



# COLLABORATIVE LAW

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# Overview

1. What is the Collaborative process?
2. History
3. Advantages
4. Determining whether Collaborative is a good fit
5. Challenges
6. Process specifics
7. Team members and their roles
8. Resources and trainings
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# What is the Collaborative Process?

- No court
- Open exchange of information and shared experts
- Mutual respect for shared and individual goals
- Respectful Communication

# History and Development

*“ Collaborative Law came about through desperation! In the late ‘80s, after practicing traditional civil law for eight years and family law for an additional seventeen years, I was approaching burn-out. I hated the adversarial nature of my practice, hated to go to work in the morning.”*

Stu Webb, Minneapolis, Minnesota

# History and Development

- ▶ Paradigm Shift, focus on “highest goals”
- ▶ Addition of team approach in the 1990s
- ▶ American Institute of Collaborative Professionals, 1999
- ▶ International Association of Collaborative Professionals, 2000
- ▶ IACP now has over 5,000 members in 24 countries
- ▶ Growth via many local and statewide practice groups



# Advantages

- ▶ Preservation of relationships/civility
- ▶ Flexible timing
- ▶ Privacy
- ▶ Efficiency
- ▶ Goal-oriented and interest based, not position based
- ▶ Supportive
- ▶ Team approach allows professionals to focus on what they're trained in
- ▶ Can be less expensive than litigation
- ▶ Client experiences (2015 data from the International Association of Collaborative Professionals indicate 94% of cases reach full settlement with high rates of client satisfaction)
- ▶ Minimize ongoing conflict



# Advantages

*Minimize impact of ongoing conflict on children*

- Negative impacts of high conflict on children
  - Emotional and behavioral problems
  - Higher frequency of illness
  - Some problems last into adulthood
- Symptoms
  - Abrupt change in personality
  - Regression
  - Depression
  - Frequent crying
  - Anxiety
  - Phobia
  - Sleep disturbance
  - Social withdrawal, school resistance
  - Low self-esteem, self-blame
  - Anger, hostility, antisocial behavior

Taken from "Minimizing Conflict for Children in Family Law Cases," Presentation to Monroe County Bench-Bar Conference by Larry Barnhill, PhD, et. al February 2010.\*



# Advantages

*Minimize Impacts of ongoing conflict on parents*

- ▶ Negative impacts of high conflict on parents
  - ▶ Impaired parenting, generally
  - ▶ Depression, anxiety, anger problems
  - ▶ Intensified personality problems
  - ▶ Increased likelihood of domestic violence
  - ▶ Increased frequency of substance abuse
  - ▶ Intensified mistrust of other parent
  - ▶ Distorted memories/perceptions of other parent
  - ▶ Overly anxious and protective of children
  - ▶ Places children in double bind – pleasing one parent hurts the other
  - ▶ Others

Taken from "Minimizing Conflict for Children in Family Law Cases," Presentation to Monroe County Bench-Bar Conference by Larry Barnhill, PhD, et. al February 2010.\*



# How does Collaborative minimize conflict?

- ▶ Allows parents to discuss and plan for how to tell children about divorce
- ▶ Focus on future relationships sets the stage for healthier co-parenting relationship
- ▶ Can bring children's voice to the process without a GAL or in camera interview via a Child Specialist
- ▶ Professionals re-direct conversation to children's best interests and established goals



## When is Collaborative appropriate?

- ▶ Clients' choice
- ▶ No agreement needed in advance
- ▶ High conflict not an absolute barrier
- ▶ Where continued goodwill and mutual respect are important
- ▶ Where both parties want to minimize "emotional fallout"
- ▶ Where parents have skills, resources, and outlet to deal with grief and sadness other than through court process
- ▶ Not ideal where there is disregard or a lack of goodwill
- ▶ Other areas of law?



# Pre-filing factors that make Collaborative more difficult

- ▶ Unilateral action
- ▶ No cooperation
- ▶ Extreme lack of empathy for other party
- ▶ Power imbalance
- ▶ Invasion of privacy
- ▶ Verbal Abuse
- ▶ Unrealistic expectations
- ▶ Attributing little or no value to contributions of the other party

From International Association of Collaborative Professionals, *IACP RESEARCH REPORT NO. 3 DIFFICULT AND TERMINATED CASES DATA AS OF AUGUST 24, 2009*



# Challenges to the Collaborative Process

- ▶ Breakdown is very uncommon
- ▶ Violation of participation agreement
- ▶ Hiding information
- ▶ Threatening court
- ▶ Abusing children
- ▶ Advice by third parties (friends or family?)

# Team Members

- ▶ Attorneys
- ▶ Mental Health Professional
- ▶ Financial Professional



# Process Specifics

- ▶ Initiation
- ▶ Local rule
- ▶ Participation agreement/joint stipulation
- ▶ Vary from community to community and especially state to state



# Mental Health Neutral

- ▶ Coach/Family Specialist
  - ▶ Child Specialist
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# Divorce Coach/Family Specialist

- ▶ Help with processing and managing emotions
- ▶ Reducing stress
- ▶ Improving communication
- ▶ Providing an outlet for the “elephant in the room”
- ▶ Helping to resolve conflicts, including co-parenting issues, helping to develop detailed co-parenting plan if appropriate
- ▶ Providing information to attorneys and other team members about communication styles, family dynamics, possible obstacles to the process
- ▶ Facilitate meetings, support all voices being heard
- ▶ Referral to other providers
- ▶ Not a therapeutic role; insurance does not apply
- ▶ What does neutrality mean?
- ▶ Is having a mental health neutral cost effective?

*Adapted from “Divorce Coaching in Collaborative Divorce,” Presentation by Kris Sullivan et. al to Bloomington Meadows Hospital, January 20, 2015.*



# Child Specialist

- ▶ Meet with child individually
  - ▶ Bring child's concerns to the table at Collaborative meetings
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# Financial Neutral

- ▶ Beyond an equal or equitable distribution
  - ▶ Consider mix of assets and debts
  - ▶ Goal-oriented: Do the assets meet your needs now? Will they allow you to meet your goals for retirement, children, college?
- ▶ Prepare for financial future
  - ▶ College savings
  - ▶ Retirement
  - ▶ Immediate income and expenses
- ▶ What does neutrality mean?



## Process Specifics:

## Common pattern

- Tentative agreement to Collaborative
- Agree on Mental Health Professional
- Individual meetings with Mental Health Professional
- Conference call
- First Team Meeting



# First Team Meeting

- ▶ Collaborative Participation Agreement
- ▶ Joint Petition, Stipulation and Order
- ▶ Goals
- ▶ Provisional issues
- ▶ Homework
- ▶ Schedule next steps (team meeting, neutral meetings, something else?)



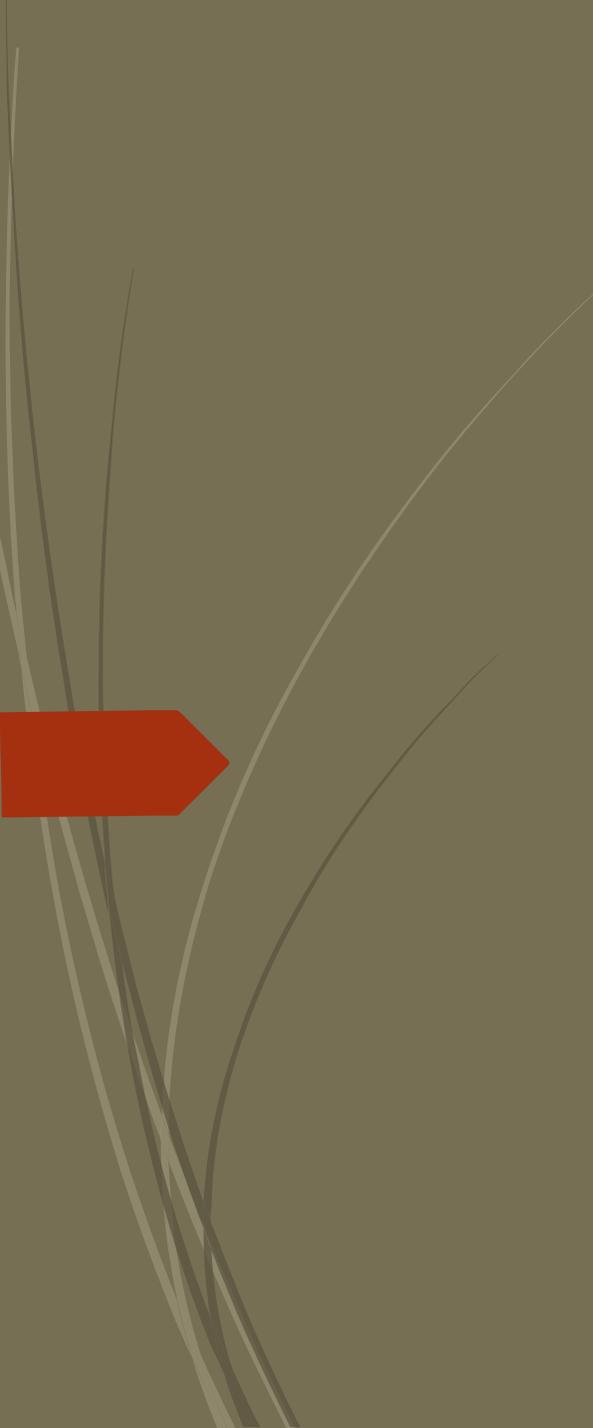
# Subsequent Team Meetings

- ▶ Including parties, attorneys, neutrals
  - ▶ Working toward goal-oriented settlement
  - ▶ Final meeting to review agreement in detail and sign
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# Resources and Trainings

- ▶ Collaborativedivorce.com (International Association of Collaborative Professionals)
- ▶ Bloomingtoncollaborative.org (Bloomington Association of Collaborative Professionals)
- ▶ Webb, Stuart & Ron Ousky, The Collaborative Way to Divorce: The Revolutionary Method That Results in Less Stress, Lower Costs, and Happier Kids--Without Going to Court, 2007.
- ▶ Upcoming ICLEF/IACP Trainings



Questions?



## Sources cited by Barnhill, 2010\*

- ▶ Baris, M. A., Coates, C., Duvall, B.B., & Garrity, C.B. (2000). Working with High Conflict Families of Divorce. New Jersey, Jason Aronson.
  - ▶ Garrity, C.B., & Baris, M.A. (1994). Caught in the Middle: Protecting the Children of High-Conflict Divorce. New York, Lexington.
  - ▶ Johnston, J., Roseby, V., & Kuehnle, K. (2009). In the Name of the Child: A Developmental Approach to Understanding and Helping Children of High Conflict and Violent Divorce. 2<sup>nd</sup> Ed. New York, Free Press.
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