



COLLABORATIVE
PRACTICE

Resolving Disputes Respectfully.

COLLABORATIVE PRACTICE INFORMATION

(ADAPTED FROM COLLABORATIVE PRACTICE MATERIALS

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1. What is Collaborative Practice?

Collaborative Practice is a way for people to resolve their own disputes in an open and respectful manner, by reaching a mutually acceptable settlement. The parties retain Collaborative Professionals such as attorneys, accountants, financial planners, and therapists, who agree to work cooperatively to gather and share all information needed to reach an agreement. The parties and their Collaborative Attorneys agree that they will not go to court to ask a judge to resolve their dispute for them during the Collaborative Process. If they are unable to reach an agreement, and one of the parties decides to go to court, the Collaborative Professionals withdraw. Litigation attorneys (and sometimes, forensic experts) are then retained to take the dispute to court.

2. How does Collaborative Practice differ from other methods of dispute resolution?

There are many ways to resolve disputes. Litigation is the traditional legal approach. In litigation, lawyers work hard to convince a judge (or jury) that his or her client's version of reality is, in fact, correct. Often, this includes contradicting, or even belittling, the other party, and that person's perception of reality. Trial is often compared to a battle, in which the best side wins. However, all lawyers understand that the "best side" doesn't always win and that in many disputes, the party who "wins" at trial still loses in other ways. In some circumstances, litigation may be the only appropriate option. For example, if a party consistently hides information or is abusive, the formal procedures used in litigation may be necessary. If a party is unwilling to negotiate in good faith, the ultimate decision may need to be imposed by a judge. Litigation usually costs more than other forms of dispute resolution and the outcome is typically less satisfactory.

In mediation, a neutral professional assists the parties in settling the dispute. Generally, the parties agree that all information will be shared and that they are seeking a "win-win" solution. The mediator does not represent either party and the parties do not go to court. In some forms of mediation, representing attorneys serve only in a consulting or reviewing capacity. In other situations, representing attorneys participate in the mediation. Mediation can work well for parties who have the ability to communicate their needs directly to the other person and who are

able to understand and analyze the information being presented.

Collaborative Practice combines the positive qualities of litigation and mediation. As in litigation, each party has an independent attorney who will provide quality legal advice and will assist in putting forward the client's interests. Drawing from mediation, the parties and their Collaborative Attorneys commit to both an open information gathering and sharing process and a resolution of their differences without going to court. In addition, the parties can mutually agree to engage other professionals such as Child Specialists, Financial Specialists, Divorce Coaches, Vocational Counselors or other neutral consultants to provide them with specialized assistance. The parties acknowledge that the best result for each of them will occur when they reach the best result for all of them.

3. How is information gathered in Collaborative Practice?

The parties do not engage in expensive legal procedures to obtain information. The parties and their Collaborative Attorneys agree from the beginning that they will share all necessary information and documents voluntarily and in a timely fashion. Hiding documents or engaging in unnecessary delays are not permitted. If a party is not acting in good faith and "hides the ball", it is the duty of the attorney to work with the client to change his or her behavior and to withdraw if the behavior continues. If a party continues to refuse to act in good faith, the Collaborative Process can be terminated.

The parties decide what type of assistance is needed in the information gathering process and jointly engage consultants. For example, the parties can jointly hire a Financial Specialist to assist them in gathering and organizing financial information and to create projections for future financial possibilities. They can also jointly engage an appraiser to provide them with information and education regarding the ranges of value of a particular asset.

4. How are questions relating to children addressed in Collaborative Practice?

One of the most important aspects of Collaborative Practice in a divorce dispute is the opportunity to resolve the divorce in a manner which creates a healthy co-parenting relationship so that the children's interests and family relationships are protected. Sometimes, the parties have developed a working co-parenting relationship prior to entering the Collaborative Process. However, in many cases, the parents need assistance in making the transition from parenting in one household to parenting in two households. Divorce Coaches and Child Specialists can assist parents in developing effective communication and in creating a parenting agreement which will be beneficial for the children. The Collaborative Attorneys assist as needed in working out an agreement and preparing the necessary final legal documents.

5. How do the parties and professionals work together?

After initial meetings with their own Collaborative Attorneys, the typical process is to start the case with a four-way conference - the parties and Collaborative Attorneys meet together to discuss the issues, to make any necessary interim arrangements regarding children or finances, and to plan for information gathering. In addition, the parties can work individually and jointly with Coaches to develop effective communication techniques and to manage the intense

emotions that often accompany conflict. Additional consultants such as Financial Specialists, Child Specialists, or appraisers can also be hired to assist in other aspects of information gathering and processing. The four-way conferences continue to be the normal means of exchanging and clarifying information and brainstorming possible options for resolution. The Collaborative Attorneys work with each other and with their clients to plan each meeting. The parties and Collaborative Attorneys focus on educating everyone regarding the underlying information, each party's interests and possible solutions. Out of this process, a settlement which meets the approval of the parties can be fashioned.

6. Does it work to have everyone together in the same room in the middle of a conflict?

The job of the Collaborative Professionals is to "set the tone" for positive communication. People in a legal dispute often feel vulnerable and emotional and can be less aware of how their patterns of communication can cause problems. The Collaborative Professionals help each client to present his or her interests and needs in a positive manner that can be heard by the other participants. Meeting together helps everyone to be "on the same page", which ultimately facilitates reaching an agreement. The focus of the meetings is to find a solution, not attack each other.

7. Must an agreement be reached in Collaborative Practice?

Any solution must be voluntarily agreed to by all parties. No party is forced to accept a solution that does not meet his or her interests and needs. The parties understand that the goal is to fashion a solution that comes as close as possible to a "win-win" agreement, while recognizing that they may not receive everything on their "wish list."

8. If the parties reach an agreement through Collaborative Practice, what happens next?

The Collaborative Attorneys will draft the necessary legal documents to memorialize the parties' agreement. This paperwork is then submitted to the court for approval. A court hearing is not required. Neither the attorneys, nor the parties, appear in court.

9. What happens if a settlement cannot be reached?

If the parties cannot reach an agreement, the parties can explore other options for settlement such as mediation, arbitration, private judging and neutral case evaluation, some of which may allow them to stay within the collaborative framework. If court hearings are required, the Collaborative Attorneys withdraw and each party retains a new attorney for trial. The Collaborative Attorney will transfer the information gathered and will assist the trial attorney in the transition.

10. Why is it necessary for the Collaborative Attorney to withdraw if an agreement is not reached?

Attorneys are typically trained to approach cases with the underlying assumption that a judge will make the ultimate decision. Cases are analyzed with this foundation and are settled with the backdrop being "what will happen if we go to court." "Going to court" can often become a weapon or threat that derails communication rather than moving the parties to settlement. Since settlement has not been the focus from the very beginning, cases often do not

settle until the parties are "at the courthouse steps," after incurring substantial attorney's fees and depleting their emotional resources.

The agreement by both the parties and Collaborative Attorneys that the Collaborative Attorneys will not go to court focuses everyone on creative means of settling the case in a way that is acceptable to all parties. The focus of the process stays on reaching an agreement rather than preparing a case for trial since the Collaborative Attorneys will not be representing the parties in court. The tendency to "drift" to court as the default decision-making method is reduced.

In addition, the parties are assured of the commitment level of the Collaborative Attorneys to the Collaborative Process by the requirement that the Attorneys withdraw if the Process is terminated. Similarly, each party is assured of the strength of the other party's commitment to achieve a resolution that is acceptable to both of them, as they would otherwise need to find new counsel and establish a new working relationship if the Process is terminated.

11. Who should consider the Collaborative approach for their dispute?

Collaborative Practice works best for parties who wish to settle without going to court and are willing to commit to a good faith effort to do so. In Collaborative Practice, each party maintains control over his/her decision-making rather than having a judge decide about important details of his/her future. Parties also control the amount of information that becomes a part of the public record (normally, the entire divorce file is open to the public, including any allegations made by either party in obtaining temporary orders or at trial).

People in conflict often have continuing relationships with each other, as co-parents, business colleagues, or through their circle of friends and relatives, and their community. Collaborative Practice will increase the possibility of maintaining a civil or even cordial relationship with the other person after the resolution of the conflict.

Those who wish to dramatically reduce legal fees should also consider Collaborative Practice. Formal legal procedures take much more attorney time (and your money) than the less formal process used in Collaborative Practice. The focus on settlement moves the case to resolution faster than the typical court-directed case, which also reduces fees.

12. What do I do if I want to use Collaborative Practice for my dispute?

You will need to find a Collaborative Attorney whom you can trust to provide you with both quality legal advice and the skills needed to work towards a settlement. You should discuss with the Collaborative Attorney how to approach the other party about choosing the Collaborative Process, which may include you discussing the idea with him or her, your attorney contacting the other party, or your attorney discussing it with the other party's attorney, if one has been retained. In the alternative, you may contact coaches or other professionals who are involved in the collaborative approach and discuss the process with them.

Central Valley Collaborative Law Affiliates (CVCLA) provides collaborative practice resources and maintains a roster of collaboratively trained Attorneys, Divorce Coaches, Child Specialists, and Financial Planners in this area. If you wish additional information concerning collaborative practice or wish to obtain the names of collaborative professionals, please visit the CVCLA website at <http://collaborativelawyers.org/> for further information.