

## FAQ in Collaborative Cases

### 1. **What is collaborative practice?**

Collaborative practice is a process where parties resolve their disputes in a non-adversarial way in a series of confidential meetings. With the help of a collaboratively trained team, the parties reach an agreement based on their respective interests. Collaborative practice is more commonly found in the family law context. However, collaborative practice is fast emerging in civil law.

### 2. **Is Collaborative practice a recognized divorce process in New Hampshire?**

Yes! In 2021, the NH legislature passed the CLA, codified in RSA 490-J. The CLA lays out in detail, the framework of the Collaborative Process. The CLA provides both legitimacy to the collaborative process as a recognized out-of-court divorce process, as well as providing courts with the statutory authority to enforce it.

### 3. **What are the benefits and risks of a collaborative case?**

First, the process is typically more time-efficient and cost-effective than a contested divorce; you can reach the terms of the agreement without going to court.

Second, in a collaborative process, the lawyers do not speak for their client; the parties work at settling the disputes together. This practice is especially helpful to the parties with children so that they can effectively co-parent in the future.

Moreover, the process focuses on a conflict-free resolution of the issues, which can reduce unnecessary destructive behavior between the parties. The collaborative process encourages the parties to end their relationship amicably — in a respectful and civilized manner. It allows the parties to divorce with dignity.

The biggest risk of a collaborative case is if the collaborative process fails, the parties will have to spend additional money retaining new lawyers and may have to start at square one in a courtroom. However, 92% of cases settle successfully and once started most clients are invested in completing the case. This is why it is essential that you use a professionally trained team in a collaborative case.

### 4. **Who is involved?**

At a minimum, the collaboratively trained team will consist of two collaboratively trained lawyers and a neutral mental health professional who is referred to as a coach/facilitator. The lawyers will each represent one party and the coach is a neutral party who facilitates the process by managing the emotional responses during the meetings.

Often times a financial neutral is also involved in the process. In a family law context, this individual will provide the couple with a comprehensive overview of their debts and assets and give a short term and long term projection of how the division of marital assets and debts will affect their financial future. Other professionals that can be used include child specialists, appraisers, realtors and business valuers.

5. **Do we really need a coach?**

Yes, the successful collaborative model is a team approach. One main reason that collaborative practice is so successful is because instead of the attorneys trying to wear too many hats, the process involves experts in their respective fields. In a family law context especially, it is expected that emotions will be high. The meetings are more effective and have a higher success rate with a coach because that person is trained in dealing with the emotional response in the room. Furthermore, because the coach is so essential to the process many attorneys will not take a collaborative case unless a coach is involved.

6. **Can our family counselor be our coach?**

No. The coach is supposed to be a neutral third party and the coach's role in a collaborative case is much different than a therapist's role. In a collaborative case, the coach will not provide therapy and will not make any diagnostics assessments of the individuals. Instead, the coach will identify the parties' goals and "hot button" issues to ensure that the meetings are conducted in the most productive and respectful way as possible.

7. **Since the process is amicable, can we use one lawyer to represent both parties?**

No. Pursuant to the Professional Rules of Conduct, one lawyer cannot represent both sides in a divorce. Moreover, the collaborative lawyer is not a neutral party; instead they represent the interests of their individual clients. Although the collaboratively trained attorneys agree not to engage in litigious or adversarial behavior, they still are their clients' advocates.

8. **How much does a collaborative case cost?**

The cost of a collaborative case is typically lower than that of a litigated case, which in many instances can cost between \$30,000 and \$100,000 per person just for the legal fees. In a collaborative case the price depends on the number of meetings with lawyers, with coaches and with financial professionals required to resolve the case. The neutral professionals often meet clients without lawyers and this creates cost savings. In general, clients invest on average \$10,000 per person to cover the legal and the other professional fees. Your case could be more or less depending upon the complexities. Much of the preparation can be done before the six-way negotiation meetings with all of the professionals present. The average settlement requires approximately three full-team meetings. The cost of your case may be more or less depending on your needs.

Importantly, handling your case in a collaborative manner is a long term investment because you will learn tools and techniques that will help you avoid future litigation. Furthermore, the agreement has a better chance of being long-lasting thus avoiding future legal costs involved in changing the terms of the agreement. This durability is a hallmark of the process because of the thoughtful and thorough decision-making which is characteristic of the collaborative divorce.

9. **Why does my attorney need to be trained in collaborative law?**

Unlike a typical case where a lawyer takes on an adversarial role and speaks for his or her client, the parties are encouraged to speak on their own behalf, with the guidance of their attorneys, to settle their disputes. Both clients have the opportunity to be fully heard in this process even if one party has traditionally been more dominant in the relationship.

Additionally, a collaborative lawyer agrees that if the process fails, he or she will withdraw from the case and not represent their client if the case ends up in a courtroom. Because collaboratively trained lawyers do not have a trial in the forefront of their mind, they approach the case with a totally different goal: coming to a mutually-acceptable agreement as a team vs. winning in court.

A collaborative lawyer is a new kind of advocate who, of course, advises their client about the law and provides counsel. He or she refrains from using adversarial techniques and represents their client's interest while taking into account the spouse's and the family's reasonable interests. There are a number of principles a lawyer should be familiar with before taking on a collaborative case and, therefore, must be trained in this field for the process to work.

Please see the training and experience of the attorneys in their profiles on this web site to help you decide who to call for the initial consult.

10. **How is collaborative practice different than mediation?**

Although both collaborative law and mediation focus on resolving the issues outside of court, the processes used in reaching an agreement are very different.

In a standard mediation, the parties may not have lawyers advocating for them or providing legal advice. The mediator cannot provide legal advice and cannot fix power or knowledge imbalances between the parties. In another kind of mediation, where lawyers are involved, the attorneys will engage in "hard ball" negotiation tactics and do most, if not all, of the talking. Usually, the parties will separate into two separate rooms and a mediator will go back and forth between the rooms and relay the other side's position. This places the parties against one another and is adversarial in nature. Moreover, in preparation of mediation, the parties' attorneys will have had to engage in discovery which sometimes requires the lawyers to send questions and request specific documents. In a successful mediation, the parties will have come to an agreement; however, the parties often leave without learning any techniques to resolve any future disputes.

In a collaborative case, the attorneys, clients and the professional team engage in “interest-based” negotiations, which mean that the team works against the problem rather than each other. The entire team will meet in a series of confidential problem-solving meetings that take place with everyone present. In a collaborative meeting, the parties control the conversation and ideally do most of the talking. If one party has trouble expressing him or herself, the coach is available to help with communication. The agenda is planned ahead of time so that meeting runs as effectively and efficiently as possible. Moreover, in a collaborative case, everyone signs an agreement where they promise to be respectful, to hold themselves accountable and to be transparent in disclosing their financial situation and positions. In a successful collaborative case, the parties will leave with an agreement that meets their goals and have learned tools to help them effectively co-parent and/or reach agreements for future disputes.

#### 11. **Is a collaborative divorce right for me?**

It depends; however, because it is such a kinder and more respectful approach to court, it is worth exploring. Often times, the parties are encouraged to meet with the coach before committing to the collaborative process since the coach is the best person to determine if the parties’ dynamics are appropriate for collaborative law. Normally, collaborative law is not appropriate in the following where there is (1) ongoing domestic abuse; (2) a total lack of empathy by one of the parties toward the other; (3) too much rigidity about what a fair settlement “must look like;” or (4) an unwillingness to take any personal responsibility for one’s words and actions. Importantly, the collaborative process can work in cases where the parties do not agree and/or get along. In a family law context, the reality is that you are getting divorced for a reason and you likely will have many disagreements. The good news is that collaborative law can help people who do not necessarily like each other come to an agreement in a respectful and amicable fashion. For a list of collaborative practitioners in your area, click here (<https://collaborativedivorcenh.com/professionals/>)