

What is the Collaborative Process?

The Collaborative Process is a transparent practice, distinct from other dispute resolution models, that allows clients, attorneys, and other professional participants to meet together to help clients resolve their disputes in a civil and respectful manner. The process occurs in a safe environment with each client represented by a collaboratively trained attorney. The attorneys are advocates for their clients but they do not act in an adversarial manner. The clients agree to work together honestly, in good faith, and to disclose all relevant information. The goal is to reach a settlement that meets their needs and interests, and the interests of their children.

All of the professionals are committed to the process. Commitment to the process by clients is a key component for a successful result. Their commitment keeps them in the process and provides the impetus for them to work toward total settlement of the issues. Creative energy evolves as the team works together and the process moves forward.

The process employs a problem solving technique known as interest based negotiation. The purpose is to reach agreements on issues that meet the needs and the interests of each party. All negotiations occur in informal meetings in an environment conducive to collaboration. The professionals model behavior for the clients. Threats, positioning, intimidation, and hostile language have no place in the Collaborative Process. If the matter does not settle, both attorneys must withdraw and cannot represent their clients in contested litigation.

The clients have the freedom to be heard in the Collaborative Process and to openly address their specific needs and interests. When each client has the opportunity to share their perceptions of issues it allows for discussions that can only occur in the Collaborative conference setting.

Since a dissolution of marriage is comprised of legal, emotional, and financial issues the practice of law has been enhanced for the Collaborative attorneys with the participation of neutral mental health (MHP) and financial professionals (FP).

After the attorneys have each met with their respective clients, the attorneys contact the mental health professional (MHP), a neutral participant in the process, and let the MHP know that the clients will be calling to schedule appointments. The MHP then schedules one or more meetings with the parties before the first team meeting to gain some insight into the dynamics of the clients' relationship and to assess their ability to communicate with each other. The MHP explains the role of the MHP and emphasizes that therapy is not provided as part of their role. The MHP helps the parties move forward in the process through the development of better communication skills and helps craft the Parenting Plan with the input of the clients

The MHP then contacts the attorneys in a joint teleconference to discuss any "hot button" issues gleaned from the meetings with the clients and to schedule the first team meeting. An agenda is agreed upon which will be followed during the team meeting. Agendas are necessary for all team meetings to keep all participants on task.

When appropriate, a neutral financial professional is engaged in the process. The FP's role is determined by the parties' needs and the facts and issues of the matter. The role of the FP can be as limited or as extensive as agreed to by the parties. Financial information is provided to the FP. The attorneys and/or clients confer with the FP to provide an overview of the issues in the matter.

The parties will meet with the FP as apprised. The FP contacts the attorneys after meeting with the clients and discusses any issues that have been raised by either party and any additional documents or information needed from either or both parties. After reviewing all of the financial information, and preparing various schedules, the information is provided to everyone to review at the next team meeting.

The first team meeting allows the attorneys, clients, neutral financial professional and MHP to commence their work together with the first order of business being the review of the Participation Agreement, which is the contract that governs the Collaborative Process. Once the Participation Agreement is read and signed by all participants, there is a discussion about the appropriate and allowable behavior throughout the process. The parties have the opportunity to discuss their specific short term and long-term goals, needs and interests and their immediate concerns are addressed as well.

It is the obligation of all the professionals to create a safe environment for both clients. The clients need to be able to work in an environment that is free of threats, positioning and intimidation. They have an opportunity in the process to be heard and to express their view of the various issues. Listening is critical since each party's perception of the same issue may differ, sometimes widely, and it is essential that the view of each party is heard and absorbed by all participants, especially the other party. Paying careful attention and listening to the other party allows for open and productive discussions and helps the clients move forward and progress toward settlement.

Informed consent by the clients is essential, especially since attorneys are bound by the Florida Rules of Professional Conduct 4-1.19. It is the attorney's obligation to clearly explain to the client the various processes available to pursue a dissolution of marriage and to distinguish each model. Further, the process requires that the attorneys must withdraw if one of the clients wants to pursue litigation.

There may be several meetings with the FP and, if necessary, a mediator may be brought in to assist the parties in reaching settlement. Once a final settlement is reached, an agreement is drafted, the parties file a Joint Petition for Dissolution of Marriage and Joint Answer and the matter is scheduled for an uncontested final hearing.