

Collaborative Law Association of Southwestern Pennsylvania
(“CLASP”)
ADVISORY GUIDELINES

PREAMBLE

1. These Advisory Guidelines are procedures which CLASP has determined to represent the best practice in our region. Advisory Guidelines do not establish a standard of care. CLASP provides them as an invitation to better collaborative practice and to build confidence about collaborative practice among collaborative professionals, the alternative dispute resolution community, the general public, and the judiciary and other court personnel, and clients.

2. For the purpose of these Advisory Guidelines:
- a. “Participant” refers to parties, collaborative counsel, and other professionals engaged to participate in a collaborative case.
 - b. “Meeting” refers to a meeting between parties and collaborative counsel, with or without other professionals engaged to participate in a collaborative case.
 - c. “Counsel” refers to any collaborative attorney representing a party in a collaborative case.

GENERAL PROVISIONS

3. These Advisory Guidelines are subordinate to the Rules of Professional Conduct of all professionals.

4. For a case to be designated as a collaborative case, counsel for both parties should have completed, at minimum, the two-day basic training in collaborative practice.

5. All participants to a collaborative case should sign and abide by a Participation Agreement. The standard CLASP Participation Agreement is preferred.

THE COLLABORATIVE LAWYER-CLIENT RELATIONSHIP

6. Collaborative counsel should inform prospective clients about legal alternatives for resolving the client’s dispute, including the collaborative process, other alternative dispute resolution methods, and litigation/adversarial representation. This Advisory Guideline may be satisfied by providing to and reviewing with prospective clients the Appendix entitled “Handbook for Clients” published by the American Bar Association (“ABA”) in 2001.

7. All parties in the collaborative process should be represented by counsel except during a transition to new collaborative counsel or by written agreement of the parties.

8. If counsel discovers that his or her client is acting in bad faith or is unwilling or incapable of abiding by the terms of the Participation Agreement, he or she should withdraw from the collaborative process and the process should terminate.

9. No collaborative lawyer, nor any lawyer associated in the practice of law with the collaborative lawyer, should serve as a litigation lawyer in any adversarial proceeding among any of the parties to the dispute.

CIVILITY

10. All participants should adhere to a heightened standard of respectfulness and civility to all other participants.

11. Participants should not threaten to terminate the collaborative process. Where a genuine likelihood of termination exists, counsel should promptly advise counsel for the other party.

DISCLOSURE

12. All participants should make a timely full and candid disclosure of all relevant or requested documents and information. All participants in the collaborative process should promptly identify and correct their own known mistakes, errors of fact or law, miscalculations and other inconsistencies, and those of any other participant.

MEETINGS AND COMMUNICATION

13. The Participation Agreement should be read and signed by all participants at the first meeting.

14. Meetings should be scheduled at mutually convenient times and places with an effort to balance the travel burden for each party and their counsel. Whenever possible, at least one subsequent meeting should be scheduled prior to adjournment of each meeting.

15. Counsel should confer with one another and with their clients prior to each meeting.

16. Meetings should be governed by a written agenda to be drafted, circulated and revised by agreement of counsel in time to be circulated to all participants before each meeting. Except in an exigency, issues should not be addressed that are not on the agenda. Exigent matters should be deferred until the end of the meeting where possible.

17. The agenda for each meeting should include designation of the person responsible to take notes. Meeting notes should be promptly circulated after each meeting. Counsel should promptly debrief with their clients and with one another following each meeting.

18. Clients should be advised that counsel may communicate with one another and with other professionals without the participation of clients to assist the collaborative process.

EXPERTS

19. Except where parties agree to separately retain neutral experts, neutral experts should be jointly retained where necessary or beneficial to the collaborative process. The opinion of a neutral expert is not binding on the parties unless the parties agree in writing to be bound by it.

20. All information provided to or produced by a retained expert in connection with a case should be provided to all participants. A retained expert's work product, opinions, and information relied upon should not be discoverable or admissible, and the expert should be prohibited from testifying as a fact or expert witness in any adversarial proceeding among any of the parties, unless otherwise agreed in writing by the parties.

PROCESS

21. It is recommended that the collaborative process proceed in the following stages:

A. Identification of Goals and Interests

Counsel should assist the parties in differentiating between bargaining positions and fundamental interests, to recognize areas of commonality, and to work toward understanding and acknowledgement of the interests of one another.

B. Information Gathering

Counsel should assist the clients in identifying, gathering and evaluating all relevant information.

C. Development of Settlement Options

Upon completion of information gathering, counsel should encourage and assist the clients to develop options to meet the goals of both clients.

D. Evaluation of Settlement Options

Upon agreement of participants that all reasonable options have been identified, counsel should assist clients in evaluating the likely success of all options to achieve the identified goals of both parties.

E. Negotiation and Agreement

Participants should fashion the terms of the agreement with the primary objective of best serving the interests of both parties and achieving the best possible outcome for both parties, and upon resolution of all issues counsel should promptly draft necessary documents to finalize the settlement.