

# Family Law

## NEWS

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### THE PRINCIPLES OF COLLABORATIVE FAMILY LAW

"Collaborative Law" is the art and practice of settling cases with legal counsel, but without court intervention at any stage. The essence of collaborative law is the shared belief by the participants that it is in the best interests of parties and their families in typical family law matters to commit themselves to avoiding litigation. Therefore, they adopt collaborative law, a conflict resolution process which is an alternative to a litigated divorce, to resolve the issues involved in their divorce. Collaborative law does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, integrity and professionalism geared toward the future well-being of the family.

#### **The Goal of Collaborative Family Practice**

The goal of the collaborative law process is to minimize, if not eliminate, the negative economic, social and emotional consequences of protracted litigation to the participants and their families. The participants commit themselves to the collaborative law

process and agree to seek a better way to resolve differ-

*Collaborative family professionals help resolve divorce, non-marital dissolution, prenuptial and post-nuptial disputes without resorting to adversarial techniques or tactics. **The core principle of collaborative family professionals is a "no-court" pledge, a cooperative model of negotiation, and the use of neutral experts, when necessary, to resolve conflict.** Collaborative family professionals try to understand both spouses and to achieve a fair outcome not only for their clients but for the family as a whole.*

ences justly and equitably.

All collaborative divorce negotiations take place in four-way conferences between parties and their attorneys. Each party has built-in legal advice and advocacy during negotiations and each attorney is committed to guiding the parties toward a reasonable set-

tlement. Because no one, neither the parties nor the attorneys, can go to court or threaten to go to court, settlement is the only goal. The parties are encouraged to communicate their real needs and interests. Through safe and focused discussions, each of the parties is encouraged to recognize the needs and interests of the other party and or the children.

The parties agree to give full, honest and open disclosure of all information, whether requested or not. There are informal discussions and conferences to settle all issues. The parties direct all attorneys, accountants, therapists, appraisers and other consultants to work in a cooperative effort to resolve issues without resort to litigation or any other external decision-making process except as agreed upon. If experts are needed, the parties agree that they will be retained jointly unless all parties and their attorneys agree otherwise in writing.

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The parties acknowledge that each of their attorneys is independent from the other, and represents only one party in the collaborative law process. The parties understand that while their collaborative attorneys share a commitment to the collaborative Law process, each of them has a professional duty to represent his or her own client diligently, and is not the attorney for the other party. The parties understand that their attorneys are entitled to be paid for their services. The parties agree to make funds available for this purpose.

### **Evaluating the Collaborative Family Law Model**

Divorce is a sensitive personal matter. No single approach is right for everyone. Many couples find collaborative practice to be a welcome alternative to the often destructive, uncomfortable aspects of conventional divorce.

Collaborative Practice is likely to be a workable option in the following situations:

- The couple wishes to maintain the tone of respect, even when they disagree.
- The couple wishes to prioritize the needs of their children.
- The parties recognize that each spouse requires equal consideration.
- The couple believes that

working creatively and cooperatively solves issues.

- The couple recognizes that it is important to reach beyond today's frustration and pain to plan for the future.
- The parties can behave ethically toward each other.
- The couple chooses to maintain control of the divorce process, and not

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relegate it to the courts.

### **The Collaborative Family Law Model: A Five Step Process**

The collaborative family law process involves the following five steps:

#### ***Step 1 - Getting Started***

Each party retains a separate attorney who is specially trained in collaborative law. The parties and their attorneys work together to come to a fair agreement without court intervention. (If this is not possible and the case proceeds into litigation, the attorneys are disqualified from continuing the case and the par-

ties would each need to retain a new attorney to represent them in court.)

#### ***Step 2 - Making a commitment***

In collaborative law, both parties must sign a "contract"... which is actually more of a promise. It states that the parties will work together respectfully, honestly, and in good faith to resolve issues and reach agreements beneficial to everyone involved. This simple piece of paper goes a long way in helping the process go smoothly.

#### ***Step 3 - Building the team***

A collaborative team is the combination of professionals that the couple chooses to work with to resolve their dispute. In addition to the parties' attorneys, other collaborative law professionals are commonly added to the team for assistance with emotional, financial, or parenting issues. From financial advisors to child specialists, these specially trained resources keep the process more efficient and effective. The "collaborative team" will guide and support the couple as problem-solvers, not as adversaries.

#### ***Step 4 - Negotiating a settlement***

A series of private meetings are held to resolve

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all issues, including parenting decisions and division of marital property, where applicable. During these meetings, everyone strives to remain civil and respectful to one another, setting aside the tendency to blame, and resisting the impulse to rehash old hurts. While each attorney is an advocate for his or her client, both ensure that all voices are heard and all needs are considered.

### ***Step 5 - Moving forward***

Once the parties reach an agreement, the attorneys create legally binding documents and file them with the courts. This holds all parties accountable to the settlement terms. However, one of the benefits of collaborative law is that the parties have created the agreement themselves—it was not imposed upon them by a third party. Therefore, the parties are more likely to abide by it.

### **Collaborative Practice vs. Mediation**

In mediation, an impartial third party (the mediator) assists the negotiations of both parties and tries to help settle the case. However, the mediator cannot give either side legal advice or be an advocate for either side. If there are lawyers for each party, they may or may not be present at the mediation sessions, but if

they are not present, then the parties may consult them between mediation sessions. When an agreement has been reached, the mediator prepares a draft of the settlement terms for review and editing by both parties and their lawyers.

Collaborative practice allows both parties to have

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lawyers present during the negotiation process to keep settlement as the top priority. The lawyers, who have training similar to mediators, work with their clients and one another to assure a balanced process that is positive and productive. When an agreement has been reached, a document is drafted by the lawyers, and reviewed and edited by both parties until everyone is satisfied.

Both collaborative practice and mediation rely on voluntary, free exchange of information and commitment to resolutions respecting everyone's shared goals. If mediation doesn't result in a settlement, the parties may choose to use their legal counsel in litigation. In collaborative practice, the lawyers and parties sign an agreement aligning everyone's interests in resolution. It specifically states that the collaborative attorneys and other professional team members are disqualified from participating in litigation if the collaborative process ends without reaching an agreement.

The choice of mediation or collaborative practice should be made with professional advice.

### **Collaborative Practice In Other Areas Of Law**

Collaborative practice can also apply to disputes involving employment law, probate law, construction law, real property law, and other civil law where continuing

Donald D. Vanarelli, Esq. is approved under the NJ Court Rules as a mediator in family and divorce matters, and civil, equity and probate litigation. He is on the Superior Court's roster of mediators for the mediation of the economic aspects of family law cases. Mr. Vanarelli has successfully mediated many cases.

## ***Law Offices of Donald D. Vanarelli***

**The Law Firm of Donald D. Vanarelli** is devoted to handling all family law matters, from the initial interview through appeal, by providing high quality legal services with integrity, professionalism and respect for our clients. We accomplish our mission by listening to client goals and then explaining the applicable New Jersey law. Whether you need a divorce attorney or a domestic violence litigator; whether you seek a child support modification or you are embroiled in a custody dispute, we are prepared to work hard for you. We are committed to pursuing the best legal strategy and achieving optimal results for our clients by combining energy and resolve with competence and sound judgment. Success may be achieved in the courtroom through litigation, or through alternative strategies such as mediation or collaborative practice; however, our focus remains on the economic and practical implications of the decisions made in the case.

### **Mr. Vanarelli is Trained as a Collaborative Divorce Professional**

The practice of collaborative family law demands unique skills from lawyers--skills in guiding negotiations, and in managing conflict. Mr. Vanarelli is a trained collaborative divorce professional. Collaborative family law provides a structured approach to divorce that addresses many of the concerns not addressed by the traditional court system. Collaborative law is the formalization of a new settlement model. Inherent in the collaborative law process is the requirement that lawyers learn new models of communication and conflict resolution in order to meet the needs of clients.

As a collaborative law attorney, Mr. Vanarelli has received specialized training in interest-based negotiation. His collaborative training allows Mr. Vanarelli to serve his clients as an educator and guide through the collaborative process. Mr. Vanarelli helps his clients to articulate their interests, and assists in the creation and evaluation of a broad spectrum of options to meet those interests. During the collaborative divorce process, Mr. Vanarelli also advocates for his clients, identifies questions and issues that need resolution, provides legal advice, manages conflict, and assists the parties in implementing agreements.

### **Publisher of the Family Law News Again Recognized as "NJ Super Lawyer" in 2008**

Donald D. Vanarelli, Esq., with offices at 242 St. Paul Street, Westfield, NJ, has been selected as a "NJ Super Lawyer" in 2008. Mr. Vanarelli was previously selected as a "NJ Super Lawyer" in 2007.

The selection of outstanding lawyers identifies the top 5% of all lawyers in New Jersey who have attained a high degree of peer recognition and professional achievement. The rigorous multi-step selection process includes peer evaluation, a review of credentials and current bar status, and review and approval from a blue ribbon panel of leading attorneys.

Mr. Vanarelli was designated as an Accredited Professional Mediator by the NJ Association of Professional Mediators. Mr. Vanarelli is a co-founder of the Elder Mediation Center of New Jersey, and he mediates cases involving elder law, guardianship, probate, and family law.

## **Family Law NEWS**

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**Articles: The Principles of Collaborative Family Law**

**Publisher of the Family Law News Recognized as 2008 "Super Lawyer"**

**Publisher of the Family Law News is a Collaborative Professional**