Three Questions for Your Clients: Improving the Quality of the Collaborative Experience

You may need a trained professional to help you assess!

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> **You need more tact in the dangerous art of giving than in any other social action.**
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> - *William Bolitho, **Twelve Against the Gods**, 1929.*

Do your Collaborative cases begin to deteriorate in quality when you get to the "negotiation" stage? Have you ever wondered why clients revert to traditional marketplace bargaining in this phase? Why they cling to legal entitlements? Why they dig in their heels and resist truly Collaborative work?

It could be that the clients are not *continually* being prepared and counseled about the process *throughout* the case. In order to have a successful Collaborative experience, the Collaborative team should be preparing clients long past the "honeymoon" meeting and constantly reminding them about the initial commitments they've made and the goals they and their partners have set.

Clients begin the Collaborative process with the ritual review and signing of the participation agreement, when their higher selves creep shyly and carefully to the table. Then slowly (and sometimes not-so-slowly) their higher selves retreat to their corners and abandon the interest-based process in favor of rights-based positioning, particularly when their respective resources are disparate as they look to the future.

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One good way to drag clients' higher selves out of hiding is to have prepared one of them to be generous and one of them to be appreciative. (Where the resources are scarce and/or relatively equal, the ideal would be to prepare both parties to be both generous and appreciative, but this is a bit trickier).

How? Try these three questions:

1) Question for all clients: *How important is it to you what happens to your spouse/partner at the end of this process?*

You are trying to find out if your client truly cares about the other person. Just asking that question bluntly ("do you care what happens to your partner?") will usually produce a "yes" answer because that is what your client thinks you want to hear.

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Asking your client *how* important it is will require a narrative answer that your client will have to think about and that will tell you a lot more. True collaboration is not possible if each client doesn't care what happens to the other person down the road. Many Collaborative professionals believe that clients' mutual love for their children can be the glue that holds the collaboration together for them, but at the end of the day, the clients must care about what happens to *each other* to truly transcend traditional positional bargaining.

2) Question for the resourced partner (a male in this example): *If it becomes clear that the best way to meet your partner's goals and needs without seriously jeopardizing your own well being is for you perhaps to take less than you might receive under the law model, would you be willing to consider this?*

You are preparing the partner/spouse with the higher income, career prospects, or stash of separate property to be generous. You are preparing him not to expect to apply the law to get the most favorable outcome for himself alone. (Note that a "no" answer, or significant hesitation, may enable you to identify the client who is requesting the Collaborative process in order to give up less than he would otherwise be "ordered" to give up or to avoid things like having his business investigated/valued.) You are planting the seed of generosity that your client can contemplate until this spirit of generosity becomes a means by which he actualizes the "yes, I care" answer *he has already given* to the first question.

One of the best ways to accomplish this is with projections that the financial specialist can provide. Ask for several scenarios: the first one should demonstrate the long-term results, for both partners, of a "law model" split of property and minimum or no

support. The others should demonstrate the long-term results of some property division and support packages that will allow the other partner to have her financial needs met to a greater extent than the law model would or might provide. It is usually clear right away that the resourced partner will be in healthy financial shape *either way*, but the other person will quickly be in serious financial trouble with the "law model" approach. If you are trying to steer clear of a strictly "law model" demonstration, you could simply do projections based on each of their proposals if they have made them, or on meeting each of their needs and goals, or on each of their "preferred outcomes" if these are clear, regardless of what the law would dictate. The goal is to be sure that *both parties* are financially healthy in the long run; the impetus is going to be stronger in a long marriage or partnership, but seeing these projections can be compelling, regardless of the length of the relationship.

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Also critical for any minor/adult children.

If the resourced partner is already prepared to consider being generous, seeing the results of his potential generosity in black and white can be powerful, particularly if you remind him that he has already told you that he cares about what happens to his partner. But this will not work if the other partner is not being prepared by her own team of professionals to be appreciative.

3) Question for the non-resourced partner (a female in this example): *If it becomes clear that the best way to meet your needs and goals without seriously jeopardizing your partner's needs and goals is for him to take less than he might receive under the law model, do you understand and can you acknowledge that he is not required to do this? And that if he wants what the law says he can have, that he has a right to request it?*

The follow-up to these questions is to be clear with this client that the Collaborative process is not a way to get more than the law model would dictate, and that her partner/spouse is not being "uncollaborative" if he resists giving up more than he has to. Both clients should also be counseled to avoid expressing anger at someone for simply wanting to exercise his rights under the law.

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You are preparing the partner with fewer resources to appreciate whatever the resourced partner is willing to do above and beyond what he is legally obligated to do. He is not going to be willing to be generous if she doesn't appreciate it. If she makes it clear that she believes she deserves every ounce of his generosity (and more), then generosity isn't going to happen. The non-resourced client who clearly feels she is entitled to more than what the law model would dictate is usually the hardest to reach, but it's well worth the effort if it succeeds.

The danger in all cases is to focus too much on specific "legal rights." However, this simple initial preparation of your clients, without an involved explanation about what the law may actually be in their case, is a good start to upgrading the quality of the Collaborative experience for clients and professionals alike.

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