action doing the necessary tasks to see that a settlement is reached.

◆ **Coaching is controversial.**

Some collaborative groups require that all couples retain coaching services. Others don't. There is a national dispute over credentialing requirements. Some groups only want coaches with mental health professional degrees. Others are open to trained coaches with certification from a national coaching institution. NW Collaborative Divorce at this time has an open door policy and only requires credentialing in the chosen field.

The coach is the one professional who does have a loyalty to only one client. However, the coaches should refrain from over identifying with only that client, and should continue to hold a broader focus. The coach will want to help the client to



by Stefani Quane – The Lawlady
Originally published for a training hosted by NW Collaborative Divorce
in February 2004

remember the client's bigger agenda- to divorce with litigation. The coach's goal is to help the client stay focused on the ultimate goal, without causing harm or failing to support the client.