

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Collaborative Law: What To Expect During The First Meeting

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Collaborative Law is a process for settling family disputes with the help and guidance of attorneys but with an agreement not to go to court. The parties agree to resolve their differences in an honest and dignified manner that remains private and confidential.

In the litigation process, the parties meet separately with their attorneys for months before ever communicating with each other in court. The early stages of litigation often include a "race to the bottom" as the parties prepare pleadings complaining of the misconduct and failings of the other party. In an effort to impress a judge that their client is better, the attorneys further polarize the parties by their incendiary claims. (Often, the only people who are moved by these pleadings are the parties themselves!)

In Collaborative Law, after an initial meeting with their attorney the parties come together for a meeting at an attorney's office for the first "four-way conference" which includes the husband, the wife and their respective attorneys.

At the first meeting there is no discussion of the substance of the case. The first meeting is reserved for discussing the process of how the matter will be settled.

After introductions around the table, the parties discuss the reasons why they want to proceed with the Collaborative Law process. They often tell each other that they have chosen Collaborative Law because they care about the ongoing relationship that each party will have with the children and a desire to make the transition as painless as possible. Even when there has been great pain in the relationship, the parties are encouraged to focus on the future rather than the past.

The parties review a Collaborative Law participation agreement which is a contract that will be signed by both parties and their attorneys. The participation agreement is their agreement to work honestly and cooperatively to bring all of the necessary information to the table and to cooperate in working on a settlement.

The participation agreement includes a pledge not to have the case resolved by a court. In the event the matter is not resolved by the parties at the table, both attorneys would be disqualified from representing the parties in court.

The "disqualification provision" is difficult for some attorneys to accept. They feel that their role as a negotiator should not prevent them from being a litigator as well. What I have found is that the disqualification provision is a key part of collaborative process and it keeps the parties and their attorneys at the table looking for creative solutions instead of giving up the control to a judge.

At the first meeting we also review the ground rules for the Collaborative Law process.

- ◆ We agree to "attack the problems and concerns at hand, not

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each other."

- ◆ We discuss how we will avoid taking positions but rather express ourselves in terms of needs and interests.

- ◆ We agree not to interrupt each other and give assurance that everyone will have a chance to speak.

- ◆ One of the ground rules is to avoid making personal attacks. Instead, we use "I" statements to show what effects certain situations would have on the individual rather than to assign blame.

- ◆ If the parties have a complaint, they are encouraged to raise it as a concern and then follow up with a constructive suggestion.

- ◆ Parties are encouraged to listen to what the other person is saying without being judgmental about the speaker or about the message.

- ◆ The parties have to be willing to commit the time required to meet regularly and be prepared for each meeting. If the parties have not done their homework in gathering information or developing new options for settlement, the meetings may not be fruitful.

The effect of the first Collaborative meeting is completely different than the initial contact in litigation. In litigation both parties usually leave the first meeting in court or deposition feeling stunned, annoyed and threatened by the process. The plan for the first Collaborative meeting is to give the parties a sense of trust and cooperation and a sense that we will be working together for a solution.

At the first meeting we can identify and resolve some immediate concerns. Although we try not to get into the substance of the case at the first meeting, if there are emergencies, they can be handled quickly.

We prepare an agenda for the next meetings which will include a review of the assets and liabilities and a discussion of the order in which they wish to discuss their issues. These generally start with issues regarding the children and the marital residence.

We set up a schedule for the next two or three meetings. We try to schedule the meetings approximately two weeks apart so that each party is able to bring information back to the table and has the energy to work on the matter. Instead of being delayed by the schedule of the court system, the parties have the ability to settle their case as quickly or as slowly as they need.

The first meeting in Collaborative Law is designed to focus everyone on the procedure that we will follow. The attorneys are there to represent their clients but also to control the process. Just as a house is built from the ground up, we try to establish a strong foundation of procedure to carry us through the difficult emotional and practical effects of the Collaborative Law settlement.

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