

Collaborative Law

by Jonetta J. Kapusta-Dorogi



Ten Reasons Collaborative Law is a Superior Process to Traditional Litigation for Most Families

Collaborative Law:

1. Returns to clients and families control over the decisions in resolving family conflicts and provides creative and individually tailored solutions.
2. Offers a private, peaceful, and generally less expensive alternative to traditional litigation.
3. Reduces the trauma experienced by families during divorce.
4. Protects children from bitter and destructive court battles.
5. Encourages outcomes that nurture constructive post-divorce relationships in the family and extended family.
6. Reduces the economic, social, and emotional consequences of litigation to families.
7. Allows couples to work toward resolution without artificial time barriers.
8. Cultivates positive, non-destructive decision-making and encourages enhanced communication skills.
9. Ensures continuity between the settlement and processing of the final dissolution of the marriage and often provides a plan for the clients to use to resolve issues that may arise in the future.
10. Maintains the privacy of clients and families.

Collaborative Law is an innovative process to resolve conflicts respectfully. The basic premise is that each client and lawyer agree in writing to settle the case without the use of litigation.

Collaborative Law requires a commitment to a principled, negotiated settlement in which protocols are established between the clients and lawyers without the threat of litigation or use of power.

The Collaborative Law process was developed in the 1990s by Minnesota lawyer Stuart Webb in an attempt to allow clients to terminate their marriage without the destructive byproducts of traditional divorce litigation. Webb's Collaborative Law approach has now gained international acceptance. This powerful process allows the parties to take control of their decision making and ultimately the outcome of their settlement. While each client has the legal guidance and support of his or her lawyer at all times, the process is less about advocacy than about having a divorce that preserves a couple's family structure and their emotional and financial resources.

To ensure commitment to the process, the lawyers sign a legally binding agreement to withdraw as counsel if the clients proceed to litigation. This collaborative agreement also requires the clients to make full disclosure of all relevant information, remain respectful of each other's interests, and negotiate in good faith and with respect to each other's needs. The clients participate fully and honestly to create a win-win situation whenever possible. The collaborative process allows the lawyers and clients to focus entirely on achieving a settlement. In Collaborative Law, the lawyers must guide the process to a settlement or withdraw from further participation. This is unlike the traditional adversarial setting in which lawyers remain involved without regard to whether the case is settled or goes to court. The parties also have the opportunity to work with trained neutral professionals at every aspect of the process, and thus may agree to include neutral mental health professionals and financial professionals to provide information and guidance in reaching a settlement. Such neutral professionals may be called upon to assist the parties at a single meeting or throughout the process.

In summary, the practice of Collaborative Law challenges collaboratively-trained domestic relations lawyers to make a paradigm shift and apply their skills and

knowledge for the true benefit of couples facing termination of their marriage and restructuring of their families.

How it Works

The clients chose their respective counsel after educating themselves on the collaborative process and other alternative processes to litigation. Clients are encouraged to do research in order to identify and retain attorneys who have made a true commitment to the collaborative movement and to other alternative dispute resolution processes. During the client's initial meeting with his or her collaborative attorney, client and counsel will discuss the suitability of the collaborative process and other alternative dispute resolution processes based on the individual needs of the client. The parties will be presented with an informed consent document which clearly outlines the client's options for the termination of the marriage. There are certain situations where litigation may be the only appropriate and safe process available to the client.

If a party chooses the collaborative process, the attorney will provide the client with a copy of the collaborative contract and review the commitments required to engage in this process. However, the collaborative contract is not executed until the first four-way meeting to ensure that all clients and counsel have made an informed decision and are voluntarily engaged in the process. It is essential that both clients fully understand the contract and agree to move forward to negotiate a settlement based on voluntary, prompt, full disclosure of relevant information without the threat of litigation. The clients also must understand that if settlement negotiations break down for any reason, their respective counsel will be unable to represent them in litigation. The sole purpose of the initial four-way meeting is to review and execute the process document and obtain the clients' commitment to work to negotiate a settlement of all issues.

At the second four-way meeting, which generally takes place soon after the initial meeting, the participants establish a time-line, prepare an agenda of issues, and discuss the clients' pressing concerns. After the two initial meetings, the clients may wish to enlist additional neutral professionals to create an interdisciplinary team to assist them in their decision making process.

Thereafter, additional meetings will be held until all issues have been resolved or the parties conclude that the collaborative process has failed. The couple maintains control of the process, moving as quickly or as slowly as is necessary to adequately address each issue. All discussions and negotiation details are kept private.

Prior to each meeting, the parties will meet with their respective lawyers to prepare and set goals for the meeting. It also is important that counsel communicate prior to each meeting. These communications enable all participants to identify the issues to be discussed by the couple and help to ensure that they are fully prepared to

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participate in productive discussions. The communications provide the lawyers and the couples with the opportunity to gather pertinent information, examine their respective interests, and begin to engage in creative problem solving prior to the meeting. The conversation between counsel also provides the lawyers with an opportunity to be updated concerning any circumstances that may have changed since the last meeting and to discuss any necessary alterations to the agenda.

Recently the Center for Principled Family Advocacy developed an informational DVD regarding alternative dispute resolution processes. Clients who have been engaged in alternative dispute resolution were inter-

viewed about their experiences. Their unscripted testimony is compelling. I encourage you to view clips from this DVD on the Center for Principled Family Advocacy website and obtain additional information regarding the Collaborative Law process and other alternative dispute resolution procedures by visiting the web site of the Center for Principled Family Advocacy at www.FAMAD.com. ■

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