



Collaborative Law

Presented by

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What is Collaborative Law?

- Collaborative Law is a process by which both parties and their counsel contractually commit themselves to resolving their differences justly and equitably without resort, or threat of resort, to the courts. If the parties do not reach settlement, the attorneys must withdraw and send clients to trial attorneys. In divorce arena, also known as Collaborative Family Law or Collaborative Practice.



Collaborative Law is Governed by a Written Agreement

- The collaborative law agreement **must** contain provisions for:
 - a full and candid exchange of information as necessary to make a proper evaluation of the case;
 - suspending court intervention while the parties are using collaborative law procedures;
 - hiring experts, as jointly agreed, to be used in the procedure (i.e. neutrals); and
 - withdrawal of all counsel if the collaborative law procedure does not result in settlement



History of Collaborative Movement

- The creation of Minnesota family lawyer, Stu Webb, in 1990
- Recently moved into civil law (probate, employment law, malpractice, etc.)
- Trainings in demand all over the country
- A worldwide movement. Originally in U.S. and Canada. Now throughout British Isles, and in Europe, Australia, New Zealand.



Why Should Law Students be Taught Collaborative Law ?

- In family law, the Collaborative Law process is more humane and promotes the post-divorce spiritual, psychological and financial health of the restructured family.
- Collaborative Law relies on an atmosphere of honesty, cooperation, integrity and professionalism – for attorneys, is a less stressful, more satisfying, practice.



“Discovery” in Collaborative Law

All parties provide an open, honest exchange of information and neither party takes advantage of the other, or of the miscalculations or inadvertent mistakes of others, but instead identifies and corrects them.



Direct Communications

- Parties meet together with their attorneys in joint sessions. Often a communications coach is utilized to assist in the parties in managing the emotional or psychological issues that might interfere with their ability to effectively communicate with each other. The skills learned in joint sessions can be utilized when the parties need to problem-solve with each other in the future.



Experts and Allied Professionals

The parties are encouraged to jointly use accountants, therapists, appraisers and other consultants as neutral advisors instead of as adversarial experts.

Mental Health and Financial professionals can join forces with attorneys to form a settlement team that addresses the legal, emotional and financial aspects of the dispute.



Interest-Based Negotiations

- The parties and their attorneys utilize interest-based negotiations to maintain a respectful and creative negotiation process that strives to meet the legitimate needs of both parties (and, in divorce, the needs of their children). Threats of litigation are prohibited.



Commitment to Settlement

- The attorneys must guide the process towards settlement or withdraw from further participation. If settlement is not reached, they “lose” their jobs. This gives incentive to the attorneys to assist in coming up with creative ways to end impasses. That incentive does not exist in the adversarial process.



Steps in Interest-Based Negotiations

- Identifying Interests and Goals
- Factual Information Gathering
- Application of the Law to the Facts – not required – a debate among attorneys
- Generating Options
- Analyzing Options in View of Each Party's Interests and Goals
- Negotiating and Reaching Agreement



Benefits for the Clients

- Both parties have skilled advisors at every stage who understand creative settlements.
- Parties always have counsel at their side, explaining issues and helping to achieve mutual goals.
- Litigation is never threatened and game-playing is not permitted.
- Skilled Allied Professionals are used to provide services as needed to enhance the process.



What is the Future of Collaborative Law?

National Conference of Commissioners on Uniform Laws is currently drafting a Uniform Collaborative Law Act.

Civil attorneys across the country are being trained as collaborative lawyers – it's not just for family law anymore.

Law Schools in several states are beginning to offer classes in Collaborative Law – new graduates will see it as normative, like mediation is now seen.



To learn more about Collaborative Law

- Visit these websites:
 - www.collaborativepractice.com
 - www.normatrusch.com

Or Contact:

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