

Collaborative Divorce Handbook

Your Choices for Professional Legal Help with Ending a Marriage or Domestic Partnership

By Pauline H. Tesler

©2001, 2008, 2016, AMERICAN BAR ASSOCIATION

1. What are my choices for professional help in my divorce or domestic partnership dissolution?

All separations and divorces involve a multitude of decisions and choices. Which professionals you select to assist you, and how you make use of their help, will surely affect how smooth a transition you and your spouse or partner are able to make from couple to single.

Some couples who communicate well and have no challenging financial or parenting issues can resolve all matters without any professional assistance at all, and then can go on to process their own divorce papers themselves through the courts. On the other end of the spectrum, some couples engage in drawn-out courtroom battles that cost dearly in emotional and financial resources and can take a very long time to complete. Most people's separations and divorces fall between these extremes.

Below are the choices for obtaining professional legal help during a separation or divorce. These options are available in most localities today. The list moves from choices involving the least degree of professional intervention and the most privacy and personal control, to choices involving far greater professional intervention and the least privacy and control. [The rest of this handbook will use the term "divorce," but the information about dispute resolution choices applies as well to the dissolution of nonmarital intimate partnerships and to certain other matters such as probate disputes, negotiating prenuptial agreements, and independent adoptions.]

a. Unbundled Legal Assistance: People who choose this model act as their own "general contractor" and take primary responsibility for their own divorce, consulting with lawyers on an "as-needed" basis to get help in resolving specific issues, drafting papers, and so forth. The lawyer doesn't take over responsibility for managing the entire divorce. If you choose an "unbundled" divorce, your lawyer's role will be limited to providing the specific advice and help you ask for. You could also consult with more than one lawyer, or a mediator, in an "unbundled" approach. You could get help from your accountant—or you could do it all yourself.

Just because you prefer an "unbundled" divorce does not necessarily mean your spouse will make the same choice. Consequently, in an unbundled

divorce you could be representing yourself with only occasional guidance from a lawyer, while a lawyer handled everything for your spouse in a conventional "take full charge" manner. This would put you at a disadvantage in negotiating solutions to disagreements.

b. Mediation: A single neutral person, who may be a lawyer, a mental health professional, a financial consultant, or simply someone with an interest in mediation, acts as the mediator for and with the couple. The mediator helps the couple reach agreement, but does not give individual legal advice, and may or may not prepare the divorce agreement. Very few mediators will process the divorce itself through the court system; you'd have to do that yourself or hire a lawyer to do it. Retaining your own lawyer to give you independent legal advice throughout a mediation is wise, and most good mediators recommend this. Waiting to secure independent legal advice until late in a mediation often causes difficulties. It is generally better for both spouses to have that legal advice available from the start. In some locales the two lawyers (yours and your spouse's) sit in on the mediation process, and in other locales they remain outside the mediation process, meeting privately with their own client to give legal advice. Either way, in a mediation, you and your partner should expect to negotiate face-to-face, directly, with the mediator's assistance. The two lawyers ordinarily do not take an active role in a mediation.

Mediators do not have to be licensed professionals in most jurisdictions, and in many jurisdictions mediation is not regulated by law. There are many approaches to mediation, all the way from something resembling a court-annexed settlement conference, to "anything goes—whatever works." In other words, each mediator has his or her own way of conducting mediation and there is no generally agreed upon set of rules, standards, or authorities that inform potential clients in advance exactly what kind of mediation is going to be provided by a particular mediator.

While mediation can work very well for motivated couples with emotional maturity and a shared desire to reach agreement, it can be challenging for many people to negotiate in this way face-to-face with a partner during the turmoil of ending an intimate relationship—especially where emotions run high, communications are difficult, or the playing field is uneven for other reasons. It works best when both spouses are able to work efficiently toward a legal agreement without much individual professional help.

c. Collaborative Law (also called "Collaborative Divorce" or "Collaborative Practice"): Each person retains his or her own trained collaborative lawyer to advise and assist in negotiating an agreement on all issues. All negotiations take place in "four-way" settlement meetings that both spouses and both lawyers attend; the lawyers never negotiate terms of settlement except with both clients present and participating. The lawyers cannot go to court or even threaten to go to court. Settlement is the only agenda. If either spouse chooses to go to court, both collaborative lawyers must withdraw, and both partners must retain new lawyers for the litigation process. Each spouse has built-in legal advice and advocacy at all times during negotiations, and each lawyer's job includes guiding his or her own client toward constructive behavior aimed at reasonable resolutions.

Ordinarily the process proceeds in predictable structured stages that move through information gathering and goal setting to brainstorming and resolution. The legal advice is an integral part of the process, and your lawyer is always at your side helping and advising you, but all the decisions are made by you and your partner. The lawyers prepare and process all papers required for the divorce. Most people who choose collaborative divorce reach a full settlement agreement resolving all issues. Collaborative lawyers are fully licensed like other divorce lawyers, and are bound by all ethical and other rules for the practice of law. In addition, some states have statutes defining collaborative law, and there are international standards for the practice of collaborative law.

d. Interdisciplinary Collaborative Divorce: In many communities, there is the additional option of working with a collaborative divorce team, which includes not only two collaborative lawyers, but also a neutral financial consultant and two specially trained divorce coaches who teach communications skills, how to manage strong emotions, and how to build a parenting plan that meets the needs of the children, if any. The children's voice is brought into the coaching process by a child specialist who can explain how the divorce is affecting the children and what their concerns and needs may be, in ways parents can hear. This team approach allows the right professional with the right training and skills to step forward and assist with problems as they arise in the divorce and settlement negotiations. Surprisingly enough, this approach is very cost effective, because it does not ask lawyers to do work they are untrained for and that they therefore will do less efficiently and at a higher fee. There are international standards for the collaborative mental health and financial professionals who work on a collaborative divorce team. People who choose the collaborative divorce team approach have the best configuration of coordinated professional help during their divorce process that is currently available.

e. Conventional Representation: Each person hires any lawyer they choose, without any agreements in place between the spouses about how the legal divorce process will be handled or how they would like negotiations to be conducted. One or both lawyers may be good at settling cases, in which case the lawyers will at some point explore the possibilities for settlement—usually with their clients not present. In most instances the two lawyers also will be preparing your case for trial, right from the start. If the lawyers are not particularly good at, or interested in, settling the case, the lawyers' efforts will be aimed exclusively at preparing for trial, and settlement discussions may not begin until the trial date is close.

When you choose conventional representation, the pacing and objectives of your divorce process will tend to be dictated by what happens in court. There will be court timelines to meet, court paperwork rules to satisfy, and court appearances to make; and lawyers working in this manner generally limit their efforts both in court and in settlement negotiations to those matters about which local judges are permitted to make orders. Regardless of how the lawyers conduct themselves, it is a fact that most divorce matters (most lawyers estimate over 90 percent) do eventually end in a settlement, but these settlements too often occur at or near the time of trial, after considerable expense and ill will (and collateral damage to

children) have been generated. Cases handled in a conventional manner often involve higher legal fees, and take longer to complete, than collaborative cases or mediated cases. The risk of a high-conflict divorce is higher than with mediation or collaborative divorce, as is the risk that “quick fix” settlements brokered close to the time of trial will be unsatisfactory and will lead to further conflict after the divorce judgment has been entered.

f. Arbitration, Private Judging, and Case Management: In some jurisdictions it is possible for divorcing couples and their lawyers to choose private judges or arbitrators who will be given the power to make some or all decisions for the couple, as an alternative to taking unresolved disputes into the public courts. While this approach permits the lawyers and their clients greater control over *who* will make the decisions and over *some* procedural rules, the decision-making process itself is not really very different from what a judge would do in court. Nor is the behavior of the lawyers: each spouse’s lawyer tries to persuade the arbitrator or private judge that his or her client should win on all disputed issues; the kind of evidence that can be presented is highly restricted; and the judge decides the outcome.

Case management is an option that is sometimes available from private and some public judges. With case management, the judge is given greater power than judges ordinarily may have to streamline the procedural stages of pretrial preparation as well as settlement conferences.

These options can reduce the financial cost and delays associated with litigation in the public courts. The financial and emotional costs may still remain high, however, because positions still are likely to be polarized by the lawyers’ trial-focused advocacy methods. When these methods are used, neither the lawyers nor the clients make a commitment to settlement as the goal, and the lawyers continue to represent the client whether the case settles or goes to trial. There are no built-in incentives or agreements in this approach that would encourage the lawyers to help you and your spouse reach an early settlement that both of you find acceptable.

g. “War”: If one or both spouses are motivated primarily by strong emotion (fear, anger, guilt, grief, etc.) it can be very difficult to keep a realistic perspective on the divorce process, and it can be perilously easy to fall into extreme black-and-white thinking and look to the courts for revenge or validation. In this situation, reasonable accommodations become impossible. The lawyers for people who have declared war on one another often function as “alter egos” for these clients, acting as gladiators or hired guns instead of serving as wise counselors who help their clients arrive at sensible solutions. Such cases can drag on for many years. Few clients report satisfaction with the outcome of cases handled this way, regardless of who “won,” and appeals and motions aimed at persuading the judge to change the orders that were issued after trial are commonplace, sometimes continuing for years after the divorce judgment is entered. This is the costliest form of conflict resolution, emotionally and financially. It is always destructive for the children involved—and often for the adults as well.

2. Can you say more about Collaborative Law?

Collaborative law is the newest divorce conflict-resolution model. It has been available in North America since 1990 and as of 2008 is being offered in 18 countries. In collaborative law, both spouses retain separate, specially trained lawyers whose

only job is to help them arrive at an agreement that satisfactorily resolves the concerns most important to each of them—whether or not a judge has the power to issue orders about those concerns. If the lawyers do not succeed in helping the clients reach resolution, the lawyers are out of a job and can never act on behalf of either client in court proceedings against the other. All participants agree to work together respectfully, honestly, and in good faith to try to find acceptable solutions to the legitimate needs and concerns of both spouses and any children. Four creative minds work together to devise individualized settlement scenarios. Whatever matters to you and to your spouse, in terms of goals, priorities, and facts, will be brought to the table in a constructive way. The lawyers are responsible for keeping the process respectful and efficient, and for guiding the negotiations in a systematic, step-by-step manner that incorporates legal advice without giving the law more power over final solutions than it deserves. The couple themselves are in charge of all decisions. No one may go to court, or even threaten to do so, while the collaborative process is moving forward, and if either spouse decides to take matters to court, the collaborative process terminates and both lawyers are barred from any further involvement in the case. Lawyers hired for a collaborative representation can never under any circumstances go to court for the clients who retained them. Their job is to work 100 percent of the time toward a goal that everyone participating has identified as their sole purpose: a complete, satisfactory resolution of all issues, entirely outside the court system.

3. So, Collaborative Law is a kind of mediation?

No. Collaborative law is a cousin to mediation but it differs from mediation in ways that can be very important to a divorcing couple. In mediation, one neutral professional helps the parties try to resolve their issues face to face. While divorce mediation works very well for couples who cooperate well and whose goal is to reach a quick settlement agreement with a minimum of conflict and expense, and while many mediators are gifted and dedicated conflict-resolution professionals, mediation lacks the structural elements that make Collaborative Law so effective.

For instance, mediation can be difficult where the parties are not on a level playing field with one another, because a neutral mediator cannot give either party legal advice and cannot help either side advocate its position. If one spouse or the other becomes unreasonable or stubborn, or lacks negotiating skill, or is emotionally distraught or passive-aggressive, the mediation will become unbalanced or stalled, and if the mediator tries to deal with the problem, the mediator may be seen by one partner or the other as biased, whether or not that is so. If the mediator does not find a way to deal with these problems, the mediation can break down, or the agreement that results can be unfair. If there are lawyers for the parties, they are not necessarily present at the negotiations and their advice may come too late to be helpful. The lawyers are not required to sign agreements that they will not take matters to court, and so their role is not necessarily supportive of working harder to find a negotiated solution when difficulties arise in a mediation.

Collaborative Law was designed to deal with these problems, while maintaining the same absolute commitment to settlement as the sole agenda. Each side has legal advice and advocacy built in at all times during the collaborative process. Even if one party or the other lacks negotiating skill or financial understanding, or is emotionally upset or angry, the playing field can be leveled by the direct participation of the skilled legal advocates. In addition, collaborative lawyers can work in teams with the other collaborative divorce professionals (coaches, child specialists, financial consultants) to provide even greater support for reaching effective

resolution. It is the job of the collaborative lawyers to work with their own clients if either or both are being unreasonable, to make sure that the process stays positive and productive. This is not part of the job description for lawyers in any other conflict-resolution mode, including mediation.

4. Is Collaborative Law only for divorces?

Collaborative lawyers can do everything that a conventional family lawyer does except go to court. They can negotiate nonmarital custody, parenting, and access agreements, premarital and postnuptial agreements, and agreements terminating gay and lesbian relationships. Collaborative Law can also be used in probate conflicts, business partnership dissolutions, employment and commercial conflicts, and much more. In fact, it is appropriate in any situation in which the parties who have issues to resolve all want a contained, creative, civilized process that builds in legal advice and counsel, aims solely at settlement, and distributes the risk of failure to the lawyers as well as the clients. But it is important that both collaborative lawyers be well trained and know how to work effectively together in managing the collaborative negotiations. This is a special skill that needs to be learned.

5. How is Collaborative Law different from the traditional adversarial divorce process?

- In Collaborative Law, all participate in an open, honest exchange of information. There is no "hide the ball."
- In Collaborative Law, neither party takes advantage of the miscalculations or mistakes of the others, but instead identifies and corrects them.
- In Collaborative Law, both parties insulate their children from their conflicts. If coming up with the right shared parenting plan is challenging, they avoid the professional custody evaluation process, instead making use of specially trained coaches and a child-development specialist to arrive at solutions that both parents can accept, solutions that reflect the children's needs and concerns.
- Both parties in Collaborative Law use joint accountants, appraisers, and other advisors, instead of adversarial experts.
- In Collaborative Law, a respectful, creative effort to meet the legitimate needs and concerns of both spouses replaces tactical bargaining backed by threats of litigation. The focus is on constructive planning for the future rather than redress for past grievances.
- In Collaborative Law, agreements can address any matters of importance to the parties, regardless of whether a judge has the power to issue orders on the subject.
- In Collaborative Law, the lawyers must guide the process to settlement or withdraw from further participation, unlike adversarial lawyers and traditional consulting lawyers in a mediation, who remain involved whether the couple settles all issues or goes to trial.
- In Collaborative Law, there is parity of payment to each lawyer so that neither spouse's access to legal advice and counsel is disadvantaged compared to the other by lack of funds, a frequent problem in adversarial litigation.

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

Both spouses and their lawyers commit in writing to disclose all documents and information that a fully informed decision maker would want to know about before reaching agreement. The information is exchanged early and voluntarily and is updated regularly. "Hide the ball" and stonewalling are not permitted. Both lawyers stake their professional integrity on helping their clients make full, early, voluntary disclosure of necessary information. Collaborative lawyers will not continue to represent a party who refuses to make necessary disclosures. The information-gathering phase of a collaborative divorce continues until all questions have been answered. Unlike "quick fix" settlement approaches, in Collaborative Law we defer considering options for settlement until the information-gathering and goal-setting phases are complete. For this reason, decisions in the collaborative process typically are based on more and better information than in other conflict-resolution processes, resulting in settlements that are more thorough and durable.

7. What happens if one side or the other does play "hide the ball" or is dishonest in some way, or misuses the Collaborative Law process to take advantage of the other party?

That can happen. There are no guarantees that one's rights will be protected if a participant in the collaborative process acts in bad faith. There also are no guarantees about that in mediation or conventional legal representation. What is different about collaborative law is that the collaborative agreement requires a lawyer to withdraw or even terminate the process upon becoming aware that his or her client is behaving in less than good faith.

For instance, if documents are altered or withheld, or if a spouse is deliberately delaying matters for economic or other gain, the collaborative lawyers have promised in advance that they will not continue to represent the client. The same is true if a spouse fails to keep agreements made during the course of negotiations—for instance, an agreement to consult a vocational counselor, or an agreement to engage in joint parenting counseling. In such a situation, a collaborative lawyer will counsel his or her client to honor the good-faith commitments made at the start, and will not continue to assist a person who declines to do what he or she promised to do. Many collaborative lawyers include in agreements with their own clients that they will terminate the collaborative process if this kind of bad faith should occur. International standards require those who do not terminate the process to withdraw from representing a client who is in bad faith.

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

The collaborative process does not guarantee you that every asset or debt or every dollar of income will be disclosed, any more than mediation or the conventional litigation process can guarantee you that. In the end, a dishonest person who works hard to conceal money can sometimes succeed, because the time and expense involved in investigating possible concealed assets is high, and the results are always uncertain at the start. Where there is a well-founded suspicion of concealed assets, Collaborative Law is generally not a good choice, because the methods for tracking concealed assets and income that are employed in conventional litigation might not be available in collaborative law, which relies upon voluntary disclosure. If unanswered questions about assets arise during the information-gathering phase of a collaborative case, the lawyers will keep asking until all the questions are answered.

If there remain unanswered questions, either a neutral expert must be empowered to investigate and find satisfactory answers, or the process should terminate so that both parties can be represented by traditional lawyers.

You are generally the best judge of your spouse or partner's basic honesty. If you have confidence in your partner's basic honesty, then the process can be a good choice for you. If she would lie on an income tax return, she is probably not a good candidate for a Collaborative Law divorce, because the necessary honesty would be lacking. (Of course, she will be just as dishonest no matter what conflict-resolution option you choose. Surprisingly, some people who know they married a thoroughly dishonest spouse still prefer the cost-containment, direct negotiations, conflict management advantages, and wide open scope for settlement options that are characteristic in collaborative law.) The choice ultimately is yours. Discuss it with your lawyer.

9. How often do Collaborative Law cases fail to reach agreement?

We do not yet have large-scale studies about the percentage of collaborative cases that reach full settlement agreements, but collaborative lawyers who have been doing this work since the mid 1990's report that only about 5 percent of their collaborative cases terminate without a full settlement agreement. Some less experienced collaborative lawyers estimate as many as 10 to 15 percent of their collaborative cases end without reaching a full agreement. In other words, our best estimate is that overall roughly 9 out of 10 couples who choose Collaborative Law succeed in their goal of reaching a full settlement agreement in the collaborative process. There is of course no guarantee that any specific couple will be able to reach a full agreement in the collaborative process. But if both of you have a serious commitment to reaching a reasonable and civilized resolution, and understand the need to work constructively toward solutions, and if both of you choose capable collaborative lawyers who know how to work effectively together, there is every reason to expect success.

10. Is Collaborative Law the best choice for me?

It isn't for every person (or every lawyer), but it is worth considering if some or all of these are true for you:

- You are willing to work toward a civilized, respectful, lasting resolution of the issues rather than leaping toward a "quick fix."
- You care about the other person's needs and concerns sufficiently to seek solutions that might work for both of you, rather than always reaching for the biggest piece of the pie for yourself alone, on every issue.
- 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 conflict resolution between parents.
- You and your partner have adult children together and recognize that they and any grandchildren will benefit when parents work toward a "good divorce."
- You and your partner have a circle of friends or extended family in common that you both want to remain connected to.
- You have ethical or spiritual beliefs that place high value on taking personal responsibility for handling conflicts with integrity.

- You value privacy in your personal affairs and do not want details of your problems 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 parenting future to a stranger (i.e., a judge).
- You recognize the restricted range of outcomes and rough, “cookie-cutter” justice generally available in the court system, and want a more creative and individualized range of choices available to you and your spouse or partner for resolving your issues.
- You prefer aiming for your best hopes rather than your worst fears in resolving divorce-related problems.
- You and your spouse are willing to devote your intelligence and energy toward creative problem solving rather than toward recriminations or revenge—fixing the problem rather than fixing blame.

Remember that you and your spouse or partner can have different reasons for choosing Collaborative Law. Talk with a collaborative lawyer, and suggest that your spouse do the same, for advice about whether it is worth considering in your situation. Visit www.collaborativepractice.com, www.teslercollaboration.com, and www.collaborativedivorcebook.com for more in-depth information about Collaborative Law and interdisciplinary team collaborative divorce.

11. My lawyer says she settles most of her cases. How is Collaborative Law different from what she does when she settles cases in a conventional family law practice?

Any experienced collaborative lawyer will tell you that there is a big difference between a settlement that is negotiated during the pressure and stress of a conventional litigation process, and a settlement that takes place in the context of a collaborative agreement that there will be no unilateral court proceedings or even the threat of court. Most conventional family law cases do eventually settle—but they reach settlement figuratively, if not literally, “on the courthouse steps.” By that time, a great deal of money has been spent, and a great deal of emotional damage has often been caused. The settlements are reached under conditions of tension and anxiety, and both “buyer’s remorse” and “seller’s remorse” are common. Moreover, the settlements are reached in the shadow of trial, and for that reason they are generally constrained by what the lawyers believe the judge in the case is likely to do. The lawyers broker the terms of agreement, with the parties rarely if ever discussing solutions directly. The lawyers have a great deal of influence over what is treated as important, what is regarded as dispensable, and what solutions should and should not be recommended to their clients.

What happens in a typical Collaborative Law settlement could hardly be more different. The process is geared from the first to encourage creative, respectful collective problem solving. In a collaborative divorce, the people who will have to live with the solutions discuss them directly with one another, and they say “yes” only when the results look fully workable and satisfactory in light of all the facts and all the priorities and concerns. They are taught how to communicate clearly and listen respectfully. The lawyers discourage hasty resolution, instead urging their clients to wait until all information has been shared and all options have been considered, so that the final decisions about settlement reflect real resolution, not a quick fix.

Conventional “courthouse steps” settlements often fail to resolve the underlying concerns of either party, with both spouses leaving the settlement process frustrated and dissatisfied. In contrast, collaborative settlement agreements usually have lasting power because of that careful attention given every step of the way to reaching real resolution.

12. Why is Collaborative Law such an effective settlement process?

Because the collaborative lawyers have a completely different state of mind about their job than traditional lawyers generally bring to their work. We call it a “paradigm shift.” Instead of being dedicated to getting the largest possible piece of the pie for their own client, no matter what the collateral human damage or financial cost, collaborative lawyers aim to help their clients achieve their best intentions for themselves and their children in their restructured families after the divorce.

Collaborative lawyers do not act as hired guns, nor do they take advantage of mistakes inadvertently made by the other side, nor do they threaten, or insult, or focus on the negative either in their own clients or on the other side. They expect and encourage the highest good-faith problem-solving behavior from their own clients and themselves, and they stake their own professional integrity on delivering that, in any collaborative representation they participate in.

Collaborative lawyers trust one another. They spend a great deal of their own time and money learning how to build effective working relationships with other collaborative lawyers, how to manage conflict, and how to guide negotiations effectively in collaborative cases. Like all lawyers, they still owe a primary allegiance and duty to their own clients, within all mandates of professional responsibility, but they know that the only way they can serve the interests of their clients who have selected Collaborative Law is to behave with, and demand, the highest integrity from themselves, their clients, and the other participants in the collaborative -process.

Collaborative Law by its very structure offers a potential for creative problem solving that does not exist in the structure for either mediation or litigation, in that only Collaborative Law puts two lawyers in the same room pulling in the same direction with both clients to solve the same set of problems, without threats or ultimatums, using an agreed and highly structured good-faith process. Lawyers excel at solving problems, but in conventional litigation the adversarial nature of court-based conflict resolution encourages even the best family lawyers to pull in opposite directions for maximum economic and other advantage to one side without regard for the impact on the other spouse or the children. In Collaborative Law, the very structure of the process means that neither collaborative lawyer can succeed in the job they were both hired to do unless both of the lawyers can work together effectively to help their clients find solutions that both clients consider satisfactory. This is the special characteristic of collaborative law that is found in no other conflict-resolution process.

13. What if my spouse and I can reach agreement on almost everything, but there is one point on which we are stuck? Would we have to lose our collaborative lawyers and go to court?

In that situation it is possible under some circumstances, if everyone agrees (both lawyers and both clients), to submit just that one issue for decision by an arbitrator or private judge. We do this infrequently, and only with important limitations and safeguards built in, so that the integrity of the Collaborative Law process is not undermined. Everyone must agree that the good faith atmosphere of the Collaborative Law

process would not be damaged by submitting the issue for third-party decision, and everyone must agree on the issue and on who will be the decision maker.

Over the years, collaborative lawyers have found that if a couple can agree on all those procedural safeguards, then with a little more effort they almost always can also find a way to reach agreement themselves on the issue that is dividing them. For that reason, it has become rare to make use of arbitrators or private judges. Instead, most collaborative lawyers prefer to invite either the larger interdisciplinary collaborative divorce team, or a “super-mediator,” into the collaborative four-way process to give the couple the best possible chance for solving their own problems, before resorting to a decision by a third party. After all, even the best judge will have less information about the facts of your own situation than you and your spouse have available in a collaborative divorce, and even the best judge lacks the time and the personal stake in outcome that you and your spouse can bring to the collaborative negotiating table. Judges have no magic, and they are the first to admit that their decisions are rarely if ever better than the ones couples arrive at themselves.

14. What if my spouse or partner chooses a lawyer who doesn't know about Collaborative Law?

Most collaborative lawyers—for very good reasons—will refuse to sign a Collaborative Law agreement if the other lawyer has no training in how to practice Collaborative Law. The success of the process depends on not just your lawyer, but your partner's lawyer as well. Most collaborative lawyers agree that working with an untrained lawyer involves an unacceptably high risk that the process will terminate without an agreement. This is because untrained lawyers lack essential skills and understandings, and have not yet built the necessary trust-based working relationships with other collaborative lawyers. They just don't know how to do the job.

Trust between the lawyers is essential for the Collaborative Law process to work at its best. Unless the lawyers can rely on one another's representations about full disclosure, for example, there can be too little protection against dishonesty by a party. If your lawyer lacks confidence that the other lawyer will withdraw from representing a dishonest client, it would be risky for you to sign on to a formal Collaborative Law process because you might agree to settlement terms based on false or incomplete information, or you might lose your lawyer if the Collaborative Law process fails because of lack of disclosure.

Similarly, Collaborative Law demands special skills from the lawyers—skills in guiding negotiations, and in managing conflict. They must have shared understandings about how the collaborative divorce will be handled: what will happen, and when, and how difficulties will be managed. These understandings and skills are quite different from what lawyers learn in law school and in the courts, and they can be developed only through training and experience. Without them, a lawyer would have a hard time working effectively in a Collaborative Law negotiation.

This doesn't mean your lawyer could not work cordially or cooperatively outside the collaborative process with an untrained lawyer, but caution is advised in signing the formal agreements that are the heart of Collaborative Law with an untrained lawyer representing your spouse. You and your spouse will get the best results by hiring two lawyers who both can show that they have committed to learning how to practice Collaborative Law at a high standard by obtaining training as well as experience in this new way of helping clients through divorce. You

would not hire a dentist to perform open-heart surgery, and you would not want a litigator undertaking collaborative law.

15. Why is it so important to sign on formally to the official Collaborative Law Agreement? Why can't you work collaboratively with the other lawyer but still go to court if the process doesn't work?

There are two important reasons why the signed agreement that the lawyers can never go to court is the essential core element of a Collaborative Law representation. One has to do with how clients behave, and the other has to do with how lawyers behave.

Effective collaborative negotiations and problem solving happen when both spouses and both lawyers recognize that although they are not on the same side, they are working toward one and the same goal. When that happens, the four people at the collaborative table become a problem-solving team, and remarkable solutions can be reached. But it's not easy for divorcing spouses to relax in the presence of one another, and when each has their own lawyer, suspicion and fear about hidden agendas can be a negative force that works against finding the best solutions. If you worry that your spouse's lawyer may have a secret intention to go to trial, or to use your words against you later, you are not likely to feel very comfortable about sharing information about what really matters to you in the divorce. This is the situation that exists in conventional settlement negotiations, either actually or potentially. But, when each spouse knows that the other lawyer cannot ever go to court as an adversary (which is the starting point in a Collaborative Law case), the climate at the negotiating table generally turns positive in a way that simply does not occur in conventional negotiations, where the lawyer across the table could at any time become your adversary in the courtroom. Settlements can and do happen all the time, even when lawyers can take matters to court, but the quality of both process and outcome in those cases just doesn't reach the high level that routinely exists in Collaborative Law.

Traditional lawyers have adversarial habits that they've applied in and out of courtrooms for so long that it is difficult for them even to see that those habits exist. Changing those habits of thought and behavior is not easy. When the lawyers can still take a problem to court as a fallback option when negotiations stall, their creative problem-solving capacity is actually crippled. This is because lawyers are impatient by nature, placing a premium on efficiency, and they are entirely comfortable in the conflict-ridden atmosphere of courts and trials. It is common for negotiations to hit rough spots, even in a collaborative divorce. When there is an apparent impasse in negotiations, lawyers who can go to court will probably do so, while collaborative lawyers simply roll up their sleeves and work harder. In other words, lawyers who can go to court tend to end negotiations much sooner than good collaborative lawyers do. When the lawyers cannot go to court, an apparent impasse liberates the creative problem solver within, motivating collaborative lawyers to help their clients find their own way through impasse. And finding their own solutions is what clients who choose Collaborative Law want.

When everyone at the negotiating table knows that it is up to the four of them and only the four of them to think their way through impasse to a solution or else the process fails and these lawyers are out of the picture, the special hypercreativity of Collaborative Law can be triggered. The moment when each person realizes that finding solutions for both parties' concerns is the responsibility of all four participants at the table is the moment when the magic can happen. When a divorcing couple finds their

own solutions together, they almost always are more satisfied than when a solution—even the very same solution—is imposed on them by someone else.

Collaborative Law is not just two lawyers who like each other, or who agree to behave nicely, trying to settle cases. It is a special technique that demands special talents and procedures in order to work as promised. Any effort by parties and their lawyers to resolve conflicts cooperatively outside court is to be encouraged, but only Collaborative Law is Collaborative Law.

16. Why would a Collaborative Law case end in termination rather than in agreement?

While we lack formal research that could answer this question definitively, experienced collaborative lawyers report that when their cases terminate without an agreement, it is generally for one of these reasons:

- An inexperienced or ineffective collaborative lawyer is representing one party.
- One or both parties has a significant mental or emotional disability that interferes with constructive problem solving and follow-through.
- One or both parties has anger management or substance abuse problems.
- One or both parties lacked a full and authentic commitment to reaching an acceptable good-faith settlement outside the court system as a high priority.

Few experienced collaborative lawyers identify impasse in negotiations as a reason why Collaborative Law cases terminate.

17. How do I enlist my spouse in the process?

Talk with your spouse, and see whether there is a shared commitment to collaborative conflict resolution. Share materials with your spouse such as websites, this handbook, and books and articles that discuss Collaborative Law and collaborative divorce. If you do not feel comfortable doing this yourself, get help from a mutual friend or trusted counselor, or ask your lawyer to send an information packet. Encourage your spouse to select a lawyer who has experience and training in Collaborative Law and who works effectively with your own lawyer. Lawyers who trust one another are an excellent predictor of success in collaborative conflict resolution.

18. Is Collaborative Law possible if my spouse does not want to hire a lawyer?

No. The Collaborative Law model requires that each of you have a separate, trained collaborative lawyer who signs the agreement not to go to court if the process ends short of a full agreement. If your spouse has no lawyer, there is no one who can advise him or her, ensure that he or she participates constructively in negotiations, and guides the process from your spouse's side of the table. You could still hire a lawyer who might negotiate a settlement directly with your spouse, but it is not Collaborative Law without two collaborative lawyers.

19. How long will my divorce take if I use Collaborative Law?

The Collaborative Law process is flexible and can expand or contract to meet your specific needs. Most people require from four to seven of the four-way negotiating meetings to resolve all issues, though some divorces take less and some take more. You and your lawyer will prepare privately for these four-way meetings and will debrief after them. These meetings can be spaced with long intervals between, or close together, depending on the particular needs of the couple. Once the issues are resolved, the lawyers will complete the paperwork

for the divorce. Time limits and requirements for divorce vary from state to state; ask your lawyer.

20. How expensive is Collaborative Law?

Collaborative lawyers generally charge by the hour as do conventional family lawyers. Rates vary from locale to locale and according to the experience of the lawyer.

No one can predict exactly what you will pay for this kind of representation because every case is different. Your issues may be simple or complex; you and your partner may have already reached agreement on most, some, or none, of your issues. You or your spouse may be very precise or very casual in your approach to resolving problems. You and your partner may be at very different emotional stages in coming to terms with separating from one another. You may communicate well with one another, or poorly. You may share many values and priorities for one another and the children after the divorce, or few. What can be said with confidence is that no other kind of professional conflict-resolution assistance can help as broad a range of divorcing couples to move through the divorce process respectfully and to reach high quality, lasting solutions. While the cost of your own fees cannot be predicted accurately, a rough rule of thumb is that Collaborative Law representation will cost from one-third to one-fifth as much as being represented conventionally by a lawyer who takes issues in your case to court for resolution.

Although Collaborative Law is efficient and cost-effective as compared to other approaches, it is still costly to retain lawyers and other professional helpers in a divorce, whatever dispute resolution mode you choose. The best reason to choose Collaborative Law isn't to save money, but rather to reach the best possible agreement you and your spouse are capable of devising.

21. Isn't mediation cheaper because only one neutral, instead of two lawyers, has to be paid?

No, mediation is not necessarily cheaper. No professional in a mediation has the job of helping each party separately to participate with maximum effectiveness in the process. Consequently, there can be more risk of a mediation becoming stalled than in Collaborative Law, where each lawyer takes responsibility for bringing his and her client to the four-way table ready to engage in constructive problem solving. The mediator must remain neutral and cannot work privately with the more troubled or uncooperative spouse to get past impasses. When a mediator must deal with difficult personalities, strong emotions, differences in negotiating skill, and other differences that cause a nonlevel playing field, the process can become inefficient and costly.

Also, most mediators strongly advise that independent lawyers for each party review and approve the mediated agreement. If the lawyers have not been a part of the negotiations, the lawyers may be unhappy with the results and a new phase of negotiations or even litigation may result. If the lawyers do participate, then three professionals are being paid in the mediation. The lawyers who serve as independent counsel in a mediation can be any lawyer that either party chooses. Such lawyers do not ordinarily commit to keep matters out of court, may have much or little skill in supporting client-centered resolution, and may sometimes even work at cross-purposes to the mediator. Each of these situations involves fees and costs beyond those of the neutral mediator.

It is a false economy to select a conflict-resolution process that turns out to match poorly with your needs. It is not easy to predict in advance which couples will and which will not succeed in reaching full agreement in a mediation. Many people genuinely

believe that they will have a very quick and simple divorce negotiation, but life can be surprising. Strong feelings arise unexpectedly; issues become more complicated than anyone anticipated. With Collaborative Law, couples have a process in place from the start that is well equipped to deal with unexpected problems. Most lawyers with hands-on experience in mediation, traditional representation, and Collaborative Law believe that in most cases Collaborative Law can deal with these happenings more effectively than other conflict-resolution models—particularly since collaborative lawyers often can bring collaborative divorce coaches and financial consultants on as part of the professional team. Their services are brief, targeted, economical, and highly specialized. As a famous psychologist has said, “If the only tool you have is a hammer, all problems will tend to resemble nails.” In Collaborative Law you have the best-stocked toolbox that we know of on call for professional help in conflict resolution. In the end, reaching a lasting, high-quality agreement will be more cost effective, when all is considered, than a settlement that doesn’t satisfactorily meet the needs of every member of the family.

22. How does the cost of Collaborative Law compare with the cost of litigation?
Litigation is, quite simply, the most expensive way of resolving a conflict. By way of illustration, it is common for litigated divorces to begin with a motion for temporary support. The result is exactly that—a temporary order, like a band-aid, rather than a final resolution of any issues. It is not uncommon for the bills for a single temporary support motion to equal or exceed the lawyers’ fees and costs for an entire Collaborative Law representation.

23. How do I find a good collaborative lawyer?
You can do a Google search. You can go to the interactive “find a practitioner” section of the International Academy of Collaborative Professionals’ website, www.collaborativepractice.com, which lists trained collaborative lawyers and other collaborative professionals from 18 nations.

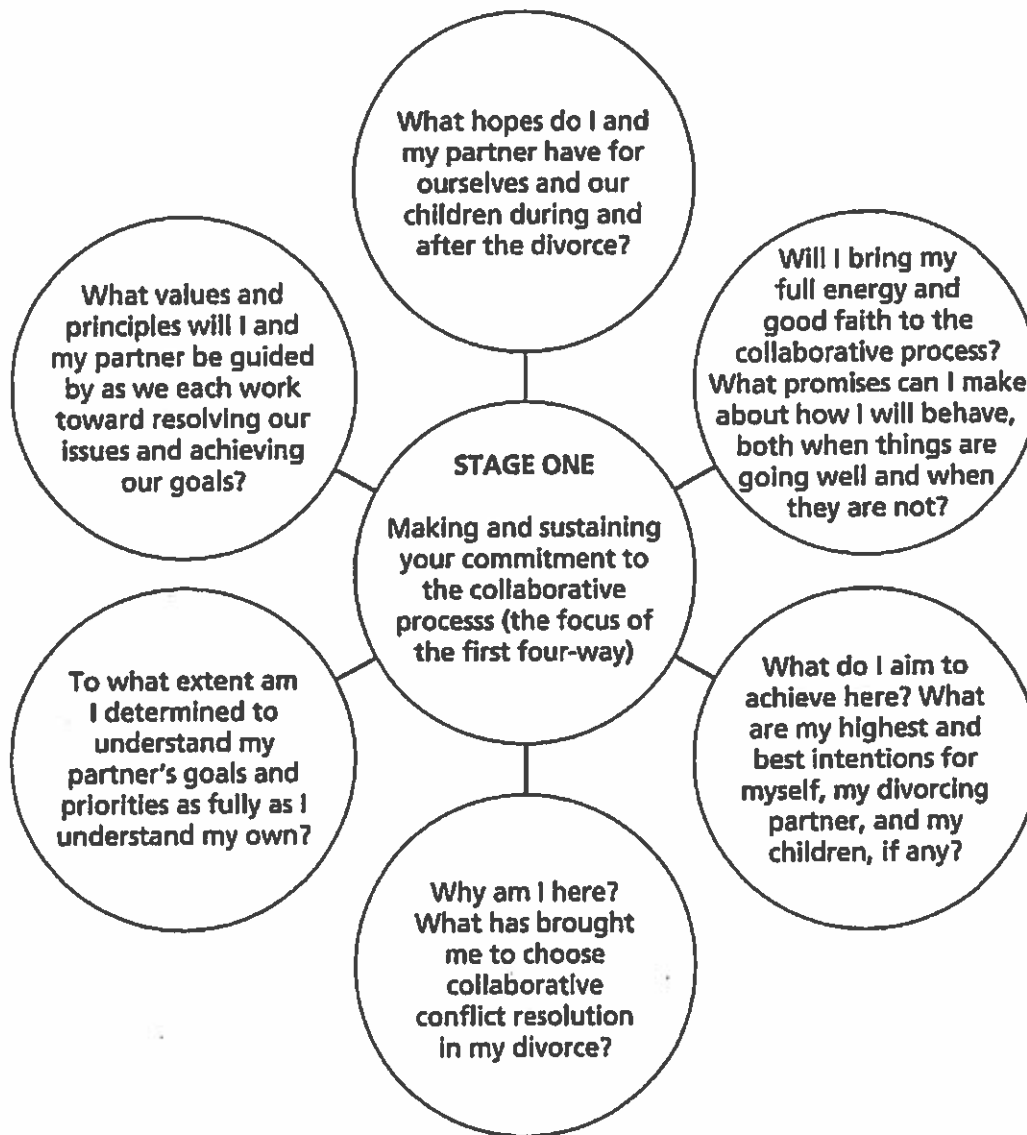
Seek out the best collaborative practitioner that you can locate; interview several, and ask for resumes. Ask how many collaborative cases the lawyer has handled and how many of them terminated without agreements. Ask what training the lawyer has in Collaborative Law, alternate dispute resolution, and conflict management. Ask if the lawyer is a member in good standing of a local collaborative practice group. Above all, make sure that you feel comfortable with the person you select, because he or she will be your advisor and guide through a uniquely stressful and challenging time of life.

24. What can I expect during the collaborative law process?
Generally speaking, you can expect three stages to the collaborative law process. Stage 1 is about making and sustaining your commitments to the collaborative process. In stage 2, you will share and evaluate information. Finally, in stage 3 you will develop and evaluate options and reach solutions.

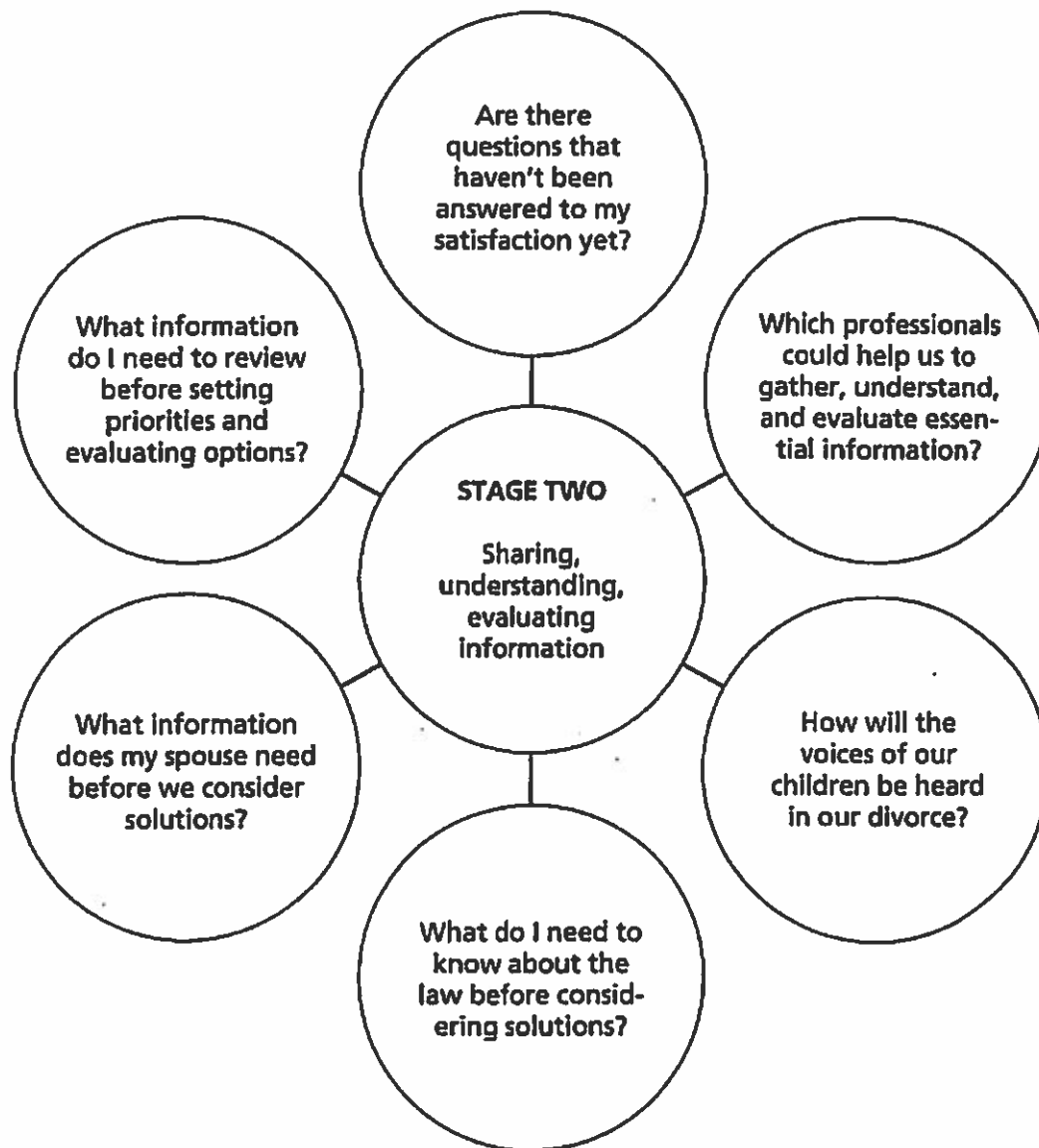
These three stages will occur through a series of four-way meetings—you, your lawyer, your spouse, and your spouse’s lawyer. Typically, you can expect the following during the four-way meetings:

Initial Four-way Meeting:

- Parties and lawyers become acquainted.
- Lawyers explain personal and ethical commitments to collaborative practice.
- Clients explain why they have chosen collaborative divorce and what their highest expectations are for the process.
- Legal divorce process in the jurisdiction is explained.



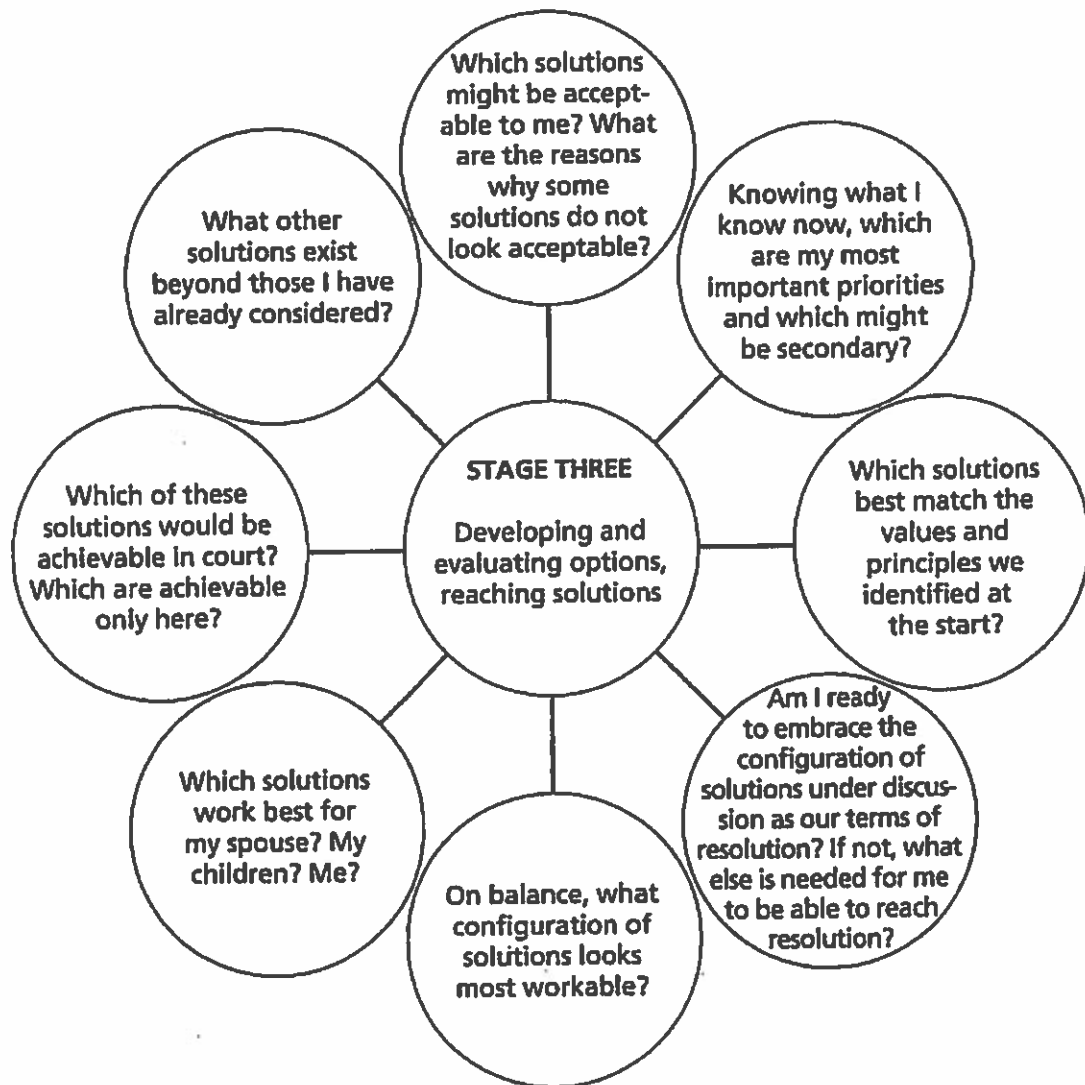
- Interest-based negotiations and self-determined decision making are discussed and distinguished from conventional negotiations.
- The unique role of collaborative lawyers (guide to negotiations, facilitator of deep resolution, conflict manager, peacemaker) is discussed.
- The role of the law is explained (not a template for decisions; merely a default setting; something to be discussed later rather than sooner).
- Involvement of an interdisciplinary collaborative team is discussed.
- What constitutes effective good-faith participation in the process is reviewed:
 - We expect good preparation and follow-through from everyone
 - We plan agendas carefully and stick to them
 - We take homework assignments seriously
 - We honor interim agreements and understandings
 - We do not act unilaterally outside the meetings
 - We confine divorce-related efforts to the collaborative process and don't try to address issues outside meetings



- We expect constructive, respectful efforts from all participants to devise mutually acceptable solutions
- We don't hide facts or information and we do not conceal goals and concerns
- Collaborative participation documents are reviewed, discussed, and signed.
- Urgent matters are identified and a process for attending to them is agreed upon.
- The agenda for the next meeting, the homework assignments, and the schedule of forthcoming meetings are agreed upon.
- One of the lawyers later prepares and distributes the minutes of the meeting.

Subsequent Four-way Meetings:

- The meeting begins with review of the agenda and minutes of the previous meeting.
- Homework assignments are discussed.



- At the second (and perhaps third and fourth meetings if necessary) documents and financial information are exchanged and discussed.
- Initial divorce petition is filed at an agreed time.
- Goals, priorities, and values are identified and discussed.
- When all financial and other information has been gathered to everyone's satisfaction, we agree on the order in which we will address issues.
- We brainstorm possibilities for creative resolution of each issue.
- We discuss the approaches to resolution that are available to judges as contrasted with the broader range of choices available to the parties in a collaborative process.
- We measure settlement options against the goals and priorities and values of each party.
- We arrive at a framework for resolution of all issues

The Final Four-way Meeting:

- We review, discuss, and sign the settlement agreement and related legal divorce papers.
- We focus on the accomplishments during the process.

- We help both parties anticipate future challenges and plan for collaborative resolution of them.
- We take time to acknowledge a job well done.

25. What can I do to ensure a successful collaborative law process?

You can ensure success by following the 10 collaborative commandments—plus one—throughout the collaborative process.

1. **See conflict as your ally, not your enemy.** Approach it with a constructive and curious attitude and it can help you reach more lasting solutions with your spouse than if it had not arisen. Ignoring differences or trying to force resolutions that fail to address them won't lead to a lasting resolution. Through conflict you can understand the roots of differences, and then look for acceptable ways to address them.
2. **Take personal responsibility—for your feelings, for your behavior, for your attitude.** No one can *make* you feel or do anything. You always have the choice of how you will respond. The lawyers have the responsibility of ensuring a respectful, civilized process but no one is perfect and bad moments can happen. Take a break, and decide how *you* wish to respond given your own personal goals and values. Blaming rarely if ever produces useful results.
3. **Speak up for your own needs, goals, and priorities.** Civility and respect are not the same as rolling over and playing dead. Saying “yes” to keep the peace will not lead to a lasting resolution. Ask for what you need, and not more than you need, and be prepared to explain why you need it. Your lawyer will help you express your needs and goals in clear, firm, constructive ways. In the rare event that no agreement can be devised that is good enough, you always have the option of terminating the collaborative process at any time if you think court is a better option for you.
4. **Pay serious attention to your partner or spouse's needs, goals, priorities, and interests.** Listen carefully. Ask questions to clarify so that you really understand. A full understanding is not the same as agreeing. But it is the doorway to out-of-the-box thinking about creative solutions that could possibly satisfy both you and your partner. You and your lawyer can't do that kind of thinking unless you work hard to understand what might work for your partner.
5. **Make sure every aspect of your own communications with your spouse or partner is constructive, not destructive.** This means not only the obvious aspects—no name-calling, no shouting, no sarcasm or blaming. It also means paying attention to the very real but subtle ways that spouses express anger and blame – gestures, raised eyebrows, eye rolling. And it means not talking about your spouse in the third person when he or she is right there at the table. Speak directly and civilly to him or her. Don't attribute beliefs or motives (“You just want . . .” or “He just thinks that I . . .” or “You always try to . . .”). Instead, express what you yourself think, feel, and want. Statements about yourself (“I don't understand that description of the condition of the roof”) are not subject to dispute, while statements about your spouse (“She just wants to drive down the value of the house”) generally lead to pointless argument. Please remember that a sentence that begins “I feel that you . . .” is not a statement about yourself.
6. **Bear in mind that you and your partner or spouse may be at very different stages in the emotional journey associated with separation and divorce.** It's

both compassionate and smart to understand and respect those differences because they affect not only how you each feel, but also your energy, resilience, and even capacity to think clearly. The person who initiated the divorce will often be further along in grieving and recovering from the loss of the marriage than the partner who didn't expect or want a separation. No one has control over how quickly they move through this grief and recovery process. Counseling helps but the bottom line is that a person who is pushed to go faster in negotiations than they can handle emotionally may need to terminate the collaborative process. It's wise to "make haste slowly" by accepting these timing differences as normal and inevitable and working with them constructively.

7. Give at least as much—and maybe even more—attention to your own values and principles as you give to your legal rights and entitlements. For solutions to look as good 10 years from now as they look today they must be congruent with your own personal values and principles. You are not bound by the limits on creative problem solving that the law imposes on judges.
8. Be careful who you listen to and whose advice you take. Friends and family who genuinely want to support you during a time of stress can actually behave in ways that undermine your commitment to a constructive, civilized divorce. Sometimes, friends and relatives mistakenly believe that attacking your spouse is the way to show their love for you. Few of them will have first-hand experience of collaborative divorce, while many will hold old beliefs that divorce always means war. It's important not to let their ideas influence you negatively. Tell these people that you appreciate their intentions but you prefer that they not discuss the actual divorce with you. Instead, they can invite you to dinner or give you tickets to the ball game.
9. Stay focused on the present and future, not the past. Focus on the past leads to feeling like a victim and looking for a perpetrator to blame. Whatever happened in the past, here you are today. You have complete freedom to decide how you wish to move forward. What you do today shapes the future for yourself and your children, if you have them. Keep your efforts focused on constructive ideas that could achieve your highest and best goals for the future.
10. Avoid attachment to any one specific solution to an issue. The best way to resolve an issue that involves differing interests and concerns is to examine a very broad spectrum of options. Be skeptical of any solution that you are already attached to before the collaborative process begins. Put it on a shelf and try to forget about it while you move through the proven steps that lead to wise, lasting solutions: begin with the facts, and with broad values and priorities. Then move to exploring specific interests and goals. Then, brainstorm to expand the range of possible options for resolution—including the one you put on the shelf, as well as many more. Only then is it time to evaluate options to see which of them can best meet the needs and interests you and your spouse have identified. Many people are amazed to discover options that can meet their needs far better than the one they originally put on the shelf.
11. Be optimistic, stay positive. Even the most challenging problems can be resolved where both parties share full intention to reach agreement. If you find yourself becoming discouraged or negative, take a break and work on understanding what is at the root of those feelings. Then work with your

collaborative lawyer to find a constructive way to address what needs to be attended to.

26. Where can I go for more information?

The literature on the collaborative law process is growing. Below are selected materials for further reading:

Books

AHRONS, CONSTANCE, *THE GOOD DIVORCE: KEEPING YOUR FAMILY TOGETHER WHEN YOUR MARRIAGE COMES APART*, 1995.

FISHER, ROGER, AND ERTEL, DANNY, *GETTING READY TO NEGOTIATE: THE GETTING TO YES WORKBOOK*, 1995.

FISHER, ROGER, AND URY, WILLIAM L., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN*, 1992.

GOLD, LOIS, *BETWEEN LOVE & HATE: A GUIDE TO CIVILIZED DIVORCE*, 1992.

RICCI, ISOLINA, *MOM'S HOUSE, DAD'S HOUSE: MAKING SHARED CUSTODY WORK*, 1997.

TESLER, PAULINE H., AND THOMPSON, PEGGY, *COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON WITH YOUR LIFE*, 2006.

VAUGHAN, DIANE, *UNCOUPLING: TURNING POINTS IN INTIMATE RELATIONSHIPS*, 1990.

WALLERSTEIN, JUDITH S. AND BLAKESLEE, SANDRA, *WHAT ABOUT THE KIDS? RAISING YOUR CHILDREN BEFORE, DURING, AND AFTER DIVORCE*, 2003.

WEBB, STUART, AND OUSKY, RON, *THE COLLABORATIVE WAY TO DIVORCE: THE REVOLUTIONARY METHOD THAT RESULTS IN LESS STRESS, LOWER COSTS, AND HAPPIER KIDS—WITHOUT GOING TO COURT*, 2006.

E-Book

SEDACCA, ROSALIND, *HOW DO I TELL THE KIDS ABOUT THE DIVORCE? A CREATE-A-STORYBOOK™*

GUIDE TO PREPARING YOUR CHILDREN WITH LOVE!, 2007. Downloadable e-book available at www.howdoitellthekids.com.

Web Resources

www.collaborativedivorcebook.com: book website offering excerpts from Tesler and Thompson's book, *COLLABORATIVE DIVORCE*, including video interview with authors and other resources for people thinking about divorce.

www.collaborativedivorcenews.com: Pauline Tesler's blog, offering news about collaborative divorce and collaborative law worldwide.

www.collaborativepractice.com: the website of the International Academy of Collaborative Professionals, an organization co-founded by Pauline Tesler.

www.collaborativepracticesfbay.com: Pauline Tesler's collaborative practice group, with links to collaborative documents, readings, and other resources for people considering divorce.

www.teslercollaboration.com: the author's website, with information about collaborative law and collaborative divorce, including links to video and audio material.

DIVORCE: COLLABORATIVE VERSUS LITIGATION

	Collaborative	Litigation
Who Controls the Process	You and your spouse control the process and make final decisions	Judge controls process and makes final decisions
Degree of Opposition	You and your spouse pledge mutual respect and openness	Court process is based on an adversarial system
Cost	Costs are manageable, usually less expensive than litigation; team model is financially efficient in use of experts	Costs are unpredictable, can escalate rapidly, and can continue after trial in post-judgment litigation
Timetable	You and your spouse create the timetable	Judge sets the timetable, often with delays resulting from crowded court calendars
Use of Outside Experts	Jointly retained specialists provide information and guidance, helping you and your spouse develop informed, mutually beneficial solutions	Separate experts are hired to support the litigants' positions, often at great expense to both parties
Involvement of Lawyers	Your lawyers work toward a mutually created settlement	Lawyers fight to win, but someone loses
Privacy	The process and discussion or negotiation details are kept private	In many jurisdictions, dispute becomes a matter of public record and sometimes media attention
Facilitation of Communication	Team of collaborative practice specialists educate and assist you and your spouse to communicate more effectively with each other	No process designed to facilitate communication
Voluntary vs. Mandatory	Voluntary	Mandatory if no agreement
Lines of Communication	You and your spouse communicate directly with the assistance of members of your team	You and your spouse negotiate through your lawyers
Court Involvement	Outside court	Court-based

Source: International Academy of Collaborative Professionals.

SOME GROUND RULES DURING THE COLLABORATIVE LAW PROCESS

While you and I cannot control how the other participants conduct themselves in negotiations, we can conduct ourselves in ways that have been proven to increase the chances of reaching agreement. Behaving in this way encourages similar behaviors from your spouse and his or her lawyer.

1. We will take turns speaking and not interrupt each other.
2. We will speak directly to one another rather than about one another, calling each other by our names, not "he" or "she."
3. We will not blame, attack, or engage in put-downs and will ask questions for the purposes of gaining clarity and understanding only, not to score points or win arguments.
4. We will avoid taking hard positions and instead will express ourselves in terms of personal needs and interests and the goals and outcomes we would like to achieve.
5. We will listen carefully and respectfully in order to understand better the other person's needs and interests and will not substitute planning our reply for real listening.
6. We recognize that even if we do not agree, each of us is entitled to respect for his or her own perspective.
7. We will not dwell on things that did not work in the past, but instead will focus on the future we would like to create.
8. We will make a sincere effort to avoid unproductive arguing, venting, and narratives, and we agree to work at all times during negotiations toward the most constructive and mutually acceptable agreement possible.
9. We will speak up if something is not working well in negotiations.
10. We will request a break when we need one, and will not remain at the negotiating table in a state of mind that is inconsistent with constructive problem-solving efforts.
11. While in negotiations, we will refrain from preemptive maneuvers, threats, ultimatums, and unilateral power plays.
12. We will take good physical and emotional care of ourselves so that each of us can participate fully and effectively in resolving our issues.

(Adapted from ground rules in wide use in the San Francisco Bay Area originally drafted by the Collaborative Council of the Redwood Empire.)

