

The Spectrum of Advocacy in Collaborative Practice

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In a client centered process such as collaborative practice, we need to be capable of moving across the spectrum of advocacy, to assess what approach is needed, to adjust if needed as the client moves through the grief cycle, and to appreciate the risks at either end of the spectrum-too little advocacy or too much. We are not helping our clients when we impose our philosophical attachment to one form of advocacy. Bernie Mayer, in his book, *Beyond Neutrality*, offers some profound insights into the role of ally, insights that capture how we can advocate in a way that is consistent with CP values: “...neutrality is not what people embroiled in conflict are usually looking for. They want assistance, advocacy, power, resources, connections or wisdom” (Mayer- *Beyond Neutrality*)

Mayer says that as an ally in CP we are not there for everyone in the room. We are there for our client. We are there to ensure his or her needs are met. However we understand that for our client to have his or her needs met, the other person does too. Appreciating this concept of enlightened self-interest may help us embrace, rather than resist, the redefined advocacy we need in CP.

As collaborative professionals, we come to this work embracing the ideals of healthy transitions for families, good divorces, and children being held harmless. These ideals are our new professional norms. We have identity needs as professionals to be seen as peacemakers and healers of conflict. We have found a home amongst like-minded colleagues; we have formed friendships and want to belong.

Collaborative practice recognizes our client as a whole person, each with individual needs connected to the family system. Most clients are motivated by a strong desire to protect their children, to be able to parent without conflict, and to maintain relationships. Many have considerable goodwill and so we can be seduced into believing the goals of the client and the family are aligned. In many ways they are, and yet soon into the process we often find there is real conflict, deep differences that no doubt led to the separation.

Julie McFarlane’s research cautions us that sometimes our values of healthy family transitions and peaceful conflict resolutions are not always in sync with what our clients want and what they are prepared to pay for. We need to be careful that our identity and affiliation needs do not interfere with our capacity to do the work our clients need from us.

Our job is to provide what Ken Cloake calls *forceful advocacy*; foster principled opposition, honest dialogue, reveal divergent interests and values, and vigorously examine choices. We need to guide clients through conflict, not suppress it. (Cloake-*Mediating Dangerously*)

All of us have been involved in collaborative files where a lawyer, with the best of intentions, fails to provide advocacy when it's needed. On the other hand, we've also participated in files where a lawyer takes over and tells the client what to do. Neither of these extremes is consistent with the principles and values of collaborative practice. However there is a legitimate spectrum of advocacy which is entirely appropriate in C.P.

The Spectrum of Advocacy

At the one end of the spectrum is a relatively low level of advocacy which we may call *Facilitative Advocacy*. At this end of the spectrum the clients can speak for themselves, the lawyers facilitate and provide information, the lawyer/client relationship is relatively detached and there is a greater focus on interests as opposed to the law. At the other end of the

spectrum is a relatively high level of advocacy which we may call *Partisan Advocacy*. At this end of the spectrum, lawyers may often speak for the client and provide opinions, recommendations and advice. The lawyers advocate for adaptations to the process, including more individual work with clients and negotiations away from the table. The lawyer/ client relationship has a high level of intensity or intimacy and the negotiations are often more legally based.

When is it appropriate to be a Facilitative versus a Partisan Advocate?

Facilitative Advocacy is appropriate in 'easy files' where there is:

- high level of trust
- goodwill
- manageable emotions
- capacity to communicate
- acceptance by both spouses of the separation
- readiness to proceed
- many shared interests
- no overriding power issues
- good capacity for both parties

On the other hand, *Partisan Advocacy* is appropriate in 'difficult files' where there may be some or all of the following:

- low trust
- little goodwill
- no or ineffective communication between the parties
- strong emotions-often stemming from betrayal, lack of self-esteem, profound fear
- power issues
- few common interests
- complex and challenging substantive issues-not enough money, mobility issues, different parenting styles
- capacity issues-substance abuse, addictions, personality issues or disorders

We can offer successful process to these more challenging clients by offering strong partisan advocacy, without losing sight of the essential principles of collaborative practice.

What are the risks of Facilitative Advocacy?

When we show up as *Facilitative Advocates*, we need to be careful not to cross the line into not advocating at all. If our clients need more support from us, they may feel unrepresented, unable to make a decision, and feel the need for second opinions. These clients may turn to third party 'stakeholders' to fill the gap. When there is not enough advocacy the risks are:

- mediocre results
- peace at any cost, in which a client's integrity, values and principles are sacrificed
- non-durable agreements
- agreements that suppress anger and leave the parties bitter toward one another
- a weaker party being taken advantage of by the more aggressive party

- loss of integrity of process

What are the risks of Partisan Advocacy?

When we show up as *Partisan Advocates*, we need to be careful not to cross the line into positional or adversarial advocacy. When we are Partisan Advocates and our clients need less advocacy from us, the risks are:

- clients becoming disempowered
- clients avoiding ownership of their own part in the conflict
- clients may give in 'to avoid a fight'
- loss of important relationships in family
- loss of confidence in counsel and process
- escalation of conflict
- settlements that don't satisfy important non-financial and non-legal interests
- risk of impasse
- loss of integrity of process

No Matter What Qualities of CP

When *Partisan Advocacy* is needed, we need to be particularly mindful to uphold the essential, *no matter what* qualities of CP which include:

- Respect everyone- Don't attack or denigrate other client or lawyer
- Appreciate and work with the perspective of other-without the need to agree
- Maintain aligned, trusting working relationships among professionals
- Remain balanced and honest in lawyers' assessment of the law
- Leave decision-making in the hands of the clients, including the role the law will play

When advocacy loses touch with the *no matter what* principles of collaborative practice, there seems to be selfishness in the room and clients lose sight of some of their earlier articulated goals. The negotiation moves from being interest based to one where clients become positional, less capable of taking into account the needs of the other and go after the 'best possible deal'. Clients may lose confidence in their lawyer, and wish to work with the neutrals where they may feel safer. A client may lose confidence in the entire process, become mistrustful of the neutrals as well as the lawyers.

When there is too much advocacy in the room we can see a different emotional connection between the lawyers and the clients; one where the lawyer may over-identify with the client, or assert his or her own views instead of those of the client. The lawyers may become more protective of their clients, focus more on the likely court outcome, move into positional negotiations and/or take control of the negotiations.

We have identified our 'top ten' ways to provide advocacy and stay true to the 'no matter what' principles of Collaborative Practice:

1. Establish reasonable expectations as to process and outcome from the initial meeting
2. Continually assess our client's advocacy needs
3. Discover what our client really wants – dig deep for their process, psychological and substantive interests

4. Get to know the interests and process/advocacy needs of the other spouse
5. Build and maintain trusting professional relationships
6. Focus on process –prepare, use agendas, do homework, debrief, stay positive and respectful
7. Bring the law into the process as a tool and not a weapon
8. Deepen our skills as principled negotiators
9. Don't take over-give the clients sufficient support to decide the outcome for themselves
10. Be a reflective practitioner-mindful of our own triggers and biases

Continual Assessment of Advocacy Needs

No matter where we initially determine we need to be on the spectrum of advocacy, we need to continually assess advocacy needs. We may not have appreciated the complexity or depth of conflict at the beginning of the case. Changes over time may change the dynamics and require a change in advocacy styles. Events that might trigger a need for a reassessment of our approach to advocacy are:

- affair discovered
- new partners
- job loss
- illness
- loss of hope of reconciliation
- shift from victim to entitled
- moving through the grief cycle- from hope to despair or sadness to anger
- getting to the 'tough' issue in the file

By accurately diagnosing where our clients need us to be on the spectrum of advocacy, we can provide flexible, customized advocacy to each and every client. As long as we remain true to the essential, *no matter what* qualities of collaborative practice, and stay mindful of providing the advocacy needed by the clients, rather than the advocacy we feel comfortable providing, we can help our clients achieve their goals even in some of our most challenging files.