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COLLABORATIVE LAW INSTITUTE OF TEXAS, INC.

PROTOCOLS OF PRACTICE FOR COLLABORATIVE MENTAL HEALTH PROFESSIONALS

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Protocols of Practice for Mental Health Professionals Involved in Collaborative Family Law.

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Protocols of Practice for Mental Health Professionals Involved in Collaborative Family Law.

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Protocols of Practice for Mental Health Professionals Involved in Collaborative Family Law.

Introduction

Mission Statement: Philosophy of Practice

Collaborative law offers enlightened approaches to families in transition. Mental health professionals, by virtue of their training, knowledge, experience, and outlook, are uniquely suited to provide critical contributions to the success of collaborative law cases.

As a new frontier for mental health professionals, collaborative law carries hopes, opportunities, and hazards. The risks and uncertainty of navigating in uncharted territory temper the lure and excitement of new forums for seasoned skills. Without sufficient direction and tools, early enthusiasm for pioneering ventures often gives way to insecurity, ambiguity, inertia, and resistance to change. This document is tendered with the hope that it will provide a structure that reduces such risks and maximizes the benefits of the contributions of mental health professionals to the collaborative law process.

Protocols in an evolving field of practice carry their own risks. This document is not an attempt to prematurely standardize the manner in which mental health professionals participate in the collaborative process. This could diminish the opportunity and incentive for innovation and for creative adaptations to unique circumstances. Instead we have sketched a rudimentary map and included some tools to ease the journey into unfamiliar territory. We do not claim to have identified all the best routes or to have captured the complexity of the terrain. But we have drawn on carefully developed principles that have stood the test of time and represent the accumulated wisdom of our professions.

The protocols that follow are designed to respond to issues that are likely to arise when mental health professionals become involved in collaborative law cases. We attempt to define some parameters of such involvement. These include the backgrounds that prepare professionals for this type of work, some general practices and procedures that have proved valuable, and the mental health professional's role when the collaborative process has ended either with or without successful resolution of disputes. Where applicable, the protocols incorporate, as aspirational guidelines, relevant ethical precepts that have evolved in our respective professions.

It bears repeating that the ideas and experience reflected in these protocols are not intended to replace the creativity of the individual clinician or to channel all practitioners into an identical mold. Rather our expectation is that this document will serve as a guidepost inviting refinements, corrections, new directions, excisions, and leaps forward. When addressing issues about which disagreement can be expected, rather than advocate for a particular model of practice, we present various alternatives. Such an approach provides the type of open-ended guidance that allows for revision in the light of future experience and research.

If this manual serves as a reference providing general direction while accommodating many pathways to practice, if it makes the venture into collaborative law less of a daunting challenge and more of an exciting journey, then it will have accomplished its mission.

CHAPTER 1
GENERAL PROVISIONS

SECTION 1.01. DEFINITIONS. In the protocols:

(1) A "mental health professional" is an individual licensed as a marriage and family therapist, professional counselor, psychiatrist, psychologist, social worker, or specialist in school psychology.

(2) A "client" is a party to the legal matter who signs a collaborative law agreement.

(3) An "allied professional" is an individual engaged as a neutral by the parties to assist in the collaborative law process. Financial professionals and mental health professionals are examples of allied professionals.

(4) "Collaborative lawyer" means a lawyer who represents a client in a collaborative law matter.

(5) A "participant" means any individual involved in the collaborative process as a collaborative lawyer, client, other involved family member, mental health professional, financial professional, or other allied professional.

(6) "Collaborative law" means a process wherein the parties and their lawyers sign an agreement to negotiate in good faith to settle a legal matter without resort to a court's imposing resolution, to provide all relevant information and to engage only neutral experts and allied professionals to assist in resolving issues. The written agreement must provide that the lawyers shall withdraw if the matter requires litigation. The agreement may contain other provisions not inconsistent with the foregoing requirements.

(7) A "collaborative team" includes the clients, collaborative lawyers, and allied professionals.

(8) "Neutrality" means not being aligned with or favoring one participant against another. Neutrality does not mean the absence of an opinion regarding a specific issue.

(9) A "communications specialist" is a mental health professional who facilitates effective communication between participants within the framework of the collaborative process and interest-based negotiation.

(10) "Divorce coach" is equivalent to "communications specialist."

(11) A “neutral expert” is a mental health professional jointly engaged by the participants to provide impartial information, opinions, or recommendations regarding specific issues to be resolved.

(12) A “child specialist” is a mental health professional who has training in child development and knowledge of the particular factors involved in resolving child-related matters related to divorce.

(13) A “parenting coordinator” is a mental health professional who facilitates clients in resolving issues related to their children and their co-parenting relationship.

(14) A “Neutral Allied Mental Health Professional Participation Agreement” is a contract between the clients and the mental health professional that defines the mental health professional’s involvement in the collaborative law matter.

SECTION 1.02. APPLICATION OF THE PROTOCOLS. The Collaborative Law Institute of Texas intends for the protocols to be used voluntarily by mental health professionals involved in the collaborative process as aspirations to practice. These protocols are subordinate to the rules of professional conduct governing each mental health discipline.

CHAPTER 2
ROLES OF MENTAL HEALTH PROFESSIONALS AND MODELS OF PRACTICE

Introduction

Communications training. Negotiation skills. Improved parenting. Management of difficult emotions. Psychological assessment. These are some benefits, among many, for which collaborative teams may engage a mental health professional to help family members resolve divorce issues.

In a traditional adversarial divorce, spouses may battle over win/lose demands and positions in their marital estates. Capable lawyers may counsel their clients further by exploring the parties’ interests in settlement conferences or in mediation.

In contrast, collaborative law helps a divorcing couple to cooperatively address their interests in their marital estates. But collaborative law also helps spouses address their “relational estate.” This less visible estate includes family relationships, shared friendships, the spouses’ co-parenting relationship, and the maintenance of self-respect and dignity in their post-divorce relationship (Tesler, 2001). More often than not, the family’s relational estate issues, particularly in the throes of a divorce, color the positions spouses present to their lawyers and prevent the spouses from adequately addressing their true interests.

The collaborative law process is both problem-solving intensive and relationally intensive while helping the spouses address the interests of their two estates. The spouses’ abilities to problem-solve their interests are vital. A breakdown or deficit in communication

or negotiation skills in either spouse or either lawyer will quickly frustrate the collaborative law process. In addition, a lack of essential information—for example, a child's special needs or the extent of a parent's disability—may impede effective problem-solving.

But the collaborative law process is also relationally intensive. The relational estate is particularly strained during a separation and divorce. In most instances, the decision to divorce is not mutually agreed upon. Typically, one spouse wants to leave the marriage while the other wants the marriage to continue. Consequently, the spouses are likely to be at different places emotionally during the separation, and neither is satisfied with how the other defines the relationship. And the greater the difficulty either spouse may have managing the conflicting feelings of love, anger, and sadness, the more intense the post-separation conflict may become.

The lawyer-client relationship is also part of the collaborative law relational mix. The client may have questions about whether the collaborative law process is appropriate for her divorce. Or the client may believe her lawyer is not assertive enough with the other lawyer or that her lawyer does not adequately articulate her interests. The client may also come to believe that her lawyer cannot adequately manage her spouse, raising issues of trust during the vital problem-solving meetings.

Clearly, much unsaid is occurring during the joint meetings between spouses and their lawyers, much that may go unrecognized until the spouses reach an impasse over an issue that touches a sensitive emotional nerve. Then the collaborative law process may capsize. At such times, a mental health professional on a collaborative law team may be a valuable lifeline if the spouses founder on the shoals of either of the two estates. A mental health professional also may help the spouses and their lawyers anticipate problems that arise from problem-solving or relational issues.

How does the mental health professional fit—practically and conceptually—on the collaborative law team? Practically, collaborative law proponents have offered several models for mental health input and consultation. Some of those models will be described in this chapter. All have proven useful to collaborative law practitioners. The collaborative law goal is to help a couple obtain a divorce in a context that promotes the values of respect and cooperation. Collaborative law principles, reflected in these differing models, advance these values.

Conceptually, collaborative law falls under the umbrellas of therapeutic jurisprudence and preventive law, the integration of which has been characterized as "a new model for practicing law" (Winick, Wexler & Dauer, 1999). Therapeutic Jurisprudence (TJ) focuses on the law's impact on emotional life and psychological well-being. It looks at the actual and potential therapeutic and antitherapeutic effects of all aspects of the legal system on the participants in that system—clients, lawyers, judges, and experts (Winick et al., 1999). For example, the therapeutic effects in the relational estate in a divorce might include acceptance between the client/spouses of the divorce and a commitment to co-parent in a manner that addresses the child's best interests; antitherapeutic effects of the legal process of divorce on the clients might include exacerbation of the emotional bitterness that attends many divorces and subsequent negative emotional consequences on the children. In sum, TJ is more of a question than an answer, and often is described as a "lens" through which the law can be

viewed. Its advocates simply suggest that we ought to look at the psychological effects of the law on the participants in the process (J.A. Dvoskin, personal communication, December, 2003).

Preventive Law (PL) emphasizes careful client counseling, document drafting, and planning to avoid future legal problems and disputes. PL emphasizes a proactive approach by the lawyer, a client-centered focus, and planning by the lawyer to avoid future costly litigation and reach desired outcomes. PL may best be seen as a set of techniques or strategies designed to reach its goals (Daicoff, 1999).

In sum, TJ provides PL with a theoretical underpinning and an explicit emphasis on humanistic and interdisciplinary values, while PL provides TJ with a set of specific techniques and methods to be used to achieve its goals. Together, TJ and PL provide the theoretical and practical bases for collaborative law (Daicoff, 1999). The mental health professional's fit in this collaborative law framework is obvious. The mental health professional may help the spouses or the team identify emotional issues that frustrate the process and provide useful family information to the spouses. And the mental health professional may help the spouses negotiate their divorce in ways that address the interests of their marital and relational estates. Finally, these interventions will teach the spouses emotion-management and negotiation skills that the spouses may use in their post-divorce interactions with each other to reduce the chances of future relationship or co-parenting problems or litigation.

Daicoff, S. (1999). Making law therapeutic for lawyers: Therapeutic Jurisprudence, Preventative Law and the psychology of lawyers. *Psychology, Public Policy, and Law, 5,* 811-848.

Tesler, P. (2001). *Collaborative law: Achieving effective resolution in divorce without litigation.* Chicago: American Bar Association.

Winick, B.J., Wexler, D.B. & Dauer, E.A. (1999). Preface: A new model for the practice of law. *Psychology, Public Policy, and Law, 5,* 795-799.

SECTION 2.01. MENTAL HEALTH PROFESSIONAL ROLES. Mental health professionals undertake three primary roles in the collaborative process: Divorce coach/communications specialist, child specialist, and neutral expert.

SECTION 2.02. DIVORCE COACH/COMMUNICATIONS SPECIALIST.

(a) As a divorce coach/mental health professionals participate in the following ways:

1. Help the participants:
    a. identify, formulate, and prioritize goals.
    b. identify shared goals.
    c. stay goal oriented and goal accountable.

2. Maximize effective communication by modeling, teaching and encouraging the participants to:
    a. use conflict resolution skills.
    b. use active listening skills.
    c. be respectful.
    d. identify and communicate personal interests.
    e. recognize and respect the interests of the other participants.
    f. identify conflicting interests.
    g. defuse high conflict issues.
    h. manage irreconcilable tensions.
    i. normalize thinking and emotions.

3. Assist the participants in negotiating by modeling teaching, and encouraging participants to:
    a. identify interests.
    b. explore options for decision making.
    c. search for external standards of legitimacy to evaluate options.
    d. identify the best alternative to an agreement.
    e. maintain two-way communication.
    f. build good working relationships.
    g. encourage the participants to explore future issues to ensure effectiveness of current decision making.
    h. make clear, careful commitments at the end of the process.

(b) Collaborative teams are strongly encouraged to include a communications specialist and particularly when:

1. The clients' relationship history includes family violence.

2. The clients' interaction pattern is characterized by heightened negative emotions, particularly around parenting and financial issues.

3. One or more of the clients have a history of psychopathology or mood disorder.

4. One or more of the clients have a history of substance abuse.

5. One or more of the clients have a lengthy history of psychotherapy.

7. A significant discrepancy exists between the clients' respective negotiating skills.

8. One consequence of divorce, or other family matters, is that the standard of living of one or more clients will significantly change.

9. The clients' particular interpersonal dynamics may impede the collaborative process.

SECTION 2.03. CHILD SPECIALIST.

(a) As a child specialist, mental health professionals participate in the following ways:

1. Assist parents and the other participants to:
   a. assess the emotional, social, academic and parenting needs of the children.
   b. identify the risks and concerns associated with those needs.

2. Encourage the participants to:
   a. remain focused on the needs of the children.
   b. identify the changing developmental and emotional needs of the children.
   c. identify the children's specific risks and concerns.
   d. identify common parenting goals.
   e. identify differences in parenting styles and manage the resulting tensions.
   f. develop co-parenting skills.
   g. understand the impact of their decisions on the children.

3. Guide the participants to a parenting plan that:
   a. meets the needs of the children.
   b. satisfies the parents' respective parenting interests and goals.
   c. optimizes the relative contribution of each parent to the development and experience of children.

d. provides satisfactory accommodations for parenting differences.
e. provides necessary safeguards
f. anticipates future concerns, and developmental and emotional issues.

4. Assist the children, in consultation with the child's therapist, in any/all of the following ways:

a. identify their core issues, needs, wants, and hopes.
b. communicate their wishes and concerns.
c. provide them with an opportunity to ask and receive appropriate answers to their questions.
d. offer them comfort, support, and safety.
e. recognize and cope with their thoughts and feelings.
f. maintain optimal relationships with both parents.
g. help them avoid unhealthy alliances with either parent.

(b) Collaborative teams are strongly encouraged to include a child specialist and particularly when:

1. A child has a significant learning disability, medical issue, developmental disability, or mental health or emotional concern. One or both parents have significant medical or psychological problems, such as a chronic debilitating illness or substance abuse problem or mood disorder, that are likely to affect parental functioning.

2. One or both parents are considering relocation.

3. One or both parents may remarry quickly, thereby introducing stepfamily issues.

4. A history of child abuse is present.

5. The parents have widely varying parenting philosophies.

6. The parents have strong disagreements about the children's school placement, participation in extracurricular activities, religious education, or access to extended family members.

7. A statutory possession schedule may not adequately address the developmental and emotional needs of the children.

8. The family includes children varying widely in age.

10. The parents initially disagree about designating a primary residence.

11. A parent who has been relatively peripheral in the lives of the children is anticipating becoming more involved.

12. A fulltime parent is anticipating having to go to work, thereby significantly reducing their parenting time.

13. The parents want to consider special access schedules to accommodate unique circumstances (e.g., to accommodate the work schedules of a firefighter).

14. The family has experienced other recent significant losses, such as the death of a grandparent or a geographic move.

SECTION 2.04. NEUTRAL EXPERT. As a neutral expert, mental health professionals provide consultation for a specific and narrowly defined issue such as scholastic placement, out of state residence, competency, or substance abuse treatment. The neutral expert may conduct needed assessments and convey a professional opinion/recommendation as to the best option(s) to resolve the issue.

Comment

The term "neutral expert" currently is in wide use and is intended to distinguish from an expert who is hired by one side in a litigated dispute. In a collaborative process, though, mental health professionals are expected to be neutral regardless of their specific roles. Thus, we anticipate that this term will eventually be replaced with a term such as Ad Hoc Consultant or Special Issues Consultant.

SECTION 2.05. MODELS OF PRACTICE. Collaborative participants in Texas are in a continuous process of defining their roles and varied models of practice. Varying models are used throughout the international collaborative community.

(a) Participation of mental health professionals varies in different models of practice and in different cases regarding:

1. Time of initial involvement: before, during, or after the first joint session between lawyers and clients.

2. Terms of involvement: mandatory versus optional utilization of mental health professionals.

3. Planned versus ad hoc inclusion of mental health professionals.

4. Role(s): single versus multiple roles.

5. Number of mental health professionals involved: one or more.

(b) Timing of involvement. In general, mental health professionals are most effective when they are part of the team from the outset of the collaborative process.

1. Many collaborative teams find it helpful to have a mental health

professional come to the first joint meeting to help the clients and collaborative lawyers assess if and in what role(s) a mental health professional(s) will be helpful.

2. Although bringing in a mental health professional can be helpful when clients reach an impasse, it is usually more effective to initiate the mental health professionals' involvement before impasses occur, potentially preventing disruptions to the collaborative process.

(c) With respect to these categories, some models of practice which currently exist are:

1. Collaborative Divorce Model. The team includes collaborative lawyers, a financial professional, a divorce coach for each spouse and a child specialist for the children. One mental health professional functions as a case manager. All of the professionals participate throughout the process. The involvement of the mental health professionals is mandatory from the outset.

2. Consultation Model. This model is similar to the consultation model developed by industrial/organizational psychologists. The number of mental health professionals involved and the extent of their involvement depends upon the family's needs and the team's practice preferences. In many cases, one mental health professional will function as both a divorce coach and child specialist. In other cases, one mental health professional will be involved as a child specialist; the team will not include a divorce coach. In other cases, two mental health professionals will be involved, one as a divorce coach and one as a child specialist. A neutral expert may be utilized in any case to address a specific, narrowly defined issue.

3. Training Model. Prior to or immediately after the first joint meeting, the clients attend negotiation training with a mental health professional to increase their negotiating skills and to help them make the 'paradigm shift' to a collaborative process.

SECTION 2.06. ADDITIONAL ROLES. Additional roles for mental health professionals include:

1. Program evaluator. Many mental health professionals have training in research method and program evaluation. Evaluating the effectiveness of collaborative law practices may broaden practitioners' understanding of effective approaches.

2. Negotiation trainer. Couples going through a collaborative divorce, benefit from increased knowledge about and skills of negotiating. In an educational model, mental health professionals train couples to use the basic elements of negotiation before the start of joint meetings.

3. Arbitrator. In rare instances, collaborative participants may agree to have a mental health professional arbitrate narrowly defined issues such as choosing a school, inpatient program, or therapist.

4. Parenting plan evaluator. There may be instances when a collaborative team decides to employ a mental health professional as a neutral expert to conduct a formal evaluation to make recommendations regarding a parenting plan.

CHAPTER 3
ENGAGEMENT CONSIDERATIONS

SECTION 3.01. SUITABILITY FOR COLLABORATIVE ENGAGEMENT. Mental health professionals make independent judgments about accepting or declining a collaborative engagement. A mental health professional may accept an engagement when the mental health professional can be neutral, the other participants' objectives are consistent with the principles of collaborative law, and there is no indication of purposeful dishonesty or fraud. A mental health professional declines involvement when other participants seek to use the collaborative process to gain advantage, such as to prepare for litigation.

Comment

When a mental health professional is confronted with a participant who wishes to exploit the collaborative law process, the mental health professional should assess:

1. *Whether the mental health professional, with or without the assistance of other members of the collaborative law team, can overcome the barriers to the collaborative law process;*
2. *Whether the mental health professional has the necessary skills to overcome the barriers in a reasonable time and within the collaborative spirit; and*
3. *Whether there are adequate resources (such as other allied professionals) to supplement the mental health professional's efforts.*

SECTION 3.02. TERMS OF ENGAGEMENT. The terms of the engagement of a mental health professional should be consistent with these protocols and the protocols of practice for collaborative lawyers. The mental health professional becomes engaged in a collaborative case through an agreement – preferably in writing – between the mental health professional, the clients, and their lawyers. The written agreement, the Neutral Allied Mental Health Professional Participation Agreement, clearly defines the objectives and scope of the mental health professional's involvement in the collaborative law process.

SECTION 3.03. DISCLOSURE. Before accepting a collaborative engagement, the mental health professional should disclose the nature and extent of any past or present business, personal, or professional relationships with the other participants. Disclosure is intended to provide an opportunity for the participants to evaluate the impact of these relationships on the mental health professional's perceived neutrality and whether to engage the mental health professional. The mental health professional should disclose to all participants the nature and extent of prior therapeutic contacts with any of the participants. In

most instances, a mental health professional who has provided therapeutic services to the clients should not accept a collaborative role as a communications specialist. In a limited number of cases, however, the scope of the mental health professional's therapeutic involvement with the clients may have been such that the mental health professional's neutrality is not compromised and a collaborative role can be accepted without creating a conflict of interest or an appearance of bias.

Comment

A mental health professional particularly knowledgeable of a client's mental health history may be primarily aligned with one of the clients. If the mental health professional has only been the therapist for one of the clients, s/he should decline participation in the collaborative law process as a neutral allied professional but may serve in the role of a non-neutral divorce coach.

SECTION 3.04. OBJECTIVES. The mental health professionals' objectives are to assist the participants in recognizing the clients' interests, goals and expectations and maximizing their functioning in order to achieve what they perceive as their best possible outcomes under the circumstances.

SECTION 3.05. SCOPE. The clients, mental health professionals and the collaborative lawyers define the scope of the mental health professional's engagement. If, during the course the collaborative process, a client or lawyer asks the mental health professional to perform services outside the scope of the engagement, the mental health professional should communicate this request to the collaborative team. The mental health professional should not perform any services outside the scope of the original engagement without prior written consent by the clients and their lawyers.

SECTION 3.06. PAYMENT OF FEES. The mental health professional and the participants should designate in the participation agreement the person(s) responsible for the mental health professional's fees. If one participant is paying all or substantially all of the fees, the other participants should be informed. When this occurs, it is important for the mental health professional to gain the others' agreement to this inequity of fee payment. Payment by one participant can lead to an appearance of bias. The mental health professional should be kept current on fees during the course of the collaborative matter to avoid any perception that a buildup of unpaid fees is impairing the mental health professional's objectivity. The mental health professional should update the fee status to clients and their lawyers in a timely manner. Fees are a valid subject for meeting agenda.

SECTION 3.07. LEGAL ADVICE. The mental health professional should not provide legal advice.

CHAPTER 4
RELATIONSHIP OF MENTAL HEALTH PROFESSIONALS TO CLIENTS, LAWYERS AND OTHER ALLIED PROFESSIONALS

SECTION 4.01. INTRODUCTION. Mental health professionals engage in a collaborative law matter to serve the interests of the clients in an impartial, unbiased, and independent manner. The mental health professional recognizes that the participants'

perception of the mental health professional's impartiality is largely influenced by the nature of the mental health professional's communications with the participants.

SECTION 4.02. TEAM CONCEPT. Clients engage the mental health professional with the advice and input from their lawyers. The mental health professionals should consider themselves part of the collaborative law team, working with the other participants to achieve mutual agreements. To this end, it is essential that each team member be informed of sensitive issues–including financial and psychological issues – that might complicate an agreement.

Comment

Often it is advisable for the lawyers and allied professionals to have mental health information to enable them to facilitate the collaborative law process. The mental health professional should anticipate areas of emotional concern and work with the other collaborative professionals to allow time to address such issues.

SECTION 4.03. COMMUNICATIONS.

(a) Initial communications with the participants will establish the perceptions of the mental health professional's objectivity and neutrality. Mental health professionals should strive to maintain effective working relationships with the participants by avoiding the perception of bias.

(b) Specific facts and circumstances of a case may require more interaction with one participant than another. When this occurs, it is important for the mental health professional to gain the others' agreement to this inequality of time. Perceived excessive interactions with one participant can lead to an appearance of bias.

(c) Mental health professionals should provide copies of all written communications to all participants, except when disclosure would be counterproductive to the collaborative process.

(d) When a client shares information with the mental health professional outside the presence of the lawyers or other the client, the mental health professional should make clear that the information may be shared with the lawyers, regardless of the client's request to the contrary. In this way, the team can consider whether the information will assist the collaborative process and how it should be addressed.

(e) If the other participants agree, the mental health professional may communicate directly with other allied professionals when it would be helpful in achieving the clients' goals. In the absence of prior agreement to engage in such communications, the mental health professional should first communicate with the lawyers.

(f) The mental health professional should ask for the involvement of another mental health professional or a financial professional when the mental health professional judges it would help further the collaborative law process.

CHAPTER 5
PROTECTING THE COLLABORATIVE PROCESS

SECTION 5.01. INTEGRITY OF PROCESS. The collaborative law process aims to achieve an ethical and enduring settlement for the clients. The mental health professional assists the participants within the scope of the engagement by furthering the participants' knowledge and information. The mental health professional recognizes that this knowledge and information may significantly influence the outcome. The mental health professional strives to provide accurate, unbiased information in a format that is understandable and available to all participants.

SECTION 5.02. HONESTY AND FULL DISCLOSURE BY THE PARTICIPANTS. The mental health professional recognizes that the clients' honest and full disclosure of relevant information is critical to a successful outcome. The mental health professional should assist clients in complying with the requirement to make full and candid exchange of all relevant and requested documents and information. The mental health professional should inform the clients that information given to the mental health professional may be made available to all members of the collaborative team.

Comment

A mental health professional may discover information know to only one client that is contrary to other information provided or the position taken by one of the clients. The mental health professional should provide opportunity for further disclosure without making either client uncomfortable. If the client does not embrace full disclosure, the mental health professional should first seek assistance from one or both lawyers to avoid derailing the collaborative process. It is essential that the mental health professional's perceived and actual neutrality be preserved.

SECTION 5.03. CORRECTING MISTAKES. The mental health professional, through faulty information or human error, may create a false impression or provide inaccurate information. The mental health professional should disclose and correct the error when it is discovered.

SECTION 5.04. SUPPORTING A SAFE ENVIRONMENT. The mental health professional strives to provide a safe environment for goal setting, data gathering, and agreement. The mental health professional encourages and demonstrates the following principles:

(a) Creative problem solving rather than positional bargaining.

(b) Speaking directly with participants about any perceived non-collaborative.

(c) Behavior and attempting to remedy the same in a constructive manner.

(d) Accepting critical feedback non-defensively.

(e) Exercising patience at all times.

(f) Avoiding the use of pressure, threats, or deadlines.

(g) Acknowledging the process can only progress at the pace of the slowest participant.

(h) Avoiding the assessment of blame and use of judgmental language.

(i) Avoiding surprises.

(j) Establishing realistic time schedules.

(k) Encouraging the utilization of allied professionals by all participants.

(l) Urging participants to speak in ways that encourage the others to listen; urging participants to listen in ways that encourage the others to speak.

(m) Allowing clients to set the timing of issues and agreements.

CHAPTER 6
PRACTICE GUIDELINES FOR MENTAL HEALTH PROFESSIONALS INVOLVED IN COLLABORATIVE LAW

Introduction

These guidelines have three purposes. First, they provide initial direction to those mental health professionals participating in the collaborative law process. Second, they are intended to provide an aspirational model of desirable professional practice and to improve the quality of services by mental health professionals. They should not be considered as practice standards. The guidelines are specifically intended to be general in nature as this area of practice is new and evolving. Finally, these guidelines are intended to serve an educational purpose; they are intended to alert mental health professionals to some of the issues they may need to consider when working in this area. To that end, cross references have been made to numerous provisions to emphasize the inter-relationship of various issues.

SECTION 6.01. AVOIDING HARM. Mental health professionals take reasonable steps to avoid harming participants and others with whom they work.

SECTION 6.02. COMPETENCE. Mental health professionals provide services within the boundaries of their competence based upon their education, training, supervised experience, consultation, study and/or professional experience.

SECTION 6.03. QUALIFICATIONS. Mental health professionals are licensed and generally familiar with relevant ethical standards and state regulations of their profession.

SECTION 6.04. CREDENTIALS, EDUCATION, AND TRAINING. Mental health professionals who wish to work in collaborative law generally have received

relevant education, training, supervised experience, consultation and/or study regarding family law matters.

(a) Mental health professionals maintain state licensure as an associate psychologist, drug and alcohol counselor, educational psychologist, licensed marriage and family therapist, licensed professional counselor, psychiatrist, psychologist, or social worker.

(b) Mental health professionals receive training in collaborative family law, preferably with an emphasis upon interdisciplinary teams, and, have a working knowledge of interest based negotiation principles based on training in at least one of the following: negotiation, mediation, alternate dispute resolution, or collaborative family law.

SECTION 6.05. CONTINUING EDUCATION. When mental health professionals begin to practice in new and emerging areas such as collaborative law, they undertake relevant education, training, supervised experience, consultation and/or study. Mental health practitioners should participate at least annually in professional activities equivalent to continuing education relevant to collaborative family law.

SECTION 6.06. NATURE OF MENTAL HEALTH PROFESSIONALS' RELATIONSHIPS. Collaborative law is a complex and evolving process and mental health professionals' professional relationships may vary across situations. Mental health professionals strive to clarify with clients, collaborative lawyers and other collaborative professionals, the nature of the relationship they will have with each. [See Section 6.08]

SECTION 6.07. NEUTRALITY.

(a) When working with participant(s), mental health professionals strive to maintain neutrality.

(b) Mental health professionals strive to promote the shared interests of all participants. [See Section 6.08]

SECTION 6.08. INFORMED CONSENT. Informed consent is based upon respect for a participant's autonomous decision making. Informed consent requires that participants engage in the collaborative law process voluntarily and that they are mentally competent to do so.

(a) Mental health professionals make reasonable efforts to disclose all relevant information regarding their role to participants. Relevant information generally includes: a review of the participants' alternatives about how to involve mental health professionals, the advantages and disadvantages of each, and the mental health professional's recommendations where appropriate.

(b) Mental health professionals strive to allow participants sufficient time to consider their alternatives and to ask questions before consenting to the collaborative law process.

(c) When participants decide that a mental health professional will play a role(s) in the collaborative law process, such agreements are generally made in writing. [See Section 3.02]

SECTION 6.09. CONFIDENTIALTY. Information disclosed in the presence of a third party is generally not considered confidential. Confidentiality is addressed by the collaborative lawyers in consultation with their collaborative clients and appropriate agreements are made regarding management of personal information.

(a) Mental health professionals strive to clarify with the other participants the confidentiality agreements under which their involvement will take place. Mental health professionals generally review such information with the participants, including how and under what circumstances information will be shared with the other collaborative law participants. [See Section 6.08]

(b) Mental health professionals also strive to clarify with the participants confidentiality agreements regarding the release of information to others outside of the collaborative law process. [See Section 6.11]

(c) Because of their roles in collaborative law, mental health professionals pursue a full and candid exchange of relevant and significant information. Mental health professionals may withhold certain information given to them by a participant if such disclosure would significantly compromise the emotional well being of one of the participants, so long as this withholding does not affect the integrity of the collaborative law process. If such withheld information could make a difference in what might be an acceptable outcome to either client, then the mental health professional should advise the lawyers that the mental health professional has information the disclosure of which would significantly compromise the emotional well-being of one of the participants and therefore the mental health professional must withdraw rather than participate knowing relevant and significant, but undisclosed information. If the participant then discloses the matter to the other team members, the mental health professional may once again participate in the process with the participants' consent. [See Sections 6.07 and 6.08]

Comment

A major paradigm shift for a mental health professional handling a collaborative matter is the requirement for disclosure of information. It may conflict with other duties of the mental health professional, including the avoidance of emotional harm to one's clients, yet such transparency is the cornerstone of the safe environment sought to be created by the collaborative law process

"Relevant information" presents a substantial challenge to the mental health professional. The appropriate minimum standard for disclosure should be: "Putting the shoe on the other foot, would the uninformed client need, expect or desire such information in attempting to make an informed decision?" Phrased differently: "Is the information so close to the matter at hand, that it cannot be ignored without a serious impact on the decision making process?" An example would be if a mental health professional were advised of a

client's substance abuse which in the professional's judgment would be perceived by the other parent as having an effect on what would be an acceptable parenting plan. The lens through which the information is viewed is not that of the mental health professional's personal opinion of the relevance, but rather how it would likely be viewed by the uninformed client.

(d) Mental health professionals consult with the collaborative lawyers regarding a particular matter when they are uncertain whether or not obtained information might materially affect the outcome of the collaborative law matter.

(e) Mental health professionals generally inform participants that information provided in the collaborative law process may or may not be protected if they choose to withdraw from it. [See Sections 6.08 and 6.12.]

SECTION 6.10. MULTIPLE RELATIONSHIPS. Multiple relationships exist when mental health professionals participate in two or more role categories with participants concurrently and/or sequentially. Multiple relationships may or may not be harmful. Harmful multiple relationships arise when mental health professionals find themselves in situations of conflict of interest and/or where their objectivity may be compromised.

(a) Mental health professionals strive to avoid entering into multiple relationships when such relationships have the potential to harm participants and/or impair the mental health professional's objectivity or judgment. [See Section 6.01.]

(b) Mental health professionals who have a prior relationship with prospective participants and/or their children generally do not participate as allied professionals in the collaborative law process. [See Section 6.07]

(c) When mental health professionals agree to enter into dual or multiple roles, they inform all the participants of their decision and obtain informed consent regarding the advantages and disadvantages of doing so. Adequate time is allowed for thoughtful decision making before proceeding. [See Sections 6.07, 6.08, 6.09 and Chapter 7]

(d) Despite one's best effort to avoid multiple relationships, they may arise nonetheless. If such circumstances arise, mental. health professionals make known the potential conflict to the participants and where relevant the collaborative lawyers and take reasonable steps to resolve it. [See Sections 6.07, 6.08, and 6.09]

(e) In some situations, mental health professionals may be asked to play sequential roles with participants during the collaborative law process. Such roles are not unethical; however, they are generally contemplated carefully in an effort to avoid harm. See Section 6.01.]

(f) When a shift in roles is considered, mental health professionals inform all the participants of the suggested change and obtain informed consent regarding the

advantages and disadvantages of doing so. Adequate time is allowed for thoughtful decision making before proceeding. [See Sections 6.07, 6.08, and 6.09]

SECTION 6.11. RECORDKEEPING. Mental health professionals keep records of their professional activities consistent with their professional codes of ethics and relevant law. Generally, such records include but are not limited to: documents regarding their engagement including fee agreements, dates of service, participants served, significant actions taken, and payment records. [See Section 6.09]

Mental health professionals advise participants that their records are co-mingled and explain procedures for their release consistent with the ethics of their profession and relevant law. [See Sections 6.08 and 6.09]

SECTION 6.12. WITHDRAWAL AND TERMINATION. Participants, attorneys and mental health professionals may withdraw from the collaborative process for a variety of personal or professional reasons.

(a) Participants have a right to withdraw from the collaborative law process. Mental health professionals take reasonable steps to anticipate this possibility. [See Section 6.09]

(b) If participants refuse to reveal material information, disclose it to mental health professionals with the expectation of confidentiality when none has been offered and/or otherwise deal in bad faith, mental health professionals consult with participants regarding their options including withdrawing from the collaborative law process. [See Section 6.01]

(c) Generally, the role of mental health professionals ends when the collaborative law process is successfully completed or terminated. At times, one or more participants may wish to continue other types of relationships with mental health professionals. Proceeding with such relationships may be considered in certain cases. [See Sections 6.08, 6.09, 6.10, 6.11, and Chapter 7]

(d) Before accepting new professional responsibilities after the collaborative law process has been terminated, mental health professionals consider that doing so may mean, or appear to mean, compromising their neutrality and that doing so may harm the collaborative law process. [See Sections 6.01 and 6.07]

(e) Mental health professionals terminate their professional relationships with participants when it becomes reasonably apparent that the participants no longer need services, are not benefiting or are being harmed by continued service.

SECTION 6.13. SEEKING CONSULTATION. Collaborative law is a new and developing legal process. These guidelines cannot address all the ethical issues that may arise in complex legal matters. When ethical dilemmas arise, mental health professionals are encouraged to consult the ethics codes and laws that govern their respective professions as

well as with lawyers and respected colleagues.

CHAPTER 7
CONTINUED INVOLVEMENT WITH THE FAMILY AFTER THE COLLABORATIVE PROCESS ENDS

Introduction

This chapter offers practice guidelines when the participants ask the mental health professional to assume an ongoing role after the collaborative process ends with a conclusion by agreement or termination without agreement.

SECTION 7.01. MAINTAINING THE INTEGRITY OF THE COLLABORATIVE PROCESS. The mental health professional protects the integrity of the collaborative process. The duty to do so starts with the first communication to the mental health professional, is continuous, and does not end with the conclusion or termination of the collaborative process.

SECTION 7.02. NATURE OF ONGOING ROLES. An ongoing role is compatible with and/or extends a collaborative role. A child specialist, for example, may move into a post-divorce role as a parenting coordinator. Similarly, a divorce coach may remain available to the participants to address specific divorce related issues after the collaborative process concludes.

Comment

The mental health professional should discuss the following questions with the clients and collaborative team before accepting an ongoing role. Would an ongoing role reasonably be expected to:

(a) prevent the mental health professional from participating on the team if the participants renew a collaborative process?

(b) create a conflict of interest with prior role(s) in the collaborative process? [See Section 7.03]

(c) jeopardize existing neutrality or undermine the perception of the mental health professional's existing neutrality? (see 7.04)

(d) leave the records, previously protected by the collaborative agreement, open to disclosure? [See Section 7.05]

SECTION 7.03. AVOIDING CONFLICTS OF INTEREST. The mental health professional should avoid taking an ongoing role that creates a conflict of interest with the original role in the collaborative process.

Comment

One cornerstone of the safe environment sought by collaborative teams is the expectation of full disclosure of information. In contrast, one cornerstone of the safe environment sought by therapists is the expectation of strict confidentiality. Attempting to perform in both roles may create a conflict of interest for the mental health professional between encouraging disclosure and protecting confidentiality.

SECTION 7.04. MAINTAINING NEUTRALITY. The mental health professional maintains neutrality after the collaborative process concludes. The mental health professional does not accept an ongoing role if there is a reasonable risk that neutrality or its appearance would be compromised.

Comment

A mental health professional cannot become an expert or therapist for one party and continue to be a neutral resource for all the collaborative participants.

SECTION 7.05. RECORDS AND CONFIDENTIALITY. The mental health professional assesses the risk, in consultation with the other participants, of whether or not a continuing role is compatible with the confidentiality agreements of the prior collaborative process. The mental health professional takes effective precaution–including not accepting an ongoing role if necessary–to honor and avoid jeopardizing the original agreements.

Comment

To protect the confidentiality of the participants' subsequent communications with the mental health professional prior to the conclusion or termination of the collaborative process, it may be necessary to obtain an agreed court order shielding the mental health professional's records once the collaborative process concludes or terminates.

SECTION 7.06. INFORMED CONSENT. The mental health professional provides ongoing services only with the agreement of all of the clients. After discussing with the clients the risks and advantages of continuing to provide services, the mental health professional introduces a new informed consent. Even with all the clients' consent, however, the mental health professional has an independent responsibility to assess whether an ongoing role is in the best interest of each client.

SECTION 7.07. ONGOING ROLES WHEN THE COLLABORATIVE PROCESS CONCLUDES WITH AN AGREEMENT. If the above conditions are satisfied, mental health professionals may provide ongoing services. The most frequent post-collaborative roles are:

(a) Parenting Coordinator. A parenting coordinator assists the parents in resolving issues related to parenting. The parenting coordinator has three primary functions:

1. monitoring and helping family members implement the parenting plan agreed upon during the collaborative process,
2. helping family members negotiate changes to the parenting plan when problems arise or to meet new circumstances, and
3. educating family members about good parenting practice, child development, and specific issues related to the children. The parenting coordinator may meet with the parents separately, together or in a group format. The parenting coordinator may also meet periodically with the children or the entire family. The parenting coordinator may also review psychological reports and school records and consult with other professionals providing services to family members. The advantages are:

1. A parenting coordinator is impartial and neutral but may have an opinion regarding a specific issue.

2. The parenting coordinator's ongoing decision-making or reporting authority, if any, is agreed upon during the collaborative process and described in a letter of engagement.

3. Parenting coordinators provide consultative and educational services to family members; parenting coordinators do not provide therapy; parenting coordinators do not perform parenting plan evaluations.

Comment

Parent coordinators have different degrees of authority, dependent upon a specific family's circumstances. Parents, for example, may agree for the parenting coordinator to have the authority to be a "tie breaker" in the event the parents disagree about a specific issue, such as school placement. In other instances, a parenting coordinator may have a reporting function, such as informing all participants about a parent's compliance with substance abuse treatment.

(b) Communication Specialist. Once the collaborative process concludes, a communications specialist may help the clients address matters related to the agreement by continuing to help them communicate effectively, attain the goals established through the collaborative process, and consider the range of available options to solve ongoing problems.

SECTION 7.08. ONGOING ROLES WHEN THE COLLABORATIVE PROCESS TERMINATES WITHOUT AN AGREEMENT. Participants terminate the collaborative process for various reasons. The clients may decide they can meet their interests more effectively by litigating. Collaborative lawyers may terminate the process if they believe their clients are not using the process in good faith. In some instances, the spouses may terminate or suspend the collaborative process to attempt reconciliation. In most cases, the mental health professional's involvement will end when the collaborative process terminates with an agreement. Participants will sometimes ask the mental health professional to take an ongoing role. For example, the clients may reach legally binding parenting agreements using the collaborative process but opt to use litigation to handle specific financial matters. In this case, the clients may wish to engage the mental health professional in an ongoing role as a parent coordinator.

The mental health professional has the same responsibility to protect the integrity of the collaborative process as when the collaborative process concludes with an agreement. Consequently, the mental health professional should follow the same guidelines when considering an ongoing role. [See Sections 7.01 through 7.06]

Addendum
Look Before You Leap: Ethical Concerns in Collaborative Law

Hopes, opportunities, and hazards. The introduction to these *Protocols of Practice* noted these discrepant yet complementary features for mental health professionals in the new frontier called Collaborative Law. Frontiers imply unexplored territories. Unexplored territories require new roads and maps. Mental health professionals in the collaborative law frontier will find themselves challenged about what ethical and professional maps to use as they negotiate the collaborative law terrain. But "[Y]ou must remember this … the fundamental things apply…"—a mental health professional in collaborative law still must consider privacy concerns, confidentiality, and multiple relationships, among other issues. Failure to do so may result in a licensing board complaint or a civil malpractice lawsuit. Professional ethics codes, license injunctions, and state statutes guide how the mental health professional weighs these issues. In fact, these prescriptions are required for a mental health professional's relationships no matter what the context. Whether the mental health professional is an individual counselor, a therapy group leader, an organization consultant, or a collaborative law allied professional, the rules still apply.

One professional issue that blends with others relates to the mental health professional's role in the collaborative law process. How a mental health professional manages her role issues highlights the perception—by her and others—of her professional identity. Collaborative law presents challenging new role questions for the mental health professional. At first glance, the mental health professional's role seems straightforward: she is a collaborative law team member who, with the lawyers, helps the spouses obtain their divorce in a respectful problem-solving context. But the mental health professional's participation begs several questions:

- First, there are several collaborative law models—some noted in section 2.5. Do the mental health professional's responsibilities differ based on the collaborative law model adopted in a particular case?

- Second, might a mental health professional's responsibility to protect the integrity of the collaborative law process conflict with her professional responsibilities?

- Third, does the notion that a mental health professional is part of the collaborative law team in a given case assume that all information gathered by the mental health professional in her work with one or both spouses should be disclosed to all team members—lawyers and other allied professionals? Put another way: If the lawyers operate with the transparency of information principle between the spouses in the legal meetings, should the mental health professional assume that same understanding with information that she gathers when meeting with the spouses?

- Finally, how should a mental health professional weigh these role/ethical concerns?

While collaborative law represents a new paradigm for helping spouses divorce, mental health professionals may learn from other contexts to make sense of the difficult questions that may arise in their allied professional roles. Two specialties that struggle with issues similar to those of collaborative law allied professionals are organizational psychology and military psychology. In these specialties, the psychologist may consult with a worker in an organization but also be required to answer to the worker's superior. These psychologists struggle with privacy concerns—must the psychologist relate all information told her by the worker to the worker's superior? What about confidentiality issues? And the overarching question of "Who is the client?" So while these are familiar issues to some psychologists, they are likely new issues to psychologists and other mental health professionals—most with individual or family therapy backgrounds—involved in collaborative law. Organizational and military psychologists weigh these concerns by consulting the ethical standards of the American Psychological Association (2002) (APA Ethics Code). Often, the answers do not come easily. But with an understanding of the APA Ethics Code injunctions and of the allowance for professional judgment, the APA Ethics Code permits in certain cases, acceptable solutions are reached.

How may a mental health professional apply the examples of organizational and military psychologists? A feasible way is to consider the collaborative law team as an organization to which the mental health professional consults. This should not be a difficult concept: clinical mental health professionals usually view families as "systems"; the collaborative law team also can be thought of as a system. So then, what are the mental health professional's responsibilities in the collaborative law system? Or how does the mental health professional maintain her professional identity—expected by licensing boards—yet participate as an allied professional in a collaborative law divorce?

The examples of organizational and military psychologists suggest that the APA Ethics Code may help the mental health professional consider her responsibilities—of course, APA members are required to adhere to the APA Ethics Code. The APA Ethics Code is more developed and differentiated than codes of other mental health disciplines. And many provisions in these protocols derive from principles detailed in the APA Ethics Code. Therefore, using the APA Ethics Code as a map to consider collaborative law role issues may help the mental health professional negotiate the collaborative law terrain.

To start, a mental health professional would be frustrated if she expected clear and definite answers from these protocols or the APA Ethics Code to all situations faced in a particular collaborative law divorce. Principles are declared, but their applications may depend on the particular situation encountered. For example, the APA Ethics Code Preamble notes that "[T]his Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists." But the APA Ethics Code also notes that "modifiers used in some of the standards of this Ethics Code (e.g. *reasonably, appropriate, potentially*) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated." While the APA Ethics Code specifies situations where professional judgment is allowed, these protocols are intended as guideposts to the mental health professional involved in a collaborative law divorce case. Nevertheless, mental health professionals still must mind the

ethics codes, codes of professional responsibility of their own disciplines, and state statutes that govern the conduct of their practices.

Several mental health professional concerns—ethical and otherwise—are addressed in these protocols. But understanding how one's professional role interacts with these concerns in the collaborative law process puts these concerns in their appropriate context. Let's consider the role issues from the view of the APA Ethics Code as organizational and military psychologists have done. To begin, Ethical Standard 1.03 addresses conflicts between ethics and organizational demands by noting: "If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code." Mental health professionals bring their professional identities, their expertise, and their ethical obligations to the collaborative law team. The principle is that mental health professionals should not compromise their professional responsibilities with the organization, but should explore feasible solutions to the conflicts. How may this be done with such conflicts in a collaborative law case? Using collaborative law principles, mental health professionals and lawyers might address role conflicts by exploring the important underlying professional interests that must be reconciled to advance the spouse's divorce in this interdisciplinary model. In such interactions, options that protect the identities and responsibilities of each professional may arise that lead to workable solutions.

Then, how should mental health professionals assess whether a conflict of interest exists in a particular collaborative law case—with either one of the spouses or with either attorney? Ethical Standard 3.06 of the APA Ethics Code notes: "Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists, or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation." Note two issues. First, this provision refers to a psychologist's "professional role." This term means more that just a psychotherapy "client." The psychologist adopts a professional role when she acts as a psychologist in many settings—the APA Ethics Code *Introduction* notes that psychologists' activities "include but are not limited to the clinical, counseling, and school practice of psychology … organizational consulting, forensic activities … across a variety of contexts." Second, note the appeal to the psychologist's judgment by use of the word, *reasonably*. But also recognize that conflict of interest issues are one of the most important issues—and potential licensing board pitfalls—that mental health professionals face. Consider a not-so-obvious example: Might a mental health professional's social relationship or friendship with one of the collaborative lawyers give rise to either bias or a perception of bias? Even perceptions of bias may compromise neutrality in a spouse's eye and impair the mental health professional's effectiveness with the couple.

The APA Ethics Code also addresses more specific organization or system issues. For example, what should mental health professionals consider when contracted to help divorcing spouses in a collaborative law case? Look to Ethical Standard 3.11, titled *Psychological Services Delivered to or through Organizations*. The standard notes: "(a)

Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services [read collaborative lawyers and the divorcing spouses] about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons." This provision makes sense because the purpose of the mental health professional's involvement becomes transparent to everyone in a collaborative law case. Case participants then understand the terms under which the mental health professional will be involved.

Next, should all information that spouses disclose during mental health professional interviews with either or both spouses be transparent to everyone on the collaborative law team? How should mental health professionals manage these privacy concerns? This is a difficult issue that, some argue, cuts to the spirit of collaborative law. And can the mental health professional judge what information might be legally relevant to the collaborative lawyers? Ethical Standard 4.04 notes: (a) "Psychologists include in written and oral reports and consultations, *only information germane to the purpose for which the communication was made* (emphasis added)." This may be a difficult judgment call, but it should be addressed openly with both the spouses and the collaborative law lawyers. For example, a divorcing husband might not know about his wife's affair in a previous marriage. If the wife discloses that information to the divorce coach, should the divorce coach disclose that information to the other collaborative law team members? The information might be more relevant if the affair occurred six months before the divorce was filed. How should this information be handled? Substitute in drug use facts in the above example. Clearly, recent or current drug use might affect a spouse's parenting judgments. In sum, mental health professionals cannot simply dismiss the relevant information concern in a collaborative law case because other professionals on the collaborative law team insist that all information shared in the process be "transparent."

Finally, the mental health professional may face the multiple relationships, or roles, issue in a collaborative law case. For example, while a mental health professional's intervention with either or both spouses or with the children may have positive therapeutic effects—one would hope so in collaborative law—that intervention is not or should not be psychotherapy. The collaborative law goal is to help the spouses get a divorce in a respectful and problem-solving context, and to teach the spouses skills towards that goal that will also likely benefit them and their children post-divorce. Psychotherapy goals are different. If mental health professionals are unclear about the distinctions, the spouses also will be unclear. Consequently, the mental health professional may compromise and thus jeopardize the spouses' collaborative divorce. Further, what roles with the spouses or children might mental health professionals accept after the collaborative process concludes, however it concludes. For example, a divorce coach who worked with both spouses during the collaborative process might still function in that role with a couple after the divorce to help that couple problem-solve ongoing post-divorce related issues. Or a child specialist might move into a role as a parent coordinator. But it would likely be inappropriate for a mental health professional to become the therapist for either spouse after the collaborative law process concludes.

How does one determine what is a multiple relationship? Ethics Standard 3.05 of the APA Ethics Code addresses this issue. The provision notes: (a) "A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person. *A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist* (emphasis added), or otherwise risks exploitation or harm to the person with whom the professional relationship exists."

Are all multiple relationships harmful? Ethics Standard 3.05 also notes that "[M]ultiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical." Be careful. This does not give the mental health professional free rein to substitute subjective notions about whether the client might be harmed by a multiple relationship—licensing board complaints in this area are legion. Rather, the mental health professional should consult with others and weigh the matter carefully.

Working in organizations or systems can present unique ethical and professional challenges for mental health professionals. The mental health professional's involvement in collaborative law cases is not different. When different disciplines apply their skills and energies toward a common goal, problems that highlight professional identities and roles may arise—this may occur within a collaborative law team. Often, the answers do not come easily. And not all answers to these problems are addressed in the following protocols—or could they be in any protocol set. Thinking about roles and ethics requires us as mental health professionals to apply the maps of professional guidelines and ethical requirements to specific collaborative law situations that we encounter. Remember, "the fundamental things apply" whatever professional role we adopt, even in this new collaborative law terrain. Our task is to ensure that the maps we follow keep us appropriately and professionally oriented. If we can maintain this perspective, we will contribute much to this new family law movement.