

SCREENING AND ASSESSMENT ISSUES

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Initial Interview

Remember, just as we get only one chance to make a first impression, so it is with that first time we meet with a prospective client. The significance of our first meeting with someone who is considering whether or not to hire one of us to assist them in resolving a family law matter cannot be overstated. There is a lot of important work to be done during this initial meeting. We must be mindful of the variety of emotions a prospective client brings with her or him to that first meeting. While time is of the essence, we must be careful not to rush through this first encounter with a prospective client. It will serve the prospective client, as well as ourselves, for us to be organized, prepared, and efficient in the way we conduct the initial interview. It is likely our first or second opportunity, depending on whether we first spoke with this person on the telephone to schedule the initial interview, for us to begin to model the specific behaviors called for in the Collaborative Process.

We think it is reasonable to allow approximately 1-1/2 - 2 hours for the first meeting with a prospective client. Early in this meeting a concise explanation of the different dispute resolution options is presented. In order for someone to make an informed choice as to the process a prospective client believes is best-suited to his/her case, our job is to describe these options in such a way that their differences are highlighted in a meaningful way that lends itself to be more easily understood.

Once we have explained the dispute resolution continuum, our job shifts to a combination of information gathering and education. We want to obtain a good working knowledge of who is in this family; and, begin to find out how it works. Some useful questions, include:

- 1.) What is the general emotional tone of the family?
- 2.) What does conflict look like in the family?
- 3.) Where is the family in the separation process? What are the challenges of the separation?

- 4.) If there is a child or children, how is the child or children doing?
- 5.) What is the child or children like?
- 6.) What are the concerns about the child or children?
- 7.) How is the parenting working? Who does what?
- 8.) What would a successful outcome look like for the prospective client?
- 9.) How comfortable is the prospective client with the idea of sitting in a room with the other party and discussing their situation and reaching the best solution for their family?
- 10.) If there is a child or children, do the parties have the same or similar approach to making decisions concerning their child or children?
- 11.) Has the other party hired an attorney?
- 12.) Have the parties made any agreements yet? If so, is any such agreement, negotiable?

In the initial interview, when we ask information seeking questions, it is useful to do so by asking open-ended questions to assess the prospective client's ability to work well in the Collaborative Process. In talking about the advantages/benefits of the Collaborative Process, we can begin to educate the prospective client as to a more effective way to communicate with the other party both during and after their legal matter is resolved. This includes such suggestions as:

- 1.) Recognizing the futility of arguing.
- 2.) Speaking only for yourself.
- 3.) Avoid using language about the other party that is critical, judgmental, accusatory, blame-oriented, sarcastic, or inflammatory.
- 4.) Listen fully while the other party is talking; instead of, thinking about what you are going to say next.
- 5.) Ask for more information on something that is not clear to you.
- 6.) You can say "I understand" without meaning "I agree".
- 7.) Avoid using the words "fair" and "unfair". Words like "acceptable", "workable", "agreeable", and "unacceptable", "unworkable", "not

agreeable” are preferable because they allow room for reasonable people to differ.

- 8.) The goals of communication with the other party are to be respectful; acknowledge what was said; and move the conversation forward.

Whether or not someone is suited for the Collaborative Process depends on a number of variables. Your experience as a practitioner is going to have an effect on the type of clients you will work with successfully. A prospective client’s level of self-awareness, willingness to engage in creative problem-solving, willingness and desire to move to a resolution, and ability to communicate, will all affect the degree of difficulty and likelihood of success of a Collaborative case. An achievable goal for us is to provide the most efficient and proficient interdisciplinary team for any given case. In building a successful, interdisciplinary team it is important to recognize and identify which area, legal, mental health, children, financial, is likely to be the most difficult; and, plan accordingly from the start. Screening a prospective client out of the Collaborative Process for any reason may push that party into a model which may be equally unsuited to the needs of the case and the parties. On the other hand, agreeing to work with a party and a case in the Collaborative Process that is beyond our skill level, may also prove unsuccessful.

SCREENING COLLABORATIVE LAW CLIENTS

- Have both parties made a clear choice for the Collaborative option after being fully informed about the complete menu of options for handling a divorce?
- Is there a commitment to full disclosure by each party and is there trust of each other's commitment?
- Does either party have concerns about being able to negotiate with the other party in the same room?
- Regardless of whether either party has concerns about being able to negotiate with the other, does the Collaborative Professional have concerns?
- Is there any serious mental illness or substance abuse?
- Can both parties contain their emotions enough to have productive discussions with each other and with any of the Collaborative Professionals working on the case?
- Are both parties willing to involve other team members as needed such as coaches, child specialist, financial professional?
- Are there any serious power and control issues?
- Is there any history of intimate partner violence?
- Are both parties willing to accept the finality of divorce?
- Are both parties able to let go of the past and focus on the present and future?
- Are both parties willing to seek what is best for their family overall as opposed to maximizing their individual advantage?
- Do both parties understand that an outcome best for the family as a whole includes helping the other party achieve his/her reasonable goals?

- Are both parties focused more on fixing the problem than on fixing blame?
- If there are children, do both parties value having a future co-parenting relationship that will benefit their children at least as much as they value maximizing their own gain in the divorce?
- Do both parties value maintaining a productive working relationship after the divorce?
- Do both parties want to protect their children from harm due to parental conflict?
- Are both parties willing to follow through with tasks and assignments?
- Is there any concern that either party may be using the child/children as a weapon?
- Is there any concern about either party hiding assets?
- Is there any concern about either party squandering assets?

- Do both parties have friends or extended family in common that they want to maintain good relationships with after the divorce?
- Do both parties have ethical or religious values that emphasize personal responsibility and handling conflicts with integrity?
- Do both parties value autonomy and controlling the process themselves as much as possible?
- Do both parties want creative and individualized choices as opposed to “off the shelf” options?
- How have parties managed conflict so far in their relationship?
- How have the parties made financial decisions so far?

- How have the parties made childcare decisions so far?
- How much does each party know about the family's financial assets and liabilities?
- How much has each party been involved in managing the family's financial assets and liabilities?
- How much has each party been involved in making decisions about the children?

SCREENING YOURSELF

- Even if these parties chose the Collaborative option, do you think that is an appropriate choice for them?
- Can you establish a good working relationship with both these parties, whatever your professional role may be in the Collaborative Process?
- Can you establish good working relationships with the other Collaborative Professionals in this case?
- Are you competent to deal with the issues in this particular case?
- Does the current status of your professional practice allow for the time and energy for you to fully invest in a Collaborative role in a case at this time?
- Are there any special issues or personalities involved in this case that trigger “hot button” issues for you that might impair your ability to function effectively?
- Do you have any personal bias or political agenda you might be at risk to impose on this family?

POSSIBLE SCREENING RED FLAGS

What would you do if either party said:

- I am scared of the other party.
- I think the other party drinks too much.
- I think the other party is trying to keep the kids away from me.
- There has been violence in our marriage.
- I'm afraid that if we are in a room together the other party will just yell at me.
- I think the other party is telling the children too much about our problems.
- I think the other party may have a serious psychological disorder.
- I don't think the other party fully accepts that I intend to divorce him/her.
- Do I really have to disclose everything? I've got a little money on the side I never told the other party about.
- How can I trust that the other party's attorney will truly be a collaborative partner, and won't be a shark who devours me and my "nice" attorney?