

## **Collaborative Mediation: The New Divorce Solution**

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Collaborative mediation is a fresh, innovative approach to divorce that is healthy, family-centered, and affordable. Collaborative mediation offers a sensible alternative to the adversarial, two lawyer divorce system for divorcing couples who instead want to make their own decisions and stay in control of their family's future. One neutral attorney-mediator and a counseling professional work collaboratively with a divorcing couple to get them over legal, financial, and emotional hurdles to reach mutually acceptable agreements. With ninety-five percent of couples finding agreement on all their issues, collaborative mediation has proven to be the new divorce solution!

### **Collaborative Mediation: The Best of Collaborative Law and Mediation**

Divorce litigation destroys families and finances. No one escapes its emotional toll, not even adult children. Over the last several decades, enlightened lawyers, marriage counselors, and financial specialists developed mediation and collaborative law as effective, private options for divorcing couples who strive to make their own decisions, protect their families, and save money and time by avoiding divorce war.

Collaborative mediation is the next big step in the evolution.

Collaborative mediation combines the best and most successful strategies of collaborative law with the pure simplicity and cost effectiveness of mediation with outstanding success. To fully appreciate the benefits and advantages of collaborative mediation, it is helpful to have a basic understanding of mediation and collaborative law.

### **Mediation**

For a long time, mediation has been the proven way most divorcing couples resolve divorce and child custody disagreements. Mediation is typically the least expensive consensual dispute resolution process available. Both spouses meet privately and confidentially with a neutral third party (a mediator) who has specialized training in facilitating communications, developing options, and negotiating agreements that work for everyone. The mediator's role is not to give legal advice or impose a decision, but instead to guide the parties to reach their own resolutions. Mediation allows divorcing spouses to make important decisions that fit their family and finances.

In many states mediation is conducted without divorce lawyers. In others, it is customary to have them present.

The downsides to divorce mediation are that in many states anyone can call himself or herself a divorce mediator even if that person has little or no training in dispute resolution. If mediation is not successful, the divorcing couple must find another way to resolve the divorce. Usually that means delay, hiring lawyers, and spending lots of money with the unfortunate result

that a judge, not the couple, will decide how much money each spouse will have and when they will see their children.

There are many positives to mediation besides low cost, ability to decide how to use lawyers, and self-determination. The settlement rate of traditional mediation is approximately eighty percent (the rate in collaborative mediation is ninety-five percent). Divorce mediation usually moves fairly quickly, unlike litigation that can drag on for years. A mediated divorce results in a legally binding written agreement that contains all the parties' agreed upon terms for property and debt division, and shared parenting. Some states allow the mediator to write the divorce decree which also saves money.

### **Collaborative Law**

Collaborative law is another private consensual dispute resolution process. The divorcing spouses must be represented by collaborative attorneys. The spouses sign a written "participation agreement" in which they pledge to:

- treat each other with respect
- consider what is most important to the other spouse in deciding issues
- voluntarily exchange relevant information and
- resist going to court

With the assistance of a team consisting of their collaborative law attorneys, and mental health, financial, and parenting professionals, the divorcing spouses attempt to resolve their disagreements in a series of private and confidential meetings. The focus in collaborative law is on improving communication between the spouses, protecting children from being put in the middle, preserving the strength and unity of the family in the face of divorce, and keeping control of the outcome in the hands of the spouses.

Collaborative law may cost less than litigation but could be equal to or more expensive depending on the complexity of the spouses' situation, the level of participation of other professionals, and how many sessions it takes to reach resolution. Around the country, the settlement rate of collaborative law cases is eighty-six percent.

*Caveat:* If divorcing spouses do not settle all issues during the collaborative law process, they cannot continue to use their collaborative attorneys and they **MUST** get new attorneys to finish the divorce. Unfortunately, for those collaborative law cases that fail, the withdrawal of collaborative lawyers can result in dramatically increased legal fees when hiring a new set of attorneys. Often the parties in this situation feel they have wasted time and valuable resources in the collaborative process without the reward of complete settlement.

Collaborative law is a better way to divorce than litigation. There are many positive attributes, especially its concern for the welfare of the family. But for those who cannot afford the full collaborative team, fear losing their lawyers if they do not settle, or who want to do their negotiations themselves with professional help but without lawyers, collaborative law is not the best fit.

## **Collaborative Mediation**

Collaborative mediation is the new divorce solution. Collaborative mediation takes the best parts of mediation and collaborative law and combines them into one streamlined process that can be more satisfying and effective than either process taken alone. The integration has yielded a better than expected collaborative mediation settlement rate. Ninety-five percent of collaborative mediation clients resolve all their issues and at a lower cost than collaborative law or litigation.

Collaborative mediation sessions are co-conducted by two professional mediators - a neutral family law attorney and a marriage/family counselor. Unlike collaborative law where the joint meetings are conducted by the spouses' collaborative lawyers, in collaborative mediation a single neutral attorney-mediator guides the couple through the legal decisions they must complete for a valid divorce, and educates about the law without providing legal advice or taking sides. The marriage/family counselor manages emotions and teaches a new way to communicate without doing therapy.

The unique co-mediator team helps spouses gather relevant information, develop options for property division and shared parenting if they have children, and negotiate agreements acceptable to both of them. Instead of requiring all other professionals to attend the settlement meetings at the same time like often happens in collaborative law, the financial, tax, real estate, child, and parenting specialists in a collaborative mediator's resource network selectively participate in the mediation sessions when and if the spouses and the mediators feel it would be beneficial. Doing it this way saves lots of money and still makes their expertise readily available.

Collaborative mediation retains from mediation:

- Neutral mediators to facilitate parties' negotiations (an attorney-mediator with the valuable addition of a marriage/family counselor to manage emotions)
- Parties' ability to decide whether to bring divorce lawyers or to represent themselves
- Control over cost
- Efficiency and expediency

Collaborative mediation adopts from collaborative law the goals of:

- Positive future family relationships
- Reducing conflict between parents to ensure children's well-being
- Respectful and constructive communications and negotiations
- Preserving spouses' financial and emotional health

From a process perspective, collaborative mediation mirrors collaborative law with:

- Full financial disclosure
- A (shortened) participation agreement in which spouses agree to avoid court
- Respectful consideration of each spouse's needs using interest based negotiation

- Structured negotiation steps (referred to in collaborative mediation as the five steps to finding T.R.U.C.E.)
- A team approach - but with a smaller team of a single attorney-mediator and a marriage/family counselor present and others offline

### **Differences Between Collaborative Law and Collaborative Mediation**

A very important difference between collaborative mediation and collaborative law is how attorneys participate and what happens if the spouses do not resolve all their issues. As mentioned above, collaborative law requires spouses to have collaborative divorce lawyers whom they must replace if the spouses are not successful in settling everything in the collaborative law process.

In contrast, a party to collaborative mediation is not required to have legal counsel. A spouse who does have a divorce lawyer, on the lawyer's advice and using his or her own good judgment, can decide if the divorce lawyer will attend one or more collaborative mediation sessions. The client may decide instead to ask the lawyer to assist offline to counsel him or her toward an amicable resolution, develop options, review agreements, and do legal paperwork.

If there is no settlement in collaborative mediation, the spouses may continue to use the same lawyers throughout, even if their lawyers are trained in collaborative law. Having control over the involvement of the lawyers in collaborative mediation significantly improves the couple's ability to control the cost of the divorce. For those clients who fear lawyers will "stir the pot", their ability to decide the lawyer's role in collaborative mediation ensures that any conflict will be of their own creation, not their lawyers'.

In summary, savvy divorcing families, collaborative lawyers, divorce financial advisors, judges, counselors, and other professionals whose practices serve families have applauded collaborative mediation as a fresh innovation in cost effective, client-centered, family-friendly divorce. Collaborative mediation has proven itself to be an attractive new solution for divorcing spouses who want to focus toward positive independent lives with their emotional and financial stability - and their family - still intact. For divorce and family professionals, it has also opened the door to a more fulfilling and satisfying practice.

Attorney Stacey Langenbahn, J.D. is a [professional family mediator](#) who developed collaborative mediation after practicing law for more than two decades. She is an accomplished civil and family trial lawyer, a pioneer in collaborative law, and founder of Detente Collaborative Mediation for Family Law, LLC in Southlake, Texas. [Contact us](#) and learn more about the advantages of collaborative law at [DivorceMediationTexas.com](#).

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