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Collaborative Family Law

What is collaborative family law?

Collaborative law is a new way to resolve family law disputes. Each party has a separate and specially trained attorney. The lawyers' only job is to help the parties settle the case. If the attorneys do not succeed in helping the clients settle, the attorneys are out of a job. They never can represent either client against the other. Everyone agrees to work together with respect, honesty and good faith. They try to find "win-win" solutions to the reasonable needs of both parties. Four creative minds work together to come up with a settlement. No one may go to court or threaten to. If anyone goes to court, collaborative law ends. Both lawyers may not be involved in the case any longer. Collaborative law attorneys never can go to court for their clients.

Is collaborative law only for divorces?

Collaborative lawyers can do everything that any other family lawyer does, except go to court. They can negotiate agreements on child custody and visitation, child support and spousal support. They can negotiate agreements before marriage and after separation, and agreements ending gay and lesbian partnerships. Collaborative law also can be used in non-family law disputes. It can be used whenever parties want a creative and civilized process that uses attorneys outside of court, and puts the risk of failure on the lawyers as well as on the clients.

What is the difference between collaborative law and mediation?

In mediation, one neutral person helps the parties settle their case. Mediation can be challenging where the parties are not on a level playing field with each other. A mediator cannot give either party legal advice or help either side advocate a position. Collaborative law deals with these problems while keeping settlement as the only goal. Each side has legal advice and advocacy at all times. Even if one side lacks negotiating skill or financial understanding, or is emotionally upset or angry, the collaborative lawyer levels the playing field. The lawyers also work with their own clients if they are being unreasonable. This makes sure the process stays positive and productive.

How is collaborative law different from the traditional adversarial process?

- Everyone takes part in an open, honest exchange of information. Neither party takes advantage of miscalculations or mistakes, but instead identifies and corrects them.

- Both parties keep their children from the dispute. If custody is an issue, they avoid the professional custody evaluation process.

- Both parties use joint accountants, appraisers, and other consultants, instead of adversarial experts.

- A respectful and creative effort to meet the reasonable needs of both parties replaces bargaining backed by threats of a lawsuit.

- The lawyers either guide the process to settlement or withdraw from further participation, unlike adversarial lawyers, who remain involved whether the case settles or is tried.

- Neither party is disadvantaged by lack of funds, a frequent problem in adversarial litigation.

What kind of information and documents are available in the collaborative law negotiations?

Both sides sign a binding collaborative law agreement to disclose all documents and information that relate to the issues early, fully and voluntarily. “Hide the ball” and stonewalling are not permitted. Both lawyers must work to assure complete disclosure of needed information.

What happens if one side plays “hide the ball,” is dishonest or misuses collaborative law to take advantage of the other side?

That can happen. There is no guarantee that a party will be protected if someone in collaborative law acts in bad faith. There also are no guarantees in adversarial litigation. What is different is that the binding collaborative law agreement requires a lawyer to withdraw upon becoming aware his or her client is less than fully honest or is showing bad faith.

For example, if documents are altered or withheld, or if a client is deliberately delaying for economic or other gain, the lawyers have promised in advance they will withdraw and not continue to represent the client. The same is true if a client fails to keep agreements made during collaborative law, such as joint parenting counseling or seeing a vocational counselor.

Is collaborative law the best choice for me?

It isn't for every client. It is worth considering if some or all of these are true for you.

- You want a civilized and respectful settlement of the issues.
- You want to keep open the possibility of friendship with your partner.
- You will be co-parenting children together and you want the best co-parenting possible.
- You want to protect your children from the harm that goes along with a lawsuit.
- You and your partner have friends or family in common you both want to remain connected to.

- You value taking personal responsibility for handling conflicts with integrity.
- You value privacy and do not want details of your problems in the public court record.
- You value control and do not want to hand over decisions to a stranger (*i.e.*, a judge).
- You recognize the limited range of outcomes and “rough justice” in court, and want a more creative and individual range of choices available for settling your issues.
 - You value the relationships in your new family situation as much or more than you value getting the most money possible.
 - You not only want to achieve your own reasonable goals, but also want to help achieve the reasonable goals of the other person.
 - You and the other party will commit your intelligence and energy toward creative problem solving rather than toward accusation or revenge.
 - You and the other party want to fix the problem, rather than to fix the blame.

How is collaborative law different from settling a case in usual law practice?

There is a big difference between a settlement during a lawsuit and a settlement when there are no court proceedings or the threat of court. Many family law cases literally settle “on the courthouse steps.” By that time, a lot of money has been spent, and a lot of emotional damage has happened. Settlements are reached under much tension and anxiety. Both “buyer’s remorse” and “seller’s remorse” are common. Settlements are reached in the shadow of trial, and generally are shaped by what the lawyers believe the judge is likely to do.

Nothing could be more different from what happens in a collaborative law. From day one, the process fosters creative and respectful collective problem solving. It is quicker, less costly, more creative, more individualized and less stressful. Overall, it is more satisfying in its results than what occurs in settling a case in usual law practice.

Why is collaborative law so effective?

Because the collaborative lawyers have a completely different state of mind about their job than traditional lawyers. Instead of being dedicated to getting most for their own client, no matter what the cost, collaborative lawyers are dedicated to helping their clients achieve their highest goals by and for themselves.

Collaborative lawyers do not act as hired guns. They do not take advantage of mistakes made by the other side. They do not threaten, insult, or focus on the negative. They expect and encourage the highest good faith problem solving from their own clients and themselves. They stake their professional reputation on delivering that.

Collaborative lawyers trust each other. They still owe a primary duty to their own clients. However, no matter how good the lawyers may be for their own clients, they cannot succeed as collaborative lawyers unless they also can find solutions to the other party’s problems that both clients find satisfactory. This special characteristic of collaborative law is found in no other dispute resolution process.

What if the other side chooses a lawyer who doesn't know about collaborative law?

Collaborative lawyers have different views about this. Some will sign a binding collaborative law agreement with any lawyer who is willing to give it a try. Others believe that is unwise and will not do that.

Trust between the lawyers is essential for collaborative law to work. For example, unless the lawyers can rely on each other for full disclosure, there can be too little protection against dishonesty by a party. If your lawyer does not feel the other lawyer will withdraw from representing a dishonest client, it would be foolish to take part in collaborative law.

Collaborative law demands special skills from the lawyers. They must guide negotiations and manage conflict. Collaborative lawyers need to study and practice to learn these new skills. These skills are different from the skills used in usual law practice. Without these skills, a lawyer would have a hard time working effectively in collaborative law.

Why is it so important to sign a binding collaborative law agreement? Why can't you work collaboratively with the other lawyer, but still go to court if it doesn't work?

Collaborative law sparks creative conflict resolution only when the lawyers and clients all are pulling together in the same direction, to solve the same problems in the same way. If the lawyers still can go to court as an option, their thought processes do not become transformed. Their creativity is crippled by the availability of court and a trial. Only when everyone knows that it is up to the four of them – and only the four of them – to think their way to a solution, or else the process fails and the lawyers are out of the picture, does the special creativity of collaborative law get triggered. When each person realizes that solving both clients' problems is the responsibility of all four participants, magic can happen.

Collaborative law is not just two lawyers who like each other, or who agree to behave nicely. It is a special technique that demands special talents and procedures in order to work.

How do I enlist the other party to do collaborative law?

Talk with the other party. See if there is a shared commitment to collaborative, win-win conflict resolution. Share materials such as this pamphlet and other articles that discuss collaborative law. Have both of you read, understand, and agree with the binding collaborative law agreement. Give the other party a list of local experienced and trained collaborative lawyers. Once the other party's collaborative lawyer contacts CVLAS and is willing to participate, CVLAS will refer you to a collaborative lawyer to start the process.

Adapted from Handbook for Clients: An Orientation to Dispute Resolution Options Available to Clients, American Bar Association (2001).