

It's All In Your Head: 10 Necessary Notions for Clients in Collaborative Practice Process

By Andrea M. Eichorn, JD

1. **You won't get everything you want. Period.**
2. **Non-adversarial divorce does not mean non-stressful.**
3. **Be vulnerable.**
4. **Forget the word "fair."**
5. **Your spouse may never understand how you see things.**
6. **Keep an eye on the big picture; value intangibles.**
7. **Accept responsibility for everything you're experiencing.**
8. **Avoid the slippery slope of the law.**
9. **Listen! And figure out how to give your spouse what they want while doing the same for yourself.**
10. **Take time to care of yourself.**

1. **You won't get everything you want. Period.** People who enter the Collaborative process thinking they're going to dictate the parameters of their divorce settlement are mistaking the nature of an out of court process. It's all about compromise, and both sides have to be flexible. You'll be well prepared for the reality of compromise if you remind yourself over and over: I'm not going to get everything I want.

Some Collaborative attorneys joke that the hallmark of a successful Collaborative process is both people feeling like they lost in the end. But rather than settle for lose/lose, another way to look at the need for compromise is to try to do what you can so that both of you can say the resulting settlement is your best possible outcome.

2. **Non-adversarial divorce does not mean non-stressful.** Current conventional wisdom holds that Collaborative Practice is for "peaceful" cases, and the courtroom is for high-conflict cases. But that is a misperception. In reality, Collaborative Practice is for people who are willing to work on their own settlement, and the courtroom is for people who want others to create their settlement for them. Sometimes Collaborative meetings ask a lot of clients—it asks them to do the work to find compromise.

Collaborative meetings can involve painful revelations as perspectives get shared, and Collaborative attorneys often request that clients dig deep into protected areas of their lives in an effort to bring out the heart of an issue. Be prepared for your Collaborative attorney to ask you some hard questions which might go into the emotional basis for your views. Getting angry or emotional once in awhile is expected considering the visceral nature of the issues being resolved.

3. **Be vulnerable!** Our culture reinforces at almost every turn that to make it through divorce in one piece you have to protect yourself and press for your rights. But both of these stances are counter-productive when used in an out of court process. It may be hard

the first few times to say what you really want and why—to be transparent—but when things are communicated clearly, it makes negotiations more rational rather than less.

By laying all your cards on the table, you give the other person the opportunity to do the same. And it's only when that happens, that can you start the work of finding as many possibilities for you to both get what you want.

4. Forget the word “fair.” Nothing is worse in an out of court process than to invoke the concept of fairness. What's fair? It differs for us all. And the notion of fairness has highly pejorative connotations; someone who's being un-fair is practically being un-American. Delete the word fair from your vocabulary in all Collaborative meetings. Instead, use the concept of acceptability: either someone's idea is acceptable to you or not, minus any description of what you think of their idea. You can talk about fairness later with your friends over coffee.

5. Your spouse may never understand how you see things. Ask two people a question about the same thing and you're going to get two different answers. That's usually how it works. Do not think that part of getting to settlement in an out of court process is to have your spouse understand you, or for you to understand your spouse. It may happen, but don't count on it. Information is shared transparently in an out of court process to facilitate empathy and creative brainstorming for solution, but don't look for a light to go on above your spouse's head and for them to say the desired thank you or I'm sorry.

Share your views with your spouse to educate them on why you want what you want, but don't expect them to agree with your version of your lives together.

6. Keep an eye on the big picture; value intangibles. This is one of the core differences between an out of court process and a courtroom hearing, so utilize the benefits. When you're transparently communicating your perspective, remember to ignore the robot in all of us that wants to look at “just the facts, ma'am” when we're under stress. If your Collaborative attorneys had you articulate your values and goals for the process, remember to reflect on them frequently.

How does the credit card ad go? Things cost money. But it's the things you can't buy that mean the most to us in the long run; it's the things you can't buy that are priceless. In the Collaborative process, if you put a value on non-tangibles, such as being friendly with your spouse after the divorce, you'll be making decisions that value quality of life. Almost everyone knows someone who was hurt by their parents' acrimonious divorce, and it seems sort of crazy that those people lost out on experiencing some of the joys of normal life because their parents' choice to remain embittered. Make choices that avoid this situation for your children, or family, or friends, or even yourself.

7. Accept responsibility for everything you're experiencing. We live in a blaming culture: from: “I'm unhappy because my boss is rude to me,” to “I refuse to compromise about the house because you're the one who left me.” But in an out of court process, you are likely to get closer to your best outcome if you accept that it takes two to tango, and

that every moment of your life is the result of every decision you've ever made. When you boil it down, you have control over yourself, so the responsibility for everything you're experiencing rests on your own shoulders.

This means taking responsibility for past events, for the quality of your mediation experience and your settlement, and for the long-term effects of its agreements.

8. Avoid the slippery slope of the law. We often think of the law as some sort of logical, concrete set of rules, a resource to be turned to for clear answers. But attorneys are highly paid because the law is not that simple. There are differences of interpretation on almost every issue. In an out of court process, the law can be helpful to give a ballpark monetary range, or for brainstorming alternatives, but if you want to bring in "the law" to justify what you want, then you are opening Pandora's Box. The law may look good for you on one issue, but how does it look on all the issues? And if you can't articulate what you want beyond the fact that you have a legal right to it, then how can the other person take it other than you want to take as much as possible from them? And that approach to negotiation never makes the other person feel generous or respected, but rather invokes a reaction to give as little as possible. Hence, the law is a slippery slope to ending up with a settlement that leaves you both deeply unsatisfied.

9. Listen! And figure out how to give your spouse what they want while doing the same for yourself. That's out of court process in a nutshell. Keep in mind that your spouse can say anything they like, and it won't result in an agreement unless you accept their terms. So feel free to listen; it can't hurt. And you can respond as to the acceptability or not of their ideas. And in turn, you will be able to talk about what you want, and they are safe to listen as you're not going to dictate the terms of the settlement either.

You cannot discount the priorities of your spouse, as you are not in an out of court process to change the way they see things. You are in an out of court process to keep control of your own divorce settlement, and negotiate its terms yourself. The only way you're going to find compromise is if you respect your spouse's priorities and try to meet them.

10. Take time to care of yourself. This means try to eat right, sleep enough, make time to be with friends and loved ones. Studies show that divorce is the second most stressful event that people can experience in their lives—second to the unexpected death of a spouse. By choosing an out of court process you and your spouse have already started to minimize the stressful nature of the divorce process, but that doesn't mean that it's not still an enormous transition.

Get massages, join a local singing group, join a softball team, see a chiropractor, Ayurvedic doctor, or other holistic body-expert. Try to avoid having more than one divorce-related meeting a week. Transition is always awkward with your old and new lives intersecting. To keep your eye on the big picture, and hence come to a successful resolution, it is essential to remember the joy of living.