

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*.



Please send us your comments and questions! Email us at info@cpcal.com

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Tips for LGBT Divorce Work

Tip #1

How comfortable are you? For example, asking questions such as "What gender do you identify with?" and "What pronoun would you prefer me to use?" See #5 below. Know your own capabilities and skills, experience and biases, and ask yourself if your biases might get in the way. If you identify some of your own biases--for example, feelings or judgments about gay couples or persons identifying as transgender being married or raising children--then seek consultation from a professional with expertise in this area. If you feel your thoughts and opinions on these topics interfere with your ability to work with a client, then refer them to a professional with expertise in working with the LGBT community.

Tip #2

Focus on the parentage of any children. Do all the people the child psychologically considers as parents have the legal status of parents? The 2015 US Supreme Court decision gave equality to marriage in all U.S. States but did *not* give equality to *parentage*. The birth certificate is useful but not determinative of this question. If needed, you can look at step-parent or second-parent adoption for both gay and straight couples. You should inquire into any pre-birth orders or adoption papers. If there is no adoption, a parent can be made legal as part of the divorce proceeding, to establish legal parentage before talking about custody. This way both people can have the "child conversation" from the status of both being parents. By statute in California a child can have more than two parents under certain circumstances, not limited to LGBT parents.

Tip #3

What is the legal status of the relationship between the adults when they walk into your office? They may have been--or not been--married, registered domestic partners ("RDP"), or under civil union ("CU"). This may be similar to unmarried straight couples who want to separate as if they were married or have nonmarital "palimony" claims. Not all those RDP/CU options are recognized for straight couples in California, and no common law marriage exists in California for gay or straight couples. Determine their legal relationship status, or even whether they may have multiple legal statuses, from different states or even different countries. Make sure that what you are doing in CA considers and will terminate all of these statuses.

Tip #4

What is the start date of the adults' legally recognized relationship? Was marriage legal where they lived when their relationship started and significantly progressed? Professionals from all three disciplines would want to help the partners look at when the partners feel they were entering into what kinds of a committed relationship at what point. For example, at what point did they merge their finances and how were they merged? This question is important if they want to apply CA marital law before marriage was legalized in CA for the purpose of determining community property and/or spousal support. This is a choice every couple has.

Tip #5

Figure out the respectful words to use in drafting the legal documents. Professionals should use the words that the couple chooses and prefers to use. Most consider it respectful to ask them how they would like to be referred to. People may want to be referred to as "spouse" or "partner" if married. With a transgender person you may ask, "what pronoun would you like me to use?" For example, you may ask "Is it appropriate to refer to you as 'she' and 'her' in my legal documents?" Ask about "Dad" as distinct from "donor," as these terms also may have emotional charge in a lesbian couple, mixed couple or even in a gay male couple. There are topics of discussion to cover when developing a parenting plan: for example, how to assist parents in developing common explanations of same sex relationships and/or how a parent identifies as gay or transgender, much as we develop common divorce stories. Another question to ask is what the children call each parent and whether they'd like these terms reflected on the parenting plan and relayed to the child specialist.

Tip #6

Look at financial transactions to see if any were done before legal recognition was available. Be aware that some transactions may have been done because of trust and estate planning before marriage was legal. Their intentions may have been different if they meant it for what was to happen at their death, but perhaps they did not intend it to cover a possible future divorce.

Tip #7

If your clients divorced before marriage equality, then their spousal support may not have had the same tax treatment as straight people's. They might want to go back and amend their divorce agreement for tax advantages.

We'll give future tips for: Transgender kids of straight people, and transgender adults getting divorced. Also, there is a workshop on this topic by Laura Ward and Mariette Geldenhuys at the IACP Forum in October 2016 in Lake Las Vegas.

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