

The Collaborative Law Process: How It Works

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Collaborative Law is a way of practicing law that begins with the premise that a significant number of legal conflicts can result in settlement agreements with higher levels of satisfaction and duration when the parties – and their lawyers – neither use nor threaten to use court intervention or litigation as the means of dispute resolution. Removing litigation and the threat of litigation from the dispute resolution equation requires lawyers and their clients to make a profound paradigm shift.

Background.

Collaborative Law was the creation of Stu Webb, a family law attorney and mediator in Minneapolis, Minnesota. Webb had practiced traditional family law for many years and was finding it increasingly difficult to rationalize providing a service that in the end inflicted more harm to divorcing families than the underlying divorce itself. As a trained community mediator, he realized that he wanted to combine his legal expertise with his conflict resolution skills and that, if litigation were removed from the options available to clients (and their counsel), people would work harder and more openly to reach an agreement. Webb wrote letters to a number of his colleagues and explained that he no longer would be litigating cases and asked if the lawyers would agree to commit to settling cases when Webb was representing one of the parties and to refrain from litigation, too. Many agreed, and the collaborative law process was created.

Principles Underlying Collaborative Law Process.

- Clients will be able to recognize and identify their own needs and to acknowledge the needs of others in a safe and confidential environment that fosters open and honest discussions.
- Absent fear and adversity, clients will act in their best interests and make better decisions.
- Clients, when empowered, are in the best position to solve their own conflicts and create their solutions.

Protocols.

- All participants agree to commit themselves to settling their legal dispute without court intervention or threatening court intervention.
- All participants agree to give full, open and honest disclosure of all relevant information, whether or not requested. Participants agree to maintain a high standard of integrity and specifically agree that they shall not take advantage of one another. Should, therefore, any inadvertent mistakes, omissions or miscalculations occur, participants agree to identify and correct them promptly.

- All participants agree to communicate respectfully.
- All participants agree to engage in informal discussions and conferences to settle all issues.
- All participants acknowledge that the collaborative law process entails good faith negotiation and that each attorney is independent from the other and represents his or her client in the collaborative law process.
- All participants are encouraged to use their best efforts to create proposals that meet the fundamental needs of all those involved.
- Any experts that are engaged shall be retained jointly and shall be impartial, not favoring one over another, in the provision of their services.
- Lawyers agree to limit their representation to the collaborative law process and to disqualify themselves from serving as litigation counsel should the collaborative law process terminate.
- Lawyers agree to withdraw from representation and terminate the collaborative law process upon learning that his or her client has withheld or misrepresented information or has otherwise acted so as to undermine or take unfair advantage of the collaborative law process.

The Process.

- Intake and pre-screening.
- Send out information about collaborative law process to client (and, in some instances, include an extra copy for client to provide to other party).
- Initial meeting with client.
 - Listen to client's story, using active listening tools.
 - Determine whether the case and the clients involved are appropriate for the collaborative law process.
 - Discussion about client needs, priorities and goals.
 - Discussion about the use of other professionals, e.g., mediator/facilitators, coaches, financial planners, mental health counselors, child specialist, vocational consultant, etc.
 - Review and agree to retainer agreement that reflects the scope of the lawyer's services as a collaborative lawyer.
 - Discussion about outreach to other party to assist him or her in finding a collaborative lawyer.
- Initial meeting with collaborative lawyer representing the other client.
 - Agree about the Participation Agreement to use.
 - Agree on the guidelines to follow.

- Identify any known needs that clients may have which may require bringing in other professionals.
- Plan for the first four-way meeting.
- Decide on the arrangements: whose office, who will serve as note-taker, etc.

- Meeting with client to prepare for the first four-way meeting.
 - Review Participation Agreement – ensure understanding, obtain approval.
 - Review conduct guidelines.
 - Discuss typical referrals to other professionals and how structured.
 - Inquire about any concerns, needs, emergent issues.
 - Review what will occur at the first four-way meeting.

- Follow-up with collaborative lawyer for other client.
 - Agree on the agenda of the first four-way meeting and identify any emergent issues that will be discussed.
 - Agree on the structure to use.
 - Discuss any special concerns that either client may have that may impede communication.
 - Agree on whether allied professionals will be recommended and client referrals made.
 - Decide on whether to use a collaborative facilitator during the four-way meetings.

- First four-way meeting.
 - Review ground rules and Participation Agreement.
 - Discuss need for and referral to allied professionals.
 - Discuss items on the agenda.
 - Schedule next meeting.
 - Decide on general topics to be placed on the agenda.
 - Identify documents and other supporting material needed to be shared to engage in open and informed discussion.
 - As collaborative lawyer, assist clients in the process of identifying their respective needs and acknowledgment of the other client's needs.

- Follow-up to first four-way meeting with client.

- Follow-up to first four-way meeting with collaborative lawyer for other client.

- Send all participants copies of the notes of the first four-way meeting.

- Prepare for the next four-way meeting(s).
 - Contact with the collaborative lawyer for the other client.
 - Review agenda items; identify client needs and any concerns; confirm status of obtaining information needed to engage in an open and full discussion.
 - Review status of client meetings with allied professionals.
 - Confer with allied professionals who are assisting in the four-way meetings, e.g., facilitator (see above).
 - Confer with allied professionals with whom clients have consulted or been referred.

- Review upcoming meeting's agenda and determine if allied professional should attend.
- Meet with client.
 - Review agenda items.
 - Review information from other client.
 - Prepare for discussion and negotiations.
 - Create proposals, ideas; avoid positions.
- Subsequent four-way meetings.
 - Rotate note-taking responsibilities and meeting locations with collaborative lawyer for other client.
 - Follow agreed-on agenda.
 - Facilitate client discussion and negotiations using active listening skills.
 - Identify interim agreements when reached.
 - Assist client in negotiating for his or her needs. Provide advice and counsel.
 - Set agenda for next meeting.
 - Agree to any follow-up homework and consultations with jointly retained experts that need to occur prior to the next meeting.
- Follow-up to four-way meetings.
 - De-brief with client.
 - De-brief with collaborative lawyer for other clients
 - De-brief with allied professionals.
 - Circulate minutes of the previous meeting, including interim agreements reached, homework assignments to be completed and agenda items for the next meeting.

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