

Mediation vs. Collaborative Law – What Should You Choose?

At the end of a consultation it is not unusual for people to ask whether they should choose mediation or Collaborative Law to handle their particular matter. It's a good question. Mediation and Collaborative Law share similar philosophies (e.g., good faith, full disclosure, creating win-win agreements), but the *procedural differences* can lead to very different client experiences. Here are a few things to consider when deciding between the two:

- **Legal Advice.** Is it important to you to have legal advice throughout your case? Your Collaborative Law attorney is available throughout the case to provide you **legal advice**. A mediator, on the other hand, can only provide you **legal information**. Legal information refers to the rules that apply to your type of matter; legal advice refers to how the rules are applied and what you should do about them. In other words, legal advice tells you what you should or should not do in your particular situation. It is possible, of course, to have your attorney present in mediation.
- **Negotiation Assistance.** Do you feel like you can effectively negotiate on your own or do you feel like you would do better with a negotiating partner? A Collaborative lawyer is there to **assist you** with negotiations whereas a mediator **facilitates** the negotiation but is not working on behalf of one party or the other.
- **Power Imbalance.** Generally speaking, **power imbalance** refers to any dynamic between two parties that causes one party to have an advantage over the other. In situations where power imbalance exists, Collaborative Law may be a more appropriate choice because the presence of attorneys will help equalize the power imbalance.
- **A Team Approach.** Collaborative Law often utilizes one or more additional professionals in addition to the lawyers. This is called the “**Interdisciplinary**” approach. This team approach is very intentional about utilizing the professionals and having them report back to the team or even participate in the Collaborative meetings. Mediation can also utilize these additional professionals, although it is less common to take a full team approach in mediation.

Some people could successfully do *either* mediation or Collaborative Law. However, some people truly would do better in the Collaborative setting due to the added support that the team approach provides.

As a final thought, if you are considering which of these processes to select, I suggest that you honestly ask yourself, “Which of these makes me feel more comfortable when I think about them?” If you have a gut reaction either way, you should probably go with it. With that said, if one person prefers Collaborative Law over mediation, then it probably makes sense to go with Collaborative Law due to the additional level of support that it offers (which probably is what draws the person to Collaborative in the first place).

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