

Collaborative Law

What is Collaborative Law?

Collaborative law refers to a new method of solving legal disputes that avoids traditional court proceedings. Rather than filing a lawsuit, each side voluntarily agrees to a series of sit-down negotiations between the parties, their attorneys, and any number of experts and therapists trained in the subject matter of the dispute. These meetings allow the parties to openly exchange information and discuss the matter with an understanding that nothing communicated will later be used against them in court. The collaborative law process is founded on good faith. By taking a cooperative approach, rather than an adversarial one, parties can resolve difficult issues that would otherwise lead to expensive and time-consuming litigation.

People tend to use collaborative law to settle highly emotional cases such as business partnership dissolutions, wrongful discharge claims, and family law cases. It is not surprising, then, to learn that the vast majority of collaborative law cases deal with divorce. Divorce litigants tend to ignore the practical ramifications of using the legal system to fight about relatively minor issues. These cases can spiral out of control, with the potential for each side to spend far more money on legal fees than either stands to gain, even in the unlikely event of a complete victory. Considering that the care and wellbeing of young children may be at stake as well, using collaborative law to handle a divorce proves to be the right choice for many couples.

Reasons to Avoid Traditional Litigation

Litigation is well suited for those who are "looking for a fight," and who do not mind spending a lot of money to battle the other party in court. It is also appropriate in cases where compromise is not desirable, such as cases brought by victims of domestic violence against their abusers. However, for many individuals, the negative aspects of litigation outweigh any potential benefit. Litigation is expensive. Due to backlogged court dockets, it is a slow process as well. Private, sensitive, or embarrassing information can be made public, either in open court, or in court filings. Moreover, litigation makes it difficult for parties to maintain a cordial relationship once the case ends. This is a particularly important concern for divorcing spouses who will share custody of their children in the future.

Collaborative Law Benefits

In contrast to traditional litigation, collaborative law is not necessarily quicker and less expensive, but at least the parties directly control how the proceedings unfold. Those who feel the issues are being disposed of without a proper amount of consideration and debate can insist that more time be spent crafting a resolution, or that additional experts or therapists be brought in to provide insight. On the other hand, those who want to expedite the case are free to compromise on contested issues and reduce the time it takes to bring the matter to a close. The parties work through the issues at their own pace, not according to the court's schedule.

Collaborative law also offers the benefit of confidentiality. The parties are not required to put their allegations into written pleadings, motions, and other court filings that can be viewed by the general public. Another benefit often cited in support of a collaborative approach is the built-in financial incentive for the parties to do what it takes to make the process work. If it fails, and the case must be moved into the court system, then the attorneys for both sides must withdraw. Any consultants hired during the collaborative stage must also resign. When it appears, the parties may be at an impasse in their negotiations, this underlying threat of both sides having to hire a new team of professionals is often enough to get the process moving forward once again.

How the Process Works

The first group session in a collaborative law case involves both parties and their attorneys meeting together to review the terms that will govern the process. They may begin with a standard form contract, and modify the agreement prior to signing, in order to address specific concerns, such as the kinds of experts who will be hired, and how costs will be allocated. The group will then meet on a regularly scheduled basis to negotiate solutions to the issues in the case. In a collaborative divorce, these issues might include alimony, property division, child support, visitation, and so forth. Once the parties are in agreement on all of the issues, the attorneys will work together to draft a stipulated court pleading that will officially resolve the case.

Finding a Collaborative Law Attorney

If you are facing potential litigation and you would like to deal with the matter outside of the courthouse, collaborative law may be the answer. These cases are not handled by general practitioners, however. Contact a collaborative law specialist in your area to learn more.

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