

# Collaborative Law: the Non-Litigation Alternative for Family Law Disputes

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Editorial Board Member

**C**ollaborative Practice, an international movement with over 5,000 practicing professionals worldwide, found its way to Illinois in 2000 through the creation of the Collaborative Law Institute of Illinois (CLII). Currently it is a dispute resolution model for family law disputes usually involving children. Leaders from CLII shared their knowledge on how Collaborative Law is helping families through divorce and child custody matters at the October meeting of the CBA Domestic Relations Committee.

Collaborative law is a dispute resolution model based on three core principles: a pledge not to go to court; an honest exchange of information; and a solution that takes into account the highest priorities and goals of all parties. Collaborative law takes a “team” approach to each case. The ideal collaborative team consists of: the couple, two attorneys, two coaches, one child specialist and one financial neutral. Not all cases will have an ideal team, but it is important that at least one neutral be involved in every case.

The current President of CLII, Charles Kingsley Perkins, a Certified Financial Planner, described the collaborative process like a charter flight. You need everyone to keep people safe, the pilot cannot do everything alone, but needs a crew of people to make it work. There is a focus on joint goals, preserving respect and creating a healthy new beginning for the couple which, generally, does not happen in litigation.

The collaborative lawyer’s role is limited to negotiator in a transactional mode, not the traditional litigation gladiator. The lawyer also supports the client while they negotiate, interacts with team members and reduces the parties’ settlement to a legal agreement to be entered as a court judgment. The lawyer may not participate in any litigation between the parties at any time and must withdraw as counsel if the case turns to litigation.

## Different from Settlement

The difference between collaborative and conventional divorce is that most conventional cases are settled on the courthouse steps after a lot of money has been spent and much damage has already been done. Many of those settlements are also shaped

by what the lawyers believe the judge will decide, not necessarily what the client wishes. Collaborative negotiation is a needs and interest based negotiation that looks for the best possible outcome for everyone given the circumstances. It is not a compromise made based on fear tactics which often occurs in litigation.

Collaborative lawyers must strive to be creative and to find solutions that both sides find satisfactory. Attorney Sandra Crawford said that the litigation process is set up to obtain agreements in the end. She explained that most clients believe court is like television where the client’s meet with the attorney in the morning at their office and then go to court in the afternoon. Clients find out later that litigation is much more than that which leads them to want to settle. In the end, the judge will often make the parties go out in the hall and come to an agreement, which they could have done in the beginning but are now under pressure to do.

The speakers noted that most collaborative clients are college educated with an above average household income and/or marital estate. Typically, the process takes about half as long as litigation, is flexible, and can expand or contract to meet specific needs and unexpected problems. A study by the International Academy of Collaborative Professionals found that collaborative divorce, on average, costs about one-third that of litigation.

In addition to state bar licensing, lawyers must complete a two day collaborative basic training, 40 hour mediation training and ongoing skills training in order to become fellows in the Collaborative Law Institute of Illinois. ■

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