

Using Collaborative Law  
to Create an Individualized  
Resolution in  
Family Law Cases

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## **Introduction**

Collaborative family law is an extra-judicial process designed to assist husbands and wives arrive at the necessary agreements needed to end their marital relationship. The process begins once the couple and their two attorneys contractually bind themselves to proceed in the manner proscribed in their collaborative participation agreement or collaboration contract. A collaborative participation agreement requires the couple to confirm, in writing, that their respective attorneys are hired only for the limited purpose of the collaborative negotiation, and that neither will ever participate in any litigation concerning the couples' marital issues. In addition to the disqualification of their legal counsel in the event of future court action, each party to the collaboration promises to make a full and complete disclosure of all material information concerning their income, property, and child-related issues.

I believe collaborative family law offers hope for a better tomorrow to families transitioning out of an unfulfilling or dysfunctional marital relationship opposed to a win-lose confrontation. The process is designed to end a couple's relationship in the very same manner in which it began, by each saying "Yes." At a time when couples are feeling a loss of control and fear of the unknown, the collaborative process can provide the time and the means to restore order, open lines of communication, and create awareness needed for appropriate problem-solving.

## **The Unique Nature of Family Law**

I was first drawn to collaborative family law out of a sense of frustration from the waste of time and energy involved in traditional family law litigation. I believe the adversarial system is antithetical to the systemic needs of a family in transition. Collaboration is required to uncouple their legal partnership in concert with terms acceptable to two people who thought their lives were their own private business. At times of confusion and mistrust, the last thing a divorcing couple needs is to move their fight from the bedroom to the courtroom. Collaborative family law is a way to stop fighting and start problem-solving. I have long felt there is no need to put off the inevitable and add a layer of hurt and distrust. Those emotions

are usually what a divorcing couple is feeling, but they are exactly what they need to get away from.

### *Typical Collaborative Family Law Cases*

I use the collaborative family law process to help settle pre- and post-decree family law disputes. This means resolution of conflicts arising before and during divorce as well as resolution of conflicts involving the children that may arise after a marriage has been dissolved. I also use the process to help solve custody and support issues for parents who have never been married before they end up in juvenile or children's court.

Most, if not all, financial and mental health professionals who hold themselves out as collaborative family law practitioners conduct their practices under the umbrella of local, regional, or state practice groups. The collaborative practice groups are loosely organized assemblies of professionals who regularly meet and discuss best practices for collaborative cases. Each case can call for a different grouping of trained professionals to meet the specific needs of a transitioning couple. Two lawyers are always required. Some practice groups have found success using mental health professionals as "divorce coaches" for each party. Other groups promote the use of a single mental health professional as a "family relations specialist" to fill the role of an independent neutral to deal with the ever-present emotional issues at the negotiating table. If financial issues are impeding effective communication, a neutral financial specialist can also be involved in a collaborative case. At their core, each collaborative process is the same. Every case requires a participation agreement that contains a disqualification clause for the professional participants, and a full disclosure clause for all material information.

I explain to my clients that the collaborative process will begin just as soon as the two clients (the parties), who have retained two collaborative lawyers, sign a participation agreement or collaboration contract. This contract is separate and distinct from each person's individual retainer contract with his or her lawyer. The collaborative contract identifies the two collaborative lawyers, the coach or family relations specialist, and/or the financial specialist, if needed. The contract goes on to say that all of the professional participants will be disqualified from ever being involved in litigation with

the couple as legal representatives, witnesses, therapists, or financial advisors. This shield is what creates neutrality and makes the process “safe.” While it does not eliminate the need for advocacy, if a client cannot find his or her voice, it does limit the extent to which advocacy can effectively be put to use. There is no other “decider” in the room other than the two parties. The contract goes on to detail each party’s promise to the other, that the status quo will be maintained during the process, and that all negotiations will be conducted with the utmost good faith. The terms of the agreement also emphasize that the process is completely voluntary and that if it is “not working” for either party, the process may be terminated and the dispute can be moved into litigation for resolution by a judge. (A sample collaboration contract is included as Appendix R.)

### *The Perception of Modern Collaborative Family Law*

I believe collaborative law is becoming popular simply because it makes sense. Antiquated social taboos about divorce have been stripped away. In this post-modern age defined by social networks and the World Wide Web, in every aspect of our political, social, and economic environment, people are more willing to be transparent and share their personal experiences with one another. The finitude of our lives in the face of our fast-paced existence leaves little time for expensive and superfluous legal maneuvering, especially when it comes to our families. The horror stories about divorce and its consequences have been documented on television, in the movies, in books, and in academic treatments such as the twenty-five-year landmark study by Judith Wallerstein, Julia Lewis, and Sandra Blakeslee, titled “The Unexpected Legacy of Divorce.” Dr. Wallerstein has documented the common feelings for grown children of divorce: “Why am I so afraid of conflict? Why do I have such a fear of commitment? Why am I always waiting for the other shoe to drop even at moments of success?” The effects of divorce reach far into the future, and handling the unfortunate situations in the “least worse way” should be encouraged by the legal community.

- **If you would like to read the rest of the chapter, you may purchase the book here:**  
<http://west.thomson.com/productdetail/179686/41127493/productdetail.aspx>