

Wills, Trusts, Guardianship, and Probate: Collaborative Magic Across the Lifespan

Speakers:

Teresa F. Parnell and Aubrey H. Ducker

Brief Description

Estate planning processes that prevent family conflict and provide peaceful resolution of contested probate matters are needed in many countries. Collaborative can help! We will discuss this practice, work through case examples together and develop your action plan to expand your Collaborative practice using this process specialty.

Agenda

1. Introduction
 - A. Who Are We?
 - B. Who Are You?
 - C. What Do You Hope to Take from Today?
2. Why use Collaborative for Wills, Trusts, Guardianship and even Probate?
3. Is the Collaborative Process the Same as in Divorce?
 - a. The Collaborative Principles
 - b. The Collaborative Team
 - c. How to Prepare Yourself for Your First Case
 - d. How Do You Get Everyone to the First Meeting
4. Let's Discuss Families Helped by the Process
 - A. Facts
 - B. Challenges
 - C. Solutions
5. Collaborative protocols for practice
 - A. Adapting Collaborative Divorce Protocols
 - B. Initiatives to Develop Specific Protocols
 - C. Considerations:
 - a. Uniform Collaborative Law Act
 - b. ABA, Model Standards of Professional Conduct
 - c. IACP Standards and Ethics

D. What is happening in your area?

6. What Will You Do Next?

A. Developing Your Action Plan

Learning Objectives:

1. Participants will recognize how Collaborative practice can proactively provide clarity and comfort in the estate planning process while reducing conflict and hostility in guardianship and probate matters.
2. Participants will identify how to begin a Collaborative estate planning or probate case, how to determine who the participants will be in each case, and how to start the process for each type of case.
3. Participants will state three actions that they will take in their local community to increase awareness among professionals and clients of the use of Collaborative practice in trusts, wills, guardianship, and probate.

Detailed Description:

According to the United Nations, population aging as determined by chronological age is a global phenomenon with nearly every country increasing in numbers of older citizens and in percentage of older citizens. Estate planning is designed to structure and protect a client's available assets for later life, as well as plan for how a client may be cared for. Estate planning also hopes to provide a legacy for a client's heirs. Court systems in many countries are feeling the impact of family conflicts regarding aging family members. Concerns with lifestyle costs, healthcare costs, responsibility for caregiving, and inheritances all contribute to emerging conflict in families with aging family members. Conflict contributes to stress in the family system and unfortunately, increases in elder abuse, most often perpetrated by family members is reported as well. After the death of a family member, the stress experienced in a probate process has been well document. Litigation regarding an aging client whether before or after death often creates a devastating level of family conflict and can also lead to financial waste of family resources.

Collaborative process provides an opportunity for a transparent and inclusive process that families need regarding a family member's future life and estate planning. This process is a proactive way to address concerns in advance and avoid later conflict that can ravage a family emotionally and financially. A Collaborative process can better incorporate and inform key people in a client's life while providing the team of legal, financial, and communication experts needed. Collaborative process is particularly well suited for post-divorce and remarriage estate planning. When clients have already participated in a

Collaborative divorce process, they can utilize the Collaborative principles and communication processes previously used to develop their estate plans while speaking with heirs about difficult issues, thus ensuring family harmony after their death and hopefully preventing litigation of their estate.

Sometimes, to ensure that the needs and wellbeing of an elder are met, family members become so entrenched in their perspectives that they seek guardianship. The elder is often painfully caught in the middle of intense disagreements at a vulnerable time in their life. Depending on the capacity of the elder, Collaborative process may be an option for addressing those family disputes. Sometimes pre-need estate planning documents or advance directives have been put in place to try to avoid family conflict or contested proceedings. Unfortunately, when family members have not been part of that elder's planning process, when they do not believe their voice has been heard, or when they were once involved and then changes occurred without their knowledge, conflict can arise. Surprise and confusion turn to mistrust followed by accusations of undue influence, coercion or lack of capacity. These circumstances may be particularly problematic when there is prior unresolved conflict within a family system. Again, an interdisciplinary Collaborative process is particularly well suited to assist with these complex circumstances thus avoiding litigation.

Another potential use of Collaborative process are those unfortunate circumstances where a Will is contested. In the aftermath of a beloved family member's death, the remaining family members may be shocked, hurt, or confused regarding the loved one's estate plan. The probate litigation often consumes a family, leaving them forever fractured and distant family relationships. During this litigation, all manner of sibling rivalries from times gone by emerge to derail hopes of peaceful resolution. Collaborative principles and professionals may be able to better assist families in navigating these processes.

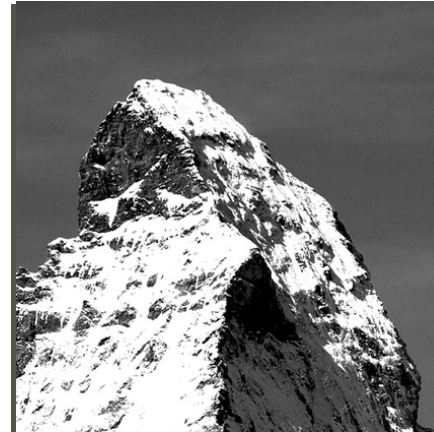
While the use of Collaborative process with wills, trusts, guardianship, and probate is not a new topic, growth in this area is moving slowly. It is important that we continue to discuss ways that clients can experience the transformative power of Collaborative process throughout their life span when professional assistance is needed. Professionals exposed to this information can continue to promote growth of this increasingly necessary service. This workshop will inform interdisciplinary team members of the application of Collaborative process to these areas, and orient attendees to the ongoing efforts to develop practice specific protocols. In order to assist attendees to understand how to apply Collaborative process to the complex, multi-person circumstances in this area of practice, we will work through at least one but up to three specific types of cases depending on whether this is a 90 minute or 180 minute workshop. We will end with discussion of how to develop practice

opportunities in this area. If the longer workshop length is offered, we will have an opportunity for each attendee to leave with a more comprehensive action plan.

Speaker Bios:

Dr. Teresa Parnell has over 30 years of experience as a mental health professional with a focus on families. She is a Licensed Psychologist, Florida Supreme Court Certified Mediator (Appellate, Circuit, County, Dependency, and Family), Accredited Collaborative Professional, Eldercaring Coordinator, and a Certified Addictions Professional. In her private practice in Maitland, Florida she enjoys helping clients transform through the challenges and conflicts they face. After many years of practice providing a range of services, she now spends her professional time as a mediator, neutral process facilitator in Collaborative family law cases, a co-parenting consultant and Collaborative process trainer. Since some families are unable to access the Collaborative process due to financial limitations, Dr. Parnell has been involved in several projects to provide Collaborative services to low- and moderate-income families.

Aubrey Ducker has more than 20 years of experience as an attorney dealing with family crisis. Collaborative practice has always been a part of his practice. After serving 6 years in the U.S. Navy, Aubrey Ducker began his voyage to become one of Florida's pre-eminent family law, education law and elder law attorneys. Following graduation from the University of Florida's Levin College of Law, Mr. Ducker decided to focus his practice in family law, helping families during the most difficult times of their lives. His practice naturally extended to elder law, where he helps clients transition into the latter stages of their lives and wants to ensure that their lives are properly ordered, while securing a hopeful future for their children, grandchildren, and other loved ones. Mr. Ducker chooses Collaboration to avoid the stressful and overwhelming forces of litigation. In his Elder Law Practice, Mr. Ducker helps families with guardianships, estate planning (wills, trusts, powers of attorneys, living wills, pre-need guardians, health care surrogates, etc.), probate, and fighting against abuse of the elderly and disabled. Attorney Aubrey Harry Ducker Jr. has had family members in legal disputes believe that one side must "win" or "lose." Luckily, there are many ways to reach a solution that works for everyone. Reaching an amicable resolution will spare clients time, stress, and cash. Attorney Aubrey Harry Ducker Jr. works to safeguard family connections and keep the peace. In addition to his thriving practice, Mr. Ducker finds time to volunteer in other areas of need in his community.



Wills, Trusts, Guardianship, and Probate: Collaborative Magic Across the Lifespan

Aubrey Ducker-CPLS

Dr. Teresa Parnell-Private Practice



Introductions



Who Are We?



Who Are You?



What do you
hope to take away
today?

Who are We?

■ Aubrey Harry Ducker Jr.

- UF Levin College of Law, J.D. May 1999
- UCF Nicholson School of Communications, B.A. Journalism May 1996
- Valencia Community College A.A. May 1994
- U.S.S. George Bancroft, SSBN 643 1988-1992
- U.S. Navy, Nuclear Power Training Unit, Windsor CN, 1988
- U.S. Navy, Naval Nuclear Power School, July 1987
- U.S. Navy, Nuclear Field Electricians Mate A School, January 1987

Practice Website: <http://www.aubreylaw.com>

Phone Number: 407-645-3297

■ Dr. Teresa F. Parnell

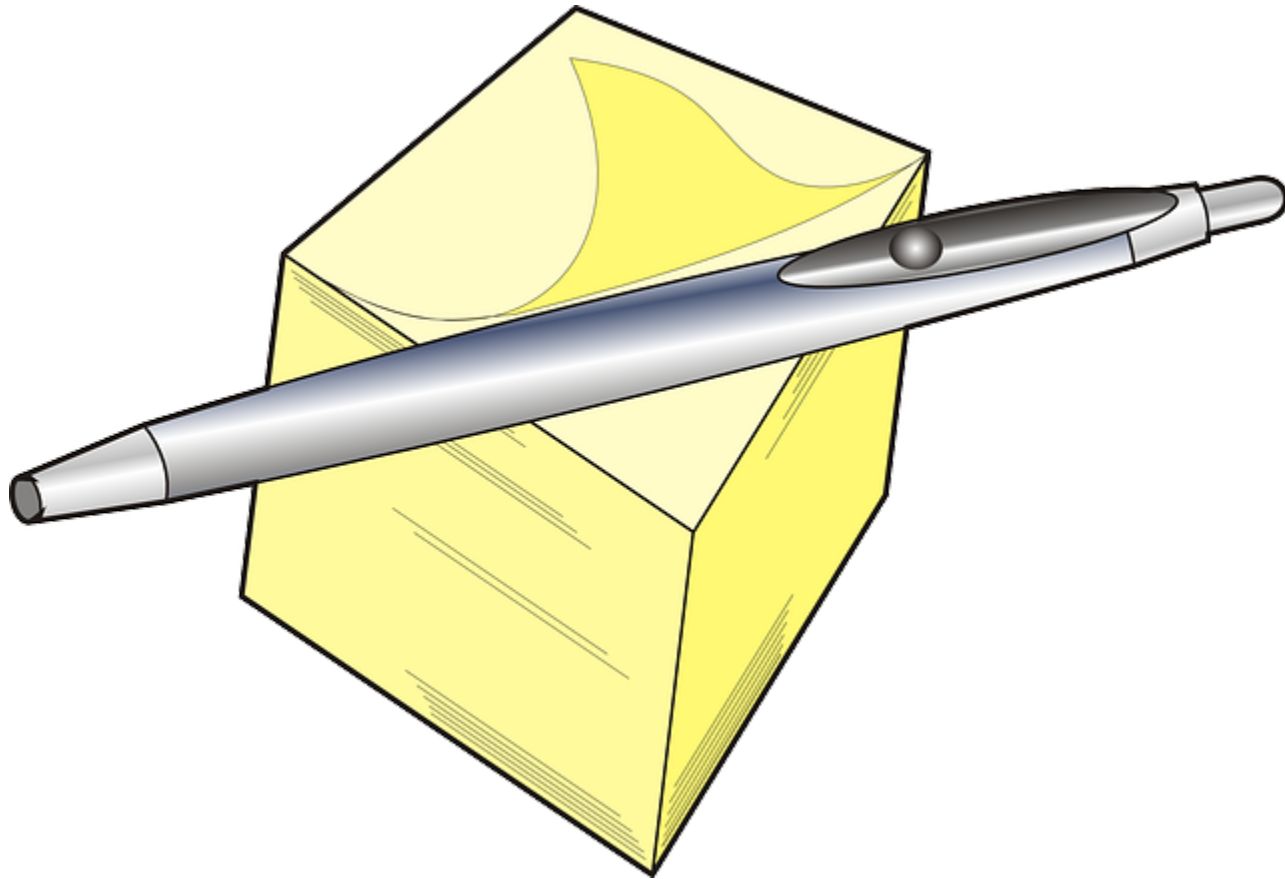
- Doctorate in Clinical Psychology and Master of Arts in Conflict Resolution
- Licensed Psychologist, Collaborative Neutral, Eldercaring Coordinator, and Florida Supreme Court Certified Family, County, Civil, Dependency, and Appellate Mediator
- Collaborative practice trainer
- In private practice since 1990 providing services for children, adolescents and adults.
- Services are focused on helping clients transform through the challenges and conflicts they face.

Practice Website: <http://www.drparnell.net>

Training Website: <http://www.roadmapsforresolution.com>

Phone Number: 407-862-2722

What do you hope to take away from today?



Who Are You? What is Happening in Your Area?





- What do clients want?
- What do clients need?
- What can clients control?
 - Regional/international differences
- How can Collaborative Processes help?

Martha wanted to live with her son . . .

- Her son was a single man, who could be a bit pushy . . .
- Her Daughter wanted to make mom's healthcare decisions, and was expecting to inherit all assets because she was the first to have grandchildren for mom.
- Her Other son lived a long way away and just wanted mom to be happy.
- Daughter listened to mom complain of son and filed a Guardianship to "protect" mom.
- Son responded and sought to enforce Mom's estate plan documents.
- Other son watched as generational wealth was used to fund litigation between the parties.
- A case study for Collaboration

Trusts, Wills, Estates and Probate Collaboratively? Why?

- Develop an estate plan when everyone is available to talk about the details
- Resolve many family disputes before a family member's death
- Avoid stress
- Reduce litigation
- Confidentiality
- Better able to meet client needs and interests
- Improve family relationships
- Durable agreements

Why? (continued)

- Ensures those professionals that are needed have a seat at the table
 - Lawyers, coaches and/or mental health neutral, financial neutral, financial planner, insurance planner, accountant, trust agent, case manager, eldercare specialist, etc.
- Open professional communication about mutual client(s) and a coordinated effort minimizes errors and is more efficient
- Opportunity for caregivers, heirs and/or other family members to be informed
 - Possibly with a formal seat at the table
 - Avoid surprises and confusion
- Client(s) have **transparent conversation** about estate planning and aging related factors with family; **increase understanding regarding inheritances and chosen caregivers**
- More than a stack of documents . . . An opportunity to craft a client-centric estate plan tailored to client wishes, potentially prevent family conflict in the future by creating durable solutions instead of animosity and grudges, and preserve inheritance rather than spend it on litigation

Estate Planning Collaboratively? For What Topics, Issues or Actions? What is Different in Your Area?

Will

Living Will

Healthcare
Surrogate

Durable Power of
Attorney

Pre-need
Guardianship

Trusts

Adjunct to Pre-
marital or Pre-
nuptial Process

Blended Family
Estate Planning

Estate Planning
Changes Follow-
up to Collaborative
Divorce

Collaborative Process: Same or Different in Your Area?



- Participation Agreement with key elements
- Paradigm Shift
- Transparency and Open Communication
- Interests/Goals
- Option Building

Collaborative Team



Who is the client?



What additional non-professional team members will participate?



Will they all have lawyers?



What if someone refuses to participate?



Core Interdisciplinary team



Subject matter experts



Getting to the first meeting

Let's Talk about Ralph and Karlene:

Ralph and Karlene were married at age 62 and 56 respectively. A second marriage for both.

Ralph had 3 children, Karlene 2.

Ralph had assets worth \$475,000.

Karlene had assets worth \$650,000.

Their children were concerned about where they would spend their final years.

Neither had long term care insurance.



Problems arise:

- Ralph's children wanted to “assist the parties” with financial investments.
- Karlene's children wanted to help the parties with care in their final years.
- Ralph suffered a brain injury . . . Karlene is Healthcare Surrogate.
- Ralph's daughter now wants to make decisions . . .
- What to do . . .

Who needs to know Ralph and Karlene's desires at their end of life or near end?

What else?

■ Financial concerns?

Investments?

Protections?

■ Healthcare Concerns?

Surrogate?

Decisions?

■ Family Property?

Community?

His/Hers?

■ Where to live?

How to die?

Where to be buried?

Challenges to Consider



Who is your client?



Conflicts of Interest



Dealing With Diminishing Capacity



Appropriate Client Communications



Key People Not At the Table



Confidentiality



Drafting With Multiple Participants

Let's Talk about Jack and Nan:

Following their Collaborative Divorce, Nan wanted to set up her estate;
and Jack wanted to set up his estate

Considerations:

- Two children, both now adults with children of their own
- Nan's new Boyfriend
- Jack's new girlfriend
- Jack's diagnosis
- What to do . . .



Developing Protocols for Practice



ABA Model Standards of Prof
Conduct



IACP Standards and Ethics



IACP training and workshops



Initiatives to develop specific
protocols



Regional and local protocols

What Will You Do Next?

Developing a Wills, Trusts, Guardianship, and Probate Practice



Action Plan Reflective Journal Activity



Whole Group Discussion



Please contact us to talk further . . .

Aubrey Harry Ducker Jr.

Practice Website: <http://www.aubreylaw.com>

Phone Number: 407-645-3297

Dr. Teresa F. Parnell

Practice Website: <http://www.drparnell.net>

Training Website: <http://www.roadmapsforresolution.com>

Phone Number: 407-862-2722

Draft Trust and Estates Collaborative Full Interdisciplinary Team Protocols

(Adapted from CPSV / CPSMC Draft Protocols for Family Law)

“I’ve learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.”

- Maya Angelou

These Protocols are intended as a guide to interdisciplinary full team Collaborative Practice. This is a Client centered dispute resolution process. As Collaborative professionals, we are called upon to educate our Clients concerning the resources available and assist in structuring a process that is optimally suited to guide and support them in achieving settlement. The protocols are not intended as a prescription but as guidelines to promote a general level of consistency in how the Collaborative option is offered to prospective Clients and how Collaborative professionals work cooperatively and effectively in a team setting. A commitment by each professional to adhere to a set of clearly articulated, common expectations of purpose and procedure will foster the mutual trust that is essential to the success of a Collaborative team in serving the interests of our Clients.

These Protocols provide a guide to the interactions of a full Collaborative team. Best practice [Experience] suggests the greatest level of success can be achieved if Clients are apprised of the potential for problem-solving and optimizing outcomes by involving all professionals working as a team at the outset; while understanding that it is the prerogative of our Clients to decide the structure of their team and whom to engage. Whatever the composition of a given Collaborative team, the Protocols offer a common strategy and procedures to enhance our effectiveness in working together.

Today there are a wide variety of Collaborative trainings available to practitioners and would-be practitioners. These Protocols are not meant as training materials or as a substitute for fundamental interdisciplinary Collaborative training. Rather, it is intended that they may facilitate a newly formed Collaborative team in getting on the same page and working in concert to best serve their Clients.

Since Collaborative Trusts and Estates is a new frontier for Collaborative Practice, our hope is that these Collaborative Protocols will not only serve as a guide, but will be adapted by professionals working in the Trusts and Estates arena to fit the specific needs of the clients and the team of professionals working together.

1 STARTING THE PROCESS

Purpose: Educating Clients as to their options, enabling them to make the choice most appropriate for their circumstances.

Preamble – Typically, Clients enter the process through an initial consultation with one of the core **Collaborative Professionals**. It is the goal of these Protocols to create a standard message in that initial consultation that is delivered to potential Clients irrespective of which professional they encounter.

Core team members include: Two Collaborative Lawyers, one neutral Financial Specialist, and one Communication Skills Specialist. As determined by the needs of the clients in any specific case, specialized professionals may join the team as advocates for a specific client (for example an Elder Specialist), information or resource providers, educators, or assessors of individual physical and mental capacity. It is essential that these specialized team members be collaboratively trained to understand both the goals of the process and their specific role.

1.1 Educating Clients – One or both prospective Clients present

1.1.1 Present and explain options in a neutral manner

1.1.1.1 “Do-It-Yourself” (“Kitchen table”)

1.1.1.2 Litigation

1.1.1.3 Mediation

1.1.1.4 Collaborative Practice

1.1.2 Each professional should be alert to urgent questions presented by or immediate actions being taken by either party which suggest that Client should immediately consult with appropriate professionals.

1.1.3 Assist Clients in making an appropriate choice. Disclose which process option you believe is most suitable for the case.

1.1.3.1 Acknowledge any bias.

1.1.3.2 Thoroughly explain the Collaborative process.

- Emphasize the importance of retaining professionals trained in Collaborative Practice.
- Discuss specific team member roles.
 - Lawyers
 - Mental Health Professional: Communication Skills Specialist (Neutral)
 - Financial Specialist (Neutral)
 - Other professionals (i.e., business valuers, appraisers, care managers, etc.)
- Discuss types of meetings (2-3-4-5-7 participants).
- Discuss benefits of team meetings: enhanced communications, coordination of work, combined skill sets in brainstorming, problem-solving, managing emotions.
- Help assess most effective format for Clients.
- Discuss billing / costs (in person meetings, emails, phone bridges, pre-meetings, and debriefs, other team meetings, etc.).
- Discuss potential cost savings vs. litigation.
 - Communication amongst team members – transparency
 - No court or litigation – withdrawal provisions

- Confidentiality
- Decisions made by Clients; process controlled by team
- Interest-based negotiation vs. positional-based bargaining
- “Outside the box” thinking
- Goal: Help preserve family relationships

1.1.3.3 Provide written information related to enrolling.

1.1.4 Client indicates desire for Collaboration

1.1.4.1 Discuss process for assembling team

1.1.4.2 Discuss process for enrolling other parties

1.1.4.3 Provide written information related to beginning process.

- List of trained professionals
- Blank Collaborative Commitment Agreement (CCA)

1.2 Enrolling Other Parties in the Collaborative Process

*1.2.1 Ascertain, if possible, from Client how **other parties** might best receive information regarding options.*

1.2.2 Possible ways to provide information to other party (ies)

For Client:

- Provide Client additional packet of written information for other parties.
- Identify for Client highlights of options to explain, depending upon other parties’ specific concerns, and suggest that each contact a member from list of trained professionals for additional information.

From Lawyer:

Letter to other parties, if unrepresented (with or without Petition)

From Communication Skills Specialist: (CCS) or Financial Specialist

- Strategize with Client how to engage other family members.
 - From friend, family member, community / opinion leaders (such as spiritual leader, etc.)
 - Joint informational only meeting with Client and other parties (conflict of interest waiver to be signed later, if applicable)
- Meeting with CCS or informational phone call
- Meeting with Lawyer or informational phone call
- Meeting with Financial professional or informational phone call

1.2.2.1 Resources of information – Any of the above sources might provide the **other parties** with the following:

- Brochures (IACP brochure with CPSV insert)
- List of collaborative professionals
- Articles / books on collaborative practice
- Websites (CPSV, CP Cal, IACP)
- Trusts and Estates Website/ Blog

1.2.3 *Consider calling other parties' non-Collaboratively trained Lawyer. Alternatively, consider having Client discuss with other parties selecting a collaboratively trained Lawyer.*

It is not prohibited but strongly discourages to engage a Collaborative Practice case with any professional who is not collaboratively trained.

2 MEETINGS

2.1 Collaborative Commitment Agreement (“CCA”) Meeting

2.1.1 *Before the CCA Meeting (Operating Process):*

Purpose: Begin Team Integration

- 2.1.1.1 Identify and assemble the team based on prior discussion with the Clients. All professionals are retained before the CCA Meeting. While a team may be made up of two lawyers with any other combination of professionals participating as the Clients elect, the following Protocols refer to the Full Team.
- 2.1.1.2 Ensure that each client signs a contract with each professional retained, spelling out the details of that professional’s role, aspects of confidentiality in Collaborative Practice, and the information regarding withdrawal.
- 2.1.1.3 No substantive decisions may be made regarding the legal aspects of the case before all participants (Clients and professional team) have signed the CCA.
- 2.1.1.4 Make initial contact with collaborative counterpart.
 - For Lawyers:
 - o Share perspective on each Client’s major concerns, expectations, emotional issues.
 - o Share perspective on what will facilitate communications for Clients, maximizing meeting participation by both Clients.
 - o Share what is known about efforts to involve other team members.
 - o Alert to urgent issues that need to be addressed at meeting.

- Discuss / decide procedural or legal issues that should be addressed at CCA meeting. (See Appendix B).
- Agree on how communications will be conducted among professionals and with Clients.
- Discuss what will be shared with Clients as a result of discussion among professionals (preparation of Clients for meeting).
- *For the Communication Skills Specialist (Neutral on the team)*
 - Meet with each Client separately obtain goals / concerns; establish neutral role.
 - Determine Client's level of motivation for participating in CP.
 - Obtain perspective on each Client's major concerns, expectations and preferences.
 - Identify potential areas of disagreement significant to the parties that may pose risk of disruption to collaboration.
 - Identify emotional issues and triggers.
 - Identify Client's style / issues that may enhance or impede collaboration.
 - Identify Client's information processing style.
 - Explore issues relevant to each family member (including family history) and attitudes toward other family members.
 - Share perspectives on facilitating communication.
 - Share what is known about team formation.
 - Plan a family meeting to set communication goals and guidelines.
 - Be sure to have each Client sign your retainer agreement before any meetings.

2.1.1.5 Arrange a conference call among all of the team members to accomplish the following:

- Make introductions to one another, if necessary.
 - Determine the location and create an agenda for the CCA meeting.
 - Assign tasks for the meeting (i.e., whether there will be a Case Manager and who will lead the discussion; which Lawyer will bring copies of the CCA and other relevant documents; who will prepare the minutes; who will bring food, etc.).
 - Discuss payment with respect to the CCA Meeting. It is within the discretion of the team members to adjust the total cost of the meeting, if they so choose.
 - Confirm payment with respect to the CCA Meeting.

- Deliver to Clients an explanatory letter describing the CCA meeting. See Appendix.
- Schedule Client / CCS / Lawyer meeting.

2.1.1.6 First Meeting with Client and Lawyer (CCS is always present in lawyer / Client preparation meetings. Financial Specialist may also be present for each meeting depending on Client needs)

Purpose: Educate and prepare Client / Lawyer / FS or CCS for the upcoming CCA meeting.

- Review the Collaborative procedure again.
- Discuss the Collaborative Commitment Agreement to ensure Client's understanding. Elicit from Client his/her understanding or any concerns he/she may have regarding the CCA. Specifically identify significant aspects of the CCA that should be discussed at the CCA meeting.
- Explain how professionals and Clients are expected to talk and act in Collaborative meetings: "Expectations of Clients and Professionals". Explain that the Full Professional Team will meet both before and after the Full Collaborative Team meetings.
- Give Clients permission to give Professional(s) feedback when they are not comfortable with how the Professional(s) are speaking or acting.
- Ask Client's permission to give Client feedback when the Professional is not comfortable with how the Client is speaking or acting.
- Normalize for the Client how challenging any estate administration is, no matter what procedure he / she chooses.
- Review what is important to Client: hopes and concerns.
- Review what Client thinks might be important to other family members: hopes and concerns.
- Discuss Client's emotional needs.
- Discuss Client's procedural needs (availability for meetings, sense of urgency).
- Discuss Client's substantive needs.
- Educate the Client about the procedural aspects of the collaboration, including initiation of legal proceedings, review of Principles and Guidelines and Stipulation and Order regarding Collaborative Practice, role of law.
- Familiarize Client with the agenda for first Collaborative meeting with Clients and Professional Team (the agenda for the CCA meeting is **always** the same).
- **Do not** specifically discuss the law model in relation to the Clients' situation.
 - Explain that their lawyers will wait until all information is gathered and maximum number of choices is developed before giving legal advice. Lawyer talks about the law model generally, as one of many choices that are available to Clients. Reassure Client that he / she will have

information about “The Law” as part of informed decision making.

- Encourage Client to delay developing or promoting specific positions until all of the information has been shared and all choices explored at Collaborative meetings.
- Urge Client(s) not to negotiate prematurely.
- Review with Clients what they can do to make the Collaboration succeed.
- Ask Client to keep Collaborative Folder (given at Client interview) updated with minutes of meetings and homework and bring to all meetings.
- Ask Client to read again both the Collaborative Commitment Agreement and Expectations of the Clients and Professionals immediately before first Collaborative meeting.
- Educate Client about the need for patience at the beginning of Collaboration.
- Educate Client about the unique and different job descriptions (roles) in Collaboration of the different collaborative professionals.
- *At the conclusion of this meeting, summarize any significant points that should be discussed at the CCA meeting.*

2.1.1.7 **Professionals’ Pre-meeting:** An hour immediately prior to the CCA meeting, the Professionals will meet to plan for this first full Team meeting. This meeting provides an opportunity to build the trust among the Team members that is key to the success for the Clients in Collaboration and to mastering the challenges along the way.

2.1.2 **Conducting the CCA Meeting** – *All of the following should be included but the sequence may vary from case to case.*

Purpose: Elicit Clients’ understanding and commitment to the process; sign documents; discuss guidelines of Collaborative Process; develop a roadmap that reflects unique aspects of Clients’ case.

- 2.1.2.1 Review purpose of meeting. Have flip chart available for notes. Pre-determined agenda is listed on the flip chart.
- 2.1.2.2 Commitment to the process: Clients are asked to express their goals and reasons for choosing a Collaborative Process. This lays the groundwork for their participation in the process.
- 2.1.2.3 Address questions with respect to the CCA that were identified at the Client / CCS / Lawyer meetings.
- 2.1.2.4 Signing of the documents: One CCA for each Client and team member. One designated original held by one of the lawyers or Case Manager: A Consent to Release and Share Information is also signed.
- 2.1.2.5 Develop a roadmap for settlement: Discuss how and when major substantive topics will be addressed to achieve a full settlement: For example, interim (“temporary”) agreements such as care management agreement for parents, financial and estate planning for parents, or distribution of assets.
- 2.1.2.6 Address any urgent concerns that require immediate attention before any

professional meetings. Re-direct any other less immediate issues to appropriate professional meetings (CCS / Lawyer – Lawyer / Financial, CCS and family meeting or meeting with another professional who is acting as a consultant to the team).

- 2.1.2.7 Together with Clients, calendar meetings with appropriate professionals, based on Clients' needs and priorities and how to carry out the roadmap for settlement. Calendar the next team meeting.
- 2.1.2.8 Discuss costs including Clients' ability to pay, identifying payment means, and any concerns Clients may have about the cost of the collaboration. Discuss the team's ability to respond / adapt to those needs without compromising the process. Note which services are being paid by the estate.
- 2.1.2.9 Choose a Case Manager; describe to Clients the function and role of Case Manager. (See Appendix B)
- 2.1.2.10 Check in with Clients as to their experience of the meeting and how it did or did not meet their expectations.

2.1.3 After the CCA Meeting

- 2.1.3.1 Debrief with team members and reconfirm roles
- 2.1.3.2 Debrief with Clients
- 2.1.3.3 Draft Minutes (See 2.2.4.3 below for more detail)
- 2.1.3.4 Follow up / follow through on selection of team.

2.2 General Meeting Protocol (to be implemented as applicable by any combination)

2.2.1 Before Each Full Team Meeting, the Client, CCS and Lawyer meet to help prepare and develop effective strategies for the next full meeting.

2.2.2 Before Each Meeting

- 2.2.2.1 The professionals confer to do the following: (Allow enough time in advance to accommodate additional preparations.)
 - Provide any updated information since the last meeting
 - Determine an agenda.
 - Assign tasks for the meeting. (i.e., who will prepare the agenda and / or minutes, who will bring the food, etc.)

2.2.3 During Each Meeting

- 2.2.3.1 Confirm accuracy or changes needed to minutes from previous meeting.
- 2.2.3.2 Seek Client and / or team feedback about last team meeting.
- 2.2.3.3 Review agenda; ask Clients for additional items or a change in the sequence.
- 2.2.3.4 Report on “homework“.
- 2.2.3.5 Conduct discussions.
- 2.2.3.6 Assign tasks, along with deadlines, for each Client and Collaborative Professional.

2.2.3.7 Schedule next meeting(s) and discuss agenda(s).

2.2.3.8 Ask Clients about any questions or concerns.

2.2.4 **After Each Meeting**

2.2.4.1 Immediately notify appropriate people of action items or significant issues that arose during meeting.

2.2.4.2 Debrief with professional team.

2.2.4.3 Debrief with Clients.

2.2.4.4 Create minutes, including a summary of any tentative agreements reached and homework assigned and distribute them to the Clients and professional team.

- The goal is to distribute minutes to the Clients within five working days of the meeting. Author should distribute minutes within two working days to professionals who were present at team meeting team. Each of whom should respond to the author within two working days of receiving minutes.

2.3 **Specific Meeting Protocols**

2.3.1 *Client / CCS One-to-One Meetings*

Purpose: Assess Client motivation for process. Help Client understand the Collaborative Process and the role of the CCS. Obtain 's views.

2.3.1.1 Before actual working meeting (assumes CCS has been retained), review and sign various documents previously sent to Client, including the confidentiality and any other preliminary documents.

2.3.1.2 First CCS meeting with each Client

- Review CCS role / Review neutrality; how it works in meetings.
- Review Collaborative Process; how meetings are structured.
- Describe purpose, structure and goals of family meetings.
- Elicit Client's "story" of the family situation.
- Listen to understand Client's views not to (influence or change).
- Determine Client's level of motivation for participating in a CP.
 - o Help Client define achievable personal goals, goals for the process and goals for family relationships going forward.
 - o Help Client articulate likely areas of reactivity or dynamics that may interfere with those goals.
 - o Help Client understand the importance of personal responsibility in a Client-centered process.

2.3.2 *CCS First Family Meeting*

2.3.2.1 Prior to meeting

- CCS sends out questionnaires and speaks individually to each family member to determine individual goals and concerns.

- CCS gathers information from each family member and prepares an agenda for meeting with family members to discuss their goals and determine communication guidelines for Full Team Meetings.
- CCS utilizes feedback from family members to create common goals.

2.3.2.2 CCS / Family Meeting Structure

- Set the stage by describing the meeting structure.
- Utilizing a flip chart or white board, begin process by noting common goals shared by family members.
 - o Determine from each family member what each is willing to do to reach the stated goals.
- Create communication guidelines with Clients for reaching personal family goals (i.e., “I” statements, listening to understand, learning patience, determining triggers and developing alternative behaviors, etc.).
- Elicit from Clients their goals / expectations for communication during the process.
- Normalize differences in opinions and conflict inherent in the process.
- Have Clients create and prioritize agenda items for upcoming meeting.
- Determine with family the needs for additional team consultants and whether there is consensus on utilizing services. (This may be an agenda item for the larger Full Team Meeting.)
- Determine if each family member understands and has the skills to actively participate in Full Team brainstorming process or needs additional one-on-one CCS meeting to prepare.
- Check-in with each Client with feedback regarding the meeting.
- Prepare notes and distribute to rest of team (preferably within 3 days).

2.3.3 *Subsequent CCS Meetings*

2.3.3.1 Keep all Team members informed on significant issues.

2.3.3.2 CCS continues to meet with individual Client in self-management skills, effective communication; problem-solving and negotiation techniques, as needed, mindful of the CCS neutral role.

2.3.3.3 CCS continues to be available to other team members throughout the process to facilitate team dialogues and provide relevant information from the clients to the rest of the team.

2.3.4 *Post-settlement CCS Involvement*

- CCS(s) may be involved post-settlement, limited in scope and time, specifically to support healthy communication achieved in the process among family members and related to the issues in the process.

- Should the family need on-going therapy, the CCS is obligated to provide appropriate referrals and should not assume the role of family therapist or work with the family over an extended period of time.
- The CCS cannot form separate professional relationships with individual participants or family members outside the defined role previously stated in this process.

2.3.5 *Financial Specialist First Meeting with Family*

Purpose: Financial Specialist establishes neutral role; assesses where Clients are financially and emotionally as they begin the process. Sets stage for information gathering.

- 2.3.5.1 FS explains that the purpose of this meeting is only to get better acquainted and gather information.
- 2.3.5.2 FS defines his / her role for the Clients as an educator and neutral facilitator.
- 2.3.5.3 FS explains the process, timeline, and underscores his / her neutrality and the benefits to Clients while addressing the Client needs, concerns and urgent issues.
- 2.3.5.4 FS explains the purpose of separate meetings with individual Clients. Clients decide whether to consent to such meetings.
- 2.3.5.5 FS listens to Clients and acknowledges their perspectives without expressing opinions or evaluation.
- 2.3.5.6 Questions about specific outcomes and discussions of ultimate solutions are deferred. Before decisions are made, a full picture of all considerations, of which financial data is only a part, must be developed.
- 2.3.5.7 FS requests information to assist Clients in understanding financial complexities of their case.
- 2.3.5.8 FS explains the Client responsibilities and disclosure requirements.
- 2.3.5.9 FS explains the necessity for a plan to finance the process (whether Collaboration, litigation or alternative) and the guidance that FS provides in developing their plan.
- 2.3.5.10 FS discusses Clients' expectations with respect to cost of Collaboration and budget for payment.
- 2.3.5.11 If not already done so, review retainer agreement.

2.3.6 *Individual Meetings of Client with Financial Specialist*

- 2.3.6.1 Review the Client's understanding of the process, including FS' role.
- 2.3.6.2 Explore financial concerns of the Client.
- 2.3.6.3 Review financial information with Client.
 - Explore history of family money management.
 - Evaluate level of financial literacy.
 - Evaluate level of financial anxiety.
 - Evaluate level of financial trust / distrust.

- Explore expectations about inheritance.
- Explore level of care appropriate for parents and available financial resources.

2.3.6.4 Encourage and support the value of the other Professional Team members.

2.3.6.5 End the meeting with confirmation of Client's to do list, summary of timeline for report, and reminder of upcoming meetings.

2.3.7 Preparation for Presentation of Financial Information

2.3.7.1 In consultation with Lawyers and / or team, FS will assist to assess the need for specialized, financial professionals such as: business appraiser, realtor, real estate appraiser, real estate finance professional, income tax advisor, estate planning Lawyer / advisor, vocational advisor, financial planner, insurance advisor, elder law specialist, geriatric care manager, Medi-Cal consultant, etc.

2.3.7.2 Follow up with Clients for verification of facts and / or possible missing information as needed.

2.3.7.3 FS to meet and / or confer with lawyers and / or full team (as indicated by case) to set agenda and strategize.

2.3.7.4 Determine who will send worksheets of financial data to Lawyers to complete and process Disclosure Forms as necessary.

2.3.7.5 The FS provides a draft summary report that includes a financial overview along with stated goals and concerns. (The draft report is an evolving document. It is important to review / revise the report as necessary before each full team meeting.)

- The FS provides the preliminary summary report to the Clients to review for accuracy. Clients' goal is to understand and agree to the content.
- Once reviewed by the Clients, the summary report is circulated to the Full Team.
- The FS will scan all back up documentation and provide a copy to each Lawyer for legal sufficiency purposes.
- Option development should be deferred until information gathering is essentially complete.

2.3.8 Presentation of Draft Summary Report to Full Team

Purpose: Present, discuss and ensure understanding of financial data; determine missing elements; revise roadmap for settlement.

2.3.8.1 FS facilitates meeting and presents draft report.

- The Clients set the priority of which questions for settlement should be addressed and in what order. Brainstorming the solutions is done separately.
- Determine what, if any, further information needs to be gathered or tasks undertaken to prepare for brainstorming solutions.

2.3.9 Mid-case Review Conference by Professional Team

Purpose: Review status of case and consider further steps.

2.3.9.1 Set the agenda and agree on pre-work.

– Pre-work may include:

- Debrief of Clients by Case Manager / other Professional Team members about experience to date. (Pace, perceived value, cost / benefit, what would Clients want team to know, etc.)
- Review of meeting minutes.
- Preparation and review of chronology of significant events in case.
- Reflect on parties and system dynamics.
- Reflect on your functioning as a team member.
- Reflect on team functioning.
- Reflect on what has worked well and what needs to be done differently.
- Check with Professionals regarding Clients' fees to date and estimate of cost to complete.

2.3.9.2 Review the case.

2.3.9.3 What is working?

2.3.9.4 What needs to be done differently?

2.3.9.5 Upcoming concerns

2.3.9.6 Check in on the team:

- How is the team working together?
- Is there any isomorphism?
- Each team member to talk about his / her contribution to function / dysfunction in team and case

2.3.9.7 Next steps – brainstorm strategies / interventions

2.3.9.8 Discuss what, if at all, to charge Clients for this meeting

2.3.9.9 What will be communicated to the Clients?

3 DEVELOPING OPTIONS

Purpose: Provides a structure and sequence to conduct the essential brainstorming part of the team meeting.

3.1 Preparation of Clients:

3.1.1 Before Full Team meeting to develop choices, CCS prepares the Clients about the “brainstorming” process.

3.1.1.1 Fully explain the “brainstorming” technique in advance. Assure Clients that they will have a full opportunity to evaluate all suggestions after all ideas are listed.

3.1.1.2 Assess Clients' capacity and readiness for brainstorming.

3.1.1.3 Prepare Clients to listen fully, both to understand and to feel understood, by the other parties. This is an opportunity to problem-solve with the Clients.

3.2 Professional Pre-Meeting:

3.2.1 *Choice development* should not begin until all information and documentation has been substantially discussed and its sufficiency accepted by the Clients.

3.2.2 *Discuss when and how lawyers will provide legal information.*

3.2.3 *Discuss how FS will facilitate meeting.*

3.3 Brainstorming Meeting(s)

3.3.1 *Record agenda, information, choices, evaluation of choices (pros and cons) and any agreements* Clients reach. (Use of flip charts or other visual aids is critical.)

3.3.2 *Get a clear picture of what each Client wants for:*

- Self
- Individual family members
- Individual relationship with each member
- Family as a whole

3.3.3 *Encourage all ideas without judgment* and remind the Clients that ideas will be evaluated later.

3.3.3.1 Ask Clients to offer all ideas, without regard to whether or not an idea could "work". (The Clients and professionals must be sensitive to effective use of humor here.)

3.3.3.2 Offer ideas from professionals only *after* Clients have no further ideas and professionals have worked hard to tease ideas from Clients.

3.3.3.3 When stuck or unclear ask: "Would you tell me more about that?"

3.3.4 *No ownership* – an idea may be offered by anyone, even if that person does not believe in it.

3.3.5 Only *after* all the options are listed, *discuss choices*. The following are typically among the topics to be addressed:

- What are the "pros and cons" of each idea, regardless of whether or not it would be the choice of one Client?
- What variations on or blending of ideas might work, regardless of whether or not they would be the choice of one Client?
- Impact on elderly parents /adult children / family as a whole.
- Note how the ideas are (or are not) consistent with the Clients' stated goals.
- The law as it may apply to these Clients particular circumstances. This is the time in the Collaboration that is often optimal for this discussion and should be done in the presence of the full team.

– Assumptions that may be used including health care costs of parents, rates of inflation, interest, and appreciation, future income amounts. These, along with other considerations may factor into settlement choices and projections.

3.3.6 Choice development often leads to *additional homework or information gathering*.

3.3.7 *Evaluate and / or Narrow choices*

3.3.7.1 Will this idea work? Why or why not?

3.3.7.2 Do the Clients need further analysis, including creation of financial models, by the FS or other involved consultants such as Eldercare Specialists.

3.3.7.3 From among the workable choices, which choice(s) would each be willing to consider?

3.4 Additional Data: Gather additional data and analysis as needed.

3.5 Choice Development: Follow-up: Full Team Meeting

3.5.1 Clients initiate the agenda.

3.5.2 Review choice development and brainstorming from previous meeting.

3.5.3 FS provides follow up feedback.

3.5.4 Evaluate choices.

3.5.5 Reach agreements.

3.5.6 Clients reach agreements and agreements are recorded on visual aid as Clients reach them.

3.5.7 Repeat as necessary for each agenda item.

3.6 Clients' Original Goals. Review Clients' original goals to confirm that all questions are answered and agreements address the Clients' goals.

3.7 Meeting Minutes. Review meeting minutes to confirm that all questions are answered and agreements are consistent with Clients' mission statement and address their goals.

4 FORMALIZING INTERIM AGREEMENTS

Purpose: To memorialize near-term solutions to preserve status quo and address immediate issues, generally subject to reconsideration.

4.1 Preliminary Considerations

4.1.1 When appropriate, agreements on which Clients expect to rely should be in writing and signed by the Clients.

4.1.2 Recognize that interim agreements are based on limited information and may be modified as information is developed or circumstances change.

4.1.3 Educate Clients about the purposes and limitations of interim agreements.

4.1.4 Clarify under what circumstances interim agreements are subject to reconsideration. Consider time-limited agreement, if necessary, to achieve resolution of pressing issues.

4.2 Financial, Emotional and Legal Implications

- 4.2.1 Ensure that Clients understand the implications, including legal consequences, of having or not having written agreements, if case falls out of Collaboration.
- 4.2.2 Be sensitive to how the presentation of legal information may shape or limit future discussions about the same or related concerns. For example, avoid referring to “rights” and “entitlements”.

4.3 Legally Binding Agreements. If any agreement reached during the Collaborative process is intended to be or necessary to be legally binding and / or enforceable, it should be reduced to writing and signed by the Clients.

4.4 Drafting Agreements. Any such agreement should be drafted by the appropriate professional and distributed first to his / her Collaborative counterpart (and any other team member(s) as appropriate), for review and / or comment prior to distribution to the Clients for review and signature.

4.4.1 *Lawyer Review:* If not initially drafted by a Lawyer, all formal agreements should be sent to the lawyers for review before distribution to the Clients.

4.4.2 *FS Review:* Agreements with financial implications should be sent to the FS for review before distribution to the Clients.

4.5 Distribution. Once signed, any formal agreement should be copied and distributed to the entire team.

4.6 Non-confidentiality. Remind Clients that once an agreement is signed, it is no longer confidential.

5 CONCLUDING THE PROCESS

5.1 Completing Settlement

5.1.1 Preparation of agreements.

- 5.1.1.1 Once agreement is reached on all important substantive terms, Lawyers, CCS and FS and other appropriate professionals should discuss which terms to include in which documents. (e.g., Will there be a separate Parent Care Plan?) If so, which parent care terms will appear in the Settlement Agreement.
- 5.1.1.2 Lawyers review standard terms in Settlement Agreement that have not been discussed with Clients and create an agenda for specific items to be discussed.
- 5.1.1.3 Discuss / decide who will prepare which documents, to whom they will be circulated, and timeline for preparation. (i.e., General waiver of claims, audit of tax returns, Stipulated Judgment, Parent Care Plan, Judicial Council Forms, Deeds, etc.)
- 5.1.1.4 All draft documents should be distributed first to the collaborative counterpart and any other professional team member, (e.g., Settlement Agreement to FS, as appropriate), for review and / or comment prior to distribution to the Clients for review.
- 5.1.1.5 Assign responsibility to ensure timely completion and distribution of agreements.

- 5.1.2 Team meeting to review with Clients and receive input regarding terms, discuss letter, spirit and meaning of agreements.
 - 5.1.2.1 Review all related documents.
 - 5.1.2.2 Discuss and assign responsibility to finalize settlement and complete tasks to implement settlement.
 - 5.1.2.3 Discuss process for addressing future issues or modification of agreements.
 - 5.1.2.4 Clients are offered the opportunity to come together to sign the final agreement as a way of symbolically ending the dispute and marking the beginning of a new phase of their lives. Many clients include short readings or statements as part of the ceremony.
- 5.4.2 Partial Agreement.
 - 5.4.2.1 Draft partial agreement (Settlement Agreement, Stipulated Judgment), and review and sign as above, and discuss with Clients choices to make to resolve remaining issues.
- 5.4.3 No Agreement
 - 5.4.3.1 If Clients are unable to reach any agreements, explore with them ADR methods to resolve and move forward (i.e., mediator to attend meeting, consult with outside Collaborative professional, second opinion from litigator, etc.).

5.5 Termination

5.5.1 By Client

- 5.5.1.1 Lawyer for _____ has signed an Election to Terminate form, files original with Court and serves all team members with copy.
- 5.5.1.2 If unable to obtain Client signature, provide written notification to team and court.
- 5.5.2 If process terminates by litigation or other definitive action by Client and unable to obtain Client signature on Election to Terminate form, all professional team members should prepare a Notice of Withdrawal and send to full team.
- 5.5.3 Professional role post-termination
 - 5.5.3.1 Facilitate transfer of case to new counsel or new process. (ADR, litigation, facilitator's office, etc.)
 - 5.5.3.2 This is intended to be short-term only and to provide immediate options regarding emergency matters only.
 - 5.5.5.3 Excludes, without limitation, ongoing legal advice, ghostwriting or instructing on how to prepare and file pleadings, serving as mediator for participants, or facilitating ongoing negotiation.

5.5.4 Withdrawal

- 5.5.4.1 By Lawyer, CCS, or other Team member
 - Prepare and send Notice of Withdrawal to full team.

- Reason for withdrawal does not need to be disclosed.
- Withdrawal by any professional does not terminate process.

5.6 Debrief

5.6.1 Professional team will meet, at no charge to Clients, to review the case, including discussion of what worked, what didn't work, and related questions.

Protocols and Appendices are Works in Progress:

Many of the documents referred to in the body of this document are in your training materials to be adapted to Trusts and Estates work.

APPENDIX A – Description of Professional Roles

1. FINANCIAL SPECIALIST

- A.** The FS is a neutral, 3rd party evaluator whose function is to:
- Gather, organize, and summarize all financial information.
 - Educate the Clients and the Team.
 - Prepare balance sheet of Family Finances (Assets, Liabilities).
 - Determine current cash flow of the estate (Income minus Expenses).
 - Use this information to provide the basis for financial settlement scenarios.
 - Demonstrate the estimated financial and tax implications for both near-term and long-term analysis via financial modeling tools.
- B.** The FS is not invested in the outcome and is focused on facilitating the collaborative process from a neutral perspective.
- C.** The FS may conduct separate meetings with each Client in order to facilitate greater literacy and understanding for that party but only with the proper disclosure and agreement in advance.
- D.** The FS is prohibited from working with Collaborative Clients after a collaborative agreement has been completed. (This applies to doing business with the FS' firm.)
- E.** The FS does not sell financial products or other services to the Clients.

2. COMMUNICATION SKILLS SPECIALIST (CCS):

- A. Works as a neutral with the participants to:**
- Create a safe context for each participant to feel understood.
 - Help each participant to be able to express genuine understanding for other's views.
 - Build on that level of understanding to reveal underlying hopes, goals and concerns of each participant
 - Identify and prioritize those concerns for in-depth conversations to elicit common interests.
 - Assist in communication about difficult and emotional topics.
 - Assist clients in managing reactivity to stressful situations.
 - Work collaboratively with Clients, their Lawyers and other involved professionals to enhance communication and reduce misunderstandings.
 - Develop and support the Collaborative Process toward resolution by increasing the effectiveness throughout the case.
 - Help Clients gain skills for effective brainstorming.
 - Help Clients learn problem-solving skills.

B. CCS works with the Team by:

- Meeting with each Client, Lawyer before the large Team Meetings to gain a deeper understanding of the Client's and Lawyer's views.
- Help both prepare for the larger Team Meeting to be the most effective in conveying those views to the other participants.
- Help both Client and Lawyer understand how other participants may view the same issues.
- With the Lawyer and Clients together, create a context where agreements are made through understanding.
- Participating in team meetings either by facilitating or jointly facilitating with the FS.

3. LAWYER:

A. Identifies Interests (Counsels):

- Listens carefully to hear feelings and views feelings as relevant elements that need to be acknowledged and managed by professionals.
- Assists in gaining understanding of what is most important (goals, priorities, hopes, concerns, etc.).
- Identifies Client's interests and assists in separating interests from positions.
- Assists in identifying what is possible and what is useful.
- Emphasizes importance of ongoing trust relationship among professionals.
- Listens carefully to each participant and communicates his / her understanding to the Client.
- Checks with the Client to make sure his / her view was understood.

B. Guides Process:

- Presents dispute resolution choices.
- Equal participant in team approach
- Collaborates with other professionals towards mutually beneficial and acceptable outcome.
- Maintains and explains Lawyer's role as counselor, process guide and legal advisor.
- Uses and role models interest-based negotiation, rather than taking positions.
- Coordinates and choreographs negotiations.
- Assists in gathering information.
- Assists in creating and evaluating choices.
- Assists in negotiating an acceptable agreement.

C. Acts as Legal Advisor

- Provides Client with understanding of the law as a part of identifying choices available (rather than entitlements).
- Enables Clients to make informed decisions.
- Ensures Settlement Agreement is legally sufficient and binding.
- Provides independent legal advice to Client.
- Prepares legal documents as necessary (Petition, Judicial Council forms Settlement Agreement, etc.).

4. CASE MANAGER

A. Qualities

- Ability to communicate effectively and respond to the needs of the case or the other team members.
- Able to detach from the problem and keep the system in mind.
- Likes troubleshooting

B. Protocol for Choosing

- Selected at the first team meeting through a discussion by the professional team members.
- Most often will be a mental health professional who is trained in case management.

C. Discipline

- Usually the CCS is the Case Manager since they are trained in systemic and team approaches. The other team members can, however, designate any team member as the case manager.

D. Responsibilities

- Primary responsibility is to keep the case moving forward and respond in a timely manner to the concerns of team members / clients.
- Discusses only process questions with team members and clients Does not offer solutions to problems, only process (the “how” versus the “what”).
- Keeps other team members informed when problems emerge that might affect the process: alerts them early on before they become major issues.
- Educates clients and team members on role and availability of the Case Manager.
- May, upon request of team members, serve as a facilitator for helping resolve team issues.
- Coordinates and facilitates team meetings / phone bridges.
- May fulfill other responsibilities as requested by the team. (For example: record keeping, notes of all meetings, dissemination of notes to all team members.)
- Remains available to clients throughout the case as a conduit for information to the rest of the team.

E. Assists in Creating the “Roadmap” at the First Full Team Meeting

- Creates, with the Team, future meetings (3 month window)
- Creates, with the Team, a list of tasks and timelines for the tasks (3 month window)
- Creates a computer tracking system

F. Assists in Implementation of “Roadmap”

- Checks in with Clients / Team on progress of tasks
- Checks in with Team members on progress and updates
- Shares pertinent information with Team members /Clients
- Ensures that no unplanned time lags negatively impact the case
- Checks with Team members on preparation for the next Full Team Meeting

APPENDIX B – IMPORTANT LEGAL PROCESS ISSUES

A. Discussion of the Law. Lawyers discuss and provide legal information, and advice, any applicable interpretation of the law, and how the law might impact on any of the choices in the presence of the full team, preferably at the end of brainstorming of choices. (Based on the circumstances of the case, this may be done earlier.)

- It is particularly important to use collaborative language here.
- Note that, “the law sets the lowest standard of acceptable conduct”.
- The law is a safety net if the Clients are unable to determine the best solution for Clients, their parents and themselves.
- Law is a box that limits only the judge. Clients and lawyers can go as far outside that box as they want, so long as they know and understand the consequences.
- Do not speak in terms of entitlement and rights; it sets the case up for failure.
- Review the law as only one source of an objective, reasonable range of outcomes.
- Recognize that the law has limited scope and flexibility and represents only one of many possible outcomes and may not generate the best outcome for the Clients.
- Do a joint Lawyer presentation of the “law” to the Clients in order to provide information, not ammunition.
- In light of the information presented, let the Clients decide how they want to solve a problem.

B. Legal Issues. Various issues may need to be considered and perhaps discussed with Clients and or team during the process. These and other issues arise under the larger question of “how and when to discuss the law”. Collaborative lawyers must balance the principles of collaboration as a Client-centered process that avoids having legal issues drive the discussion versus protection of interests in the event a case falls out of collaboration.

- Enforceability of oral agreements: Agreements made at meetings are non- enforceable unless in writing and signed by the participants.
- Written Agreement recommended
- Filing appropriate court documents (probate/trust)

Note: An effective use of Lawyer time may be to have a relatively brief procedural four- way meeting before the Sign-on meeting. **No** discussions of the substance (content) or any issues of the case may be addressed in this meeting. The only goal of the meeting is to describe legal procedures common to every case.

Wills, Trusts, Guardianship, and Probate: Collaborative Magic Across the Lifespan Bibliography

Abney, S.R. (2011). Civil Collaborative Law: The Road Less Travelled. Trafford.

Abney, S.R. (2019). Civil Collaborative Practice: The New Way to Do Business, in Cordover, A. B., & Mosten, F. S. and Cordover, A.B. (Eds.). Building a Successful Collaborative Family Law Practice. American Bar Association.

American Bar Association, Center for Professional Responsibility (2020). Model Rules of Professional Conduct, Retrieved From:
https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

Draft Trust and Estates Collaborative Full Interdisciplinary Team Protocols (Adapted from CPSV / CPSMC Draft Protocols for Family Law). Retrieved from:
<https://www.collaborativepractice.com/system/files/T%20and%20E%20Protocols-2018.docx>

Jenkins, J. (July 2020). The sandwich generation on wheels. Retrieved from:
<https://openpalmLaw.com/the-sandwich-generation-on-wheels/>

Juetten, M. (March 2021). Why are only family lawyers using collaborative law? ABA Journal, Family Law Column, Retrieved From:
<https://www.abajournal.com/columns/article/evaluating-collaborative-law-outside-of-matrimonial-matters>

Emotion And Litigation: Will Disputes Shown To Have Marked Effect On Clients' Mental Health, (October 2019), Retrieved from:
<https://www.irwinmitchell.com/news-and-insights/newsandmedia/2019/october/emotion-and-litigation-will-disputes-shown-to-have-marked-effect-on-clients-mental-health>

King County Bar (March 2011). Collaborative Process: Probate & Trust Administration, Retrieved from:
https://www.kcba.org/kcba/streaming/Documents/COLLABORATIVE-Collaborative_Process_Probate_Mar2011.pdf

Love, K. (September 2020) What is Collaborative trusts and estates practice? CPSD Admin, Retrieved from: <https://www.collaborativepracticesandiego.com/what-is-collaborative-trusts-and-estate-practice/>

Mason, R.J., Press, J.A.C., Crist, J. (2010) Emotional and Psychological Aspects of Probate Litigation, Retrieved from: <https://www.rodnejmason.com/practice-areas/emotional-and-psychological-aspects-of-probate-litigation/>

National Conference of Commissioners on Uniform State Laws (2009) "Uniform Collaborative Law Act," Hofstra Law Review: Vol. 38: Iss. 2, Article 2. Retrieved From: <http://scholarlycommons.law.hofstra.edu/hlr/vol38/iss2/2>

Karl Pillemer, David Burnes, Catherine Riffin, Mark S. Lachs (2016). Elder Abuse: Global Situation, Risk Factors, and Prevention Strategies, Gerontologist. 2016 Apr; 56(Suppl 2): S194–S205. Retrieved From: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5291158/?msckid=d011122baa2711ec9c2612c83d33314b>

United Nations, Department of Economic and Social Affairs, Population Division (2019). World Population Ageing 2019: Highlights (ST/ESA/SER.A/430). Retrieved From: <https://www.un.org/en/development/desa/population/publications/pdf/ageing/WorldPopulationAgeing2019-Highlights.pdf>