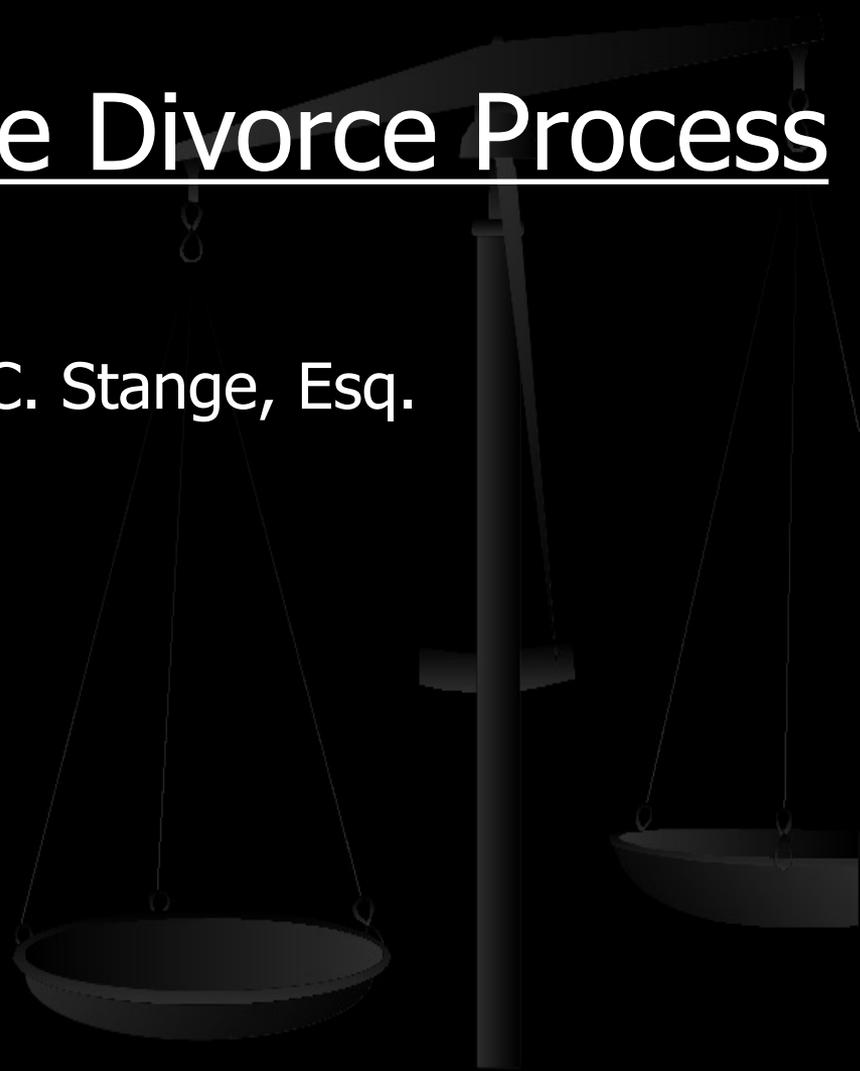


Stange Law Firm P.C.

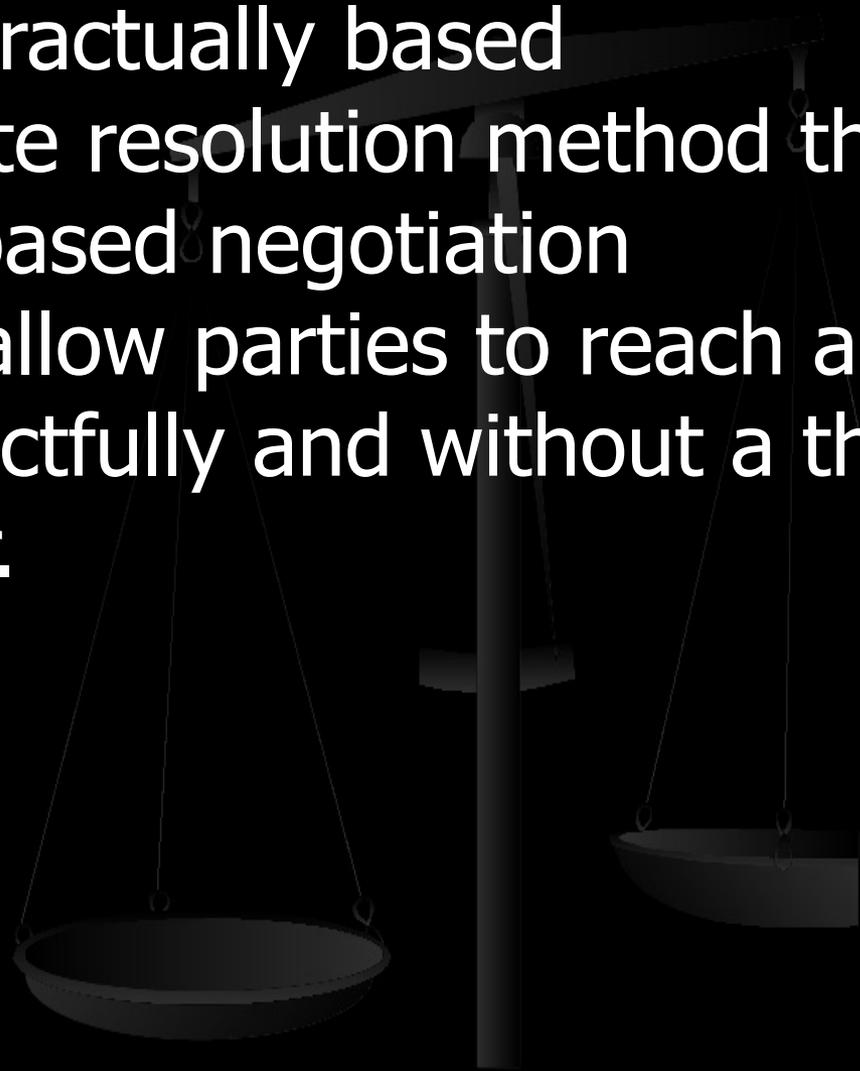
Collaborative Divorce Process

Kirk C. Stange, Esq.



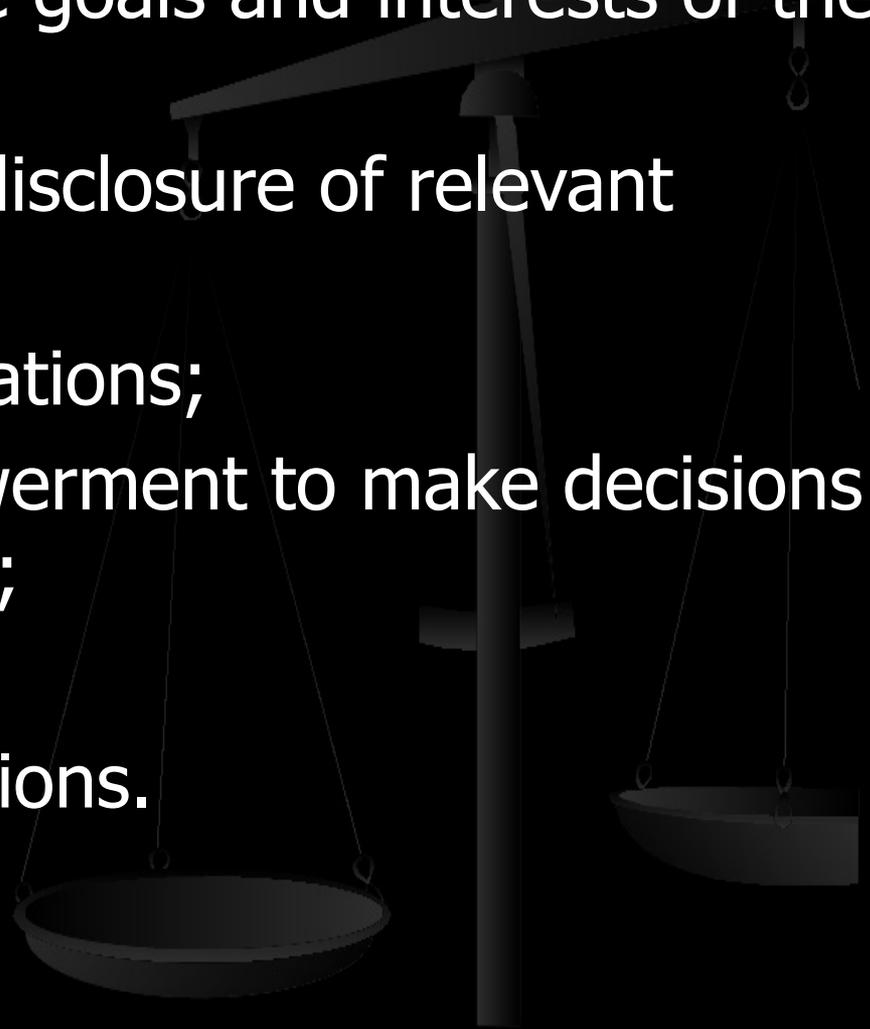
The Collaborative Divorce Process

- A voluntary, contractually based alternative dispute resolution method that utilizes interest-based negotiation techniques that allow parties to reach an agreement respectfully and without a third party adjudicator.

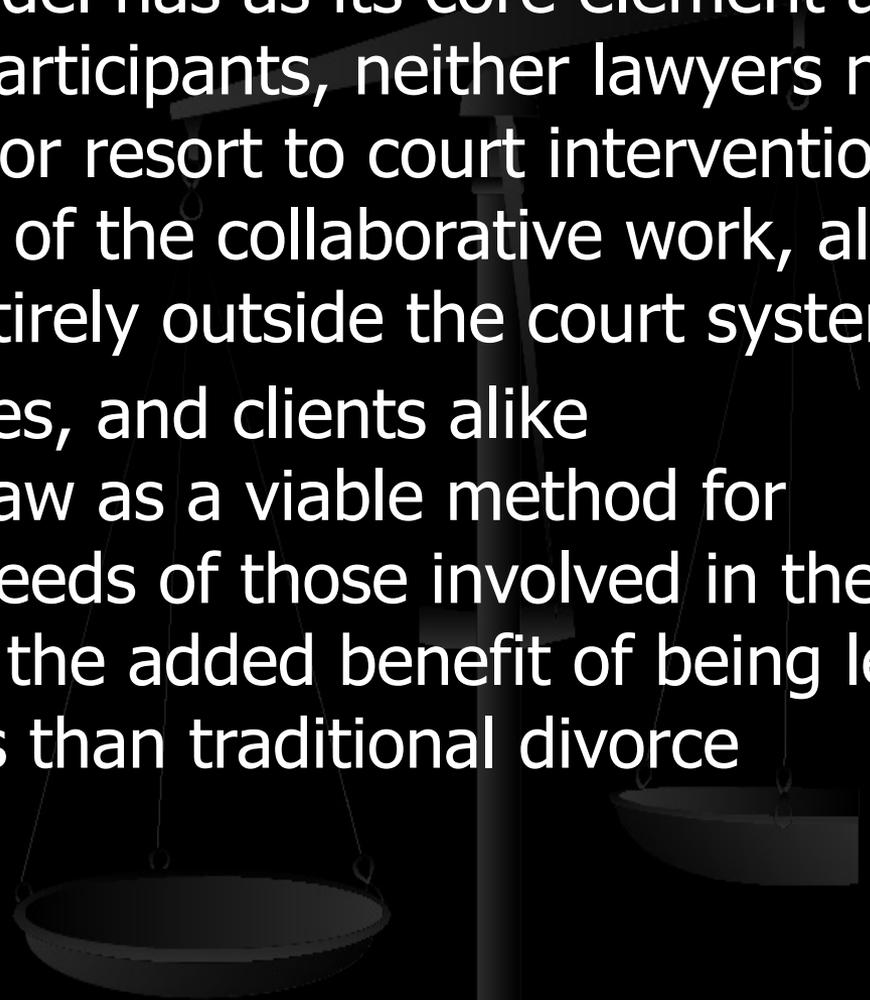


Essential Elements of the Collaborative Process

- Identification of the goals and interests of the parties;
- Full and complete disclosure of relevant information;
- Efficient communications;
- The parties' empowerment to make decisions on a level playing field;
- Confidentiality; and
- Good faith negotiations.



Essential Elements of the Collaborative Process

- The collaborative model has as its core element an agreement that no participants, neither lawyers nor clients, will threaten or resort to court intervention during the pendency of the collaborative work, all efforts take place entirely outside the court system.
 - Family lawyers, judges, and clients alike praise collaborative law as a viable method for better meeting the needs of those involved in the divorce process with the added benefit of being less destructive to parties than traditional divorce proceedings.
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The Collaborative Process—Overview

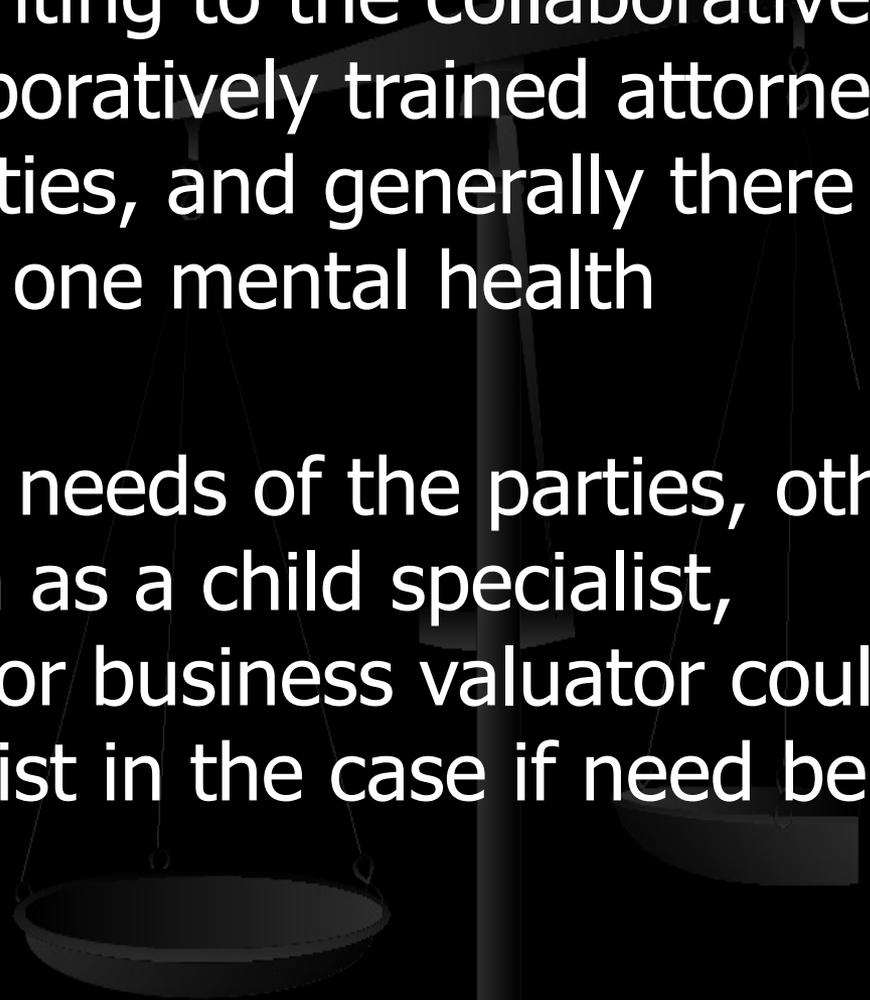


The Collaborative Process—Overview

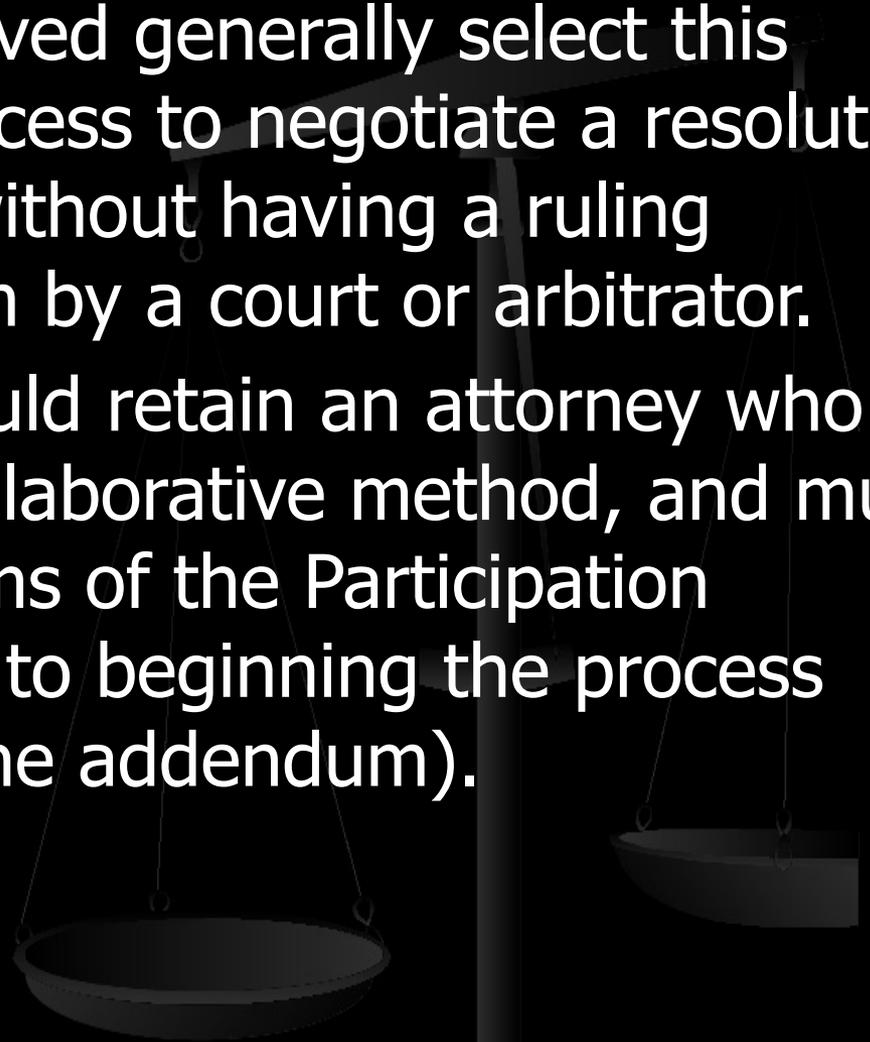
- A. Parties
- B. Counsel
- C. Experts/Advisors



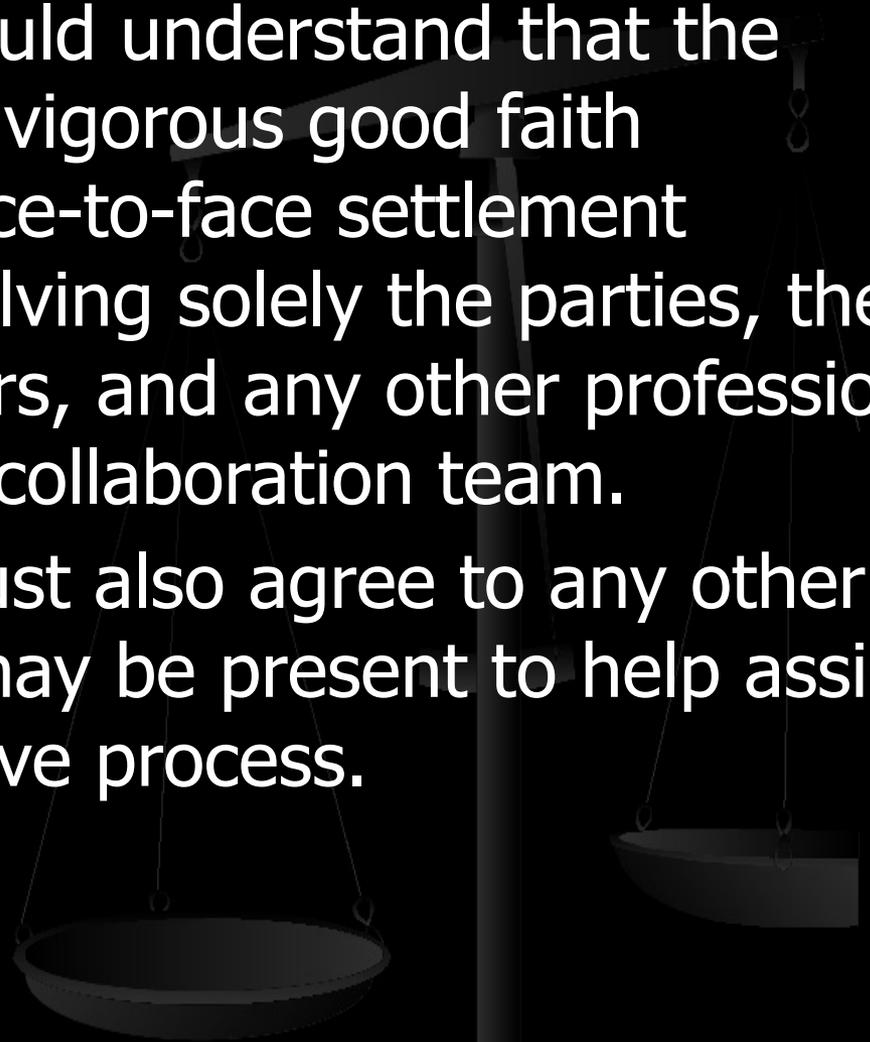
Who Is Involved?

- The parties consenting to the collaborative process, the collaboratively trained attorneys of each of the parties, and generally there should be at least one mental health professional.
 - Depending on the needs of the parties, other professionals such as a child specialist, appraiser, realtor, or business valuator could be retained to assist in the case if need be.
- 

The Parties

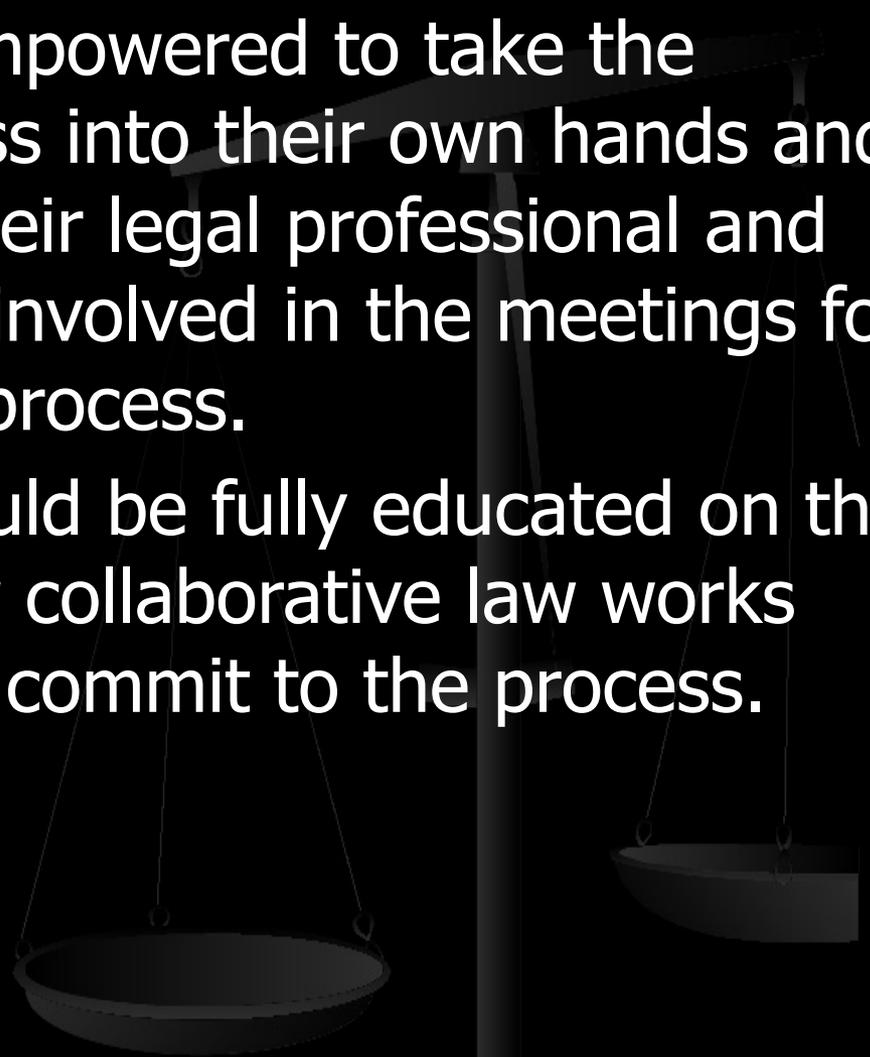
- The parties involved generally select this collaborative process to negotiate a resolution of their matter without having a ruling imposed on them by a court or arbitrator.
 - Both parties should retain an attorney who is trained in the collaborative method, and must agree to the terms of the Participation Agreement prior to beginning the process (see sample in the addendum).
- 

The Parties

- The spouses should understand that the process involves vigorous good faith negotiation in face-to-face settlement conferences involving solely the parties, their respective lawyers, and any other professional members of the collaboration team.
 - Both spouses must also agree to any other personnel who may be present to help assist in the collaborative process.
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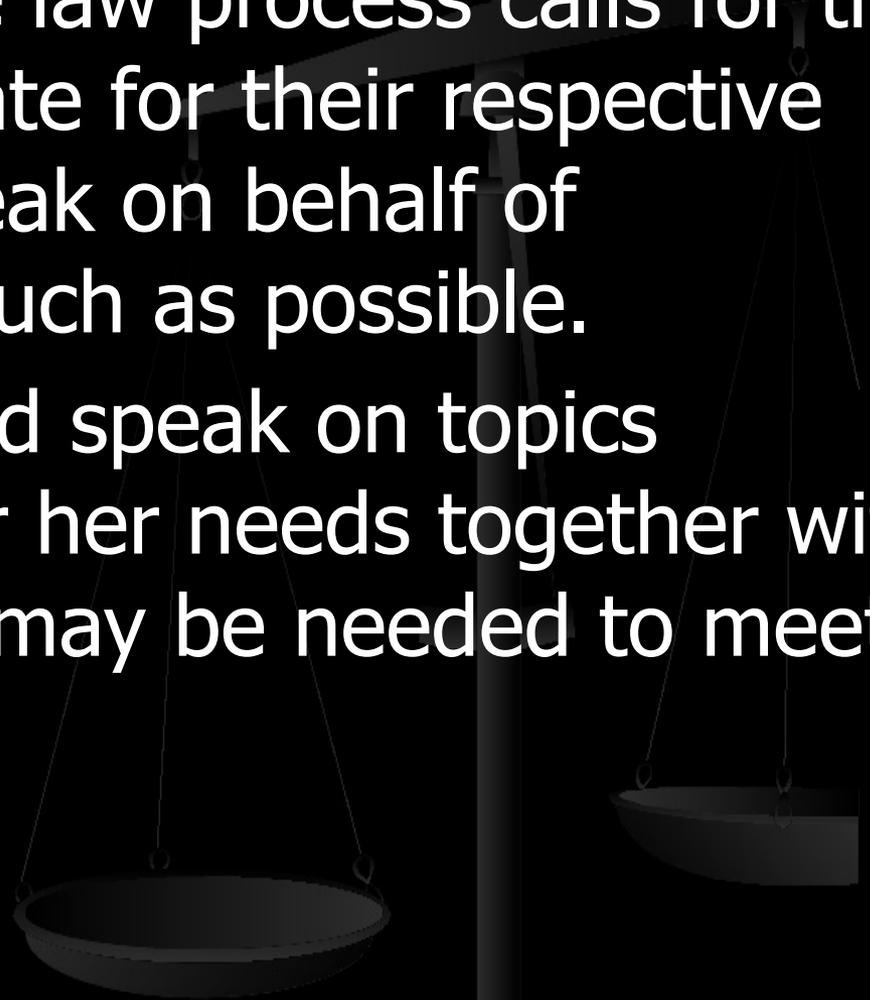
The Parties

- All parties are empowered to take the resolution process into their own hands and should look to their legal professional and other personnel involved in the meetings for guidance in the process.
- Both parties should be fully educated on the process and how collaborative law works before they fully commit to the process.



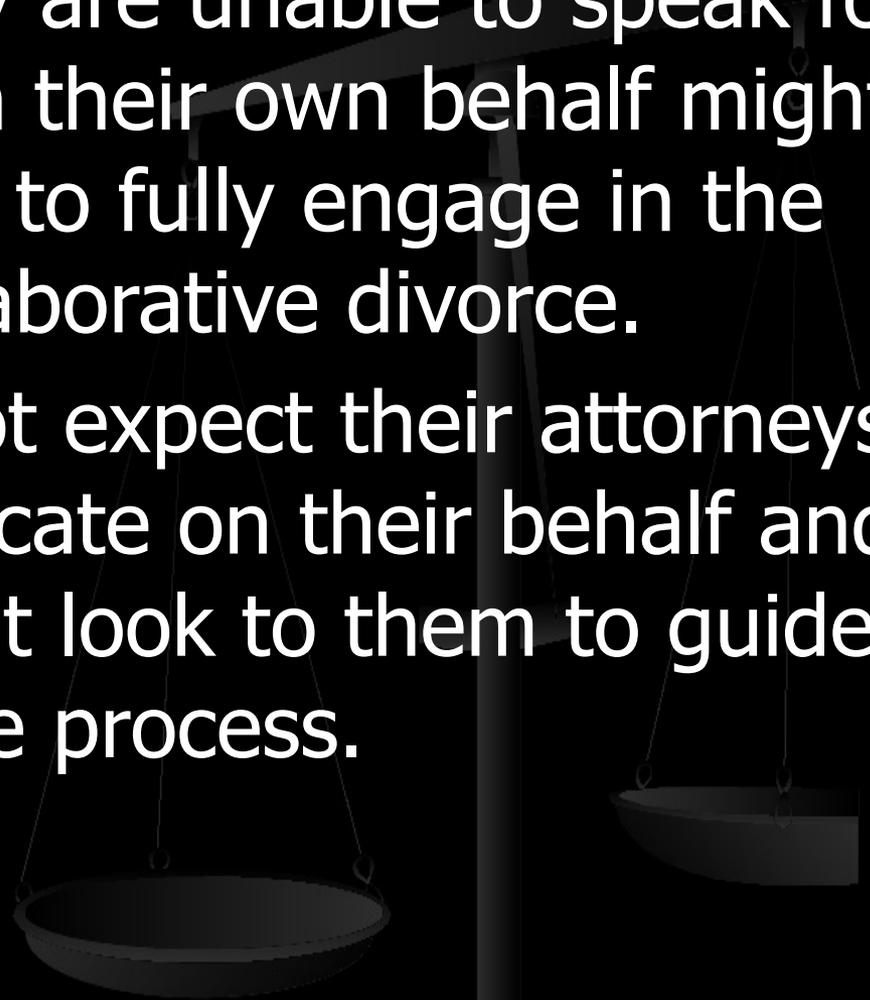
The Parties

- The collaborative law process calls for the parties to advocate for their respective interests and speak on behalf of themselves as much as possible.
- The clients should speak on topics concerning his or her needs together with the options that may be needed to meet these needs.



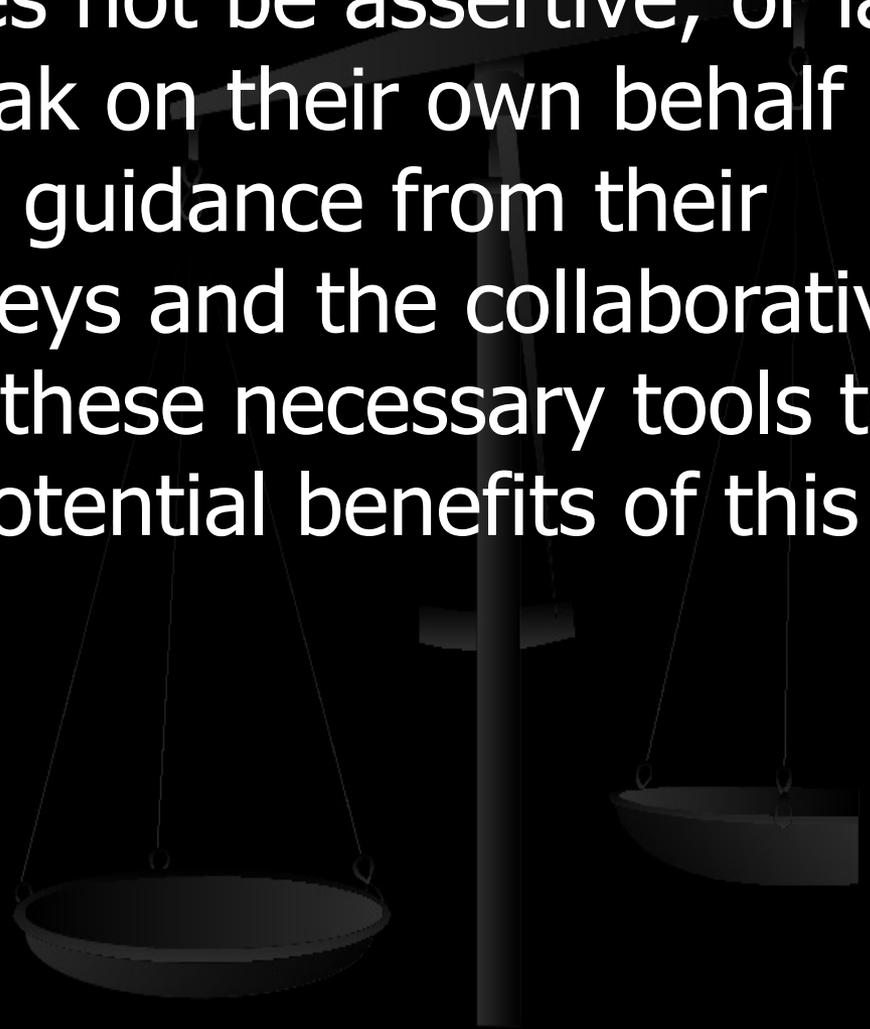
The Parties

- Parties who likely are unable to speak for themselves or on their own behalf might lack the capacity to fully engage in the process of a collaborative divorce.
- Parties should not expect their attorneys to speak or advocate on their behalf and their interests but look to them to guide them through the process.



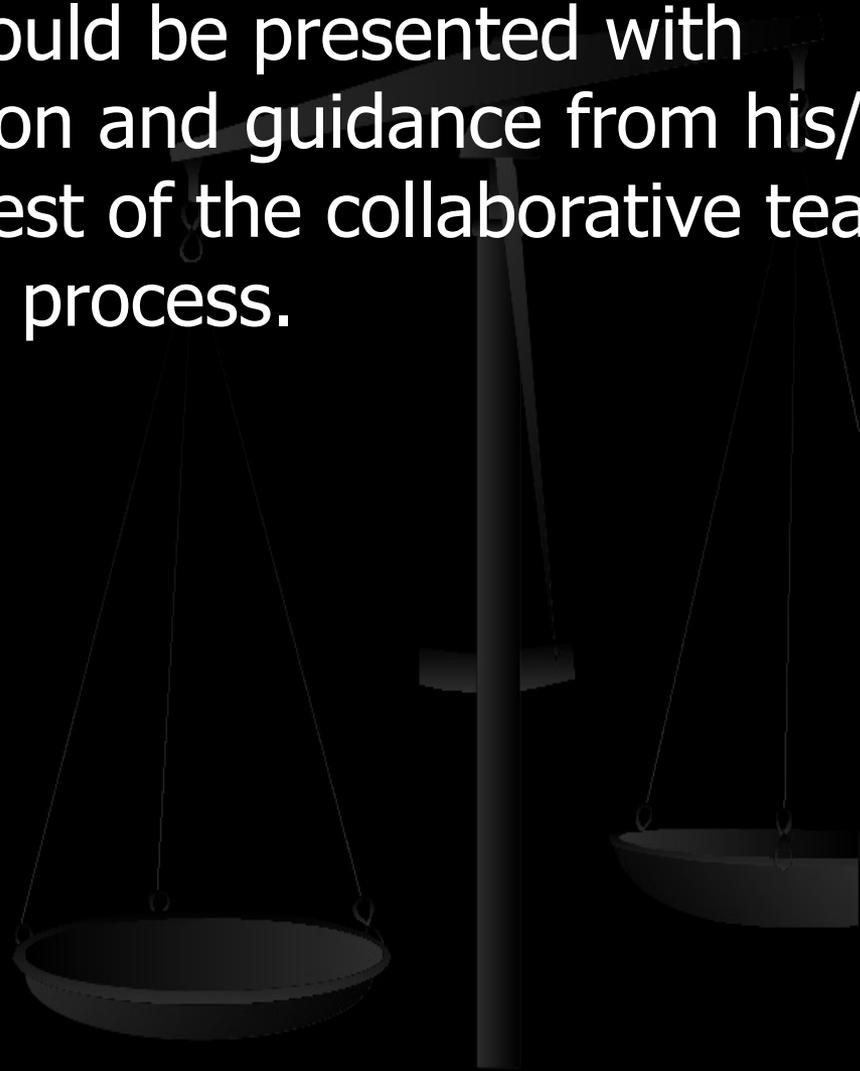
The Parties

- Should the parties not be assertive, or lack the ability to speak on their own behalf they should seek guidance from their respective attorneys and the collaborative team to develop these necessary tools to maximize their potential benefits of this process.

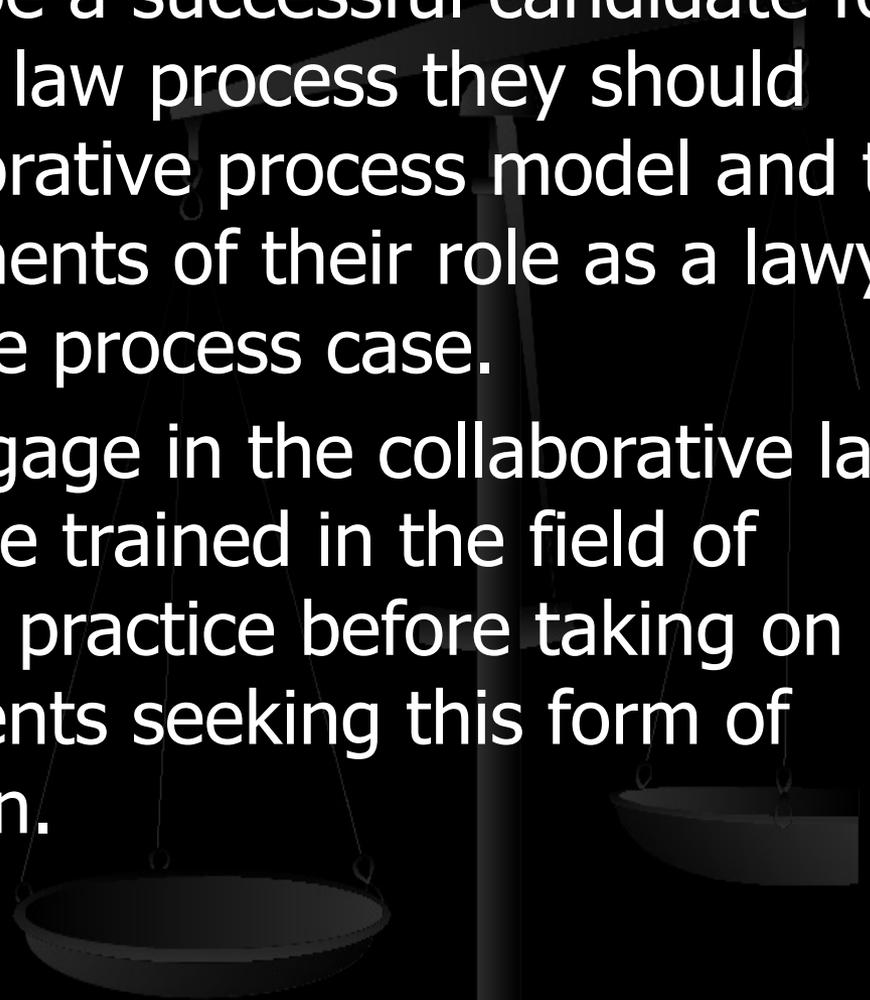


The Parties

- Both spouses should be presented with support, protection and guidance from his/her lawyer and the rest of the collaborative team during the entire process.



Counsel



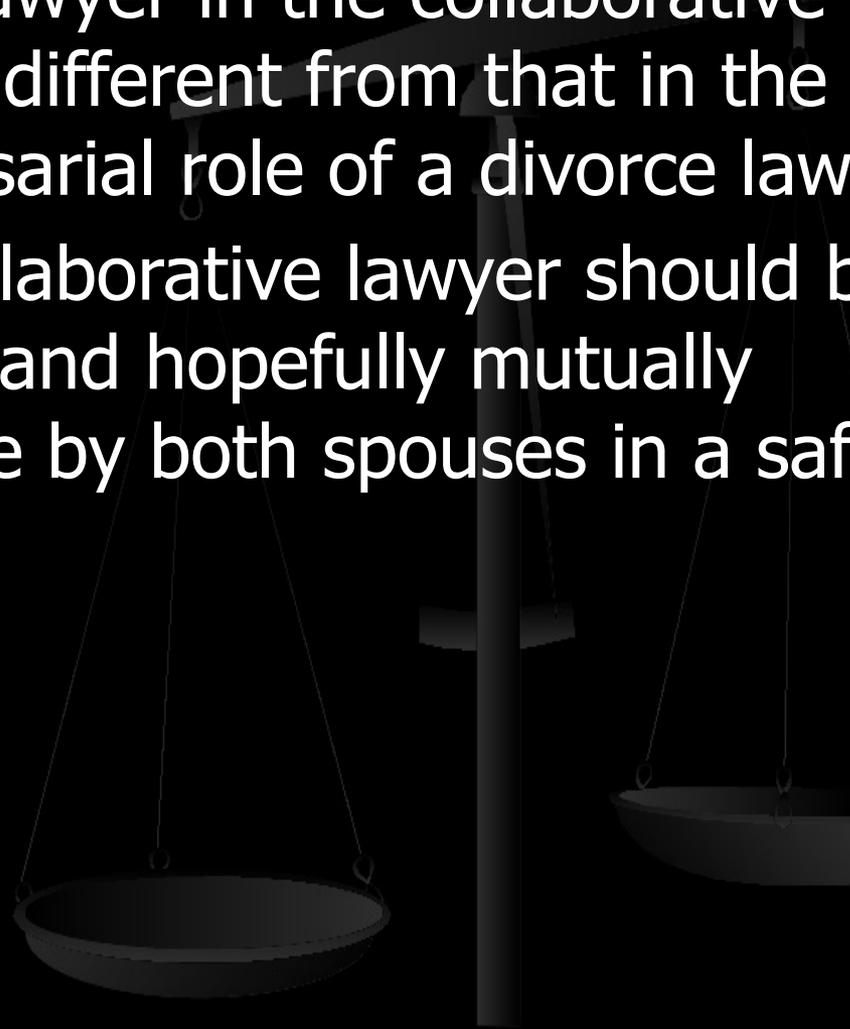
- For a lawyer to be a successful candidate for the collaborative law process they should study the collaborative process model and the distinct commitments of their role as a lawyer on a collaborative process case.
- Lawyers who engage in the collaborative law process should be trained in the field of collaborative law practice before taking on cases or new clients seeking this form of dispute resolution.

Counsel

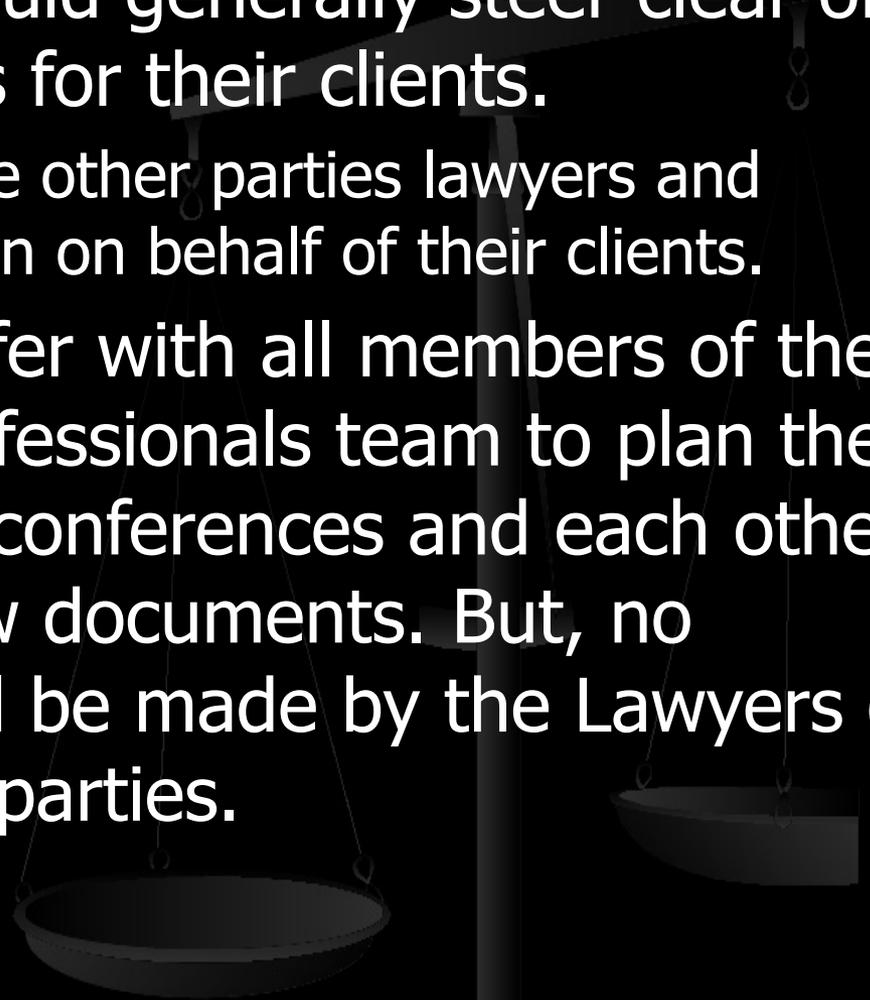
- Depending on which jurisdiction you are practicing in, there may be different rules and regulations regarding practicing the collaborative method.
- States and organizations range from 1-3 day training sessions on interest-based negotiation and mediation skills.
- But the International Academy of Collaborative Professionals requires a 2-day interdisciplinary training.

Counsel

- The role of the lawyer in the collaborative process is vastly different from that in the traditional adversarial role of a divorce lawyer.
- The goal of a collaborative lawyer should be to achieve a fair and hopefully mutually satisfied outcome by both spouses in a safe environment.

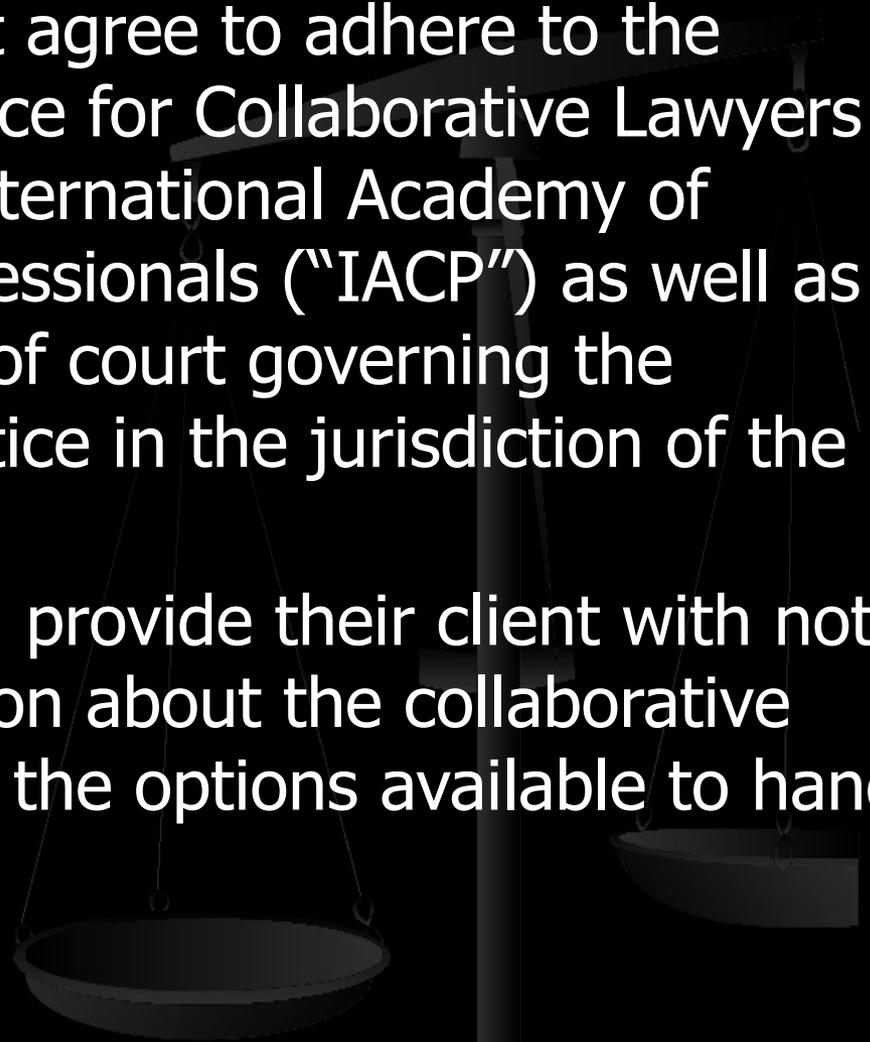


Counsel



- The Lawyers should generally steer clear of making decisions for their clients.
 - Or contacting the other parties lawyers and making a decision on behalf of their clients.
- Lawyers will confer with all members of the collaborative professionals team to plan the agendas for the conferences and each other to draft or review documents. But, no agreements shall be made by the Lawyers or on behalf of the parties.

Counsel

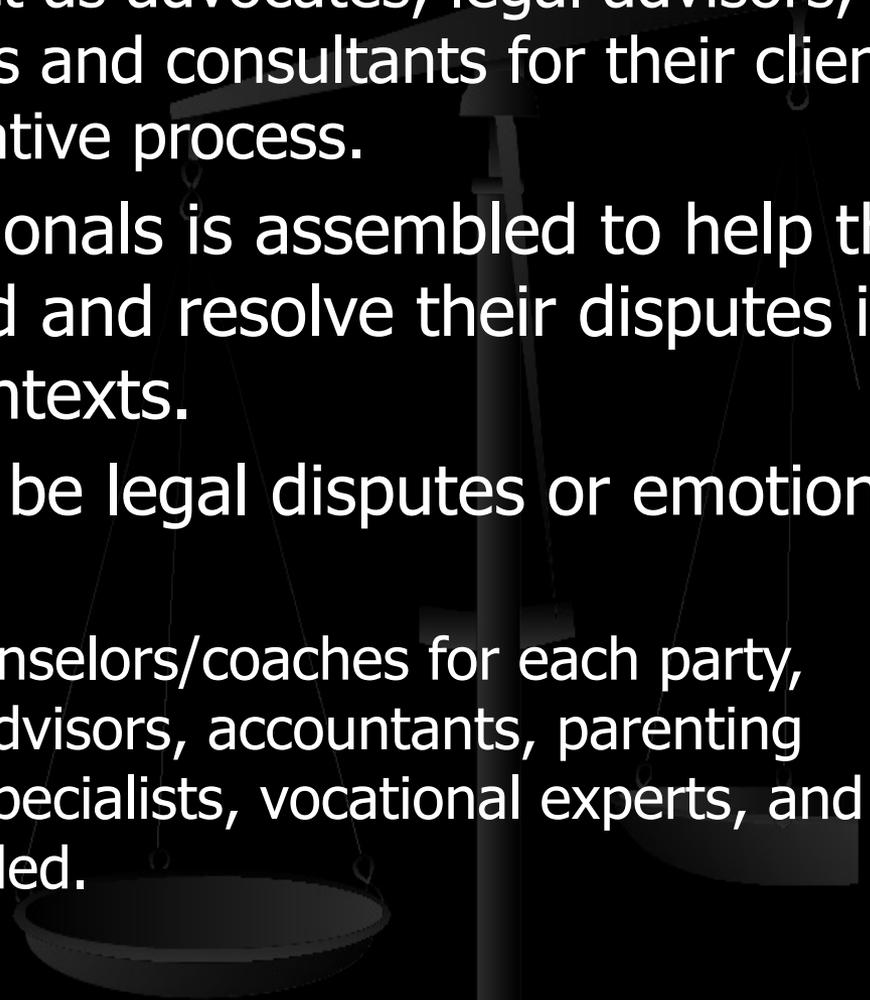


- The Lawyers must agree to adhere to the Protocols of Practice for Collaborative Lawyers adopted by the International Academy of Collaborative Professionals (“IACP”) as well as any laws or rules of court governing the collaborative practice in the jurisdiction of the dispute.
- The lawyer should provide their client with not only the information about the collaborative process, but all of the options available to handle their case.

Counsel

- Under the board umbrella of the IACP, there are practice groups throughout the country that are associations of professionals that facilitate collaborative practice. One example: In Missouri, there is the Missouri Collaborative Institute. Other states and localities have their own practice groups, which can be found on the IACP webpage.
- A collaborative lawyer should not serve as a lawyer in any adversarial proceedings regarding the subject matter of the dispute, unless otherwise agreed upon.

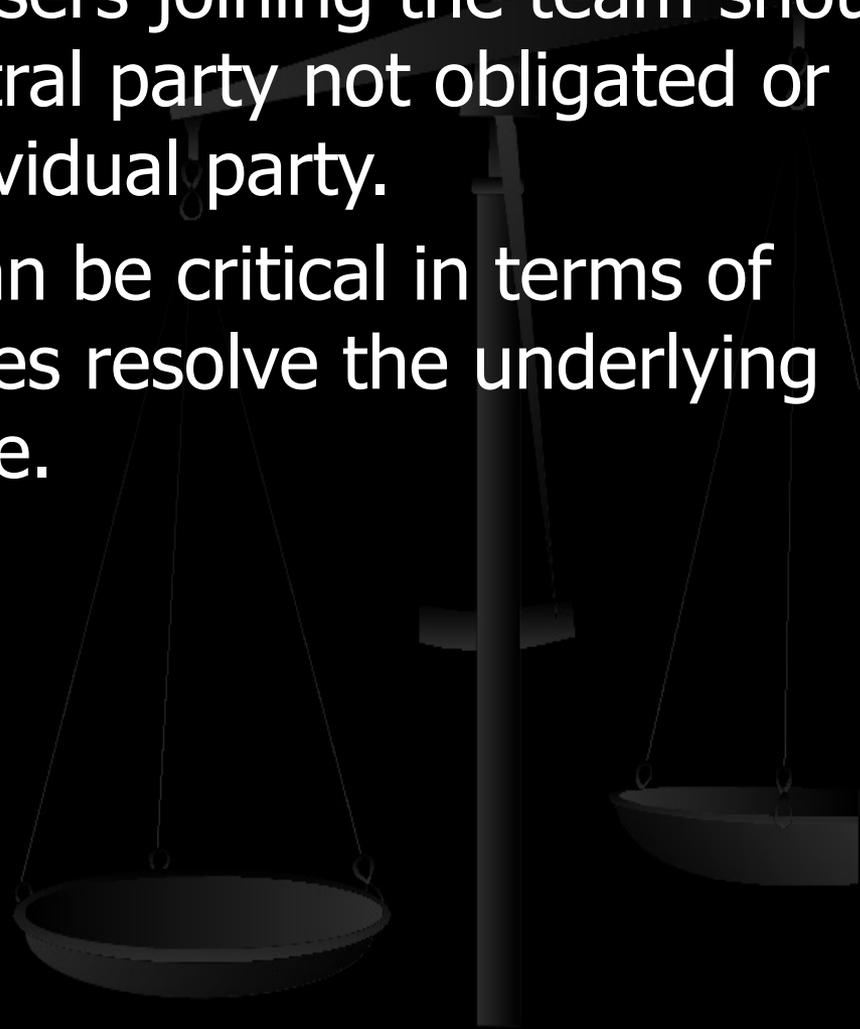
Experts/Advisers



- Attorneys should act as advocates, legal advisors, negotiators, drafters and consultants for their clients during the collaborative process.
- A team of professionals is assembled to help the parties understand and resolve their disputes in many different contexts.
- The disputes may be legal disputes or emotional and include:
 - mental health counselors/coaches for each party, neutral financial advisors, accountants, parenting specialists, child specialists, vocational experts, and appraisers, if needed.

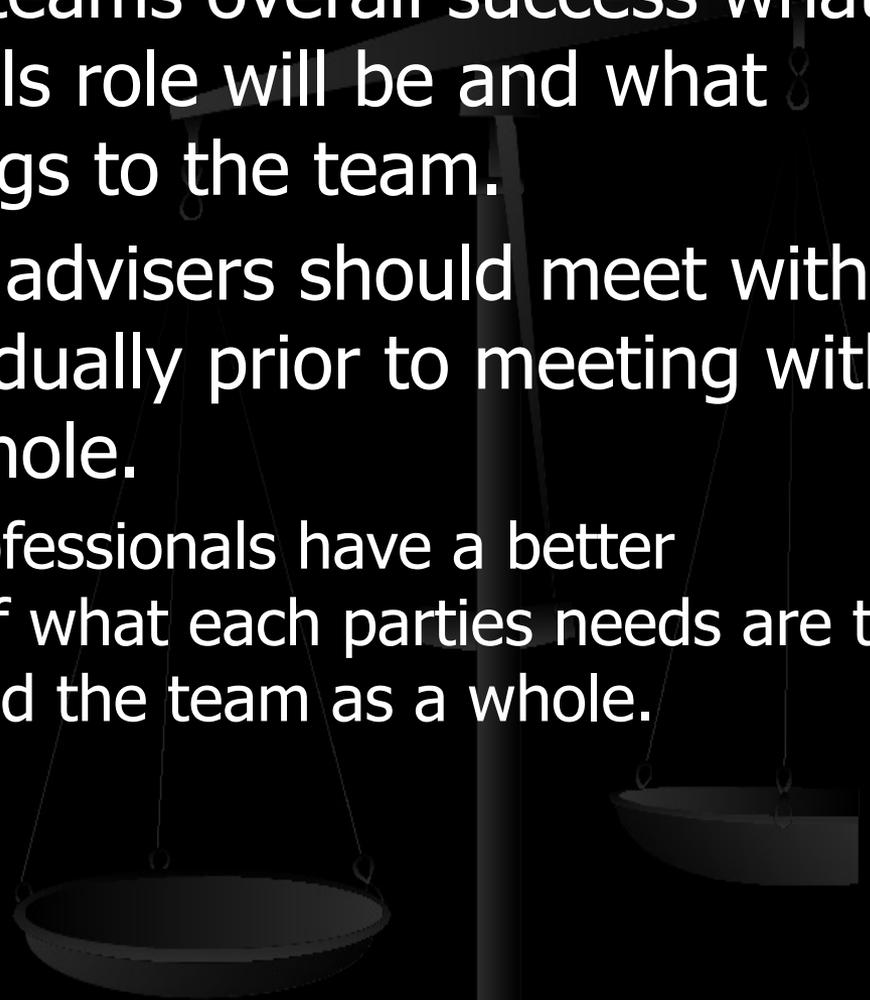
Experts/Advisers

- Experts and advisers joining the team should be that of a neutral party not obligated or bound to an individual party.
- These experts can be critical in terms of helping the parties resolve the underlying issues of the case.



Experts/Advisers

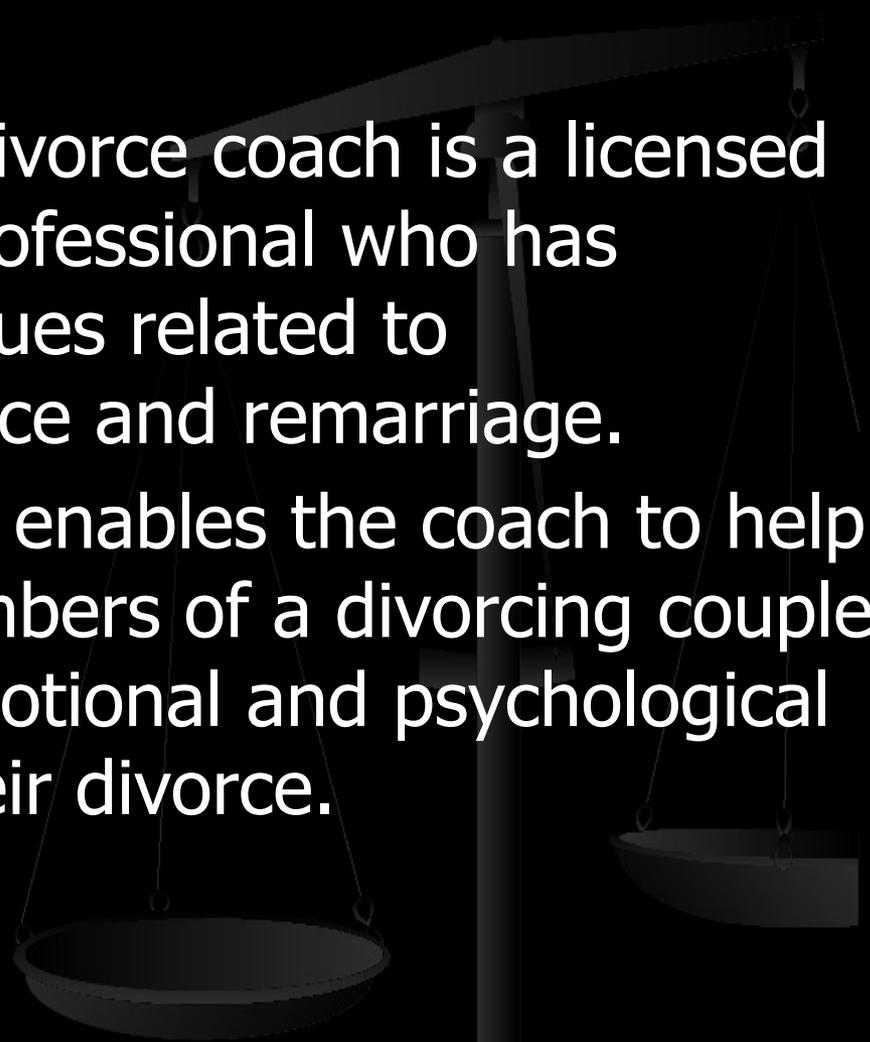
- It is critical to a teams overall success what each professionals role will be and what talents each brings to the team.
- The experts and advisers should meet with each party individually prior to meeting with the team as a whole.
 - This way the professionals have a better understanding of what each parties needs are to better understand the team as a whole.



Experts/Advisers

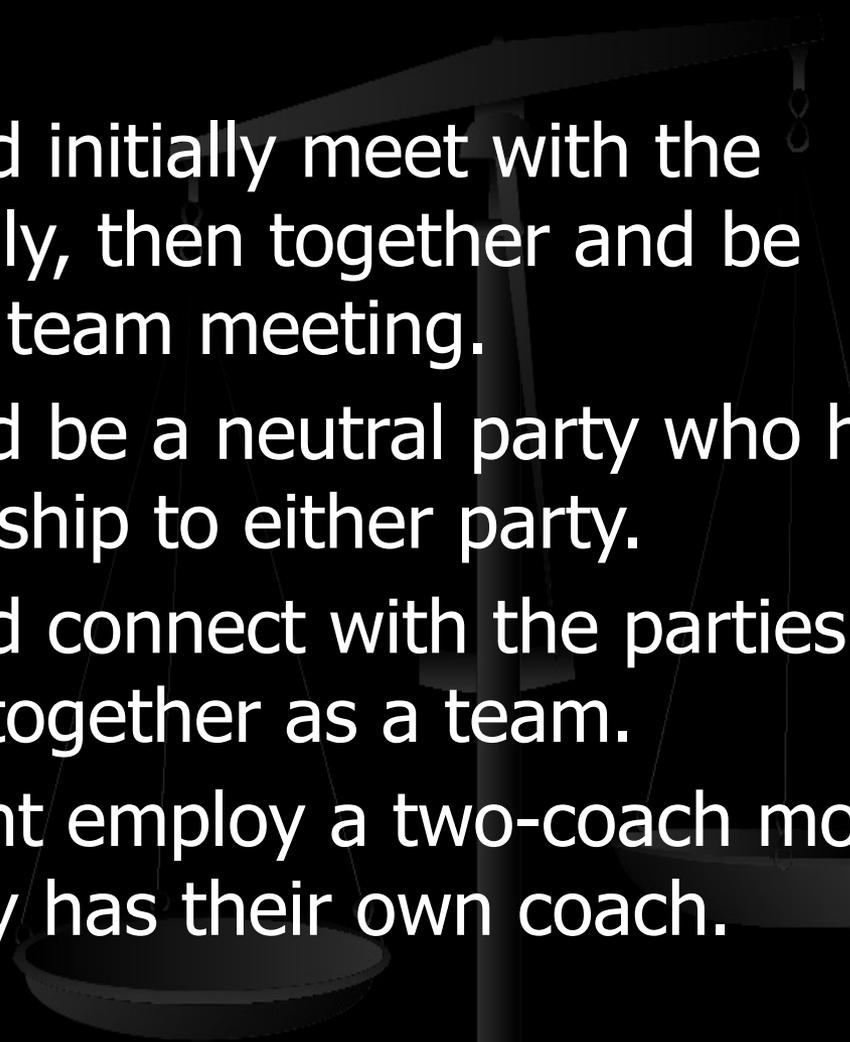
■ Divorce Coach

- A collaborative divorce coach is a licensed mental health professional who has experience in issues related to separation, divorce and remarriage.
- This background enables the coach to help one or both members of a divorcing couple deal with the emotional and psychological challenges of their divorce.



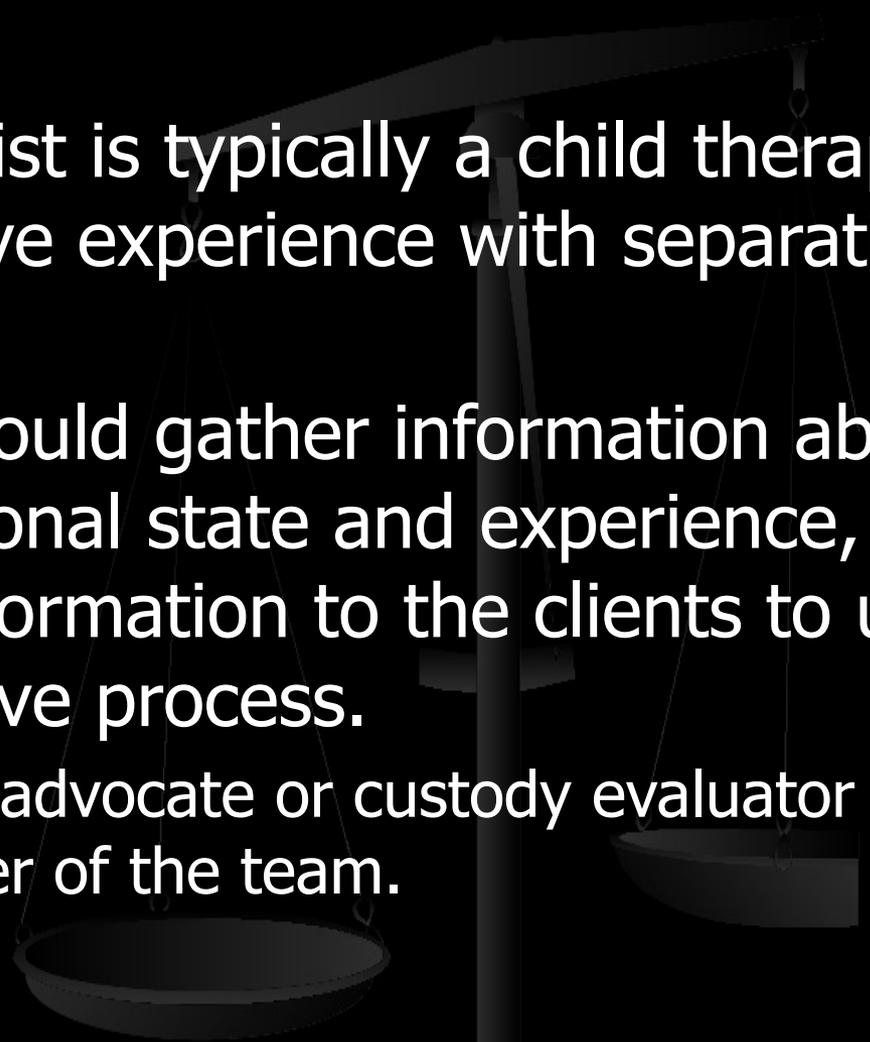
Experts/Advisers

■ Divorce Coach

- The coach should initially meet with the parties individually, then together and be present at every team meeting.
 - The coach should be a neutral party who has no initial relationship to either party.
 - The coach should connect with the parties individually and together as a team.
 - Some areas might employ a two-coach model where each party has their own coach.
- 

Experts/Advisers

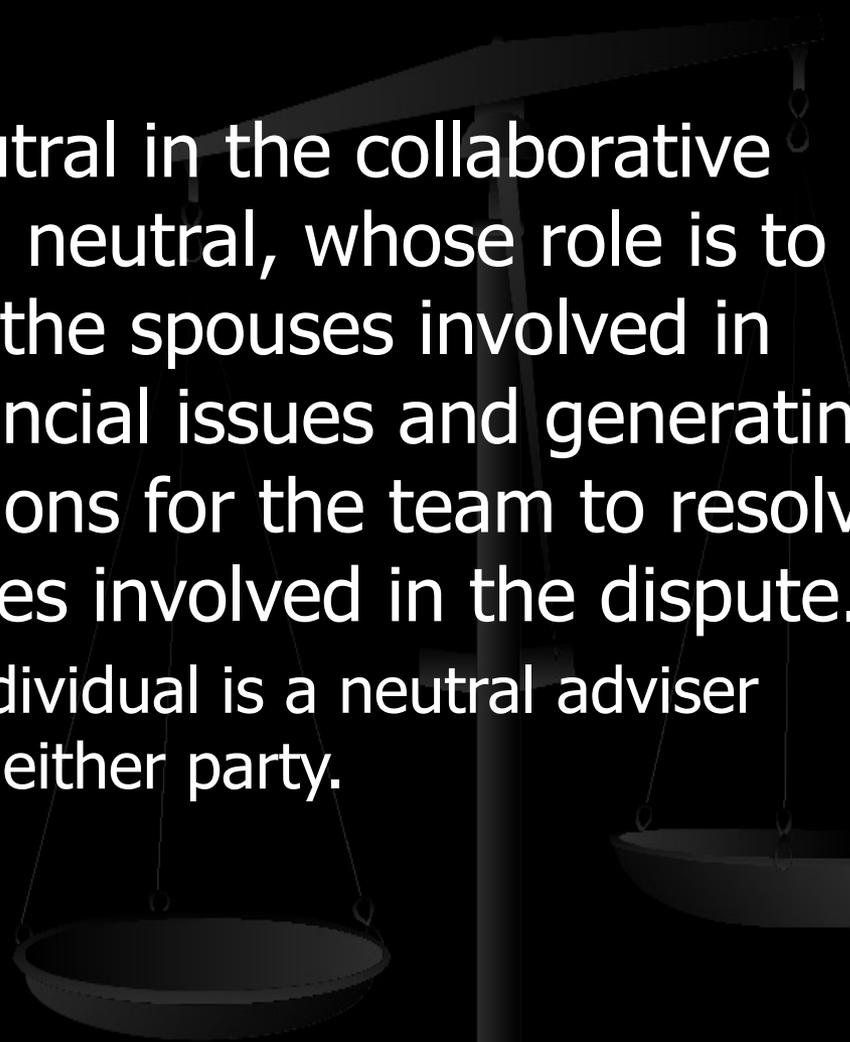
■ Child Specialist

- The child specialist is typically a child therapist who has extensive experience with separation and divorce.
 - The specialist should gather information about the child's emotional state and experience, and bring the information to the clients to use in the collaborative process.
 - They are not an advocate or custody evaluator but a neutral member of the team.
- 

Experts/Advisers

- Child Specialist
 - A child specialist generally plays a very important role in the collaborative process. During a divorce children often become the unintended victims during proceedings.
 - A child specialist works with the children of divorcing parents, it is their job to assist children in understanding the parental dispute and relieving the feeling of guilt that usually falls on the child.
 - Specialists generally teach them how to cope and how to talk to their parents, giving them a voice in the proceedings and becoming apart of the team process.

Experts/Advisers



- Financial Neutral

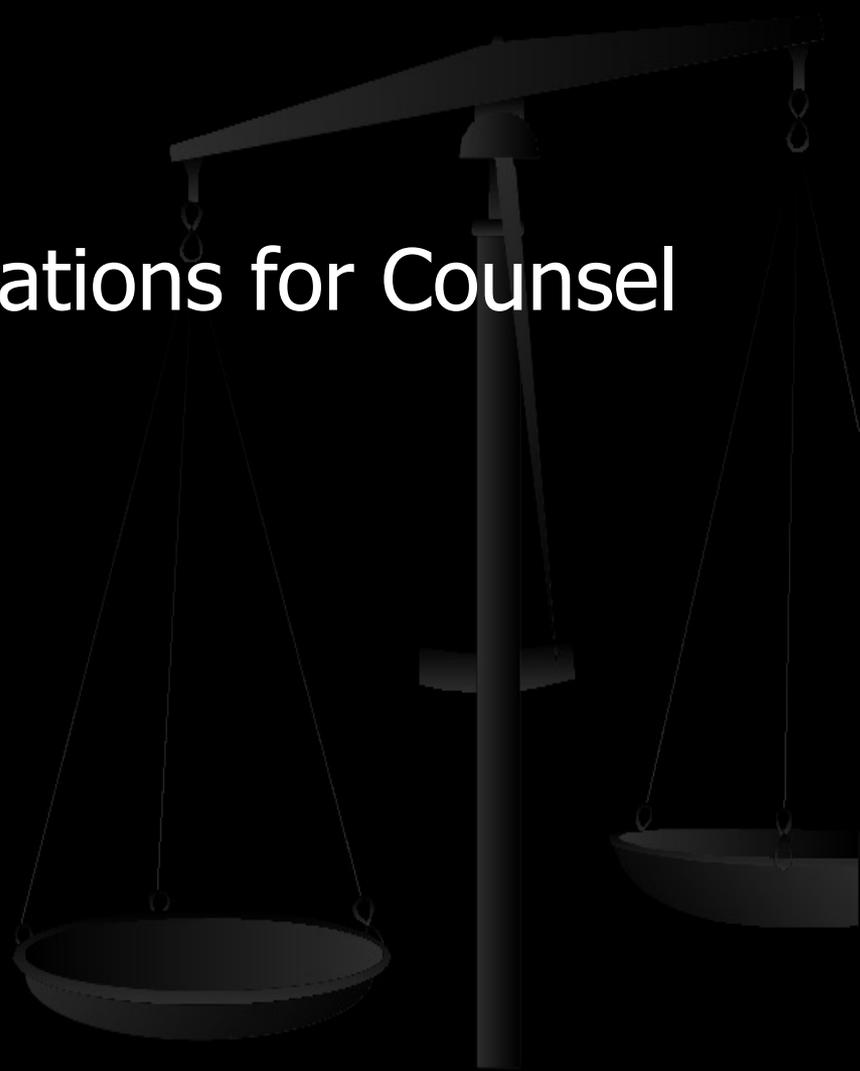
- The financial neutral in the collaborative process is truly a neutral, whose role is to financially assist the spouses involved in grasping the financial issues and generating considerable options for the team to resolve the financial issues involved in the dispute.
 - Generally this individual is a neutral adviser unaffiliated with either party.

II. The Collaborative Participation Agreement

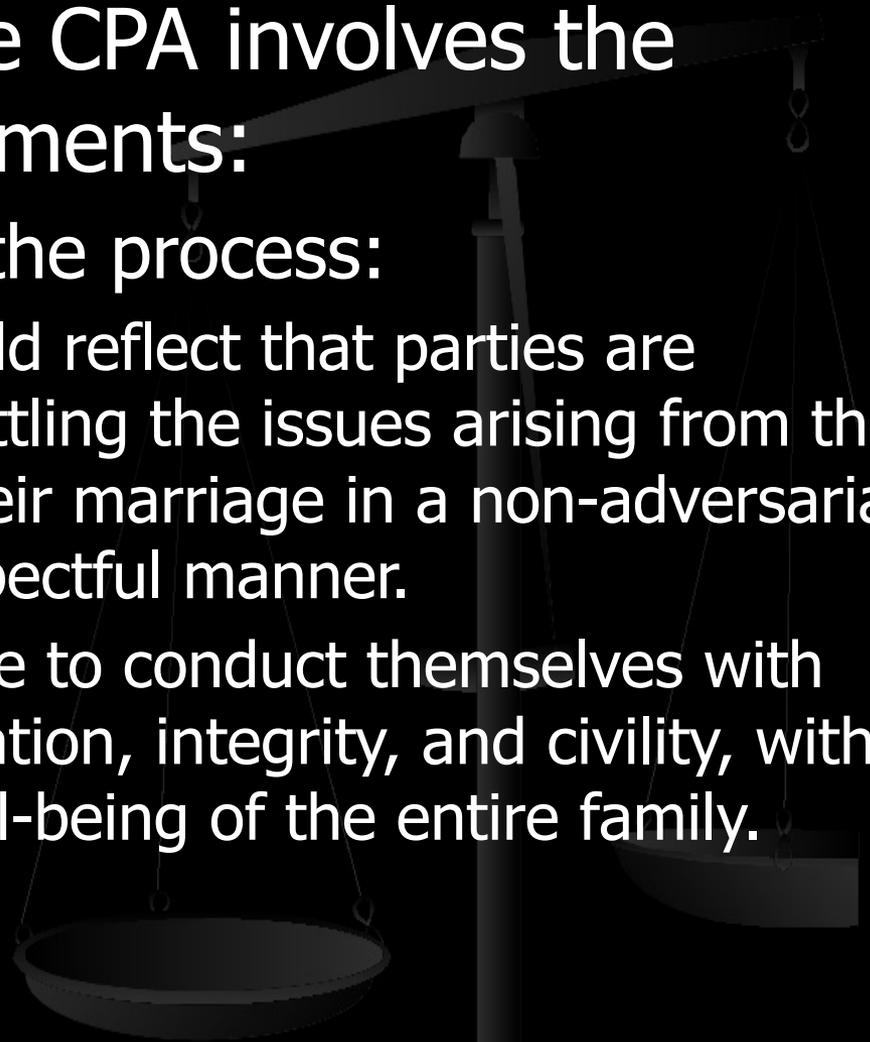


Collaborative Participation Agreement: Overview

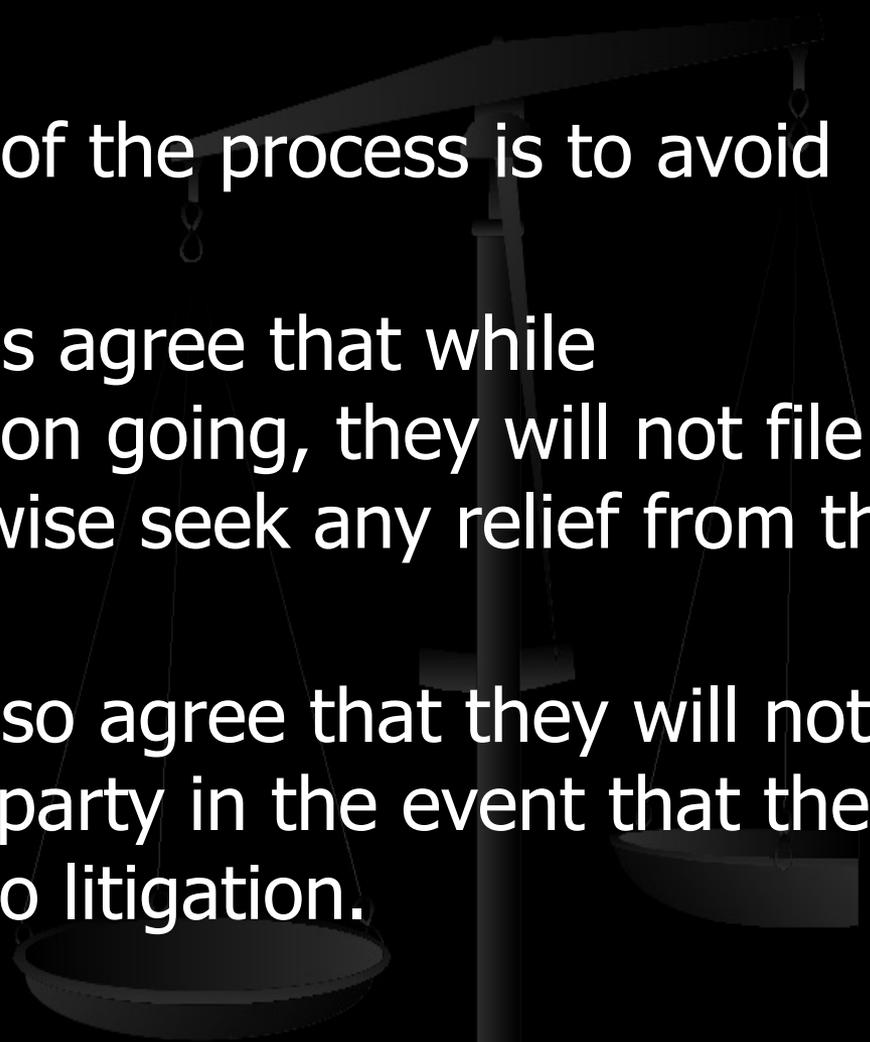
- A. Scope
- B. Disclosure
- C. Ethical Considerations for Counsel



Collaborative Participation Agreement: Scope

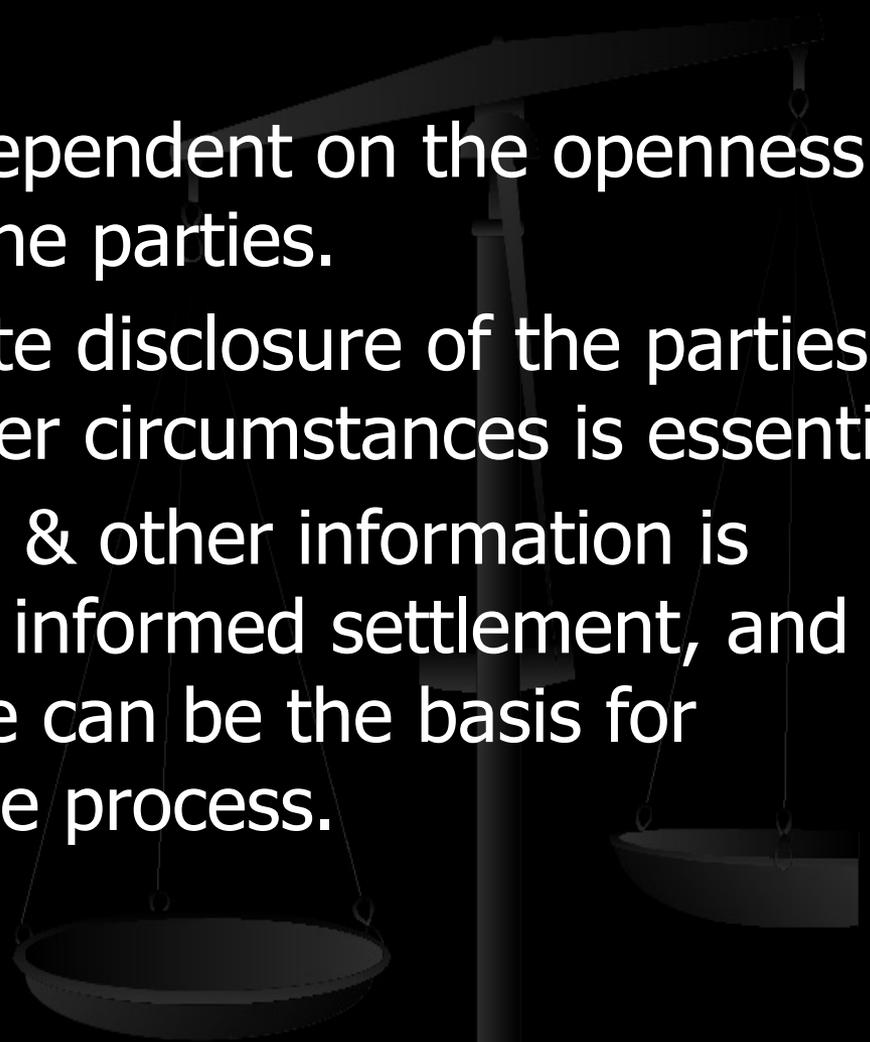
- The scope of the CPA involves the following key elements:
 - Commitment to the process:
 - Agreement should reflect that parties are committed to settling the issues arising from the dissolution of their marriage in a non-adversarial, private, and respectful manner.
 - The parties agree to conduct themselves with honesty, cooperation, integrity, and civility, with a focus on the well-being of the entire family.
- 

Scope

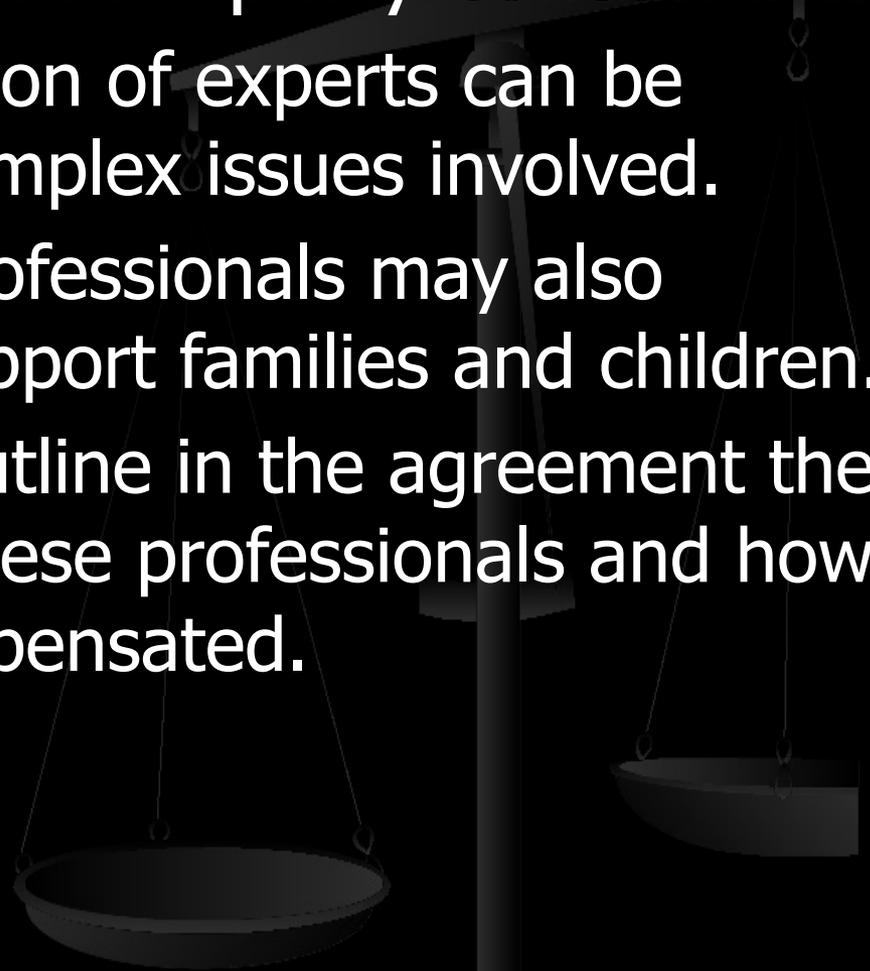


- No Litigation:
 - The whole point of the process is to avoid litigation.
 - Therefore, parties agree that while negotiations are on going, they will not file for divorce or otherwise seek any relief from the court.
 - Attorneys may also agree that they will not represent either party in the event that the matter proceed to litigation.

Scope

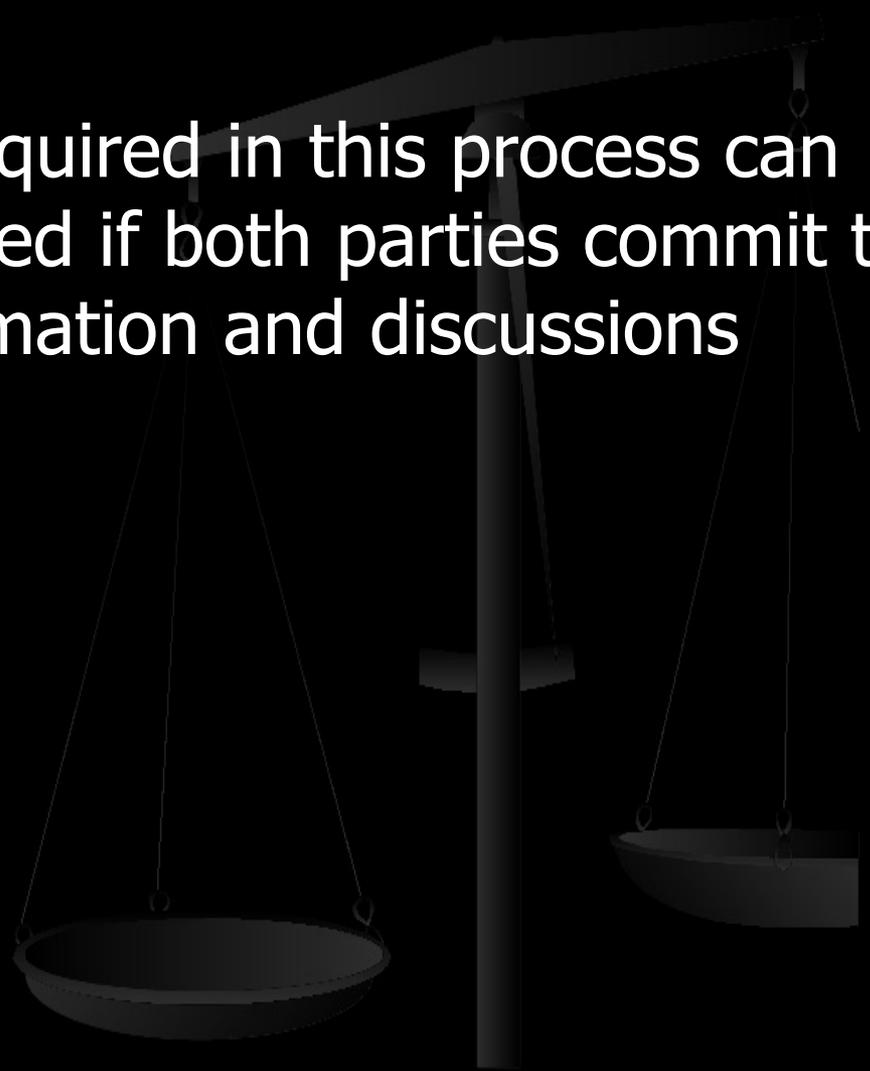
- Full Disclosure:
 - The process is dependent on the openness and honesty of the parties.
 - Full, and complete disclosure of the parties' financial and other circumstances is essential.
 - All assets, debts, & other information is necessary for an informed settlement, and failure to disclose can be the basis for termination of the process.
- 

Scope

- Use of Experts and 3rd party consultants:
 - Insight and opinion of experts can be necessary for complex issues involved.
 - Mental health professionals may also participate to support families and children.
 - Parties should outline in the agreement the desired use of these professionals and how they will be compensated.
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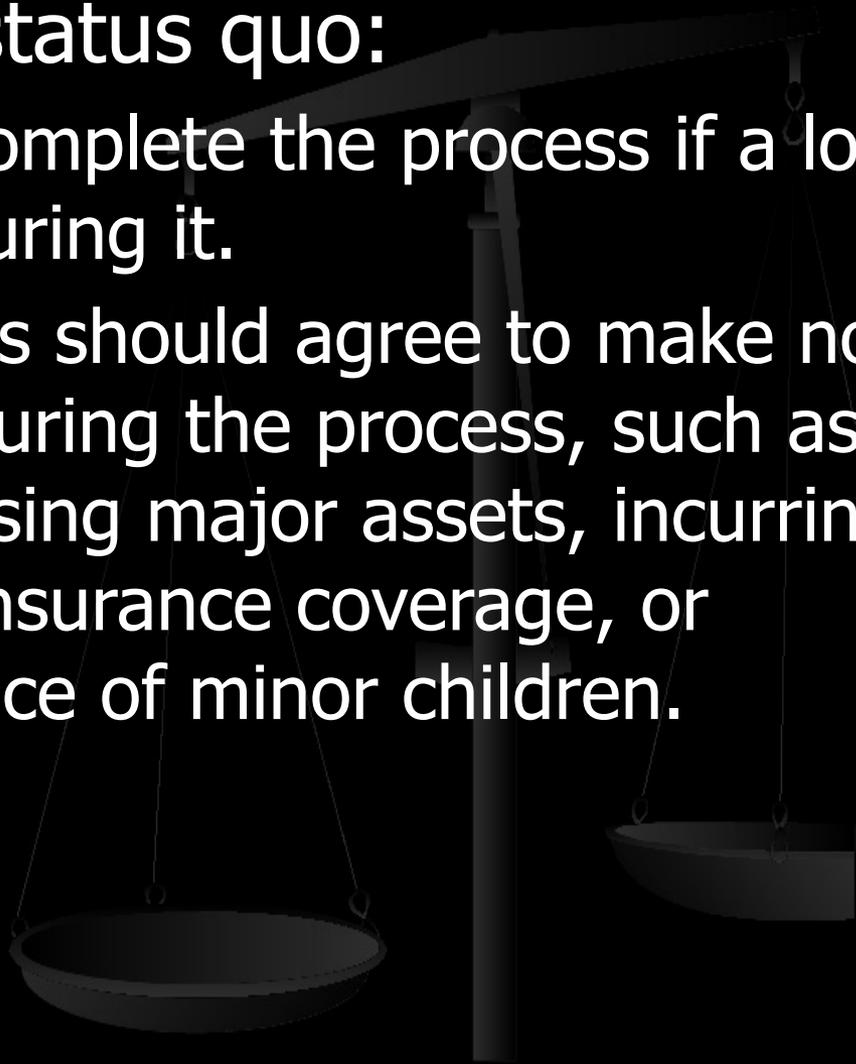
Scope

- Confidentiality:
 - The openness required in this process can only be maintained if both parties commit to keeping all information and discussions confidential.



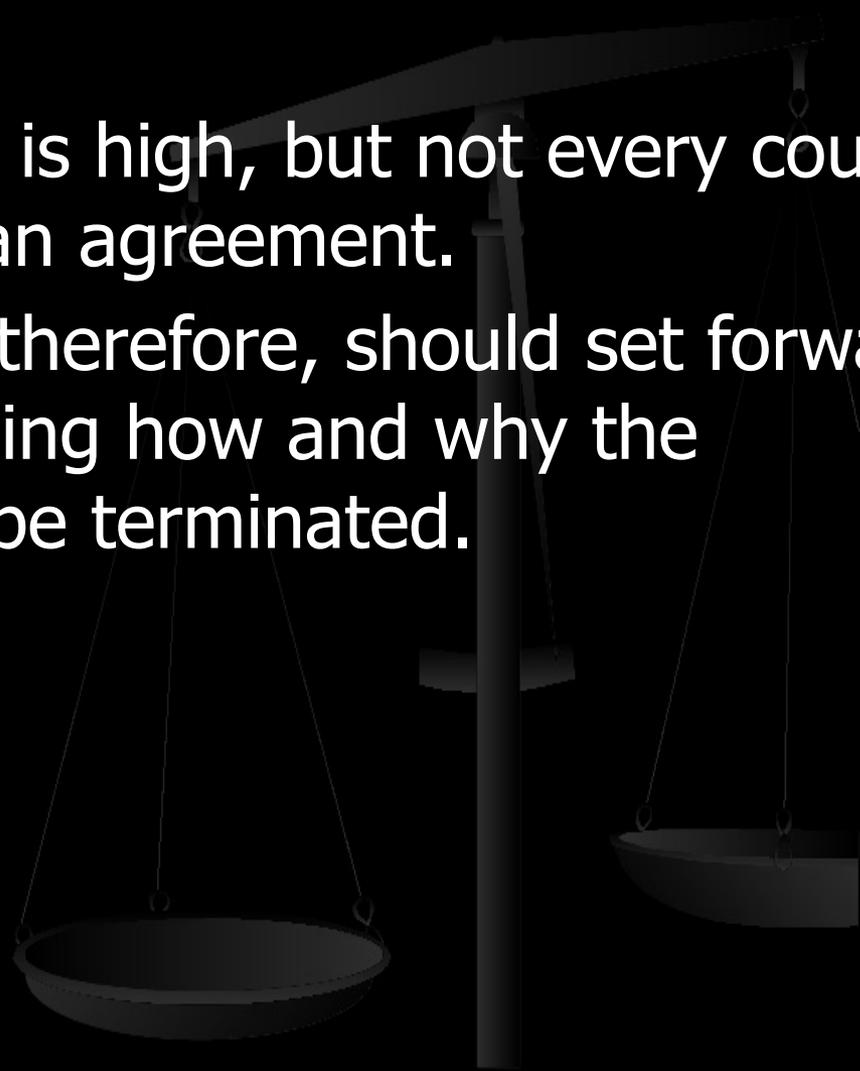
Scope

- Maintaining the status quo:
 - It is difficult to complete the process if a lot of changes occur during it.
 - Therefore, parties should agree to make no major changes during the process, such as selling or purchasing major assets, incurring debt, changing insurance coverage, or changing residence of minor children.



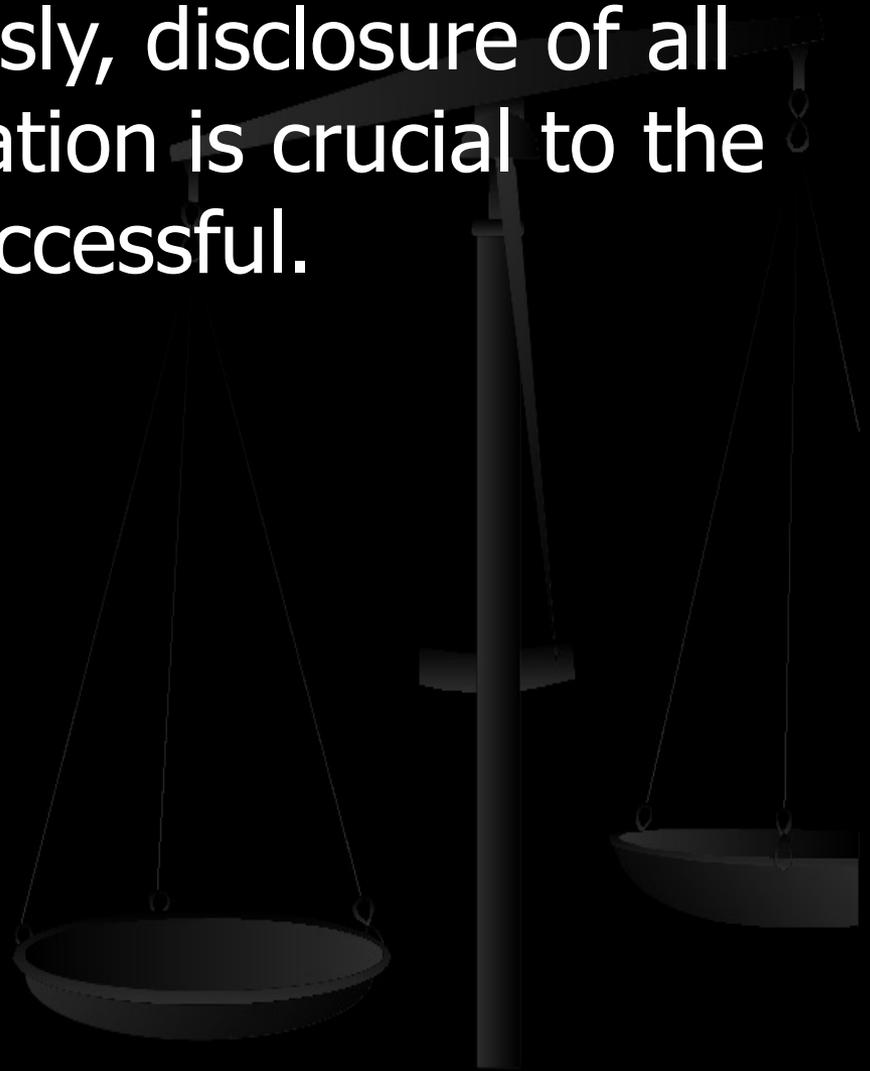
Scope

- Termination:
 - The success rate is high, but not every couple is able to reach an agreement.
 - The agreement, therefore, should set forward the terms regarding how and why the agreement may be terminated.

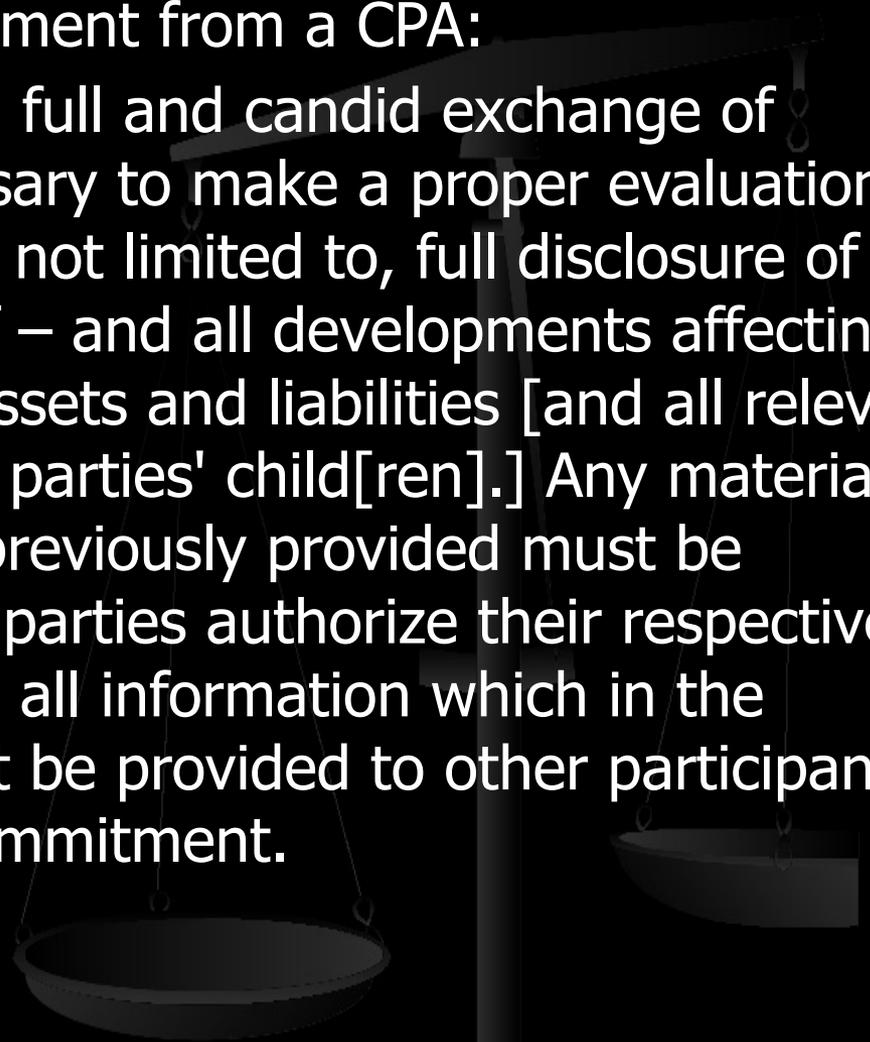


Collaborative Participation Agreement: Disclosures

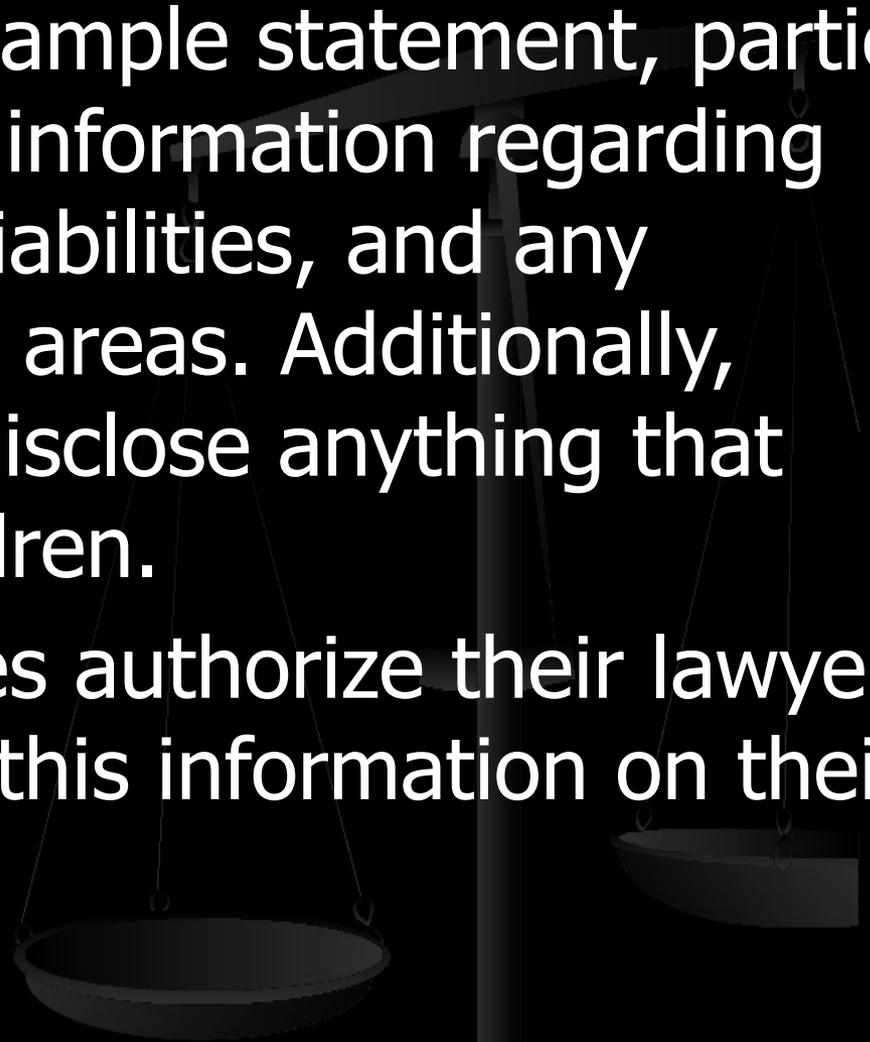
- As noted previously, disclosure of all pertinent information is crucial to the process being successful.



Disclosure

- Sample disclosure statement from a CPA:
 - We agree to make such full and candid exchange of information as is necessary to make a proper evaluation of the case, including, but not limited to, full disclosure of the nature, extent, value of – and all developments affecting – the parties' [income,] assets and liabilities [and all relevant matters concerning the parties' child[ren].] Any material change in information previously provided must be promptly updated. The parties authorize their respective lawyers to fully disclose all information which in the lawyer's judgment must be provided to other participants in order to fulfill this commitment.
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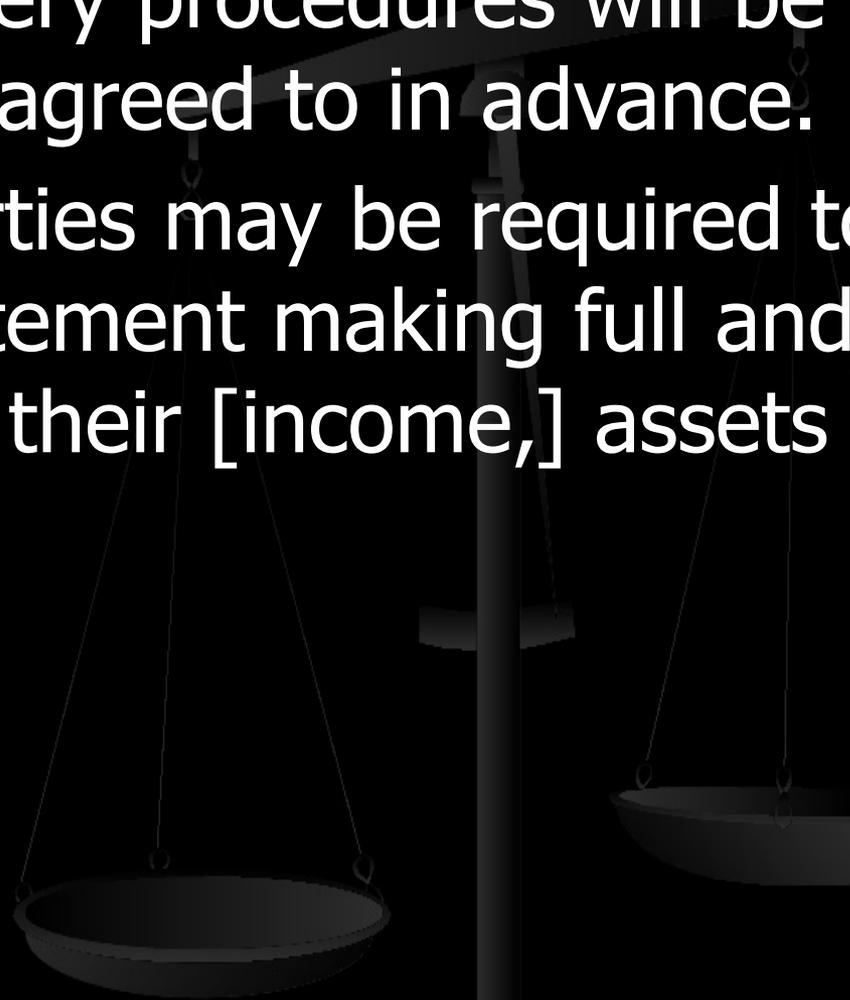
Disclosure



- As noted in the sample statement, parties must disclose all information regarding income, assets, liabilities, and any changes in these areas. Additionally, parties need to disclose anything that affects their children.
- It is best if parties authorize their lawyers to disclose all of this information on their behalf.

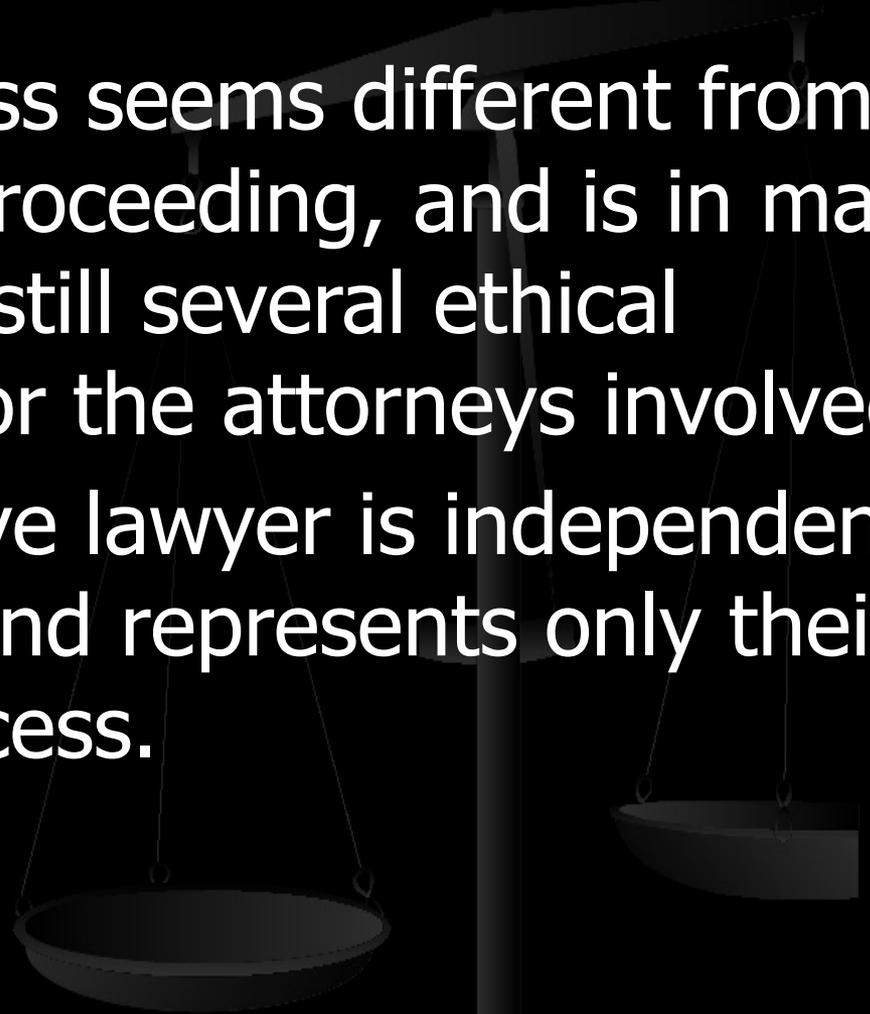
Disclosure

- No formal discovery procedures will be used specifically agreed to in advance.
- However, the parties may be required to sign a sworn statement making full and fair disclosure of their [income,] assets and debts.

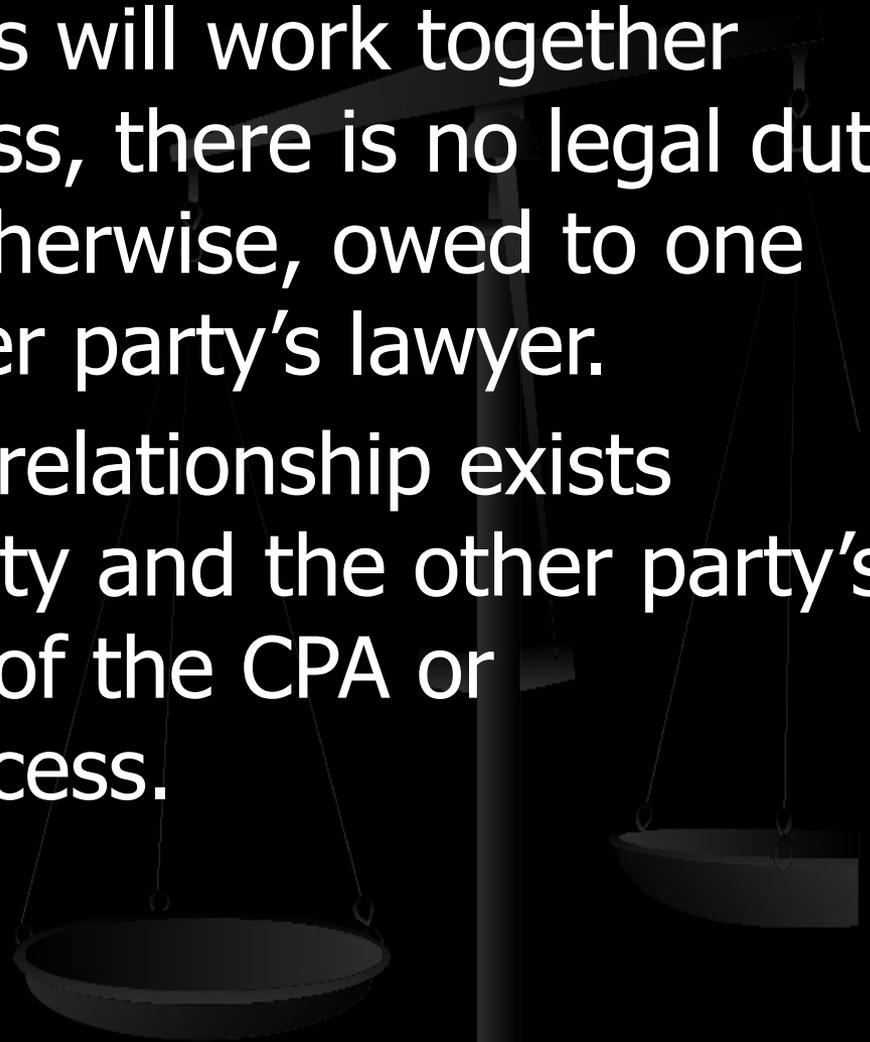


Collaborative Participation Agreement: Ethical Considerations for Counsel

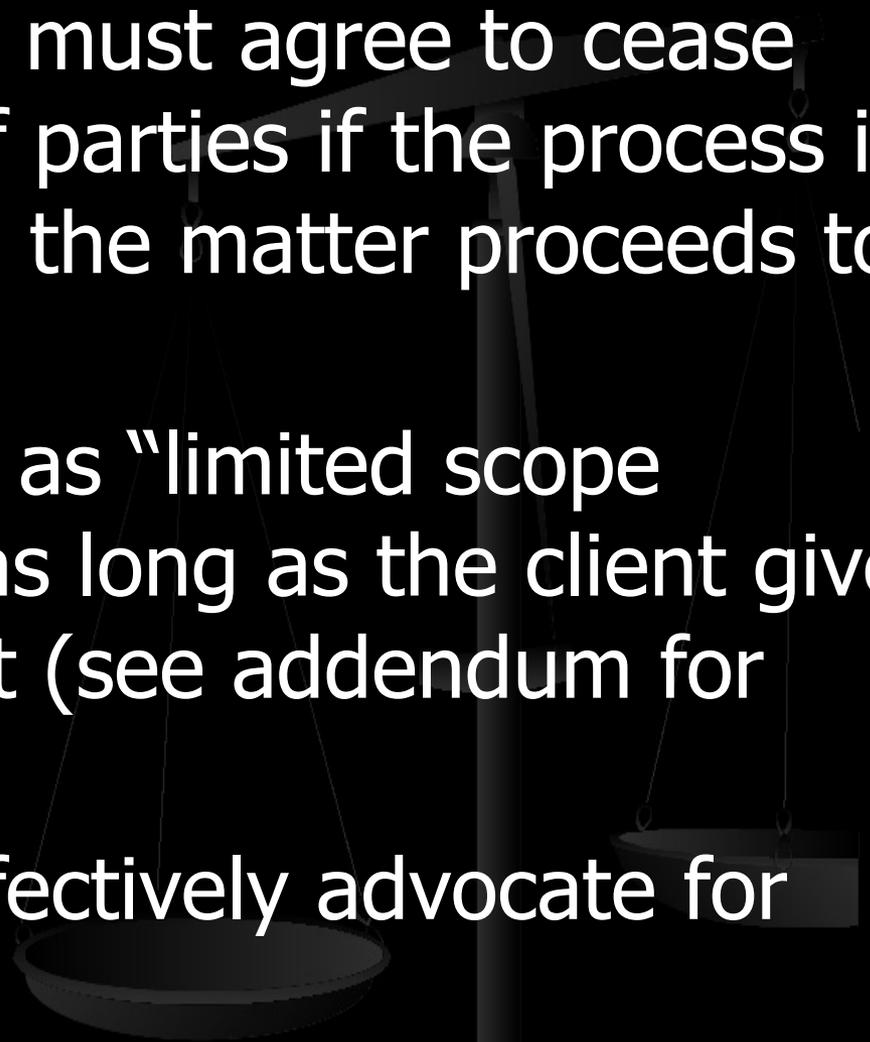
- While this process seems different from a typical divorce proceeding, and is in many ways, there are still several ethical considerations for the attorneys involved.
- Each collaborative lawyer is independent from the other and represents only their client in the process.



Ethical Consideration for Counsel

- While the lawyers will work together during the process, there is no legal duty, by contract or otherwise, owed to one party by the other party's lawyer.
 - No-lawyer client relationship exists between one party and the other party's lawyer by virtue of the CPA or collaborative process.
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Ethical Considerations for Counsel



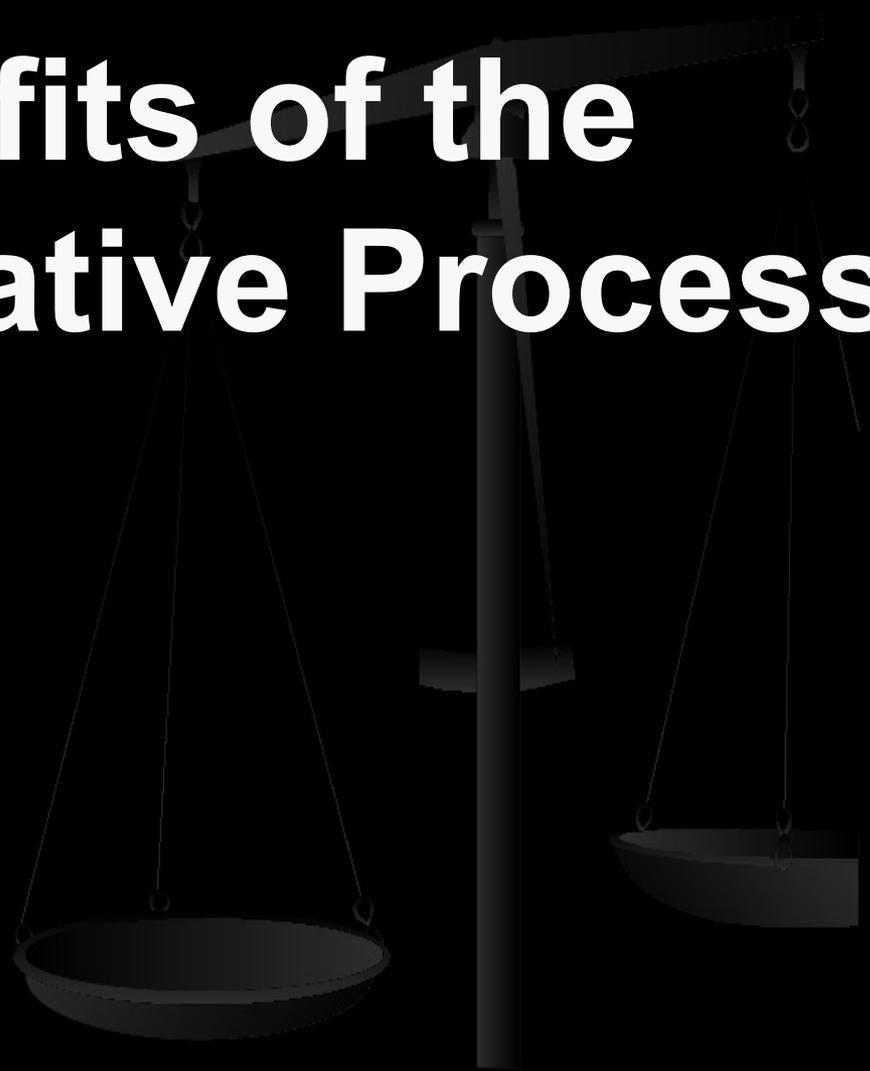
- Lawyers typically must agree to cease representation of parties if the process is unsuccessful and the matter proceeds to court.
- This is permitted as “limited scope representation” as long as the client gives informed consent (see addendum for sample).
- Lawyers must effectively advocate for their clients.

Ethical Considerations for Counsel

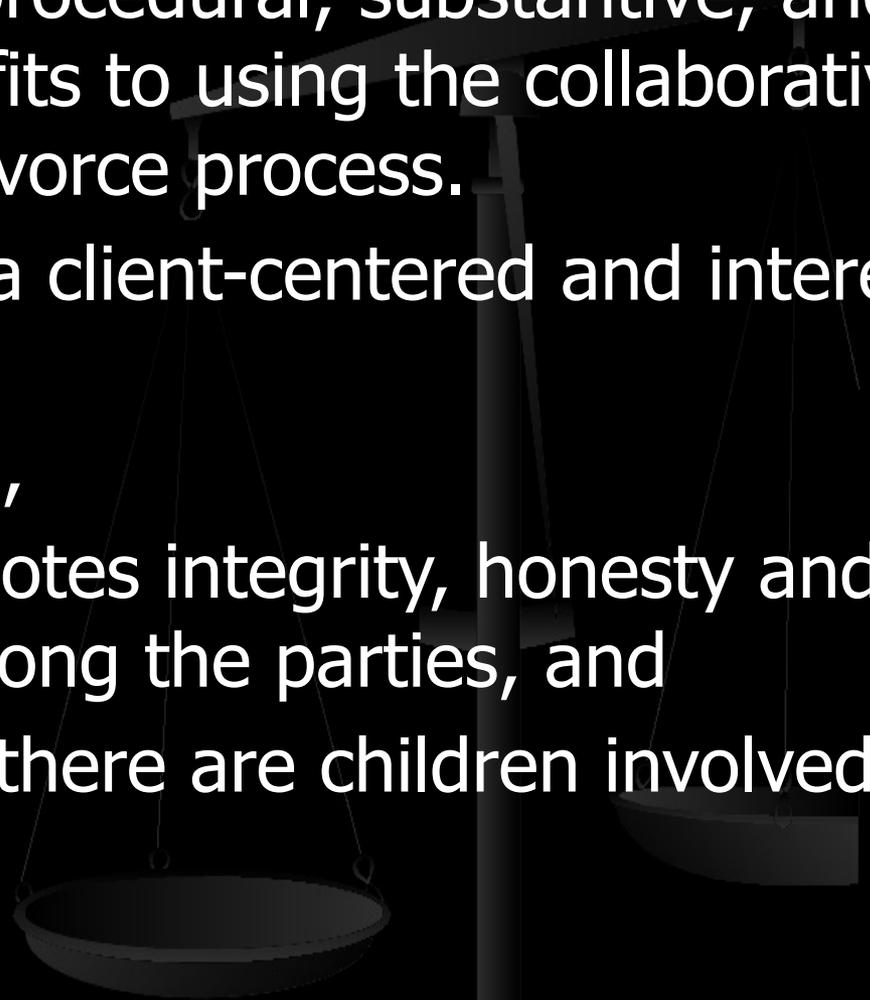
- Lawyers should clearly outline both risks of the process and alternatives to the process.



Benefits of the Collaborative Process

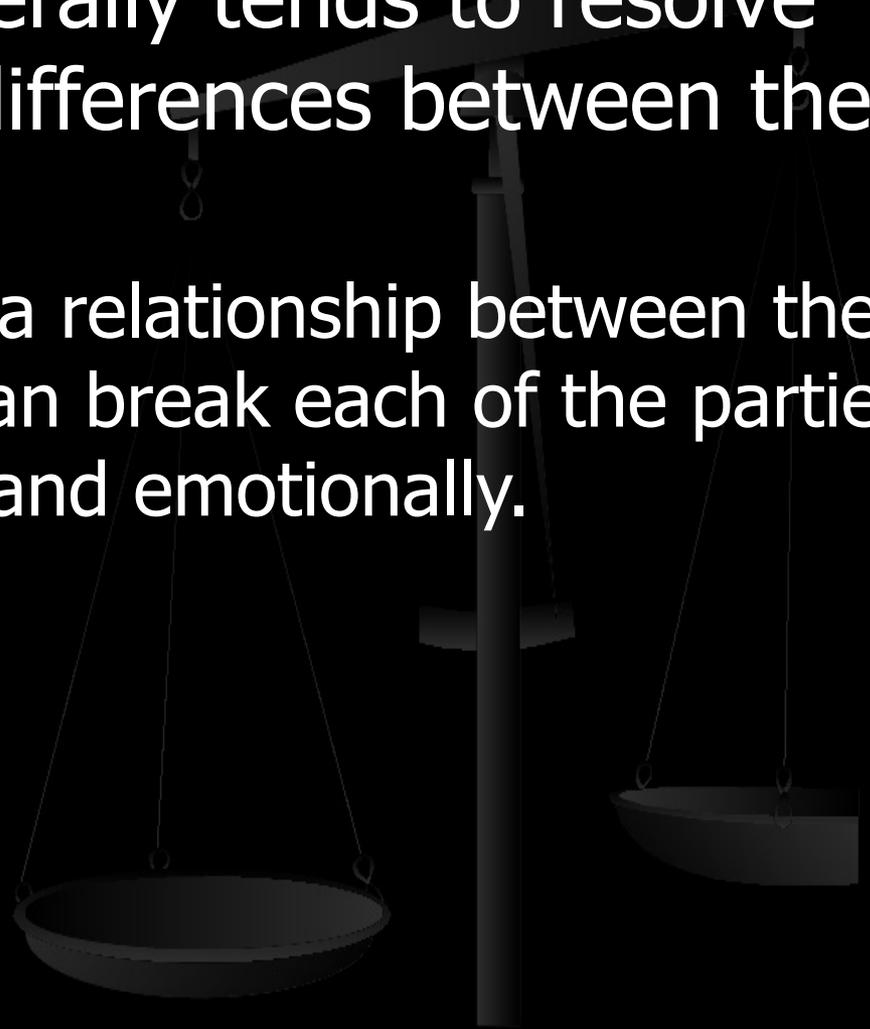


Benefits of the Collaborative Process

- There are various procedural, substantive, and psychological benefits to using the collaborative law model in the divorce process.
 - It encompasses a client-centered and interest-based approach,
 - It is empowering,
 - This model promotes integrity, honesty and transparency among the parties, and
 - It is beneficial if there are children involved.
- 

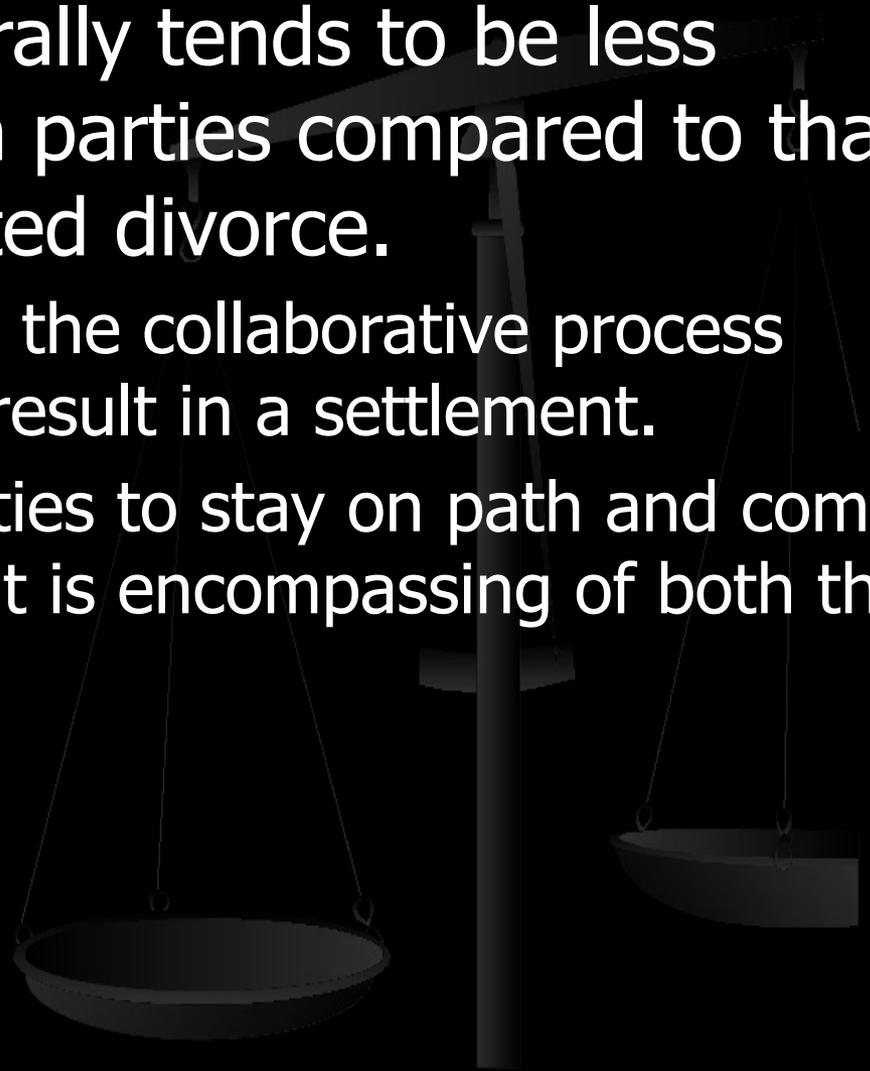
Benefits of the Collaborative Process

- The process generally tends to resolve communication differences between the parties.
 - It tends to build a relationship between the parties rather than break each of the parties down physically and emotionally.



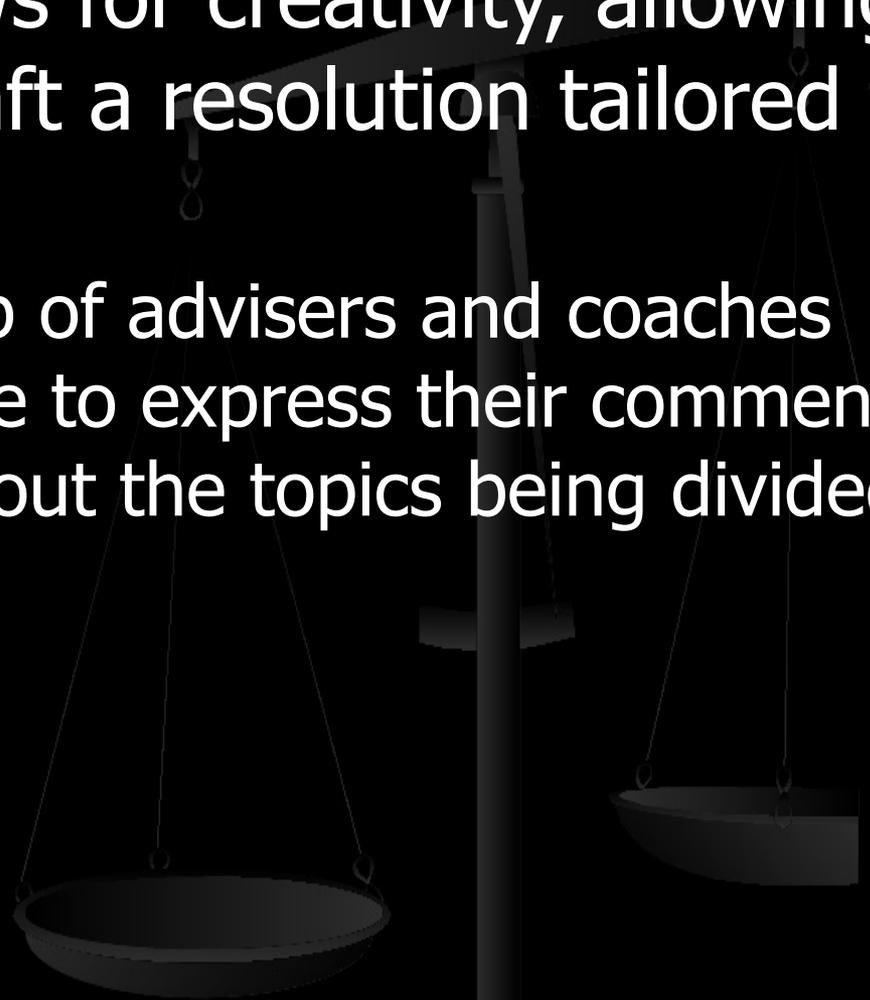
Benefits of the Collaborative Process

- The process generally tends to be less expensive on both parties compared to that of a lengthy litigated divorce.
 - Parties involved in the collaborative process generally tend to result in a settlement.
 - It encourages parties to stay on path and come up with a plan that is encompassing of both the parties needs.

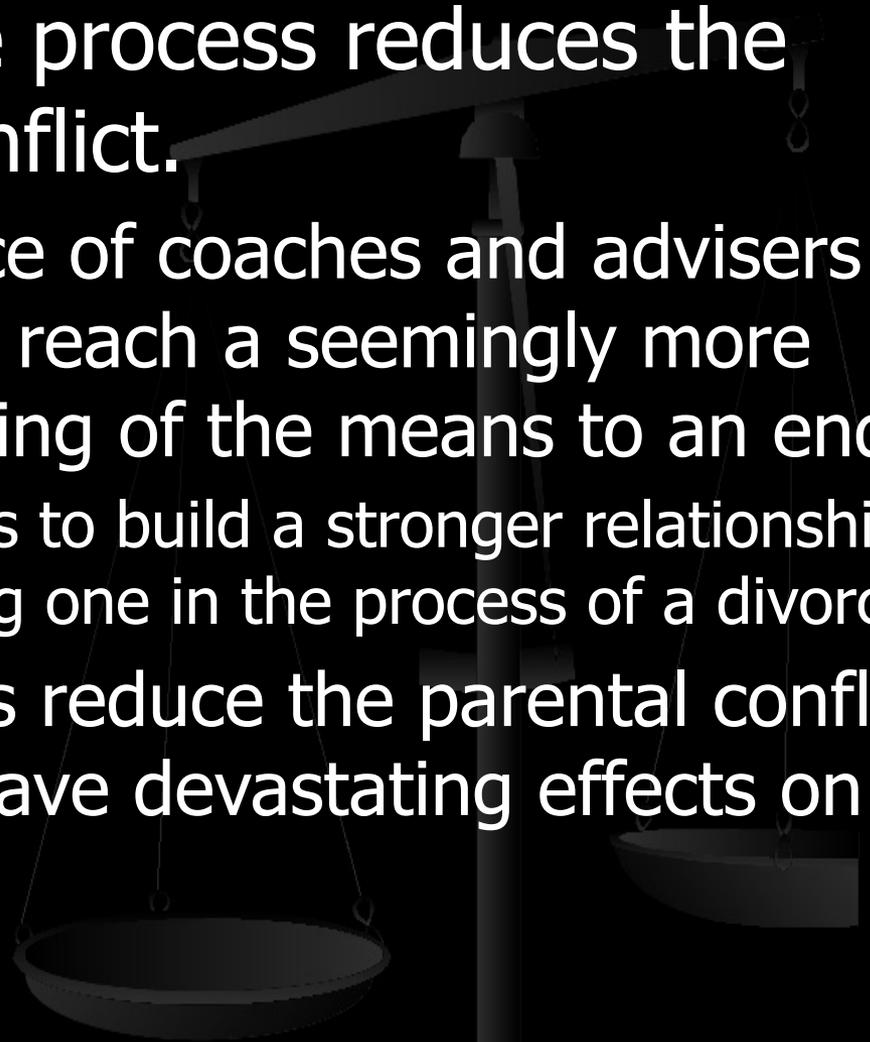


Benefits of the Collaborative Process

- It generally allows for creativity, allowing the parties to craft a resolution tailored to their own needs.
 - Through the help of advisers and coaches each party is able to express their comments and concerns about the topics being divided in the divorce.

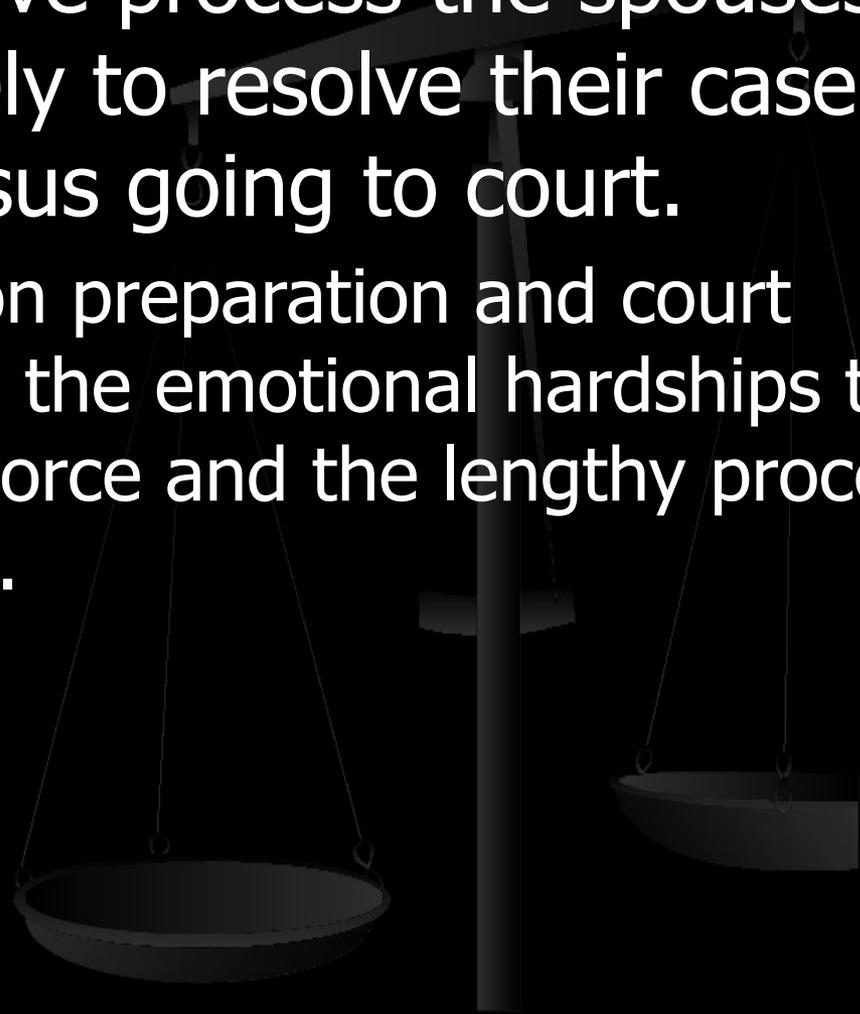


Benefits of the Collaborative Process

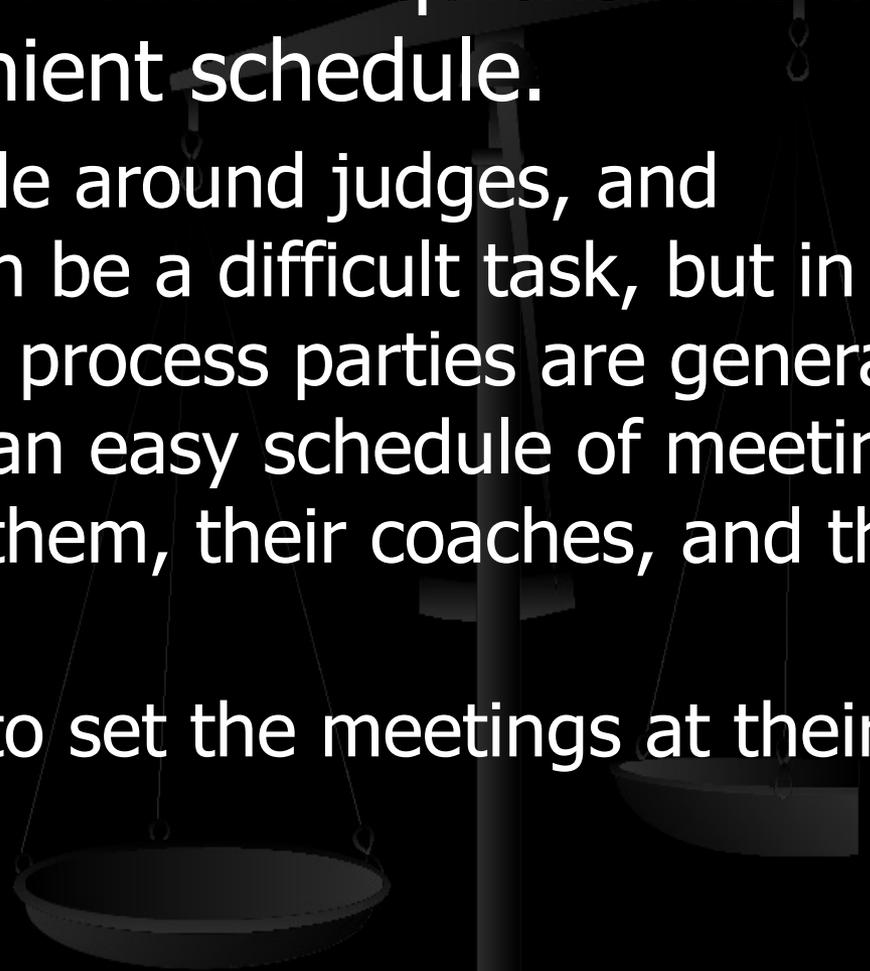
- The collaborative process reduces the production of conflict.
 - With the presence of coaches and advisers it helps the parties reach a seemingly more calm understanding of the means to an end.
 - It generally helps to build a stronger relationship versus destroying one in the process of a divorce.
 - It generally helps reduce the parental conflict, which tends to have devastating effects on the children.
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Benefits of the Collaborative Process

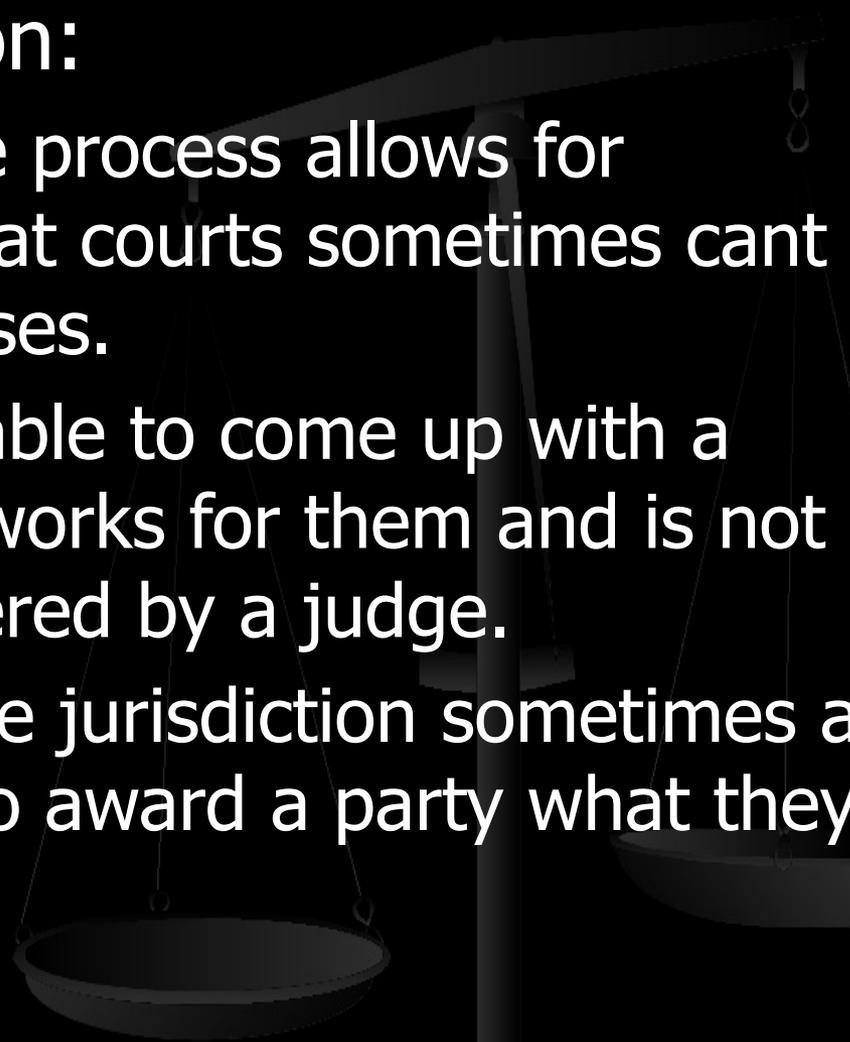
- In the collaborative process the spouses are generally likely to resolve their case in a settlement versus going to court.
 - This cuts down on preparation and court costs, along with the emotional hardships that comes with a divorce and the lengthy process of going to court.



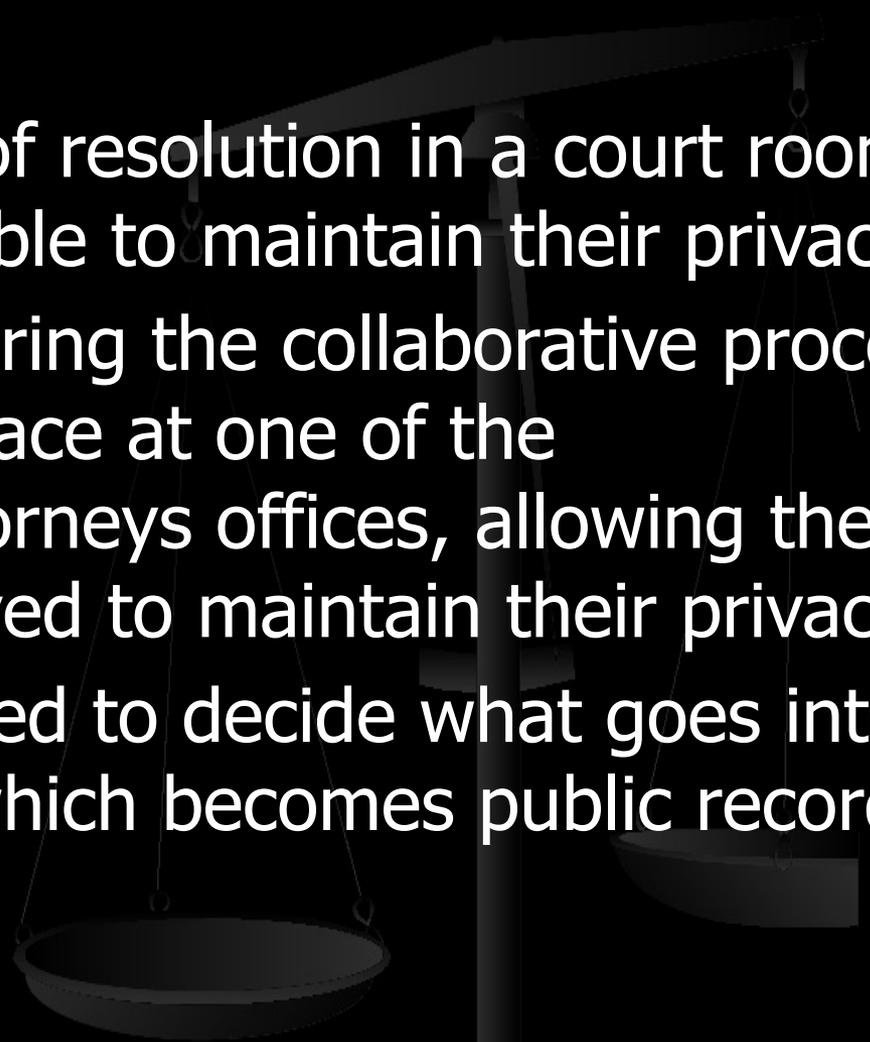
Benefits of the Collaborative Process

- Parties are able to achieve quicker results at a more convenient schedule.
 - Setting a schedule around judges, and lawyers can often be a difficult task, but in the collaboration process parties are generally able to produce an easy schedule of meetings that works with them, their coaches, and their attorneys.
 - Parties are able to set the meetings at their own pace.
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Benefits of the Collaborative Process

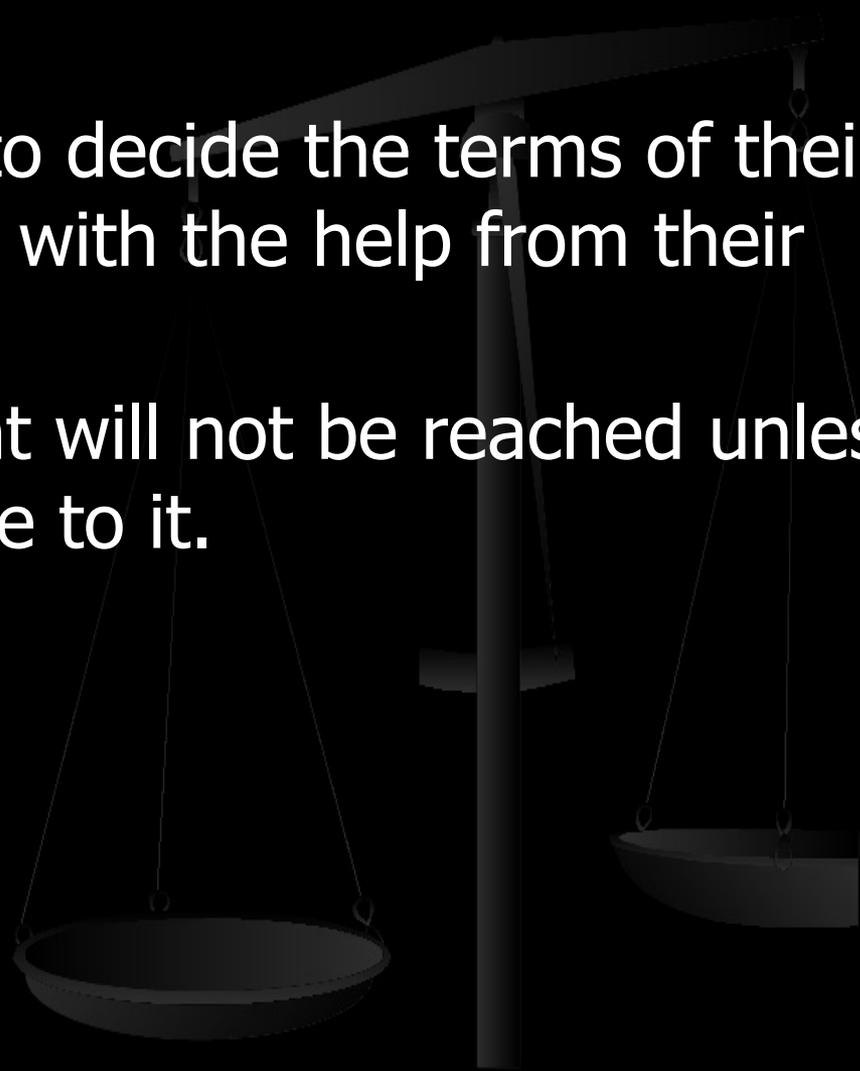
- A Custom Solution:
 - The collaborative process allows for arrangements that courts sometimes cant provide for spouses.
 - The parties are able to come up with a settlement that works for them and is not granted or delivered by a judge.
 - Depending on the jurisdiction sometimes a court is unable to award a party what they need.
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Benefits of the Collaborative Process

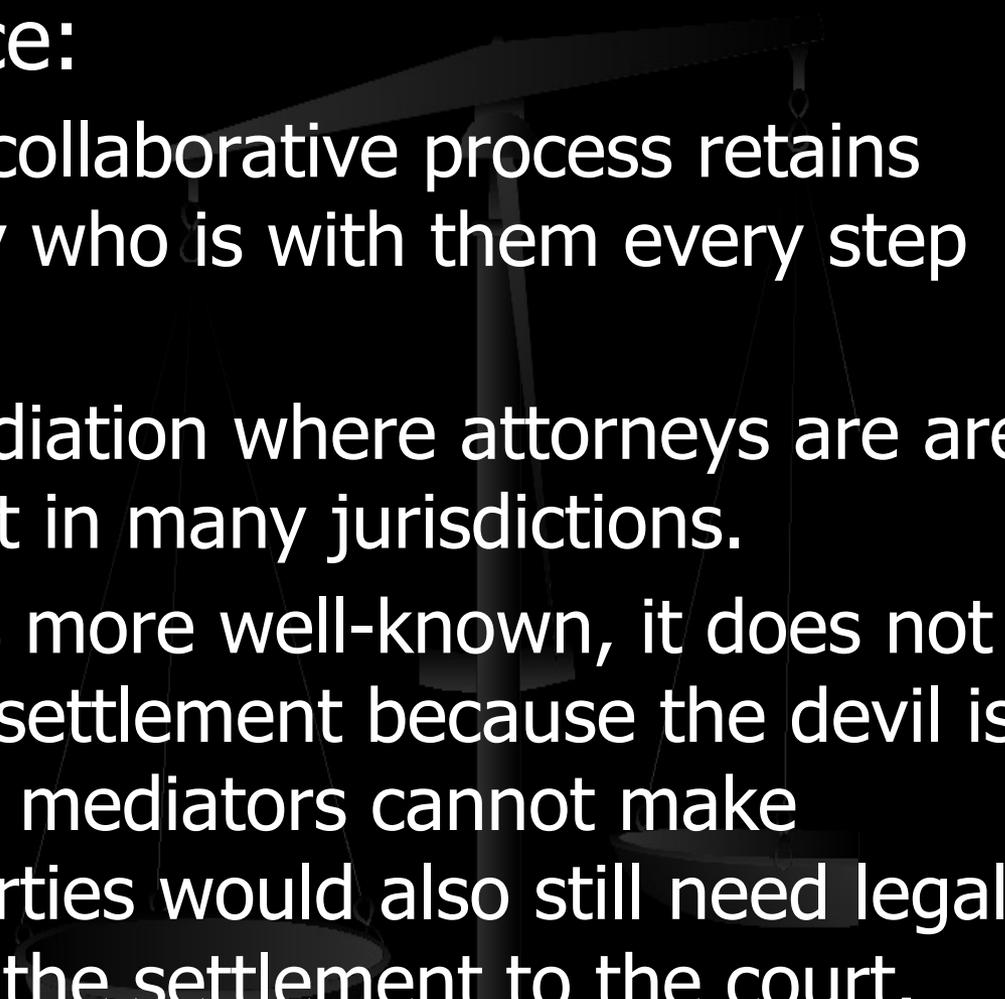
- Privacy:
 - Due to the lack of resolution in a court room the parties are able to maintain their privacy.
 - The meetings during the collaborative process generally take place at one of the collaborative attorneys offices, allowing the individuals involved to maintain their privacy.
 - Parties are allowed to decide what goes into the paperwork which becomes public record.
- 

Benefits of the Collaborative Process

- Client Control:
 - Clients are able to decide the terms of their own agreements with the help from their teams.
 - A final agreement will not be reached unless both clients agree to it.



Benefits of the Collaborative Process

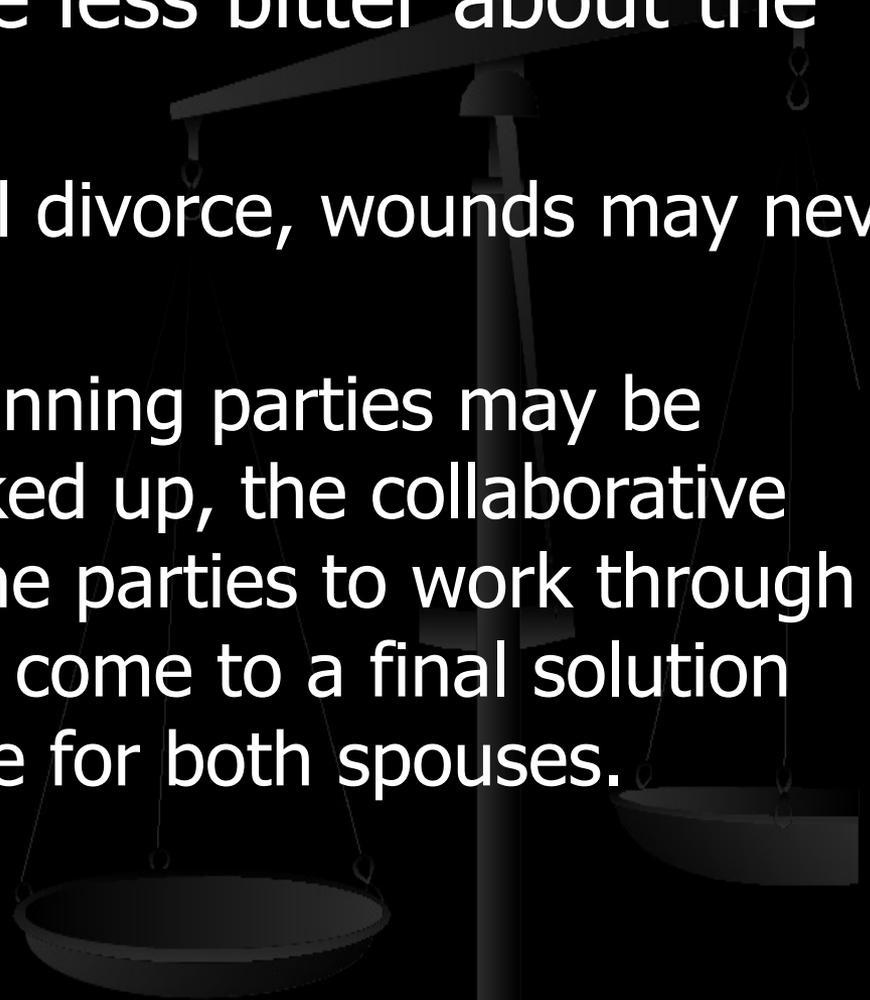
- **Attorney Assistance:**
 - Each party in the collaborative process retains their own attorney who is with them every step of the way.
 - Different from mediation where attorneys are not always present in many jurisdictions.
 - While mediation is more well-known, it does not always result in a settlement because the devil is in the details (and mediators cannot make parties settle). Parties would also still need legal counsel to submit the settlement to the court.
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Benefits of the Collaborative Process

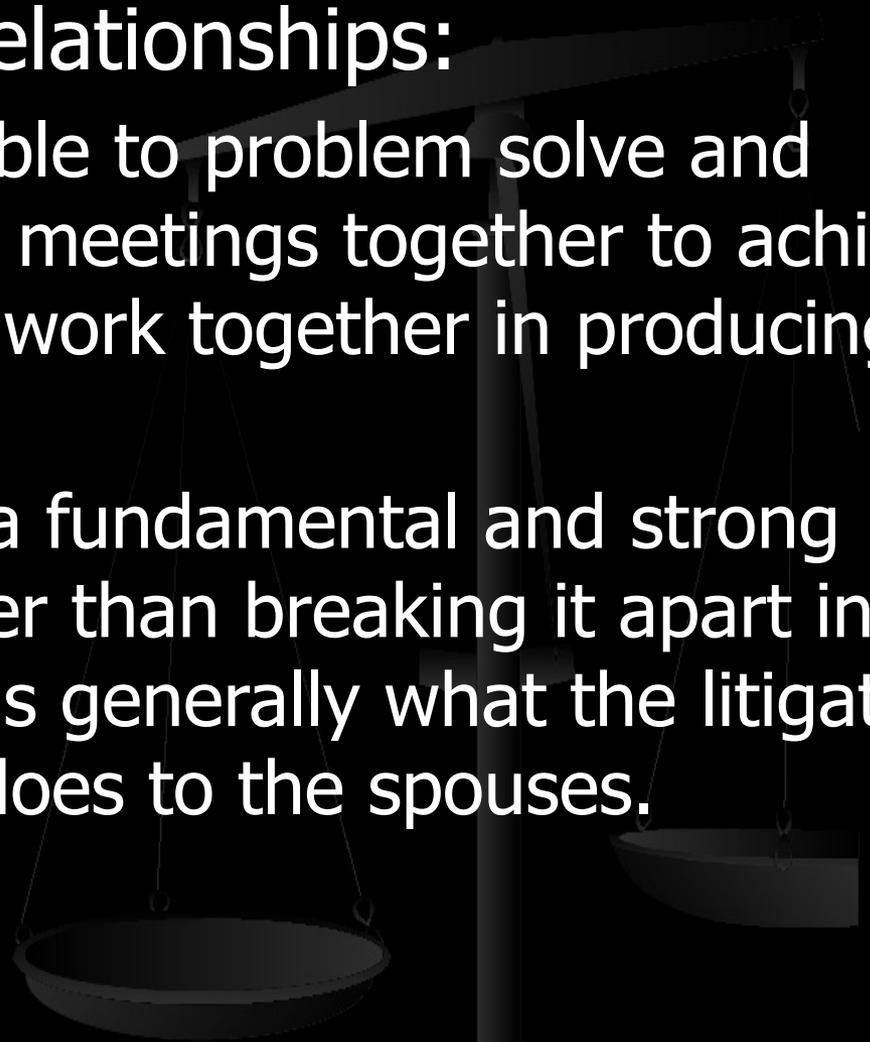
- Reduced Costs:
 - Collaborative law cases can often cost less than litigated cases. This is true, in part, because motions for contempt and modifications are less frequent where there is an amicable settlement.
 - Since the collaborative process requires everyone to be open, honest and upfront about things in the divorce, attorneys don't have to spend extra time and money to produce discovery about the other party.

Benefits of the Collaborative Process

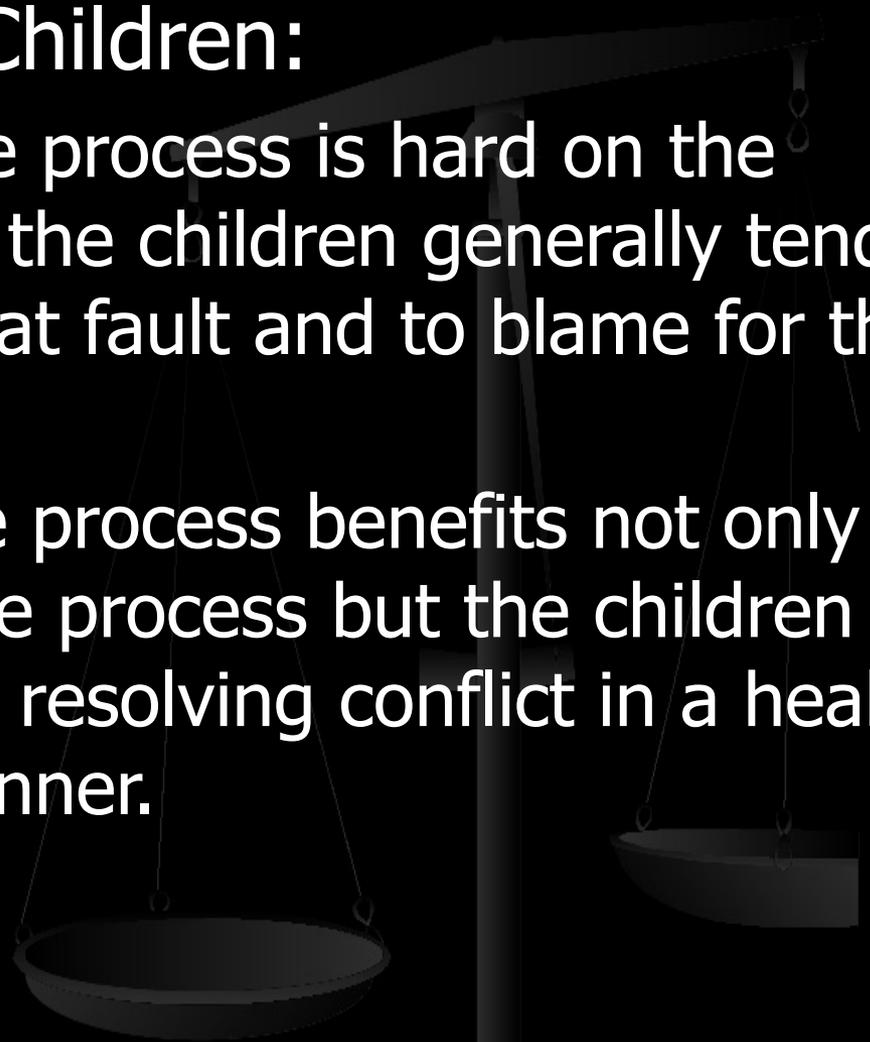
- Parties tend to be less bitter about the situation:
 - With a traditional divorce, wounds may never fully heal.
 - While in the beginning parties may be emotionally worked up, the collaborative process allows the parties to work through these issues and come to a final solution equally admirable for both spouses.



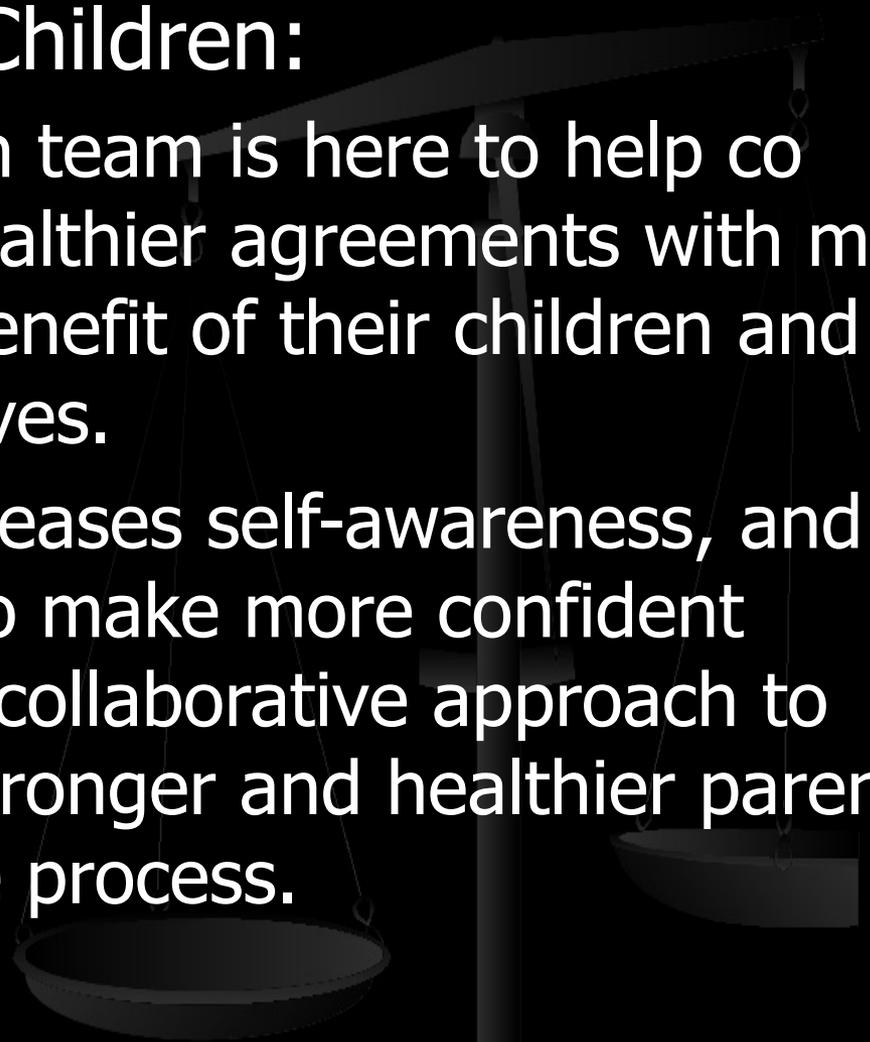
Benefits of the Collaborative Process

- Preservation of relationships:
 - Individuals are able to problem solve and coordinate these meetings together to achieve an end goal and work together in producing a solution.
 - This helps build a fundamental and strong relationship rather than breaking it apart in litigation, which is generally what the litigation process usually does to the spouses.
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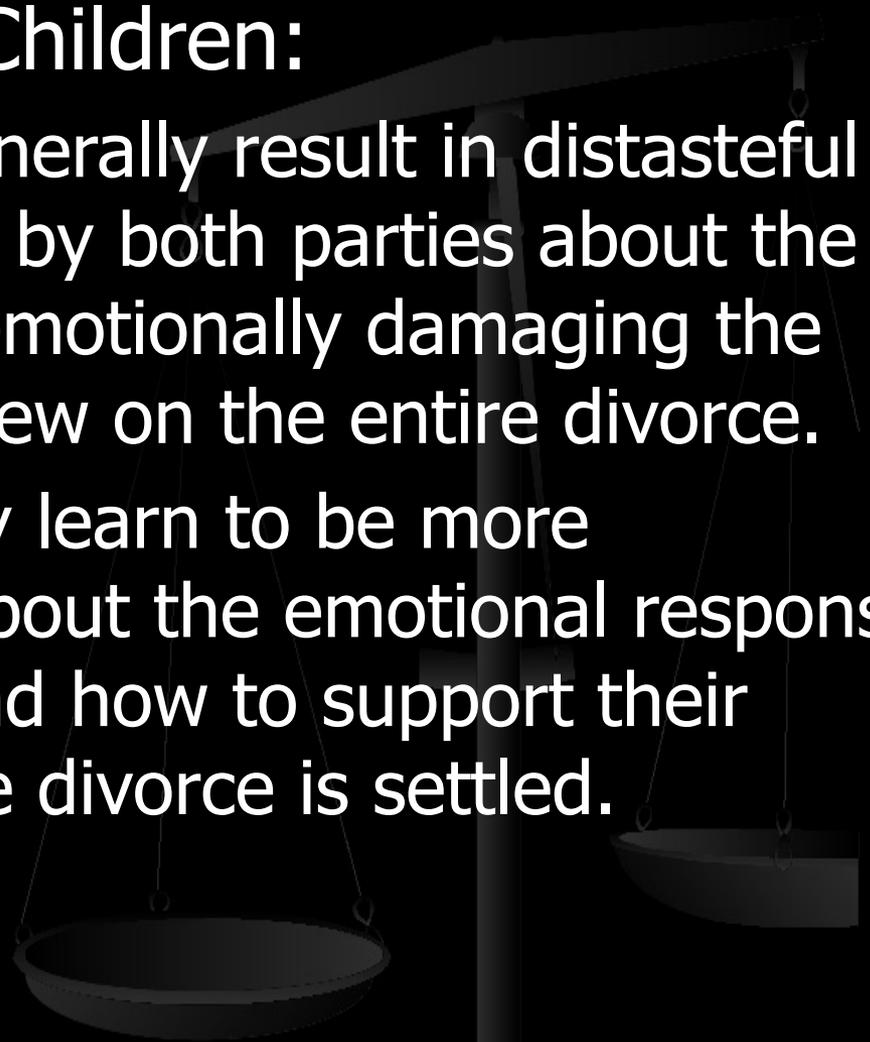
Benefits of the Collaborative Process

- Benefits for the Children:
 - While the divorce process is hard on the parties involved, the children generally tend to believe they are at fault and to blame for the divorce.
 - The collaborative process benefits not only the parents in the process but the children as well, it promotes resolving conflict in a healthy and peaceful manner.
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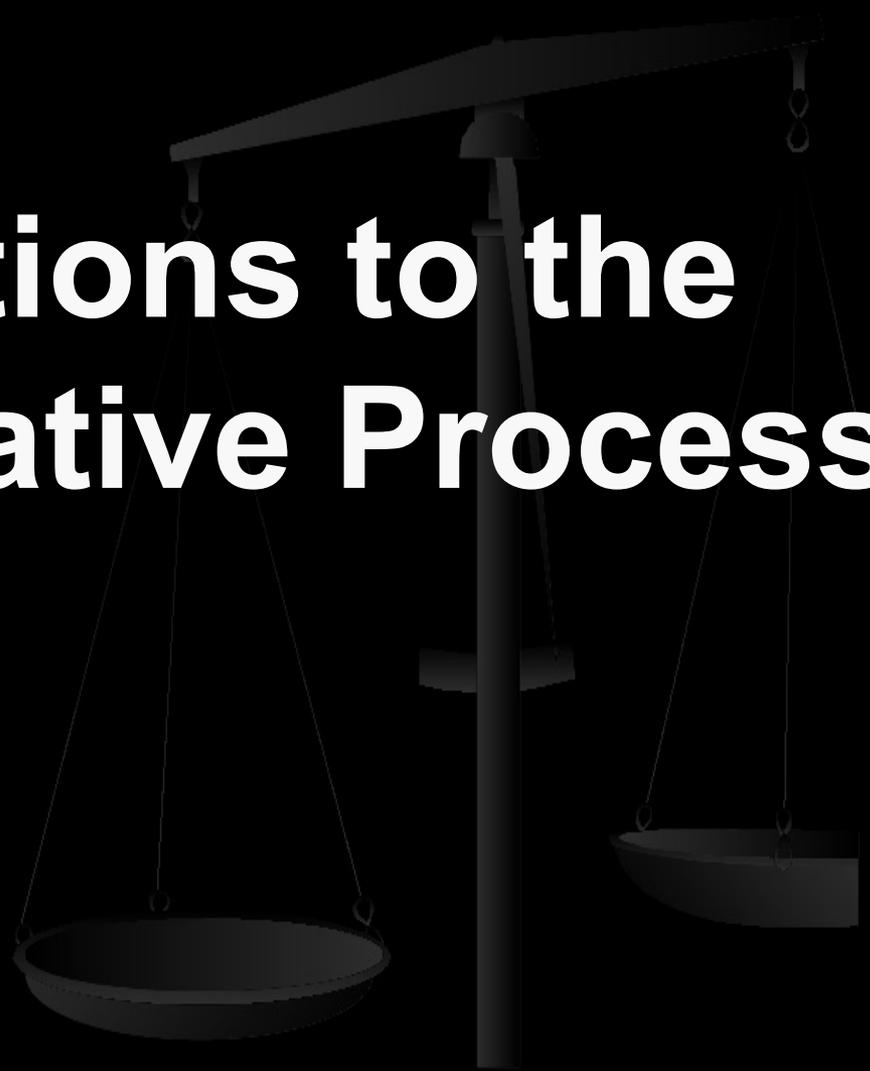
Benefits of the Collaborative Process

- Benefits for the Children:
 - The collaboration team is here to help co parents make healthier agreements with more control for the benefit of their children and not just themselves.
 - This process increases self-awareness, and a new beginning to make more confident decisions with a collaborative approach to create a much stronger and healthier parent at the end of the process.
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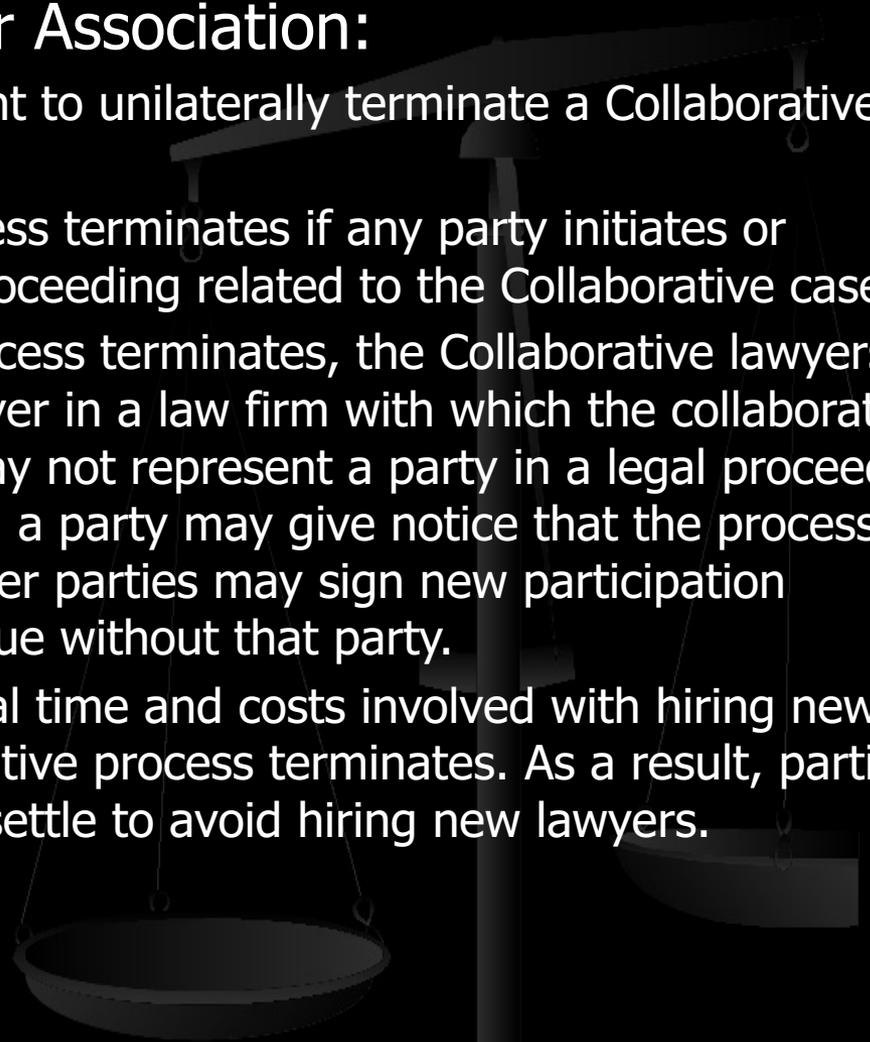
Benefits of the Collaborative Process

- Benefits for the Children:
 - Litigation can generally result in distasteful comments made by both parties about the child's parents, emotionally damaging the child and their view on the entire divorce.
 - Parents generally learn to be more understanding about the emotional responses to the divorce and how to support their children once the divorce is settled.
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Limitations to the Collaborative Process



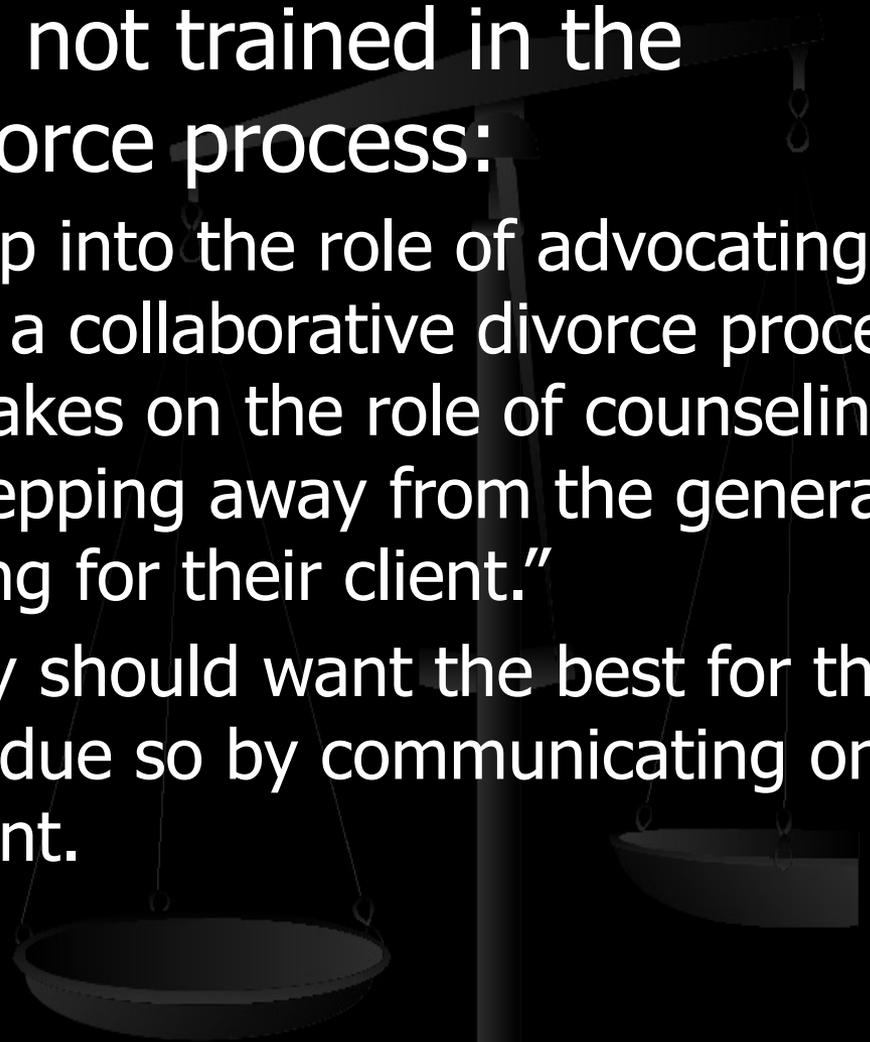
Limitations to the Collaborative Process

- From the American Bar Association:
 - i. All parties have the right to unilaterally terminate a Collaborative law process for any reason.
 - ii. The Collaborative process terminates if any party initiates or intervenes in a legal proceeding related to the Collaborative case.
 - iii. If the Collaborative process terminates, the Collaborative lawyers for all parties and any lawyer in a law firm with which the collaborative lawyer is associated may not represent a party in a legal proceeding. In a multiparty dispute, a party may give notice that the process is terminated and the other parties may sign new participation agreements and continue without that party.
 - iv. There may be additional time and costs involved with hiring new lawyers if the Collaborative process terminates. As a result, parties may feel pressured to settle to avoid hiring new lawyers.
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Limitations to the Collaborative Process

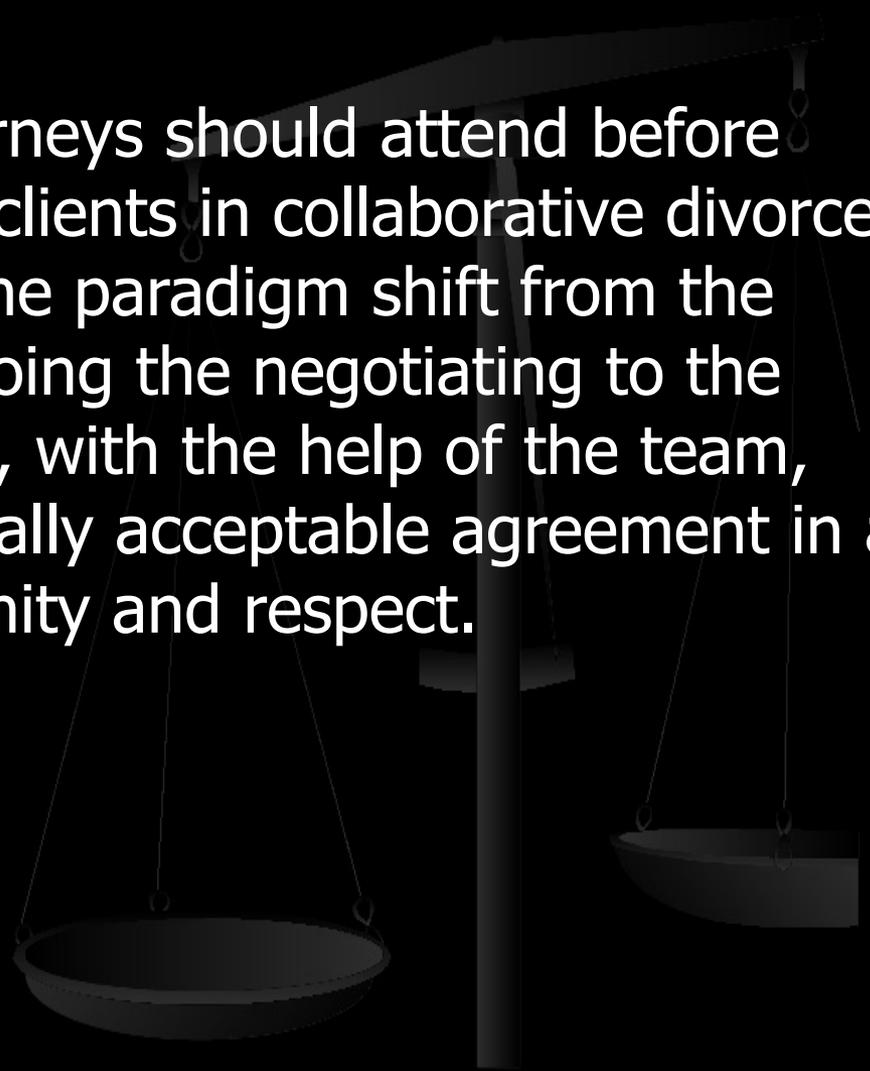
- Not all attorneys are equipped to represent a client in a collaborative process divorce.
 - Attorneys should receive ample training before taking on a case to represent a client in a collaboration divorce (interdisciplinary and mediation training).
 - Attorneys should also screen clients before referring a client to the process and assuming it will be best for their situation.
 - This process is not always right for every situation.

Limitations to the Collaborative Process

- Lawyers who are not trained in the Collaborative Divorce process:
 - Attorneys fully step into the role of advocating for their client, but in a collaborative divorce process an attorney also takes on the role of counseling their client and stepping away from the general position of “winning for their client.”
 - While the Attorney should want the best for their client he may not due so by communicating on behalf of their client.
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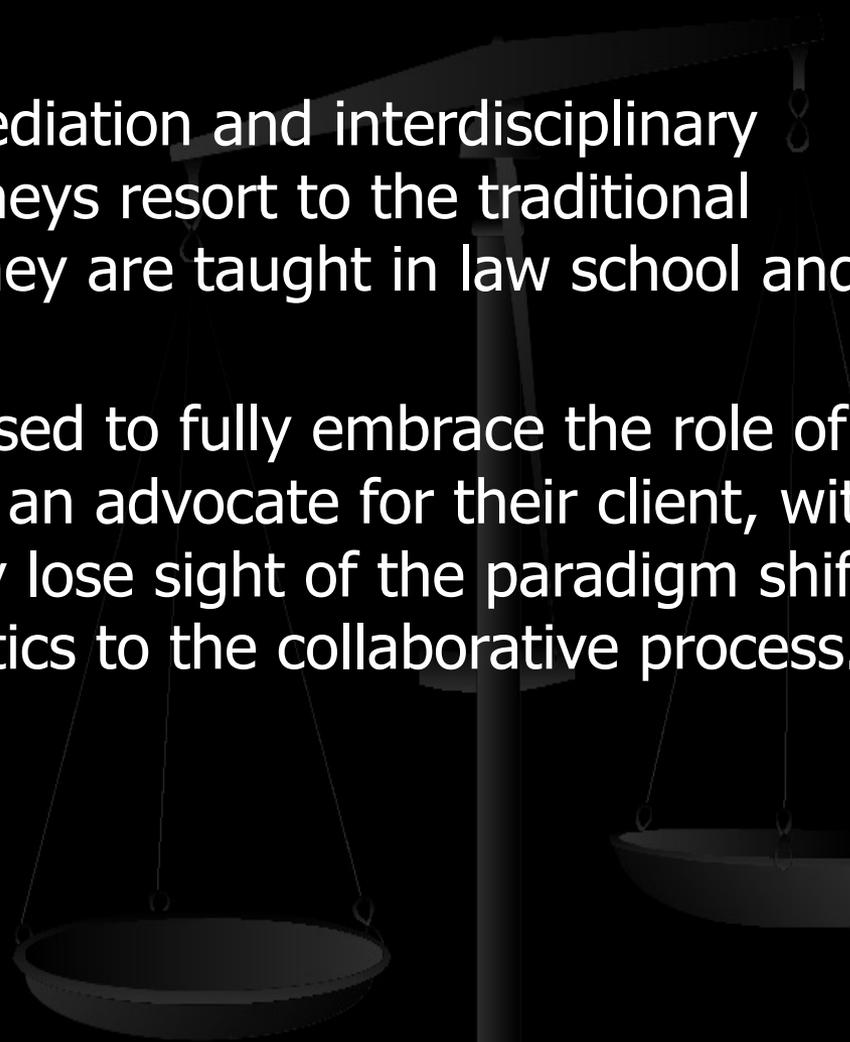
Limitations to the Collaborative Process

- Lack of Training:
 - Trainings that attorneys should attend before representing their clients in collaborative divorce process, address the paradigm shift from the general attorney doing the negotiating to the parties themselves, with the help of the team, developing a mutually acceptable agreement in an atmosphere of dignity and respect.



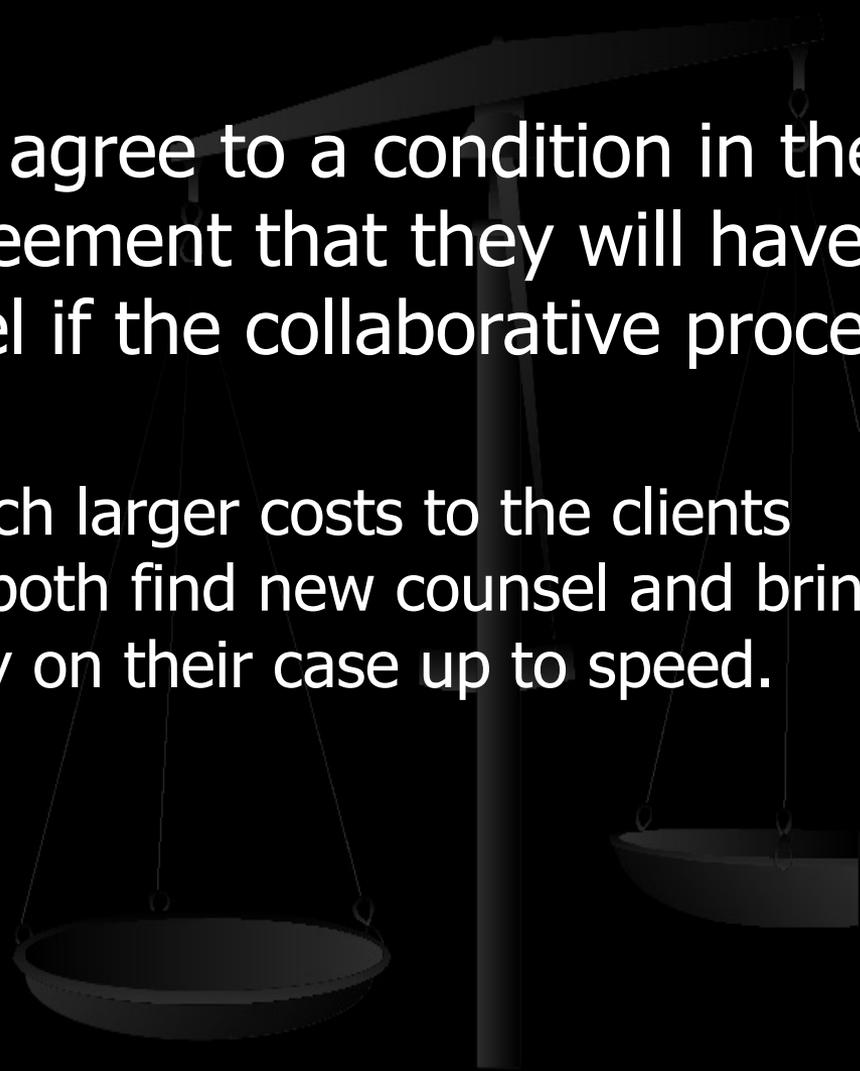
Limitations to the Collaborative Process

- Lack of Training:
 - Without training (mediation and interdisciplinary training) most attorneys resort to the traditional adversarial tactics they are taught in law school and practice.
 - Attorneys are supposed to fully embrace the role of a counselor as well as an advocate for their client, without this an attorney may lose sight of the paradigm shift from adversarial tactics to the collaborative process.



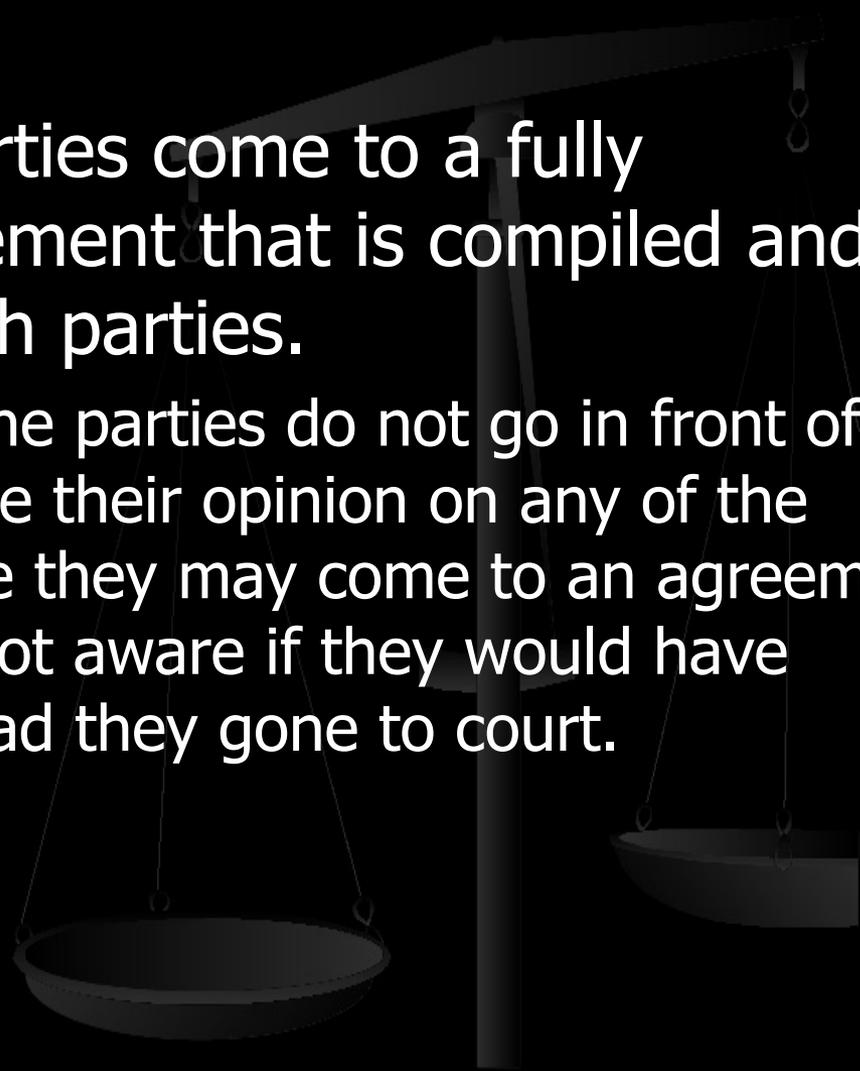
Limitations to the Collaborative Process

- Representation:
 - Clients generally agree to a condition in their participation agreement that they will have to seek new counsel if the collaborative process is terminated.
 - This accrues much larger costs to the clients forcing them to both find new counsel and bring the new attorney on their case up to speed.

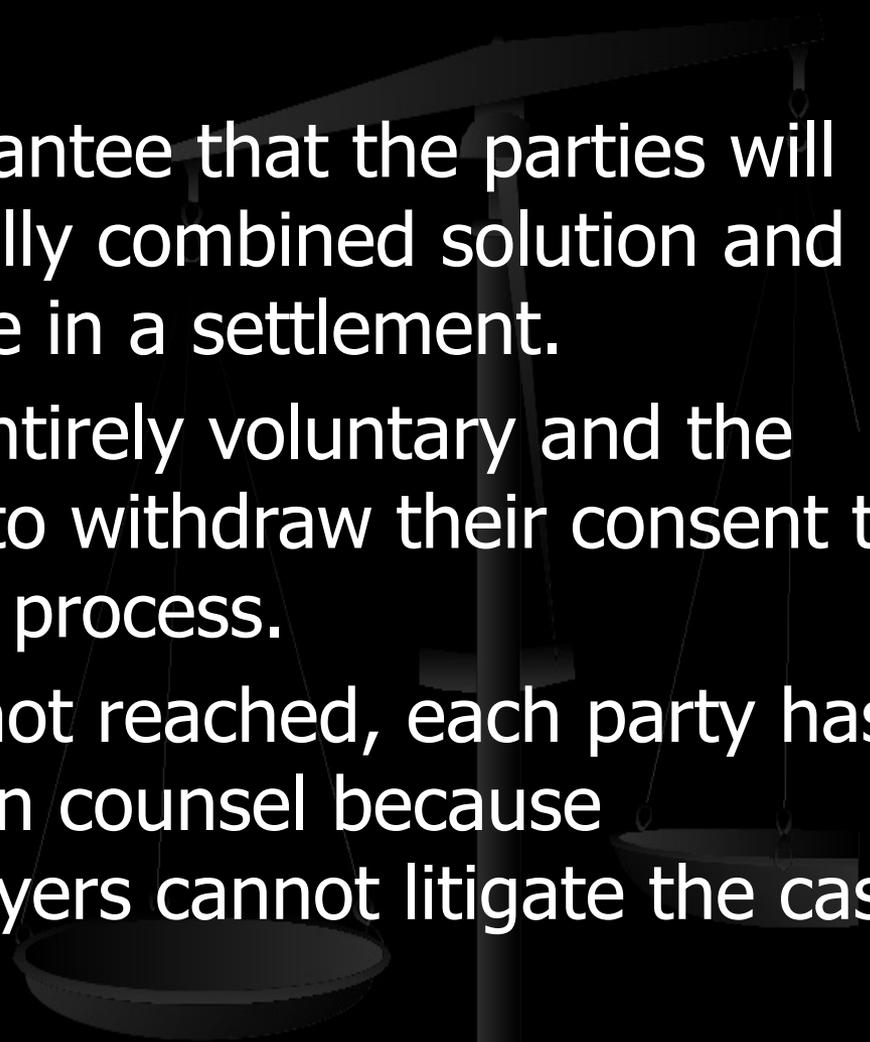


Limitations to the Collaborative Process

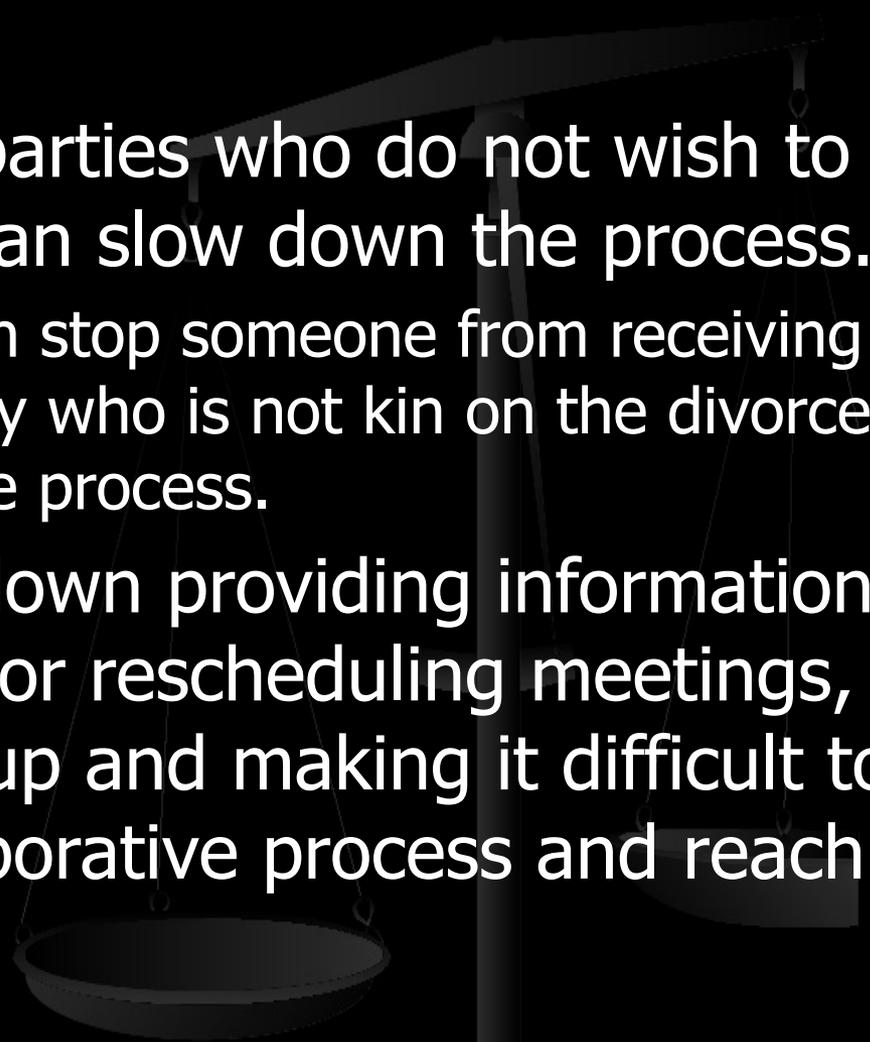
- Fairness:
 - Generally the parties come to a fully negotiated agreement that is compiled and agreed to by both parties.
 - In this process the parties do not go in front of a judge and receive their opinion on any of the matters, so while they may come to an agreement the parties are not aware if they would have received more had they gone to court.



Limitations to the Collaborative Process

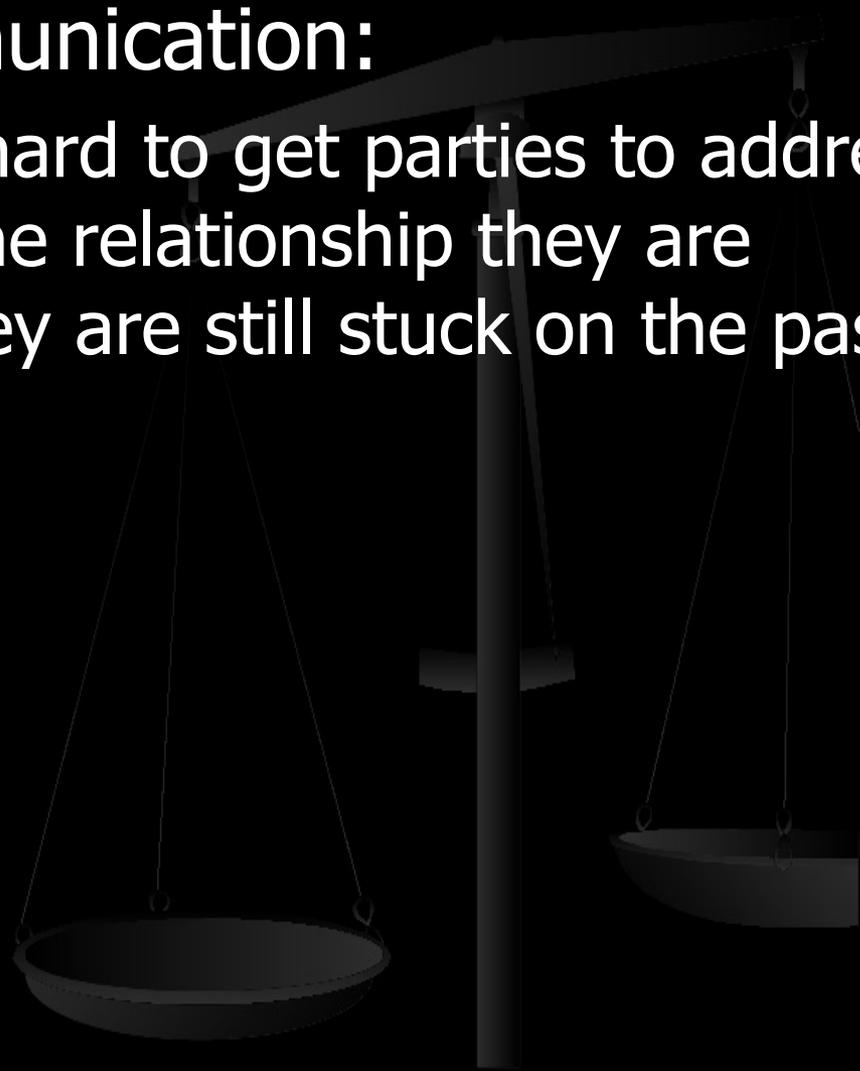
- No Guarantee:
 - There is no guarantee that the parties will come to an equally combined solution and resolve their case in a settlement.
 - The process is entirely voluntary and the parties are able to withdraw their consent to the collaborative process.
 - If settlement is not reached, each party has to hire new litigation counsel because collaborative lawyers cannot litigate the case.
- 

Limitation to the Collaborative Process

- No Guarantee:
 - In the terms of parties who do not wish to get a divorce, they can slow down the process.
 - While no one can stop someone from receiving a divorce, the party who is not kin on the divorce may drag out the process.
 - They may slow down providing information and documents, or rescheduling meetings, driving the cost up and making it difficult to further the collaborative process and reach a settlement.
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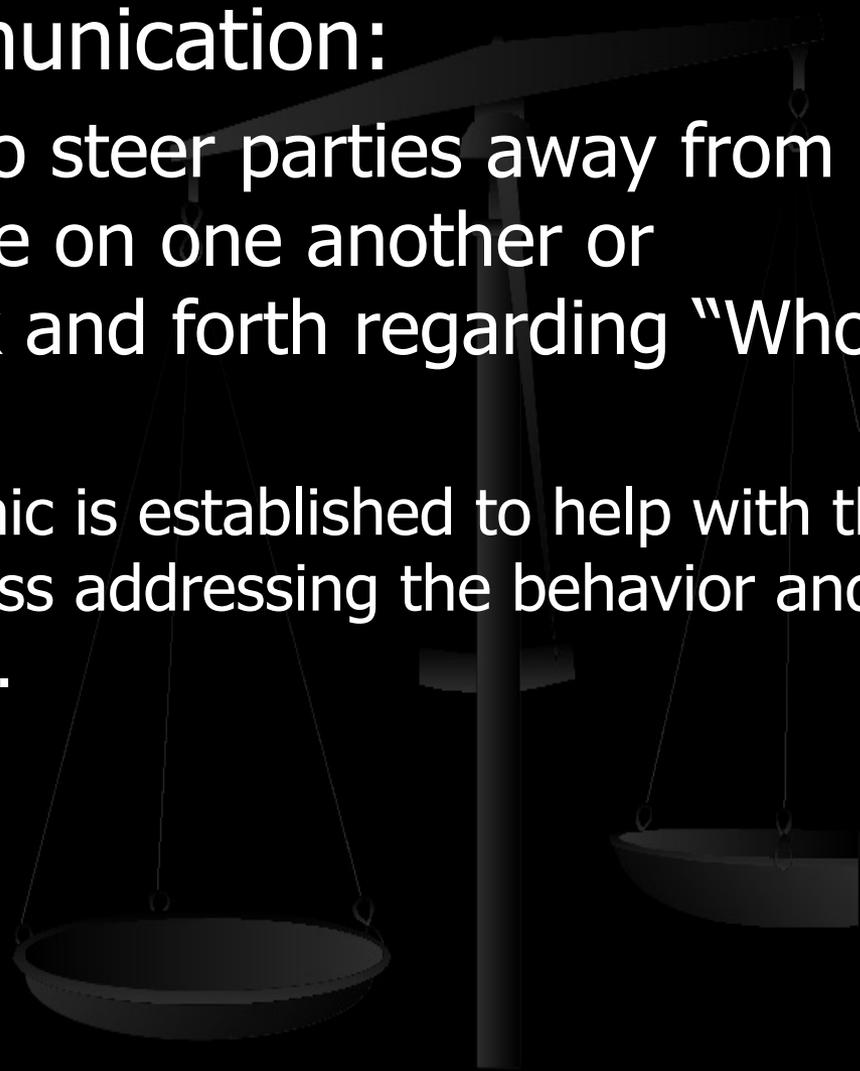
Limitations to the Collaborative Process

- Respectful communication:
 - Sometimes it is hard to get parties to address the future and the relationship they are working for if they are still stuck on the past.

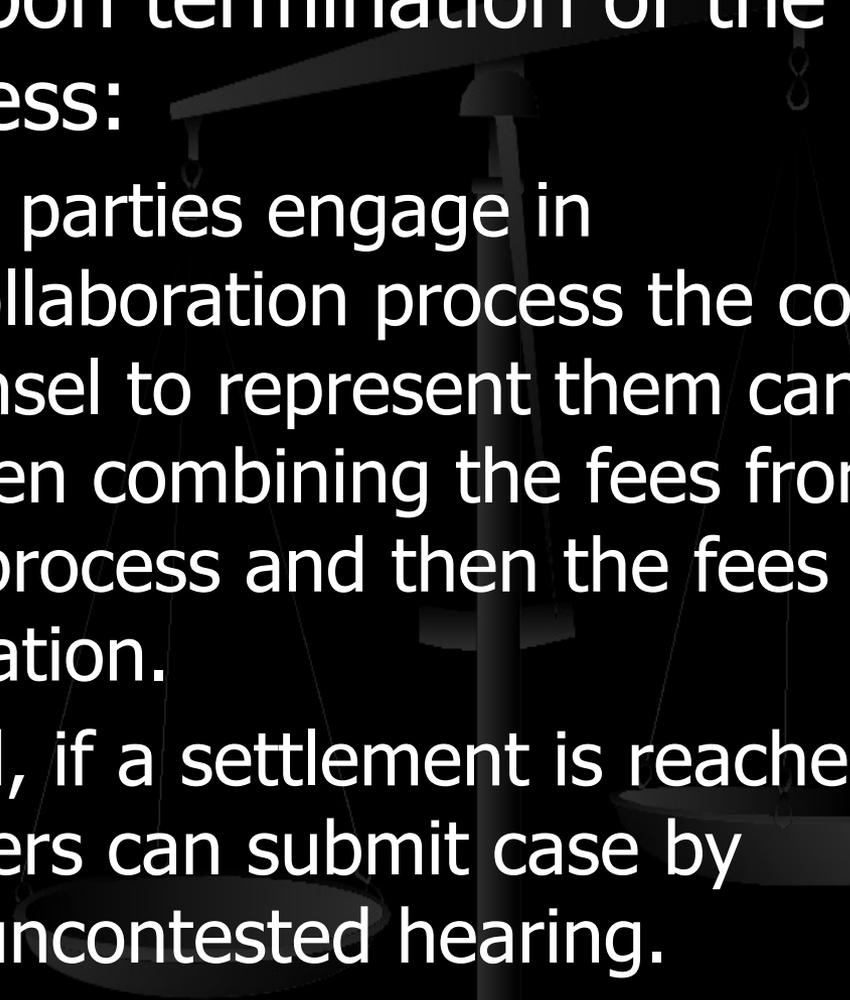


Limitation to the Collaborative Process

- Respectful Communication:
 - It may be hard to steer parties away from placing the blame on one another or accusations back and forth regarding “Who is at Fault.”
 - The team dynamic is established to help with this during the process addressing the behavior and how to correct it.

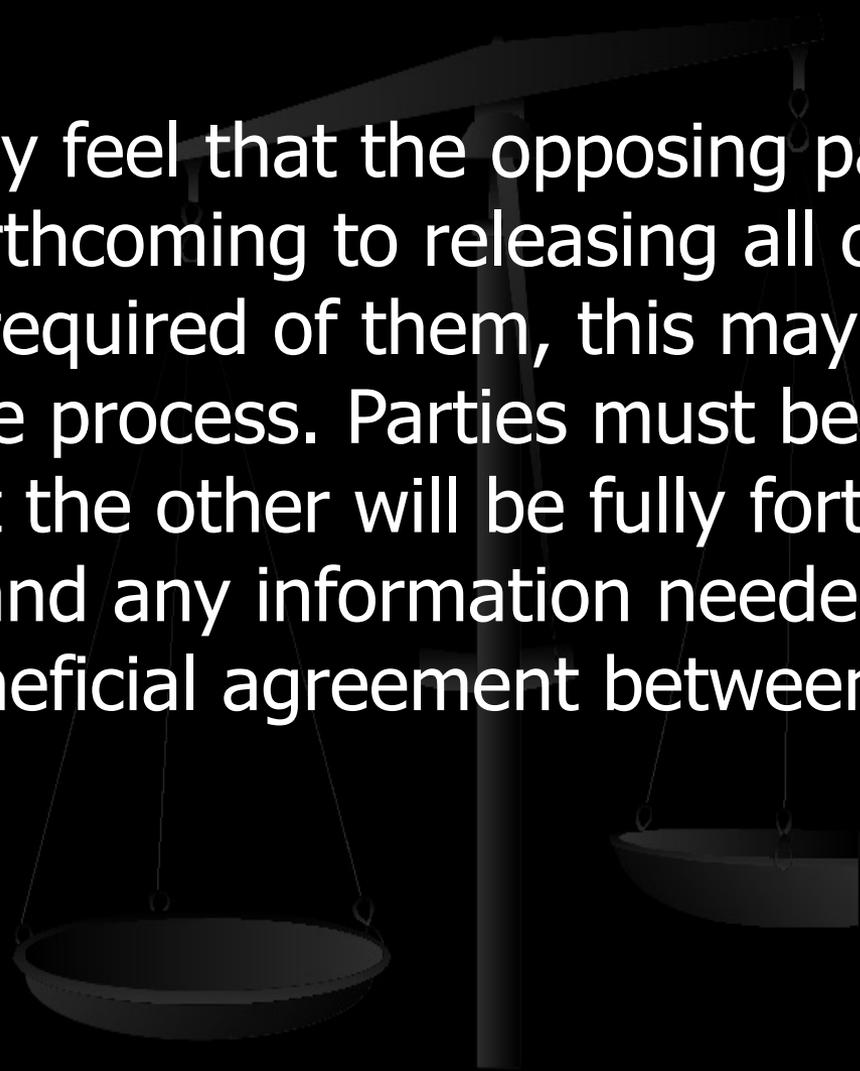


Limitations to the Collaborative Process

- Increased costs upon termination of the collaborative process:
 - When one or both parties engage in terminating the collaboration process the costs of hiring new counsel to represent them can become costly when combining the fees from the collaboration process and then the fees acquired with litigation.
 - On the other hand, if a settlement is reached, collaborative lawyers can submit case by affidavit or at an uncontested hearing.
- 

Limitations to the Collaborative Process

- Trust:
 - Some parties may feel that the opposing party won't be fully forthcoming to releasing all of the information required of them, this may be a set back for the process. Parties must be able to trust that the other will be fully forthcoming with all and any information needed to come to a beneficial agreement between both parties.



Appendix.

- See sample Limited Scope Representation Agreement in the Appendix.
- See sample Participation Agreement in the Appendix.



The End

