

19th Annual Networking and Educational Forum

Collaborative Creativity

Seattle, WA October 25–28, 2018

“You Aren’t Being Collaborative”

Language and Skills for Difficult Dynamics

Have you ever been told you were “not acting collaboratively” or thought that about someone else? In this fast-paced, interactive workshop, we will explore situations where this dynamic arises and learn skills on how to use these instances to deepen our Collaborative practices and create stronger Collaborative Teams and Communities.

Adam B. Cordover, J.D., M.A., is a collaborative attorney, trainer, and Florida Supreme Court Certified Family Law Mediator who practices exclusively in private dispute resolution in Tampa, Florida. Adam is Co-Chair of the Research Committee of the International Academy of Collaborative Professionals (“IACP”), a Past President of Next Generation Divorce, growing it to become one of the largest collaborative practice groups in the U.S., and a graduate of the IACP Leadership Academy. Adam is co-author with Forrest (Woody) Mosten of an American Bar Association Book on “Building A Successful Collaborative Law Practice.”

Brian Galbraith is a family law lawyer, mediator and trainer. Brian is the owner of Galbraith Family Law Professional Corporation, an eleven-lawyer family law firm with offices in two cities in Ontario, Canada. Brian has presented at the IACP International Forum on several occasions and conducted trainings in various locations in Canada and the United States. When not helping other families, he enjoys spending time with his own family doing a variety of activities including curling, white water canoeing, canoe camping, downhill skiing and living life on a lake.

Over the past 25 years Kevin Scudder has built a successful private law practice in Seattle, Washington that incorporates his values of compassion and integrity, as well as intellectual / emotional growth and development. A full-time Peacemaker having stepped-away from litigation a number of years ago, his Collaborative, client-based focus results in resolutions that are durable over time and which focus on the well-being of the children. Kevin is a graduate of the International Academy of Collaborative Professionals’ inaugural Leadership Academy, a trainer, and a regular contributor to the Collaborative literary community.

OUTLINE

1. Introduction of Trainers
2. Survey of Participants
3. Ever been accused of not acting collaborative?
 - a. What were you doing?
 - b. How did the accusation make you feel?
 - c. What was the impact on the Team?
4. What were behaviors that you have seen in cases that you considered “not collaborative?”
 - a. What behavior elicited the phrase? (Examples)
 - i. An attorney who monopolized the conversation during a meeting
 - ii. An attorney who does not want to include neutrals because they feel it would save money
 - iii. An attorney nodding every time her client says something
 - iv. A financial professional who provides clients with how he thinks assets should be distributed
 - v. A mental health professional diagnosing a client
 - vi. Another professional undermining you to one of the parties.
 - b. What was the other person’s response when you called them “not collaborative?”
 - c. How did you feel when you observed behavior that was not context constructive?
 - d. What did you do when you felt something, or someone was “not collaborative?”
5. The Context of “Collaborative Behavior”
 - a. What may be common in one community may be seen as unhelpful in another.
6. Effective Feedback Skills
 - a. Have you set the stage for effective feedback in your collaborative cases?
 - i. Team Prep Meetings - using an agenda to set the stage for the process
 - ii. Invitation of Feedback

- b. What is the purpose of your feedback?
 - i. To be heard?
 - ii. To change behavior?
- c. I vs. You Statements Exercise
- d. Discussion of Intent vs. Impact argument and how to avoid it
- e. Curiosity - using open ended questions to determine intent
- f. Other feedback options

7. Problem-Solving Interventions Mistaken for “Not Acting Collaboratively”

- a. Advocacy
 - i. A colleague speaking on behalf of a client who is not comfortable advocating for himself/herself
 - ii. An attorney working separately with a client to prepare a parenting or financial proposal
- b. Use of the Law - an attorney emphasizing the importance of the law as an objective yardstick
- c. Time, Place, and Manner for providing information e.g. revealing information later or limiting disclosure
- d. Hardball tactics such as
 - i. Attorney to attorney such as imposing artificial deadlines or process steps
 - ii. Attorney and Client to other Attorney and Client such as making lowball or highball offers
- e. Coach or financial professional reaching out directly to client

8. Wrap-Up

CASE STUDY

“You Aren’t Being Collaborative” Language and Skills for Difficult Dynamics

The players: Jim represents Sam.
Joan represents Cindy.
There is both a Coach and a Financial Neutral

This is a 25-year marriage. Cindy is the Leaver and Sam the Leavee. The couple moved to the State of Washington from the Midwest, where they had met in high school. Early in the relationship, when the children were being born Cindy and Sam agreed that Sam would quit his job as a mechanic and stay at home and raise the children. Cindy has always been the financially advantaged spouse, with a lucrative, rewarding job which benefited the family. Sam was close to Cindy’s parents and cared for them in their old age, until their deaths, in addition to taking care of the children. Sam and the children did not want to move to Washington and did so at Cindy’s insistence. They are not clear why the move took place. Within two years of moving to Washington Cindy tells Sam she wants a divorce. Sam believes the move was related to Cindy’s decision to divorce.

Sam and Cindy select the Collaborative Process for their divorce. There is a Coach and a Financial Neutral that are part of the Team.

At the first meeting Sam is barely able to take part in the meeting. He goes through a box of Kleenex at that meeting, mumbling that Cindy was his “soul mate” and that he did not know why she was making the decision to divorce. As additional meetings take place and a residential schedule for the 17-year-old is agreed to, and financial information is being gathered and presented to the clients at Team meetings, Sam continues to struggle with the idea of the divorce. At one meeting Sam presents with a stutter that makes it nearly impossible for him to be understood.

As the case continues, Sam becomes more emotionally present and stable, his stutter recedes, and it is Cindy who starts to falter. The stress of her job situation, selling the family residence, shielding and supporting the children through Sam’s emotional struggle, and the fact that she was in the middle of opening up a business of her own, brought her to a meeting where it was all “too much” and she felt that she could not have things asked of her.

For purposes of this Case Study, we will assume that up to this time the professionals are working as a cohesive professional team at this point.

Below is a list of actions taken from this point of this Collaborative Case. For each one consider how you would respond in each situation.

1. The Team, during a Professional Team Only (PTO) caucus, based on Cindy's emotional state and contrary to Jim's (Sam's attorney) instincts, the Coach proposes that Jim and Sam meet separately to create a financial scenario proposal. In this community, it is considered "best practice" to develop financial scenarios at full team meetings. Jim thinks to himself, "this is just not being collaborative." How should he respond so as to keep the clients moving toward resolution? What response would be most effective and helpful?

2. Jim and Sam meet and create a proposal. Sam says an agreement he made at the meeting in response to Cindy's highly emotional state, that he would not need to see important financial source documents does not work for him and he has changed his mind. Joan (Cindy's attorney) had made a point of putting this unsigned "agreement" about Cindy not having to provide source documents in the Progress Notes. Sam says, "I know what I agreed to, but I need to see the source documents," which would violate the agreement reached. Jim says to Sam "This is just not collaborative behavior. A deal is a deal." How could Jim have better handled this scenario?

3. Jim sends the proposal to the Professional Team only, along with Sam's change of heart on seeing source documents. Joan responds that she found the proposal to be egregious. "You and your client are not being collaborative," she writes to Jim. How could she have better responded?

4. In response to Sam's change of heart regarding the source documents, Joan responds saying "A deal is a deal. This agreement was in the Progress Notes. He is just not being collaborative!" How could she have responded more effectively?

5. Jim emailed a PTO response that said, among other things: *"It feels like you are treating me like an adversary, rather than as a Team member."* Is Jim simply telling Joan that she is "not being Collaborative"? What other possible actions were available to Jim?

6. The Coach (MHP) chimes in at this point by email, providing his "two cents" worth. Among other things the Coach says:

Our job and our only job is to hold them as they discuss and work further to an agreement. We don't know what Sam is capable of nor do we know what Cindy is capable of at this point. It is not our job to think for them. I think we talk to Cindy and see if she has gained some strength and may be ready to sit at the table again. Not sure but very sure we all need to pull together....

Would you change the Coach's message in any regard?

7. The Financial Neutral chimes in by email, and says in part:

After the scenario is modeled and the clients calmly review it with their attorneys, discussing how the scenario works or doesn't for each of them, and how it could be improved, then we should meet again as a group/full joint session to discuss. We can then discuss an alternative scenario to model and consider. Do you think that will work? I don't know if they can do that and if not. We just have to work within their abilities.

Would you change the Financial Neutral's message?

8. Joan responded defensively via email, saying:

- "I'm not changing my mind";
- I feel that I am being treated as the "solitary guilty" party;
- Jim, as Sam's advocate, had a heavy hand in the scenario rather than letting Sam come up with his own scenario;
- I believe it was Jim, and not Sam, that was asking for the source documents;
- That by backing Sam's request to have his scenario seen by the full Team the Financial Neutral was being adversarial;
- That the Coach was being adversarial by advocating that the scenario be explored, even if everyone understood that it was not likely to be the final result; and,
- She wanted everyone to understand she was "*simply attempting to raise a mirror so that each of you can see how you have not been acting collaboratively throughout this whole mess.*"

What do you do now from the perspective of each participant?