

# **COLLABORATIVE PRACTICE**

## [Frequently Asked Questions](#)

### **Introduction**

Collaborative Practice is a conflict resolution method in which the participants focus their efforts on reaching a mutually agreeable resolution. Professionals are retained during the collaborative process for the sole purpose of assisting their clients in attaining this goal.

The client and professionals agree to work respectfully and in good faith to gather all information needed to reach an agreement, including developing the interests of each client. The participants do not engage in expensive legal procedures to obtain information. The clients and their collaborative attorneys agree from the beginning that they will produce all necessary information and documents voluntarily and in a timely fashion. Hiding documents or unnecessary delays are not permitted. Non-legal professionals are usually retained as joint neutrals and work together with the participants to define the scope of their assignment and to gather information.

The process typically includes various meetings at which the clients and professionals meet together to discuss the issues, make any necessary interim arrangements, and to plan for information gathering (not every professional will be present at every conference.) These conferences continue to be utilized to exchange and clarify information and to brainstorm possible options for resolution. The clients and the professionals focus on educating everyone regarding the underlying information, each client's interests and possible solutions. Out of this process, a settlement which meets the approval of all clients can be fashioned. Negotiations are based upon efforts to find options that will serve the interests of all clients and other affected persons, and if applicable, create the possibility for a positive continuing relationship.

The clients and their collaborative attorneys agree that they will not go to court during the time they are working towards settlement. If the clients are unable to reach an agreement, the collaborative attorneys and other professionals withdraw and litigation attorneys take the dispute to court.

Collaborative practice started with one attorney in Minnesota in 1990 and has now spread across the United States, Canada, and internationally. Although it has primarily developed in the field of family law, efforts are now being made to move collaborative practice into other fields. Collaborative practice started in Sonoma County in 1999 primarily as an attorney centered method in family law. More recently, a multidisciplinary family law practice group formed. Interest has grown in spreading collaborative practice to other areas of law.

The Collaborative Council of the Redwood Empire is a new multi-disciplinary, multi-field group open to all professionals interested in collaborative conflict resolution. The group includes family, probate and civil attorneys, mental health practitioners, financial experts and other types of experts that may be involved in a collaborative conflict resolution process.

## **1. What is Collaborative Practice?**

Collaborative Practice is a way to resolve disputes between people in a fair, open and respectful manner. In Collaborative Practice, the goal is to reach a mutually acceptable settlement of a dispute. The parties retain Collaborative Professionals such as attorneys, accountants, financial planners, and therapists, who agree to work in good faith 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 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 the lawyer's client's version of reality is, in fact, correct. Often, this includes denigrating the other party or his/her 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 is 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, a third party decision may be needed. 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, attorneys serve only in a consulting or reviewing capacity. In other situations, 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 sophisticated enough to understand 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 give her or him quality legal advice and will assist in putting forward his or her interests. Drawing from mediation, the parties and their Collaborative Attorneys commit to both an open information gathering and sharing process and to resolve 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 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 additional 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. Or, they can jointly engage an appraiser to provide them with an opinion regarding the 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 transitioning 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. 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 4-way conference - the parties and Collaborative Attorneys meet together to discuss the issues, 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 4-way conferences continue to be the normal means of exchanging and clarifying information and to brainstorm possible options for resolution. The Collaborative Attorneys work together 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 will be heard by the other participants. Meeting together can help 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?**

No. All parties must voluntarily agree to the solution. 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 won't 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.

## **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 court 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 moves 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 Attorney 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.

## **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, you maintain control over your decision making rather than letting a judge decide. You can 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. Collaborative Practice will increase the possibility of maintaining a civil or even cordial relationship with the other person after the resolution of your conflict.

You should also consider Collaborative Practice if you wish to dramatically reduce your legal fees. A dispute that goes through the entire legal process including a trial can cost \$20,000 and up for each party. The formal legal procedures take much more attorney time (and your money) than the informal process used in Collaborative Law. The focus on settlement moves the case to resolution faster than the typical court-directed case, which also reduces your 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 can discuss with the Collaborative Attorney the ways of approaching the other parties about collaborative process, which can include you discussing the idea with him or her, your attorney contacting the other parties, or your attorney discussing it with the other parties' attorney(s), if they have retained one. In the alternative, you can contact coaches or other professionals who may be involved in the collaborative approach and discuss the process with them.