

COLLABORATIVE LAW

Mindy Hitchcock, JD,

Leigh Travis, Ph.D.

What is Collaborative Law?

Collaborative Law was created by Stuart G. Webb, a Minnesota attorney, in 1990. After almost quitting the practice of law because of the hostile courtroom environment, Mr. Webb chose to practice as a settlement lawyer only; i.e., no more going to court. He developed a team approach composed of lawyers, psychologists, child advocates, and coaches, that supported the parties as they worked toward creating their own settlement to their problems – a procedure designed to ensure compliance with the final court order, and to save the parties money by avoiding the costly adversarial system (which “pays” attorneys to run their clocks). This basic idea blossomed as lawyers, their clients, psychologists and social workers saw collaborative law as an economic and just way to solve disputes.

What types of legal disputes can be resolved with Collaborative Law?

It has been used the most often in the family law arena to resolve disputes related to:

- Divorce, legal separation or annulment
- Child custody/parenting Plans
- Visitation and visitation disputes
- Spousal maintenance/alimony
- Child support, daycare costs and college tuition

- Valuing assets
- Division of property
- Division of debt
- Tax issues
- Paternity issues
- Break-up of same sex partnerships
- Guardianships
- Adoption

It takes two willing participants to effectively use the collaborative law process, and two lawyers willing to practice law collaboratively. The most important non-adversarial rule for collaborative lawyers is that they must both agree to the issues involved; if the matter cannot be settled out of court, the lawyers must withdraw from further representation. The parties then have to find new lawyers to go to court. This withdrawal rule provides a compelling emotional and financial incentive for the parties to settle. Both sides must agree to full and fair disclosure of all relevant facts -- no stonewalling or game-playing. The parties seek to reach a settlement for the highest good of all concerned.

Since Collaborative law is a relatively new process, your spouse may be reluctant to agree without proper education regarding the benefits of the process. Therefore it is a good idea to:

- Schedule a restaurant "date" with your spouse to discuss Collaborative Family Law and share this information. If you feel your spouse might be wary of the

information coming from you, invite him/her to look up collaborative law on the internet.

- Review and choose from the list of collaborative law attorneys practicing law in your state.
- Meet with your attorney to discuss your case and the details of the process.

Why should retaining collaborative lawyers be considered?

There are several reasons to consult collaborative professionals:

- The process is generally less costly and time-consuming than litigation.
- You are a powerful part of the settlement team, not just a spectator in the courtroom.
- All parties are supported by their lawyers and work cooperatively with the other parties and their lawyer(s) in resolving the issues.
- The process is much less fear- and anxiety-producing than going to court, or the threat of such proceedings.
- Everyone focuses proactively on settlement.

Collaborative Law is well worth considering if some or all of the following are true for you:

- You want a civilized and respectful resolution of the issues.
- You would like to keep open the possibility of friendship with your partner down the road.
- You and your partner will be co-parenting children together and you want the best co-parenting relationship possible.

- You want to protect your children from the harm associated with litigated dispute-resolution between parents.
- You value privacy in your personal affairs and do not want details of your family restructuring to be available in the public court record.
- You value control and autonomous decision making and do not want to hand over decisions about restructuring your financial and/or child-rearing arrangements to a third party, for example, a judge.
- You recognize that outcomes in the public court system can be highly restrictive, and want the freedom to creatively structure your own resolution in a way that works for you both.

What areas of the law are best for Collaborative Law?

While many areas of the law are good candidates for Collaborative Law, it is most commonly, at this time, used in Family Law cases.

How does Collaborative Law work? What steps are involved?

Collaborative law begins with both parties retaining collaborative lawyers, and then signing a participation agreement. They then schedule a series of four-way meetings where the parties agree to provide full and fair disclosure of all relevant information. The collaborative team may also include divorce coaches for each party, a neutral financial expert, and a child therapist where it is appropriate. Basically, the collaborative lawyers are committed to finding ways to achieve settlement that will work best in your case. Their philosophy is that as much effort should be exerted toward settlement as is traditionally spent in preparation for and conducting a trial.

What is the difference between Collaborative Law and mediation?

In mediation, there is one "neutral" professional mediator who helps the disputing parties try to settle their case. The parties do not have the benefit of legal counsel to advise them. The mediator cannot give either party legal advice, and cannot help either side advocate its position. If either party becomes unreasonable or is emotionally distraught, or lacks negotiating skill, the mediation can become unbalanced. If the mediator tries to deal with the problem, the mediator is often seen by one side or the other as biased, whether or not that is so. If the mediator is unable to deal with the problem, the mediation can break down, or the agreement that results can be unfair.

Collaborative Law was designed to deal more effectively with all these problems, while maintaining the same mediation commitment to settlement as the sole agenda. Each side has legal advice at all times during the process. Even if one side or the other lacks negotiating skill or financial understanding, or is emotionally upset or angry, the playing field is leveled by the presence of the lawyers. If the clients are being unreasonable, it is the job of the lawyers to work with their own clients to make sure that the process stays positive and productive.

What kind of information and documents are available in the Collaborative Law negotiations?

Both sides sign a binding agreement to provide full and fair disclosure of all documents and relevant information. "Hide the ball" and stonewalling are not permitted.

What if the other party does not behave honorably?

That can happen. It also can and does happen in conventional legal representation. What's different about collaborative law is that the collaborative agreement requires a

lawyer to withdraw if his/her client is being less than fully honest, or not participating in good faith. For instance, if documents are altered or withheld, or if a client is deliberately delaying matters for economic or other gain, the lawyers have promised in advance that they will withdraw and will not continue to represent the client. The same is true if the client fails to keep agreements made during the course of negotiations. The other party then has 30 days to find a new lawyer and the parties proceed via the expensive and painful, adversarial court system.

How do I know whether it is safe for me to work in the Collaborative Law process?

The Collaborative Law process cannot guarantee you that every asset or every bit of income will be disclosed, any more than the conventional litigation process can guarantee you this. In the end, a dishonest person whose goal is to hide assets can sometimes succeed, because the time and expense involved in investigating concealed assets is high, and the results uncertain. You are generally the best judge of your spouse or partner's basic honesty. If you have confidence in his or her basic honesty, then the process may be a good choice for you.

What happens if settlement cannot be reached?

If the parties are unable to arrive at a settlement through the collaborative-law approach, the collaborative lawyers withdraw from the case and the parties then retain trial attorneys to pursue their matter in the expensive adversarial court system.