

COLLABORATIVE Practice Tips

A monthly bulletin from the CP Cal Practice Excellence Committee

The Practice Excellence Committee is pleased to offer tips to help you increase your Collaborative cases and achieve *practice excellence*.



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Collaborative Premarital Agreements

The Collaborative process is a great option for Premarital and Postmarital Agreements. Here are some tips:

Tip #1

What are the benefits? Explain the benefits of the process to the clients. For example, as couples are planning a wedding, they are hopeful for the future and have positive feelings towards each other. A Collaborative approach will likely feel more in line with their relationship than an adversarial approach; and a Collaborative process can focus on helping them structure an arrangement that is fair for both of them and considers each of their interests going forward. Lastly, explain that Premarital Agreements require that each party have an independent attorney to sign the agreement; because of this, a Collaborative process may be more efficient than mediation.

Tip #2

Use a coach or coaches and a financial neutral. This can be a difficult time and negotiations can be difficult, especially when one party or the other was not prepared for a request for such an agreement when they decided to marry. Strongly recommend that the clients see coaches or have a neutral coach to help them process the feelings that arise from having a Premarital Agreement. And, the coach(es) can help them talk through difficult matters.

Explain to the clients that Premarital Agreements require full disclosure of assets and debts and that a neutral financial professional can help prepare personal financial statements to meet this requirement. Recommend that the clients get input from a financial advisor or have a neutral financial professional review the tax and financial

implications of their agreement. The financial can also do scenarios for them as needed and help them structure their finances to minimize disagreements.

Tip #3

How would the process work? Have a meeting *before* drafting the Premarital Agreement so that the choices to be made in an agreement can be discussed. In a traditional process, the attorney for the client who wants the Premarital Agreement will prepare the initial draft; this immediately sets the tone for negotiating against each other. In a Collaborative process, each attorney and that party's coach or a neutral coach should meet with his or her client separately to understand his/her goals. The attorney can explain what the law would provide in the absence of a Premarital Agreement, or this can be done together in a meeting with all participants. There are almost always financial considerations, so a meeting with a financial neutral to discuss the impact of what they are thinking about would be helpful. Then, there should be a meeting to discuss their respective goals and to negotiate the terms of the agreement together. Once they have reached agreement, then the initial draft of the Premarital Agreement can be prepared.

Tip #4

Prepare the agreement together. The initial draft of the Premarital Agreement should be prepared jointly by the attorneys. After one attorney prepares an initial draft, it should be sent to the other attorney for comments before it is sent to either client. Or, sit down and prepare it together. When the initial draft is finally presented to the clients, it should reflect their agreement without the need for much further negotiation. Each attorney can then review the agreement individually with his or her client to make sure the client understands all of the terms.

Tip #5

How to deal with confidentiality. Although normally a Collaborative process is confidential, that might not be the best process for a Pre- or Postnuptial Agreement. Discuss the pros and cons with the team and your clients. Remember that if someone ever wants to set the agreement aside, and it was confidential, it will be difficult to look at the underlying process--and that might be important in the future.



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