

Ethical Standards For Collaborative Practitioners

Preamble Collaborative Practice differs greatly from adversarial dispute resolution practice. It challenges practitioners in ways not necessarily addressed by the ethics of individual disciplines. The standards that follow:

- 1) Provide a common set of values, principles, and standards to guide the Collaborative practitioner in his or her professional decisions and conduct,
- 2) Create a framework of basic tenets for ethical and professional conduct by the Collaborative practitioner, and
- 3) Identify responsibilities of Collaborative practitioners to their clients, to Collaborative colleagues, and to the public.

General Standards

1. **Resolution of Conflicts between ethical standards.**

1.1 Any apparent or actual conflict between the Ethical Standards governing the practitioner's discipline and these Standards should be resolved by the practitioner consistent with the Ethical Standards governing the practitioner's profession.

2. **Competence.**

2.1 A Collaborative practitioner shall maintain the licensure or certification required by the practitioner's profession in good standing and shall adhere to the Ethical Standards governing the practitioner's discipline.

2.2 A Collaborative practitioner shall have completed a minimum of twelve hours of Collaborative Practice/Collaborative Law training or Interdisciplinary Collaborative training consistent with IACP Minimum Standards for Collaborative practitioners, prior to commencing a Collaborative case or engaging in Interdisciplinary Collaborative Practice.

2.3 A Collaborative practitioner shall practice within the scope of the Collaborative practitioner's training, competency, and professional mandate of practice, as specified by the IACP Minimum Standards for Collaborative practitioners. The practitioner shall be mindful of the client's individual circumstances and the over-all circumstances of the case that may require the involvement of other professionals, both within and outside of the Collaborative process.

Comment

As Collaborative practitioners experience a greater diversity in their client population they become confronted by more complexity in physical, psychological and emotional factors affecting the client. It is important for the practitioner to be able to recognize these factors, as they will necessarily influence the Collaborative process and the client's decision making. It is even more important for the practitioner to recognize the limits of his or her ability to effectively deal with these factors and with the client's response to them. In fully addressing the client's needs, interests and goals, the Collaborative practitioner must be willing to turn to other professionals both within and outside of the Collaborative process, such as mental health professionals, medical professionals, financial professionals, vocational specialists and possibly rehabilitation counselors in the areas of physical disability, substance abuse, and domestic violence.

3. Conflicts of Interest.

3.1. A Collaborative practitioner shall disclose any conflicts of interest as defined by the practitioner's respective professional guidelines and Ethical Standards.

Comment

Upon full disclosure of a conflict of interest, the client(s) affected may waive the conflict in writing consistent with the practitioner's professional guidelines.

4. Confidentiality.

4.1 A Collaborative practitioner shall fully inform the client(s) about confidentiality requirements and practices in the specific Collaborative process that will be offered to the clients.

4.2 A Collaborative practitioner may reveal privileged information only with permission of the client(s), according to guidelines set out clearly in the Collaborative practitioner's Participation Agreement(s) or as required by law.

Comment

The rules of confidentiality are among the most important core values of the legal and mental health professions. Those standards may be modified by the terms of the Collaborative practitioner's fee and/or participation agreement with the client(s), so long as the modifications are consistent with the ethical standards of the practitioner's discipline. A competent Collaborative practitioner will be knowledgeable regarding the requirements of his/her professional standards pertaining to the necessity of obtaining a client's informed consent, and shall provide sufficient information to enable the client to give informed consent.

5. Scope of Advocacy.

5.1 A Collaborative lawyer shall inform the client(s) of the full spectrum of process options available for resolving disputed legal issues in their case.

5.2 A Collaborative practitioner shall provide a clear explanation of the Collaborative process, which includes the obligations of the practitioner and of the client(s) in the process, so that the client(s) may make an informed decision about choice of process.

5.3 A Collaborative practitioner shall assist the client(s) in establishing realistic expectations in the Collaborative process and shall respect the clients' self determination; understanding that ultimately the client(s) is/are responsible for making the decisions that resolve their issues.

5.4 A Collaborative practitioner shall encourage parents to remain mindful of the needs and best interests of their child(ren).

5.5 A Collaborative practitioner shall avoid contributing to the conflict of the client(s).

Comment

This section highlights the special obligations undertaken by the Collaborative practitioner that specifically result from the unique nature of Collaborative Practice. Psychologists and social workers are free to recommend outcomes to their client(s) believed to be in the client(s)' (or the clients' family's) best interest, provided that they take care to do no harm. The traditional model of lawyering includes advocacy by the lawyer for the client's position so long as that position is legally supportable. Thus, this section has particular impact for lawyers because it reflects the considerations underlying law society and bar association rules in a number of jurisdictions. For example, Rule 2.1 of the American Bar Association's Model Rules of Professional Conduct recognizes that the role of the attorney encompasses more than providing purely technical legal advice. As the Comment to Rule 2.1 explains, the attorney's advice can properly include moral, ethical, and practical considerations, and may indicate that there is more involved in resolving a particular dispute or even the client's entire case than strictly legal considerations. In Collaborative practice, the practitioner specifically contracts with the client(s) to provide advice that recognizes a full range of options for dispute resolution and takes into consideration relationship and family structures when looking at the possible outcomes for the client(s).

6. Disclosure of Business Practices.

6.1. A Collaborative practitioner shall fully disclose to the client(s) in writing his/her respective fee structure, related costs, and billing practices involved in the case.

6.2 A Collaborative practitioner shall be truthful in advertising his/her Collaborative practice and in the solicitation of Collaborative clients.

7. Minimum Elements of a Collaborative Participation and/or Fee Agreement

7.1. A Collaborative Participation Agreement and/or Fee Agreement shall be in writing, signed by the parties and the Collaborative practitioners, and must include provisions containing the following elements:

A. Pertaining to Full Disclosure of Information

1. No participant in a Collaborative case, whether a Collaborative practitioner or a client, may knowingly withhold or misrepresent information material to the Collaborative process or otherwise act or fail to act in a way that knowingly undermines or takes unfair advantage of the Collaborative process;
2. If a client knowingly withholds or misrepresents information material to the Collaborative process, or otherwise acts or fails to act in a way that undermines or takes unfair advantage of the Collaborative process, and the client continues in such conduct after being duly advised of his or her obligations in the Collaborative process, such continuing conduct will mandate withdrawal of the Collaborative Practitioner and if such result was clearly stated in the Participation and/or Fee Agreement, the conduct shall result in termination of the Collaborative Process.
3. In the event of a withdrawal from or termination of the Collaborative process, the Collaborative practitioner shall notify the other professionals in the case.

B. Prohibiting Contested Court Procedures

1. Undertaking any contested court procedure automatically terminates the Collaborative process;
2. A Collaborative practitioner shall not threaten to undertake any contested court procedure related to the Collaborative case nor shall a Collaborative practitioner continue to represent a client who makes such a threat in a manner that undermines the Collaborative process.

3. Upon termination of the Collaborative process, the representing Collaborative practitioners and all other professionals working within the Collaborative process are prohibited from participating in any aspect of the contested proceedings between the parties.

Practice Protocols

8. Consent.

8.1 Each Collaborative practitioner shall obtain written permission from his/her client(s) to share information as appropriate to the process with all other Collaborative professionals working on the case.

9. Withdrawal/Termination.

9.1 If a Collaborative practitioner learns that his or her client is withholding or misrepresenting information material to the Collaborative process, or is otherwise acting or failing to act in a way that knowingly undermines or takes unfair advantage of the Collaborative process, the Collaborative practitioner shall advise and counsel the client that:

- A. Such conduct is contrary to the principles of Collaborative Practice; and
- B. The client's continuing violation of such principles will mandate the withdrawal of the Collaborative practitioner from the Collaborative process, and, where permitted by the terms of the Collaborative practitioner's contract with the client, the termination of the Collaborative case.

9.2 If, after the advice and counsel described in Section 9.1, above, the client continues in the violation of the Collaborative Practice principles of disclosure and/or good faith, then the Collaborative practitioner shall:

- A. Withdraw from the Collaborative case; and
- B. Where permitted by the terms of the Collaborative practitioner's contract with the client, give notice to the other participants in the matter that the client has terminated the Collaborative process.

9.3 Nothing in these ethical standards shall be deemed to require a Collaborative practitioner to disclose the underlying reasons for either the professional's withdrawal or the termination of the Collaborative process.

9.4 A Collaborative practitioner must suspend or withdraw from the Collaborative process if the practitioner believes that a Collaborative client is unable to effectively participate in the process.

9.5 Upon termination of the Collaborative process, a Collaborative practitioner shall offer to provide his/her client(s) with a list of professional resources from the Collaborative practitioner's respective discipline from whom the client(s) may choose to receive professional advice or representation unless a client advises that he or she does not want or need such information.

Ethical standards specific to particular Collaborative roles

10. Neutral Roles

10.1 A Collaborative practitioner who serves on a Collaborative case in a neutral role shall adhere to that role, and shall not engage in any continuing client relationship that would compromise the Collaborative practitioner's neutrality. Working with either or both client(s) or with their child(ren) outside of the Collaborative process is inconsistent with that neutral role.

A. A Collaborative practitioner serving as a neutral financial specialist in a Collaborative case shall not have an ongoing business relationship with a Collaborative client during or after the completion of the Collaborative case, but may assist the clients in completing the tasks specifically assigned to them by the clients' written, final agreement. Such assistance may not include the sale of financial products or other services.

B. A Collaborative practitioner serving as a child specialist may assist the family in divorce related matters for the child(ren.) Such assistance may not include becoming the child(ren)'s therapist.

C. A Collaborative practitioner serving as a neutral coach may assist the family in divorce related matters. Such assistance may not include acting as a therapist for one or both parties.

11. Coaches/Child Specialists

11.1 A Collaborative practitioner who serves in the role of coach on a Collaborative case shall not function as a therapist to the Collaborative practitioner's client after the case has ended. Coaches should remain available to continue to help the clients/family address specific divorce issues after the divorce is final. A therapist for a client shall not serve in the role of coach or child specialist on a Collaborative case involving a client with whom the therapist has acted in a therapeutic role.

11.2 A Collaborative practitioner serving as a child specialist shall inform the child about the child specialist's role and the limits of confidentiality as appropriate, taking into account the child's age and level of maturity.