

## **What To Expect When Working With A Collaborative Attorney**

A premise of Collaborative Practice is that clients are best served by working with people who are trained experts in their field. A divorce involves “uncoupling” in three areas:

Emotional / Family Restructuring

Financial

Legal

This handout explains the role of the Collaborative Attorney and what clients should expect when working with their attorney in a Collaborative Case.

In Washington State, a statute, RCW 7.77, codifies the Uniform Collaborative Law Act. Pursuant to that statute a Collaborative case requires:

Two Parties;

Each Represented by their own Attorney; and

A Signed Participation Agreement with a Disqualification Provision.

These requirements are exclusive to the Collaborative Process and make this process unique among other legal processes available for clients to select.

The Disqualification Clause is an essential element of the Collaborative Process as it increases the level of trust in what is referred to as the Collaborative Container. Knowing that both attorneys are committed to full disclosure, good faith negotiations, and to taking no contested action in court allows the parties to speak openly without fear that what they say will be used against them in the event the Collaborative Process results in Termination, rather than Resolution.

### **A. Commitment of Your Collaborative Attorney**

Your Collaborative Attorney is committed to helping you and your spouse through the Collaborative Process by supporting you in the following aspects of the Collaborative Process:

1. Full Disclosure of Information.
  - a. The Collaborative Process requires the full and affirmative disclosure of all Material Information whether or not requested.

- b. The Collaborative Process requires that clients and professionals comply with all reasonable requests for information.

## 2. Advocacy in the Collaborative Process.

Your Collaborative Attorney will not advocate for you to “win” because if you “win” someone has to lose. Instead, advocacy by your attorney in the Collaborative Process incorporates the following elements:

- a. Making sure that your decision is based on your having all information needed for you to make an informed decision, including your understanding of the law underlying the issues related to your conflict and what a probable result would be if the matter were to go to court for a judge to make a decision;
- b. Respecting your right to self-determination, recognizing that ultimately you and your spouse are responsible for making the decisions that resolve your issues;
- c. Assisting you in establishing realistic expectations because unrealistic expectations can increase conflict, and the more conflict, the higher your invoice from your Collaborative Attorney will be;
- d. Encouraging you to consider the impact of your decisions on your dependents, in cases that relate to the care and support of children, elders, or other dependents;
- e. Considering the impact your Collaborative Attorney’s experiences, values, opinions, beliefs, and behaviors will have on the Collaborative matter, and endeavoring to separate them from your unique situation;
- f. Avoiding contributing to any interpersonal conflict you have with your spouse, including when identifying and discussing your respective interests and concerns.

## 3. Good Faith Negotiation.

Your Collaborative Attorney will be active in making sure that the Collaborative Process is a safe place for you to do the work needed to reach a resolution.

- a. Your Collaborative Attorney will act in good faith in all negotiations and in the Collaborative Process and will assist you in complying with the Collaborative Process’ good faith negotiation requirement.
- b. Good faith negotiation requires that:
  - (1) Each client and professional takes a thoughtful and constructive approach on all unresolved questions in the interest of reaching agreements.
  - (2) Each client and professional complies with the Participation Agreement

and any other formal and informal agreements made in the Collaborative Process.

- (3) No client or professional takes advantage of inconsistencies, misunderstandings, miscalculations, omissions, or inaccurate assertions of fact, law or expert opinion.
- (4) No client or professional threatens to undertake a Proceeding to coerce a particular outcome on an issue to be resolved by the Collaborative Process.

## **B. Collaborative Attorney Support**

The quality of the relationship between the Collaborative Client and the Collaborative Attorney has a direct relation to the quality of the work done in the Collaborative Process. Whether a Collaborative Attorney has had one hundred Collaborative cases or one Collaborative case, you should expect the following from your Collaborative Attorney:

### **1. Information**

Your decisions made in the Collaborative Process, starting before you choose the Process and ending in your Resolution, are based on informed consent and full disclosure. You deserve to have good information on which to base your decisions and to have your questions answered. Your Collaborative Attorney will help you get that information, explaining any costs associated with that task.

Even when choosing the Collaborative Process, some clients want to know what they are “entitled” to under the law, or what a court would do.

In the Collaborative Process there is an ethical duty for your Collaborative Attorney to inform you in these areas. Instead of there being a question of whether to provide this information, the real question is “when” to provide this information.

Do not expect to be provided answers to these questions in your initial consultation or even in the beginning of the Collaborative Process. This information will be provided when the Professional Team (Attorneys, Coach, and Financial Neutral) determine the time is right for providing the information, which will then be provided in a Team meeting rather than separately with each attorney.

Creating unrealistic or conflicting expectations by providing this information separately or too early in the Process can create conflict, pushing clients further apart and reducing the likelihood of a Durable Resolution. For instance, if Client A is told by Client A’s attorney that Client A is entitled to A + A + A, and Client B is told by Client B’s attorney that Client B is entitled to B + B + B, a Resolution becomes difficult.

An appropriate scenario is that later in the Process, after you, the clients, have received sufficient information to start creating your parenting plan and / or financial settlement, the time will come for you to hear information about the effect of “the law” on your

negotiations. Rather than each client hearing the information separately, this information will be provided during a Team meeting, so that each client gets to hear, for the first time, this information not only from their attorney, but from the other attorney as well. We have found that presenting this information in this manner is more cost effective and time efficient and lowers the risk of creating conflict between the parties.

## 2. Diligence

Timely communication and the timely sharing of information are essential to the success of the Collaborative Process. Your Collaborative Attorney knows that untimely communication or an unexplained delay in providing work product reduces the level of trust between you which, in turn, has a negative impact on your working relationship.

Note the difference if your Collaborative Attorney does not live up to this expectation, or if you, the Client, falls short. In the first instance, you may then feel that you cannot rely on your Attorney. For the Attorney, the Client's falling short increases the cost of the Process and by slowing momentum may impact the Client's experience with the Process.

## 3. Preparation

Preparation is needed for every step of the Process. Your Collaborative Attorney will prepare you for every step of the process, either through in person meetings, video meetings, or phone conversations. These meetings can vary from ten minutes to an hour or more, depending on the needs of the Client. A lack of preparation for meetings is a sure way to drive up the cost of the Process.

## 4. Support

Your Collaborative Attorney advocates for you in a different manner in the Collaborative Process than in a traditional legal proceeding. Your conversations with your Collaborative Attorney often focus on the well-being of you, your children, and even your soon-to-be ex-partner. This is because your Collaborative Attorney knows that your best, most durable result is one that incorporates as much as possible of what is important for you and for your partner as well. In this way, you each can say that you treated the other person fairly, and that you were treated fairly by the other person. In supporting you through this Process, your Collaborative Attorney may suggest counseling, exercise, and other personal tending to help you be in a place where you can make the best decisions.