

A Light or Heavy Hand on the Wheel

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Slide: Introduction

Some clients capably guide the process where they want it to go. Others need strong direction, firm boundaries, and pre-formulated options. Others unwisely seize control and drive the case off a cliff. This workshop explores gradations of light vs. firm support, adjusted according to the needs of the particular case.

Slide: Compromising the ideal for extra structure

This workshop is about how some kinds of challenging cases require the professionals to take a firmer grip on the wheel, even though this may limit how much clients can lead the process and be open and creative in their deliberations.

Rather than insisting on an ideal when unrealistic to do so, this approach accepts and works within the natural limits of this case and these clients, employing a stronger structure as needed (while still upholding core collaborative principles).

The goal is to be more at ease with these realities and to be thoughtful and deliberate about what changes are required and how these impact the case, positively and negatively.

Conversely, sometimes professionals lean in with a heavy hand when this is neither necessary nor helpful. This will also be discussed.

Slide: The Collaborative Ideal

Often, in foundational trainings, collaborative divorce is presented, understandably, in terms of its positive promise. Often the attributes associated with collaborate divorce at its best can become expectations of how this should be done and the outcomes one can achieve. Identifying concepts we associate with collaborative divorce can help us be alert to what we may be tacitly demanding of ourselves and our clients.

Slide: Continuum—Less and More Ideal

Imagine the collaborative at one end of a continuum. Here, the ideal is adhered to: clients lead the process and non-directive professionals provide support as needed without getting in the way. At the other pole is a process that is more guided, structured and boundaried, and as a result, less free, but still respectful of clients and their concerns.

Slide: Light Hand

When clients are highly capable and cooperative, the professionals can keep a lighter hand on the wheel. If good work is flowing, the professionals, fulfilling their roles responsibly, while endeavoring not to interfere or influence the client's true North.

Slide: Light Hand for Calm Waters

Less conflict often allows for a more relaxed approach and a smoother structure lingers in the background, performing its job silently and mostly out of view.

Slide: Firm Grip

With more challenge in the case, the professionals need a firmer grip on the wheel so that the boat—the case—stays steady.

Slide: Firm Grip for Big Waves

With bigger waves, a firm grip keeps the crew (professionals) and passengers (clients) from washing overboard—and the boat from capsizing. Vigilance is needed. If there are sails, these need to be tied down. The boat must constantly correct its direction to meet the big waves head on. They may come one after another, in quick succession, and from different directions. (No tanning on the sundeck!)

Slide: Structure provides stability

The chief benefit of structure is to provide stability and boundary. The more difficult and complex the case, the more the team must be cohesive and on-point in its strategy. The latter may need to be sophisticated, nuanced, complex; but the overall plan needs to be simple so less can go wrong.

Slide: Structure facilitates freedom

Philosophically speaking, structure facilitates freedom, like a trapeze artist relying on a secure metal structure above and a safety net below, and the wide berth of a freely moving bar. In an ideal situation, the cohesion of a good collaborative team gives capable clients the security they need to trust, risk and explore.

Slide: Structure impinges freedom

When one or both clients are less capable and bring some chaos, distortion or trouble into the communal collaborative space, then a stronger structure is required, like when heavy sandbags are brought to stop a wild river from overflowing. This constriction provides safety, but reduces free flow. Think of the tight brace that corrects a case of scoliosis.

Slide: Situations Requiring extra Structure and Stability

Certain clients have cognitive or emotional challenges that make it more difficult to get through a divorce process and may require more containment and support.

Slide: Executive Function Deficits

Executive function deficits are epidemic in our society and grossly underdiagnosed. Clients often don't even know they have such issues, though they experience the challenges every day. Commonly the client may have slow processing and may require repetition to understand and remember important information.

Tension and intense emotions at the table may further reduce bandwidth. In general, concepts may be misconstrued, and wrong assumptions can loop and become reinforced, making it difficult to encourage a different perspective. Difficulties separating thoughts and emotions can mean that feelings drive logic, or rather, illogic.

Taking pains to ensure that the client is understood and understands others is critical. Simplified options may be essential, particular if thinking remains rigid. Similar principles may apply to individuals with autism.

Slide: Intense Emotions

Intense emotions can rock the boat of the collaborative case and require special interventions and boundaries. Three frequently encountered patterns include anger, tearfulness, and being cut-off.

With an angry client, the team needs to provide good boundaries at the table. Situational anger may release with intervention, but a long pattern of anger is unlikely to change in the short-term. To avoid escalatory triggers and manage containment, a simple path guided by the professionals may be helpful.

Clients drowning in an ocean of tears may need simplified steps—it's all they can manage—and more direction; otherwise, they feel lost. They may struggle with meetings where the spouse is present and need separate meetings. Outside of the spouse, they may constantly spontaneously cross boundaries with the spouse.

Some clients are emotionally cut-off, but underneath the surface, sadness and/or anger is slowly building until it must erupt like a volcano. Often this eruption happens toward the end of the process, in which case the team may need to intervene with a deft and heavy hand, while managing outbursts and last-minute demands.

Slide: Mental Health Issues

Of the many mental health issues that can appear in collaborative, four stand out: anxiety (and obsessiveness); depression; borderline personality, and narcissistic personality.

Those with anxiety and/or obsessiveness often need constant reassurance. Such clients may need to be firmly guided to keep moving forward or else they ruminate and second guess countless decisions related to the divorce process. A tendency to catastrophize can lead to mandates to change the agreement. Steering them to work through their emotions first is wiser than rushing to revisit recent agreements.

Depressed clients may feel tired, overwhelmed, hopeless and negative. Often, they need some buttressing to get through the process and some help with decision-making.

Borderline individuals are often needful, testing of others, dramatic, threatening and attacking. Professionals generally need to set solid boundaries and protect agreements and the process from unraveling.

Narcissistic clients need affirmation but must be challenged if they attempt to control the process and the outcome.

Both narcissistic and borderline clients require extensive intervention by the entire team in a well-coordinated manner (so as not to be split). Advocates must usually demonstrate what they have to offer their clients (while often being seen as insufficient). The case may be quite restricted and succeed by only a slender margin. The principle is 'what is workable' given that many unreasonable demands may come like waves and need to be contended with. Such cases often need a firm hand to get across the finish line.

Slide: Conflict

High conflict couples need a well-coordinated team. Outbursts must be managed at the table and behind the scenes. Simplified options may work best—even these may be stretched to the breaking point. Professionals do well not to take venting at face value. The litmus test for options is often whatever does not incite more incendiary escalation. One must be careful not to be manipulated by who rages most. Facilitation may need to be quite directive when both clients are at the table, with many shifts of pace, pauses, reframes and resets. The team must be careful not to run toward quick solutions (just to appease the most recent conflict) or to inadvertently reward bad behavior.

Slide: Perspectives and Approaches Requiring Extra Structure

Some ways of looking at divorce may predispose toward—or create challenges that seem to need—additional support, stabilization and intervention. In some cases, early intervention may change perspective and obviate the need for more structure.

Slide: Formula-focused

Some clients have in their mind that the court works by set formulas: “Just do whatever they usually do.” These clients often do not understand that formulas can be modified in multiple ways, especially by the judge. The illusion of a fixed formula is consoling to some: “I won’t be taken advantage of; it’s fair.” If a discussion about framework of the law does not change their minds, then the team may need to guide toward a middle of the road version of the formulas, adjusted to their circumstance.

Some clients take an opposite view, wanting to toss formulas out the window ‘because they are not fair’—probably because they want to maintain more assets or pay less support. If this approach strongly advantages one client over the other, some return to legal reference marks or other rationales for equitable division can be undertaken to see both sides and to remember that the agreement is consensual.

Somewhere in-between these two poles is the idea to maximize common modifications to the formulas, reducing the payor’s responsibility, perhaps with reference to newer rulings that support this line of thinking.

In all these deliberations, the use of reference points—standard or modified formulas or non-standard rationales—can provide some grounding or foundation for guiding compromise and narrowing the gap between the clients. Meanwhile, adapting formulas to one’s own situation can preserve some level of collaborative creativity.

Slide: Unrealistic about Outcome

Some clients have curious notions that simply don't work:

- not telling the children that they are getting divorced;
- retiring at a young age with insufficient retirement funds (that must now be split);
- trying to keep the original house well beyond one’s means;
- a parent planning a career that requires a costly education with little income potential and few resources.

In such cases, the team must often work gently but deftly to help these helium balloons deflate little by little so the person can return to earth and contend with the painful reckonings related to divorce. While the path of one’s life is one’s own to make, a professional may nevertheless need to direct some clients back to reality. This may require some alternation of a light hand and a heavy one. In these cases, professionals may keep reiterating the numbers as if to let them speak for themselves.

Slide: Process Points that Involve a Heavy Hand

In the collaborative divorce process, certain dynamics or certain phases or moments may lead to a firmer grip and greater directiveness—sometimes for good reasons, sometimes for bad.

In Doubt, Tendency to Tighten Up

In some cases, when professionals mirror the stress of their clients, they may want the pain or uncertainty to stop. Based on old habits in litigation, they may tighten up and introduce a proposal, and begin to move forward with a firm grip. This move away from emergent agreements and interest-based, cooperative negotiations toward positions, entrenchment, and possible impasse can be difficult to undo. The team needs to meet and, with a firm grip on the wheel, turn the case back toward collaborative principles before it is too late.

Shuttle keeps me in a bubble

Clients who cannot tolerate being in the same room can be shifted to a shuttle process where neutrals go back and forth between each client-lawyer pair. This can work well for a while, though it often requires simpler solutions, since same-room, real-time mutual creativity is not available. At some point however the clients may become entrenched in their own self-affirming bubble. Sometimes the only way to pop this bubble and close the gap is to have both clients back in a collaborative meeting.

Threat of Litigation

Some clients, after experiencing a range of frustrations, may believe the grass is greener on the other side, and they may hint at or boldly declare it is likely they will go to litigation. Rather than resist this, the professionals may do well to set up a consultation with a trusted litigator who won't promise the moon and won't denigrate the collaborative process.

In other dire situations of difficult dynamics or impasse, the professionals may need to discuss the fact that if further compromise is not achieved, the default is litigation. This comment is not meant as a manipulative threat or a hard ball tactic to force someone's hand, just a reality check that may or may not motivate movement toward resolution.

Bumpy at the End, Tenacity to Get Through

Commonly, the last lap of the case can feel like a rollercoaster. Just when you think this ride is nearly done, it throws you for another loop. Some professionals don't have the endurance for this and may want to throw in the towel. At this point, the team may need to exert some gentle force to stop unreasonable late-game actions by the clients. Strong structure and coordinated intervention by the professionals may be needed to help overtired and reactive clients close the gap. If this is only partially successful, the clients may need a do or die 'lay your cards on the table' final meeting.

An Overly Controlling Client

Some clients are very intent on controlling the process. They may arrive with countless spreadsheets, declaring that they've solved this relatively easy case. Others determine to dictate the agenda. Some try to fire neutrals to save some money, doing so at the worst time when that neutral is most critical to the case succeeding. Such clients are akin to a patient telling a cardiac surgeon how the surgery should be performed and which surgical staff should be dismissed.

The overly controlling client must be prevented from hijacking those aspects of the process that are the exclusive purview of the professionals—and for good reason. This may require that all the professionals, in coordinated fashion, put two firm hands on the boat wheel.

Conversely, some more capable clients, tired of not being heard, may appropriately commandeer the process. In a case of argumentative lawyers leaning on the clients with unwanted advice, for example, the clients may finish a negotiation process with one or two neutrals.