

By: **Lisa Collins Werner**
Consensus Mediation Group



Collaborative Law- *A New Tool for Your Legal Practice*

Collaborative law is relatively new to attorneys practicing in Tennessee but has been used successfully in other states for many years. Collaborative law can be used in several areas of practice: business, estate planning, and real estate, but is primarily practiced in the area of divorce.

The collaborative practice was created in the early 1990s by a family lawyer, Stuart Webb, who saw that traditional litigation was often damaging to families. The goal of the collaborative practice is to provide long term solutions for life-long relationships. Collaborative attorneys realize that families have a past, a period of transition, and a future. The collaborative process provides a way for a couple to successfully resolve their divorce while maintaining a high level of integrity for themselves and their children. This is different from a traditional litigated divorce that can become so adversarial that the parties and their children never truly recover.

A collaborative lawyer is an attorney who has gone through a several day training program in the collaborative process. Usually these attorneys are already Rule 31 Mediators in either family law or general civil mediation. The skill sets learned in mediation training are similar to those learned in collaborative training, but the processes themselves are different. It is important that attorneys interested in a collaborative practice receive training in order to properly represent their clients.

The key document in a collaborative case is called a participation agreement. This is a limited scope representation agreement which is completely within the guidelines of professional responsibility. It is a contract signed by the participants and their attorneys which sets forth the rules for the process. The parties and lawyers agree that:

1. The lawyers will not litigate the case. If the settlement process fails and litigation is the only recourse, the original attorneys must withdraw and the parties retain new attorneys. This creates a substantial buy-in for the parties and the attorneys. As a result everyone involved is committed to finding creative ways to get the issues resolved.
2. There is no formal discovery. Everyone enters into the process in good faith and bring all of the relevant documents to the table. No party is allowed to hide any material facts or information. If it is determined later that they have, the entire agreement would be void.
3. The divorce is handled in a series of four-way meetings. Everything said in those meetings is confidential, and everyone attending is to behave in a respectful manner.

The collaborative divorce differs from a traditional divorce in that it incorporates a team approach that is tailored to the couple's needs. Joining the collaborative team may be a divorce coach or collaborative coach to assist the couple with relationship issues between themselves and their children. There can be child specialists to assist with the

children's issues. Financial experts can be part of the team as well as real estate professionals. Unlike a traditional divorce which would use competing experts, the couple agrees on which affiliated professionals should join the team and use one professional in each category.

These professional alliances benefit the clients because they are using qualified professionals to address their legal, emotional, and financial needs. The expertise of each team member is pooled to assist in creating positive solutions.

Collaborative divorces benefit clients because the focus and time is spent on assisting families to resolve problems and reach unique, creative solutions. Instead of concentrating on events of the past, the process works with a future focus. Emotional issues inhibiting the process are addressed so that decisions are made with a more enlightened self-interest. The emphasis is on the clients' common interests, not their differences. The clients are pleased that they control the process and can move ahead as quickly or as slowly as their comfort allows. The court and the judge aren't controlling the timeline.

Children are benefitted in the collaborative process because they can have a voice in the restructuring of the family system. Children's needs are kept at the forefront, and the children are insulated from the parental conflict.

There are many financial benefits to clients participating in the collaborative process. Since most of the divorce is handled in a series of four-way meetings, the clients aren't wasting their time and money for motions being drafted and the court time to argue them. The process allows all team members to talk to each other in regular meetings. This prevents hostility and costly misunderstandings. By utilizing the services of non-legal professionals who charge less per hour than attorneys, the clients are able to address emotional and financial issues in a less costly way.

The collaborative process helps teach the clients effective communication skills. When individuals are going through a divorce, they have not been communicating effectively for a long time. By educating the parties during the process to manage and contain emotions, they leave the marriage with the ability to communicate in a healthier way and to develop successful co-parenting skills. These improved conflict resolution skills are beneficial to the children while the couple is going through the divorce and as the family transitions.

Clients find satisfaction in the process because they are involved in the process every step of the way. They like that they are part of the solution rather than having their family decisions dictated to them. They also are pleased that their typical timeline for a collaborative divorce is 17 weeks versus 18 months for a contested divorce.

Collaborative divorce may not be the answer for all divorcing couples. It is, however, a very effective way for families to transition from one phase of life to another with much less damage and more satisfaction than the traditional divorce.