

What is Collaborative Family Law?

Collaborative Family Law is a method of settling cases without court intervention. It blends the benefits of each client being represented by an attorney with the cooperative face-to-face negotiation of mediation. Clients, attorneys and other collaborative team professionals assigned to a case sign a Collaborative Participation Agreement that details their commitment to this non-adversarial process.

In Collaborative Family Law two clients and two lawyers work as a *team* to generate options for a mutually acceptable, comprehensive settlement. Where appropriate, other collaboratively trained professionals join the *team* to provide added expertise and counseling. These collaborative professionals can include a facilitator, coaches, parenting specialists and financial analysts.

Both clients enable collaboration by sharing all knowledge each has that bears on the process and by treating the other with honesty and respect. This enables trust and assures fair dealing. By participating in the process, both clients are agreeing that they are willing to:

- ❖ Achieve a fair and comprehensive settlement without resorting, or threatening to resort, to litigation.
- ❖ Voluntarily disclose all information relevant to reaching a settlement.
- ❖ Make a good faith effort to look for resolutions that meet the needs of all members of the family.
- ❖ Deal honestly with each other and to communicate in a respectful manner.

And, both clients are agreeing that they do not want to turn their decision-making over to a judge or endure the trauma and expense of litigation, or threatened litigation, and that they want to work amicably to reach a settlement.

❖ **The Meeting Format**

The process typically starts with each client meeting with his or her own attorney. The two attorneys then meet for a planning session to lay the groundwork and set the agenda for the first team meeting. Then each attorney meets with his or her client to prepare for the first team meeting.

At the first team meeting clients and attorneys sign the Collaborative Participation Agreement – an enforceable, binding contract. The newly established team will also address the issues of immediate concern like how bills will be paid, and, if you have children, what your parenting plan will be during the negotiation period.

Meetings are usually 2 hours in length, scheduled about 2 or 3 weeks apart. They generally end with “homework” assignments being given to each participant in preparation for the next session. The team meeting format continues until a complete settlement has been reached, but the format may be changed based on the needs and agreements of the team.

❖ **The Process**

Collaborative Family Law is not about winning or losing; the goal of an agreed upon settlement is to permit both clients to achieve their objectives to the greatest extent possible taking into consideration the resources available. Clients are encouraged to participate directly in the process, and with the assistance of their counsel, are expected to identify and assert his or her own respective interests.

The collaborative process cannot eliminate concerns about the disharmony that led to divorce or the dispute being addressed. However, each participant is expected to treat the other with respect, and to listen to the other's perspective, interests and concerns. This sometimes requires that clients let go of the past in order to focus on the future.

Each team member will uphold a high standard of integrity. They agree to not take advantage of inconsistencies or miscalculations of the other, and they agree to disclose and correct any that are discovered. In addition, no team member will threaten to withdraw from the collaborative process or to go to court as a means of achieving a desired outcome or forcing a settlement.

Collaboration requires each client and each professional to take a reasoned position on all issues. Where positions differ, everyone uses their best efforts to create proposals that meet the fundamental needs of both clients, and, if necessary, to compromise to reach a settlement on all issues. This process encourages creative solutions that are not available in court, and lets you control the outcome so important family decisions are not left to someone who doesn't know you or understand your family.

The goal is to preserve the relationship between clients and within the family by creating a respectful environment that sets the tone for open communication and reduced conflict in the future. Each client makes a commitment to find a way to resolve the disputed issues in a manner that is also acceptable to the other, even if the process of doing so is difficult. What clients can realistically hope to do is trade the antagonistic feelings that result from a divorce or other family law battle, for a genuine sense of resolution.

❖ **The Team of Collaborative Professionals**

Collaborative professionals function as legal, financial, communication, and parenting educators, depending on his or her area of expertise. The professionals on your team help you understand and perform the promises you commit yourself to by signing the Participation Agreement. They show you how to move effectively and safely through the divorce process to a fair resolution.

Specifically, they help you identify your needs, anticipate what your future needs might be, and help to create ways to accommodate those needs. They use their professional skills to analyze problems and to help work out solutions that you can accept. They also help you avoid using blame, recrimination, anger, and retribution while acknowledging your own fear, pain, and loss in needing to separate your interests.

Each client will enter into a separate retainer agreement with his or her own attorney. These agreements will not be the same. Fees for other collaborative professionals may or may not be shared. As part of the collaborative process, funds need to be made available for paying attorney and professional fees, as well as any costs that are incurred mutually during collaboration.

❖ Consulting Experts

When appropriate and needed, clients will jointly hire neutral experts to assist with issues that require expert advice and recommendation. These experts – appraisers, vocational consultants, pension attorneys and others – often offer specialized knowledge and information which is valuable in reaching a fair and comprehensive settlement. Such division of labor is made to affect the most efficient and cost-effective use of time, increase expertise, and reduce legal fees for your benefit. All experts and other consultants retained in the collaborative process are directed to work in a cooperative manner to resolve issues.

❖ Children

If children are involved, parents, attorneys and any counselors or child specialists commit to reaching amicable resolutions to issues that promote the best interests of the children and the family as a whole. Parents commit to making an effort to insulate children from involvement in the parents' disputes, and to encouraging a caring, loving and involved relationship between the children and the other parent.

The collaboration process provides an opportunity for clients to reach a resolution with enhanced understanding, respect, and continued cooperation in child-raising.

❖ Impasse

Unfortunately, there is no guarantee that the process will be successful. The hallmark of collaborative practice is the *formal agreement to forswear the litigation option*. While this does not abrogate a client's ultimate right to litigate a dispute, it is a pledge not to do so.

If an impasse is reached, the collaborative lawyers may suggest that the team bring in a neutral third party with special expertise in the area of the impasse to provide another viewpoint, and to assist each spouse in recognizing and accepting an imperfect, but reasonable decision. Ultimately, if the collaborative process proves unsuccessful, the collaborative attorneys will cooperate fully in transferring the case to trial lawyers. Agreements reached during collaboration can be preserved, and litigation can focus on the remaining issues. In the end, clients will have had the best representation for each phase of the proceeding.

❖ Disclosure

Two other rules in the Participation Agreement deserve special mention. They spell out each client's obligation to: 1) disclose relevant information to one another, and 2) to maintain the confidentiality of such disclosures.

1) Each client promises to give prompt, full, honest and open disclosure of all information and documents relevant to the care of the children and to the understanding and valuing of assets and debts – whether specifically asked or not. When you are asked, you are obligated to provide good faith responses to good faith questions and requests for information. Good faith questions and answers are reasonably calculated to assist in assessing the merits of a particular position, valuing an asset, or otherwise furthering the process of reaching a settlement of all issues. This is a voluntary resolution made between clients to insure equal influence over the process, and a fair resolution.

Each attorney is obligated to withdraw his or her representation immediately upon learning that his or her client is undermining or taking unfair advantage of the collaborative process. Examples include: the secret disposition of property, failing to disclose the existence or nature of assets or obligations, physically or emotionally abusing the children, or planning to flee with the children.

2) The second obligation – the confidentiality rule – is an important compliment to the disclosure rule. It enables candor by forbidding the use of any statement, comment, or disclosure made by any party or collaborative professional during the collaborative process in court except for some limited situations such as statements which show an intent to endanger another person or property. It also prohibits collaborative attorneys and other collaborative professionals from testifying in court.

❖ Final Thought

If at anytime you have a question about collaborative practice, be sure to consult with your attorney. They will be happy to discuss it with you.