

The information contained here is by no means a fully comprehensive discussion of Collaboration. It is provided for informational purposes only. Since it is not possible to address all features of Collaboration here, inquiries are invited by request. Please feel free to send an online request, or to call the office, for more information.

Similarities Between Mediation and Collaboration

Like Mediation, Collaboration involves specially trained professionals. The process requires cooperation between the parties to negotiate, in good faith, in order to craft their own settlement terms in a way which is most advantageous to all parties involved.

Both Mediation and Collaboration presume a level of ongoing respect between the parties. Each process is used in a way so as to preserve some form of ongoing relationship between the parties which is meant to survive once the dispute has been resolved.

When agreement is reached on a particular point, it is memorialized in a written document which may become part of the Settlement Agreement.

Practically speaking, the process of Collaboration itself may also appear very similar to Mediation. That is, each require the parties to sign a Participation Agreement, (*in this case, a Collaborative Agreement*), which they have the ability to revoke at any time during the process. As with Mediation, if the Collaborative Process ends prematurely, the parties are free to move their dispute to Court.

And, as in Mediation, any participant is free to abandon the process at any time it becomes reasonably clear that resolution is not possible.

Also in Collaboration, negotiations normally take place as a series of meetings, and outside of the Court room setting.

Differences Between Mediation and Collaboration

First and foremost, unlike Mediation, in the Collaborative Process there is no Mediator, or independent, acting as a “*neutral*.” There is no Judge or independent Evaluator to determine the outcome of the dispute. The parties themselves are the decision makers.

Also, Collaboration requires the participation of specially trained legal counsel. While in Mediation a party is not represented by counsel, in Collaboration their specially trained collaborative attorney participates in all meetings alongside the Client, continuing to provide legal representation to them.

Next, Collaboration allows financial and psychological collaboratively trained professionals to work with the parties, and their attorneys, to be certain that all concerns are adequately addressed. In Mediation, such consultation with a legal, financial or psychological professional requires cessation of the mediation session in order to accommodate private consultations.

Further, in Collaboration if one of the participants decides to stop the process to move the dispute into the Court system, all Collaborative attorneys *must* walk away, that is the lawyers who represented the parties in the Collaboration cannot also represent them in the Court room, or even advise them in their new litigation. This means that the parties are required to secure new legal counsel in order to start the process over in Court system.

More importantly, however, unlike in Mediation where written Agreements on specific points are determinative of the particular issue and remain in place, in

The information contained here is by no means a fully comprehensive discussion of Collaboration. It is provided for informational purposes only. Since it is not possible to address all features of Collaboration here, inquiries are invited by request. Please feel free to send an online request, or to call the office, for more information.

Finally, both approaches assume the parties' *ability and willingness* to resolve their dispute with the help of professionals. This is, however, where Collaboration and Mediation part ways.

When to use Collaboration instead of Mediation?

Collaboration tends to be most successful in cases where:

- ✧ The parties to the dispute wish to maintain ongoing respect;
- ✧ Where there is a need or desire to preserve an ongoing relationship with the other party, or parties, involved in the dispute;
- ✧ Where sensitive issues may be better served with a series of private meetings than in a public court room, or where privacy is otherwise a concern in the dispute;
- ✧ Where, based on the nature of the dispute involved, the Court does not have the adequate legal remedy available to most effectively resolve it;
- ✧ Where parties wish to maintain control of the terms of their own settlements;
- ✧ Where the parties are not in full agreement on all terms, but need outside help on practical aspects of the settlement terms;
- ✧ Where the parties want to, and are capable of, reaching their own settlement terms with the financial, psychological and legal support available to them in the Collaborative Process;
- ✧ Where it is not necessarily "winning" which matters, but where it is fairness which counts.

Collaboration, all Agreements which may have been reached during the Collaborative Process are lost as the parties and their lawyers walk away. Those issues must be decided anew in the Court process. This could mean that Agreements the parties believed were *fait accompli* are, in fact, open to change.

What are the Advantages of Collaboration?

Privacy

Minimize Emotional Costs

Maintain Control of Settlement Terms

Preserve Ongoing Relationships

Develop Respectful Solutions

Access to Representation by Counsel throughout the Process.

Less formal and more comfortable surroundings.

Non-legal issues may be discussed and become the subject of Agreements.

The Process itself is flexible.

Other features of Collaboration to Consider:

Agreements made during the process are not enforceable if the process fails.

Despite their disagreements, Parties must genuinely wish to settle their dispute outside of the Court system for the process to work.

If the process breaks down, the lawyers must walk away leaving the Parties to find new counsel.

The Process may not necessarily prove less expensive than traditional litigation, however the parties have more control over the costs.