



COLLABORATIVE DIVORCE - RESOLUTION WITHOUT LITIGATION

Seminar Topic: This material provides an in-depth examination of what collaborative divorce is while exploring the basic process, brief history of the collaborative movement and how a collaborative divorce attorney differs from a litigator.

This material is intended to be a guide in general. As always, if you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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119 South Emerson St.,
Suite 248
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Toll Free 866•657•2004

920 South Spring Street
Springfield, Illinois 62704
Toll Free 866•657•2004

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About The Author

Olga Stambler graduated Magnu Cum Laude from Brandeis University in 1992 with a Bachelors of Art in Political Science. She attended Fordham University School of Law and graduated in the top 20% of her class in 1995. Olga was admitted to practice law in the State of New York in 1996 and in the State of Illinois in 1999. She began her legal career as a corporate attorney at Dewey Ballantine in New York City and then at Bell, Boyd & Lloyd in Chicago. She has handled many aspects of Domestic Relations litigation including child support, maintenance, custody and visitation issues and division of complex marital estates. Olga's corporate background is a tremendous asset in assessing, negotiating and resolving financial issues. Olga has recently negotiated a successful settlement relating to the division of marital estate worth over \$15,000,000. Olga is trained in Collaborative Law. She is a fellow of the Collaborative Law Institute of Illinois and a member of the Association for Conflict Resolution, the Collaborative Practice Professionals of Illinois, and the International Academy of Collaborative Professionals.

Author's Email Address: olgastambler@hrkfamilylaw.com

Author's Website:

Author's Mailing Address: 30 N. LaSalle Street, Suite 1210
Chicago, IL 60602

Author's Phone Number: (312) 782 - 2400



I. Introduction – Basic Principles of Collaborative Process

1. Alternative path to traditional litigation where parties commit not to go to court.
2. Team approach - Collaboratively trained professionals, including attorneys, divorce coach, financial neutral and child's representative (when needed) address the legal, financial and emotional needs of the parties in order to facilitate an atmosphere of honesty and cooperation.
3. Parties commit to a process of integrity, respect, honesty, complete disclosure and good-faith and when children are involved, prioritizing their needs.
4. Attorneys represent their clients by using an interest based problem solving method of negotiation
5. The parties participate In face to face negotiations in series of meetings with Collaborative Professionals.
6. The entire team of Collaborative Professionals provides the family with tools necessary to reach a unique and creative settlement based on their needs and interests.
7. The parties avoid the stress and animosity of litigation and court imposed resolution. Instead, through a process carefully controlled by Collaborative Professionals, the parties are the ultimate architects of their own settlement.
8. Because both parties are deeply invested in the process and are in control of their settlement, they are more likely to adhere to the settlement, thus reducing the likelihood of post-decree conflict.
9. Unlike litigation which can stress and destroy relationships, the Collaborative Process works to restore and enhance the parties' communication and relationship to promote cooperation post-divorce.

II. Brief History of the Collaborative Movement

1. In the 1970s Forrest (Woody) Mosten and other attorneys in California started exploring "unbundled" limited scope representation service and started to grow the "legal clinic" service model
2. In the 1980s Pauline Tesler in San Francisco (family law practitioner) starts studying cross-cultural anthropology looking at less adversarial cultures and their process for conflict resolution.
3. In the 1990s Stu Webb in Minnesota announces he will only aid clients in settlement of family law matters and will no longer go to court.
4. Early 90s Peggy Thompson a psychologist and Nancy Ross, a social worker in the San Francisco Bay area begin to offer interdisciplinary mental health and financial services under the name "Collaborative Divorce".
5. In the late 1990s, Tester, Webb, Thompson and Ross connect and start offering training in Collaborative Law to lawyers around the country.
6. In 1999 collaborative lawyers, mental health and financial professionals formed the organization which later became the International Academy of Collaborative Professionals (IACP) and convened its first International conference in Emeryville, California with about 50 participants.
7. In 2001, five Illinois attorneys traveled to Wisconsin to be trained and formed the Collaborative Law Institute of Illinois
8. ICAP has now grown to 5,000 members in 24 countries.

III. How Is a Collaborative Attorney Different from a Litigator - Paradigm Shift



1. Concept faced by legal professionals when commencing exploration of alternative dispute resolution models.
2. Requires a fundamental change in approach or assumption; basically replacing a former way of thinking/problem solving with radically different method.
3. Shift in thinking:
 - a. Move from positional negotiation to needs and interest based negotiation.
 - b. Rather than being dominated by legal concerns, focus on client's values and facilitate creative problem solving with interdisciplinary team promoting client self-determination.
 - c. Move from mind set where lawyers are in charge to where lawyers work in partnership with clients and other collaborative team members to foster honest, respectful communication, emphasizing good-faith and full disclosure.
 - d. Rather than thwarting or limiting disclosure, information is shared openly in order to create and expand options.
 - e. Understanding that the way a problem is defined often dictates the outcome.
 - f. Rather than sacrificing relationships, relationship building is emphasized by fostering open and honest communication.
 - g. Attorneys manage the process but the clients determine the outcome.

IV. Role of Collaborative Attorney

1. Educating Client
 - a. Identify client's learning styles and present information in way easiest for client to process



- b. Describe the Collaborative Process
 - c. Describe the Retainer Agreement
 - d. Participation Agreement
 - e. Provide legal advice
 - f. If children are involved, inform Client about children's issues and needs in divorce and separation setting and possible referral to child specialist.
 - g. Discuss roles of other professionals and make recommendations.
- 2. Individual work with Client
 - a. Assist Client in reducing anxiety (future focus)
 - b. Identify and prioritize needs
 - c. Assist Client in identifying long and short term goals
 - d. Assist in promoting communication in safe environment
- 3. Process Facilitation
 - a. Co-manage meeting with Collaborative counterpart
 - b. Assist with setting agenda to discuss identified goals, needs and interests

V. Terms of Representation - Retainer Agreement

- 1. Commitment to honesty, constructive problem solving efforts and mutual respect for people and the integrity of the process.
- 2. Scope of Representation
 - a. Limited purpose retention solely to reach comprehensive agreement with spouse. Attorney will not represent Client in any adversarial proceedings or assist in litigation.
 - b. Attorney will not be called as witness in litigation against spouse and will not provide evidence.
 - c. Client can terminate Collaborative Process at any time and seek remedies through court but that will end the representation.

- d. If spouse elect to go to court that will also terminate the representation.
 - e. Attorney will not file an appearance and be attorney of record except for purposes of filing the Judgment.
3. Disclosure
- a. During Collaborative Process, Client gives up right to formally object to production of any discovery to the other side
 - b. Client commits to producing any documentation requested by Attorney that Attorney deems non-privileged, non-confidential, relevant, material and the kind of information a reasonable decision maker would want to have available in order to make an informed decision on an Issue in their family law case.
 - c. Client commits to making full disclosure regarding nature, extent and value and all developments impacting income, assets and liabilities.
 - d. Client authorizes Attorney to make such disclosures to collaborative counsel and spouse as Attorney, in his/her sole discretion, deems necessary.
 - e. Client's persistent failure/refusal to provide disclosure requested by Attorney will be deemed constructive termination of Collaborative Process.
4. Good Faith
- a. Success of Collaborative Practice depends on good-faith of the parties
 - b. No attorney can guarantee the good faith conduct of their client
 - c. Attorney commits to alerting client of any suspicion of bad faith and recommends terminating process.
 - d. Client commits to acting in good-faith and if Attorney perceives that Client is not honoring that commitment then Client authorizes Attorney to terminate the process.

VI. Participation Agreement

- 1. Goals**
 - a. Parties resolving their issues without litigation**
 - b. Commit to honestly, Integrity, cooperation and professionalism**
 - c. Considering all possible options to maximize opportunities for settlement**
 - d. Reach settlement in most amicable way possible**
- 2. No Court Intervention**
 - a. Commit to settle disputes without court**
 - b. Commit to full, honest and timely disclosure without formal discovery and promptly update information**
 - c. Commit to open face-to-face negotiations with attorneys and clients present In order to engage In discussions in furtherance of reaching settlement**
- 3. Cautions**
 - a. No guarantee of success**
 - b. Success depends on good-faith, honesty and integrity of all parties and the process cannot protect against dishonesty and bad-faith**
 - c. During Collaborative Process, waive right to formal discovery such as Interrogatories, subpoenas, depositions. No hearings. Use common expert instead of each party using their own experts.**
 - d. Collaborative Process Involves vigorous good faith negotiation and each attorney has a professional duty to represent the interest of her/his client competently and diligently and to advocate for her/his client form an interest based, problem solving model of negotiation.**

- e. Despite best efforts, an acceptable agreement may not be reached and one or both parties may terminate the process at any time. If that happens, both parties would have to withdraw.
4. Integrity and Good Faith
- a. Protect privacy, respect and dignity of all involved
 - b. High standard of integrity, not take advantage of other parties' mistakes or misunderstanding
 - c. Inform other party of any significant changes in current circumstances
 - d. Each party will take reasoned position in all disputes and use best efforts to create proposals to meet needs of entire family.
 - e. Will not threaten litigation to force settlement
5. Professionals - each attorney is independent from the other and each represents only one party
6. Confidentiality - parties agree that discussions between all parties, attorneys and other professional team members and any documents produced by any of them will be deemed privileged settlement negotiations and, therefore, unless agreed otherwise, will not be disclosed or subject to discovery.
7. Children's Issues - the parties will make every effort to reach amicable solutions that promote the best interest of the children.

VII. Evaluating Candidate for Collaborative Divorce

- 1. Consider goals - include respectful treatment, preservation of relationship, prioritize children's interests, control over outcome and willing to work to maintain that control rather than letting outcome be decided by court.
- 2. Past Conduct - able to sit in a face to face meeting, cooperate
- 3. Ready to participate in dispute resolution process, emotionally
- 4. Belief in trustworthiness of spouse

5. Any information client unwilling to share that is relevant to dispute
6. History of coercive or violent behavior
7. Particularly difficult issues to resolve (fraud, IRS issues, physical or mental abuse of kids)
8. Spouse's attorney is collaboratively trained
9. Willing to participate in voluntary disclosure of all relevant information
10. Client's ability to express needs and interests and listen actively to spouse's concerns and interests.
11. Any factors that would undermine client/spouse ability to make reasonable decisions (substance abuse, mental illness, fear/coercion)
12. Discuss client expectations as to process and timing.

VIII. Collaborative Divorce - An Overview of the Process

1. Meet with client to evaluation if appropriate for Collaborative Divorce
2. Discuss Collaborative Divorce with Client If determine that Client would be appropriate candidate
3. Explain Retainer Agreement and Participation Agreement to Client
4. Sign Retainer Agreement
5. First Meeting Between Attorneys
 - a. Discuss philosophy
 - b. Share basic data
 - c. Confirm both parties received Participation Agreement
 - d. Come to agreement on inclusion of team members (divorce coach, financial neutral, child's representative)
 - e. Set Agenda for first meeting (location, time, date, participation agreement, urgent concerns)
Identify who takes notes.
 - f. Discuss use of flow chart, flip chart or white board
6. First Group Meeting

- a. Introduce Everyone at the Meeting
 - b. Review Main Principles of Participation Agreement
 - c. Discuss why parties chose Collaborative Process, and identify concerns and fears about the process
 - d. Generate list of tasks to be performed and who will perform them (gathering financial information and preparing budget/asset forms)
 - e. Identify/address any immediate concerns
 - f. Set additional meeting times/locations
7. Informational Gathering and Exchange Meetings
- a. Collect all information impacting the case, including all financial information
 - b. Determine value of all assets and debts (including real estate, retirement, business and tangible property)
 - c. Cash flow - income and expenses of both parties
 - d. Health information of both parties and children
 - e. Special issues relating to children
8. Planning and Solutions Team Meeting
- a. Parenting Agreement - custody, visitation, holidays, vacations, health, education and religion
 - b. Marital Settlement Agreement - allocation of assets and liabilities and address support, maintenance and child support and tax Issue
9. Meetings-Generally
- a. Set an Agenda and distribute to all parties
 - b. Model behavior you hope parties will follow
 - I. interest based negotiation and negotiating transparency
 - If. work cooperatively to obtain and share information and use that information to explore options

- c. expect and handle emotions by refocusing conversation back to agenda issues
 - d. identify long and short term goals and Interests that motivate goals
 - e. After each meeting, prepare minutes and distribute to all parties so everyone is on the same page as to discussions and agreements reached at the meeting.
10. Draft and Revise Documents and reach agreement on final drafts, JPA and MSA are signed
 11. Appear in Court for Prove Up end Entry of Judgment

IX. Role of Team Members

A. Benefits of a Team

1. Collaboratively trained professionals specially trained to focus on parties' needs, including emotional issues that develop in trying to manage divorce process, issues with children and parenting and financial issues.
2. Level playing field and achieve efficiency and neutrality when using one set of experts
3. Models team work and cooperation for the parties
4. Focus on common purpose of achieving the best result for the family.

B. Role of Coach

1. Not couples therapy - specific function to help couples focus and stay engaged in collaborative divorce process.
2. Facilitates positive and healthy communication
3. Assists in decreasing couples' stress and anxiety.
4. Assists in ensuring that meetings move forward productively by facilitating positive discussion.
5. Assists in trust building to a sufficient level such that parties can maintain relationship as divorced parents to continue to communicate and co-parent.

C. Role of Child Specialist



1. Gives child a voice in the divorce process
 2. Addresses child's anxiety and uncertainty about the process and what will happen to the family
 3. Provides support and comfort for the child
 4. Express child's concerns to parents
 5. Provides information to parents so they can make better decisions
 6. Helps develop co-parenting skills
 7. Addresses potential issues with co-parenting
- Helps develop parenting, holiday, vacation

schedule

D. Role of Financial Neutral

1. Gathers client's financial data and prepares cash flow analysis
2. Meets with clients and educates clients about financial consequences of various settlement options
3. Manages financial expectations of clients
4. Assists clients with developing a budget for each separate household
5. Identifies and evaluates tax consequences of different settlement options
6. Illustrates long term financial objectives
7. Creates options
8. Mediates/facilitates financial decisions

X. Case Examples

A. Bob - Life Insurance - Example of Creative Problem Solving

1. Rather than spending money on life insurance to secure maintenance obligation, Bob bought an annuity which was the most secure option for his wife and much less costly for him

B. Hockey Puck Case - Importance of Child Rep

1. Couple told Child Rep their son was OK. Child drew picture of hockey game for Child Rep and told her he was the puck.
2. Child Rep assisted couple in understanding child's concerns and refocused

parents on how to

manage their relationship and communication to put child's needs first.

C. Richard and Ellen

1. Richard's infidelity was huge breach of trust for Ellen. She had conflicting instincts of making Richard pay and avoiding bitter divorce that she saw devastate too many other families. Also, Ellen was concerned that Richard was financially sophisticated and wanted someone to help her understand the finances.
2. Richard wanted an amicable process to minimize pain for his family. He did not believe in therapy but realized that having help navigate Ellen's anger would be critical to an amicable process. Richard wanted an attorney that would represent his goals and he wanted to avoid court
3. By using Collaborative Divorce, Ellen had the support of a financial neutral that made the financial settlement understandable to Ellen and comfortable for both parties and the coach assisted Ellen process her feelings of anger. With the support of the Collaborative team, the parties were able to craft future oriented settlement where both parties felt comfortable about their financial future and a parenting plan that put their children's needs first.