Detailed:

This panel will discuss the ethical considerations concerning advocacy, good faith negotiations, and professional teamwork in collaborative practice, focusing on the issue of the role of the law in collaborative practice. We will explore how, when and where the law can be, or should be, addressed. Attorney concerns about malpractice exposure and how to mitigate this will be addressed though exploring techniques for developing adequate informed consent based on educating the client and explaining the benefits and drawbacks of various process options. The panel will demonstrate addressing the role of the law in initial client meetings, pre-briefs, de-briefs, and attorney client consultation. Case scenarios will be presented for discussion. Point -counterpoint style differences will be demonstrated by the attorneys and attendee participation will be encouraged.

Structure and methodology

This is an interdisciplinary panel presentation of 3 attorneys and a psychologist facilitator who will challenge the attorneys' adherence to the paradigm shift and good faith negotiation while being consistent with AAML Bounds of Advocacy and legal rules. Didactic material will be presented in a point-counterpoint fashion followed by demonstrations of different styles in attorney-client consultations, pre-briefs, team meetings, and debriefs. Questions from the floor will be entertained and case scenarios will be presented to use in group discussions. Various IACP and other representative ethical standards and professional guidelines will be discussed as the backdrop to resolve how, when and where the law should be considered in a process of client self-determination. We will ask attendees to actively engage with the panel and we will encourage interaction and challenge.

Short description – 50 wds max; exactly 50

Collaborative professionals debate the role of law in collaboration citing potential ethical violations regarding advocacy and responsibility to educate. This panel discussion will explore when, where, and how the law should and must be considered and the relationship to client self-determination. This is an important backdrop for the neutral professionals.

STRUCTURE OF PRESENTATION

1. (5”) Sheila Furr, PhD, INTRODUCTION – welcome; explain format of presentation; encourage audience participation.
2. (5”) Review handout (provided digitally in advance): Course outline and references:
   * + - 1. IACP Ethics
         2. AAML Bounds of Advocacy
         3. Other aspirational standards
         4. Laws and rules around the collaborative world
         5. UCLA Rules/Act

Introduce some concepts the attorneys will explore and demonstrate:

1. Following professional ethics is stated as a priority in IACP ethics. What do ethics say about the role of the law in collaborative matters and how does that relate to self-determination, a basic tenet of collaboration? What is the professional responsibility of attorneys to educate the client about the law, the process, and ensure informed consent?
2. Are the standards of care and professional rules mandatory or aspirational? Are they different across the collaborative world?
3. Attorneys face risk of a malpractice action related to lack of reasonable discovery; this can lead to defensive over-lawyering in litigation and in collaborative. How does that issue manifest itself in collaborative practice?
4. Explore the growing importance of out of court dispute resolution and the paradigm shift with ongoing adherence to IACP and local rules and standards.
5. Uniform Act Rule 14- most stringent requirement of informed consent. Team will address how to assess with a client whether the collaborative approach is appropriate for their matter by providing sufficient information to reach informed consent.
6. Examples of some rules in US:
7. Consider the opinion of Federal District Court Judge Patrick Walsh: “The scorched-earth practice many lawyers employ, attempting to discover ‘everything’ without regard to cost and aggressively litigating when production is not forthcoming, seems inconsistent with the goals of the civil rules- the just, speedy, and inexpensive resolution of the case -in what one assumes is the client’s goals: obtaining the best possible result for the least amount of money.”

How does that impact first client meetings?

1. ABA Model Rule 1.1: ensure client’s best interests are served.
2. Rule 2.1 ABA Model Rules of Professional Responsibility- responsibility as an advisor more than strictly legal consideration. How does that impact first client meetings? Does the role of and advisor mean to offer judgment and provide sufficient detail so the client can give truly informed consent?
3. Garris court- “Duty of informed consent (standard of reasonable care): inform clients about the relevant facts and circumstances concerning process of settlement…those facts should include non-judicial alternatives, options that may have significant impact on cost, privacy, timing, emotional turmoil, family relationships.” How does that impact first client meetings?

So…How, when, and where should the law be applied in a collaborative matter!

1. (15 “) Kim Nutter, Esq.- Review Bounds of Advocacy, rules for attorneys, etc., i.e., guiding principles regarding professional responsibility and standards of care. Consistencies and jurisdictional differences (IACP Ethics, standards from different countries) (25 minute mark)
2. (20”) Jeff Wasserman, Esq. and Jeff Weissman, Esq. explain their view on the role of the law and how it is/isn’t part of a first client meeting. Discussion of issues related to positional vs interest-based negotiations. Encourage attendees’ comments and discussion. (45 “)
3. (20”) DEMO of 1st Client meeting: Jeff and Jeff individually interview a client demonstrating their approach to educating a client about process options. Kim plays role of client.) Encourage attendees’ comments and discussion. (65”)
4. (20”) Examples of fact patterns where the law unexpectedly emerges as an issue during a team meeting: discuss and role-play.
   1. Scenario #1: Co-mingling of money (Jeff & Jeff are the attorneys, Kim the client, Sheila the facilitator) – how much discovery is required?
   2. Scenario #2: Timeshare plan not consistent with case law - best interest of the child prevails. (Jeff & Jeff are the attorneys, Kim the client, Sheila the facilitator)
   3. For each of the two scenarios the team will demonstrate how the attorneys discuss the issue in a full team meeting, followed by how to process the issue in a debrief, which then leads to attorney-client offline meetings, followed by a prebrief to update the team.
   4. Discuss how there is a difference in self-determination with financial (alimony, equitable distribution) vs child issues. Impact of case law and judicial review.
   5. What if clients’ interests align but the law does not provide for their self-determined agreement? Encourage attendees’ comments and discussion.
   6. Discuss concern about malpractice exposure and duty to inform client. Encourage attendees’ comments and discussion.
5. (5”) Questions and answers (90”)