

SUMMARY OF PROPOSED ADOPTION OF UNIFORM COLLABORATIVE LAW ACT
IN TITLE 27, M.C.A.

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What is collaborative law: Collaborative Law is a structured process for solving legal conflicts where the parties agree to resolve their dispute outside of court with the assistance of collaboratively trained attorneys, bringing in specially trained neutral experts when needed. The parties agree that these attorneys will only represent them for the limited purpose of negotiating and resolving the dispute outside of court and will not engage in a lawsuit or the threat of other court action. The Parties also agree that the process is confidential, that they will freely disclose information relevant to the dispute, and will participate in the process in good faith.

Benefits of Collaborative Law:

- By creating a safe, confidential and non-adversarial environment, collaborative law enables the parties to use interest based negotiation to explore all possible solutions for resolution, including solution that may not be available in Court.
- Studies indicate collaborative law is 87% effective in reaching resolutions in family law matters, with an additional 3% reconciling the marriage.
- Parties are often more satisfied with the process and outcome and are less likely to reenter the court system with subsequent actions to enforce or modify prior agreements or court orders.
- The process reduces conflict, minimizing the psychological, financial and social impact of divorce on the parties and their children.
- The Collaborative Law process models effective ways to resolve conflict. The parties learn are better equipped to use these tools to resolve latter issues amongst themselves.

History of Collaborative Law:

- Collaborative Law was first described in 1990 by Minnesota Lawyer Stu Webb.
- Used in almost every U.S. jurisdiction, in Canada, and other nations to resolve a variety of legal disputes, including family law matters.
- Approximately 22,000 lawyers worldwide are trained in collaborative law.

The Uniform Collaborative Law Act (UCLA):

- a. The Uniform Collaborative Law Act codifies the minimum requirements of a collaborative law process and provides important protections for the process, the public, the parties and the professionals involved.
- b. To date, the UCLA has been enacted in Alabama, District of Columbia, Hawaii, Maryland (2014), Michigan (2014), Nevada, Ohio, Texas, Utah, and Washington.
- c. The UCLA was introduced in 2014 in Florida, Illinois, Massachusetts, New Jersey, Oklahoma, and South Carolina
- d. Other states including California, North Carolina, Texas, and Utah already had collaborative law statutes or have their own statutes outside the UCLA.

Law and Justice meeting
June 27, 2014



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June 13, 2014

Law and Justice Interim Committee
63rd Montana Legislature
c/o Rachel Weiss, Lead Staff
PO Box 201706
Helena, MT 59620-1706

Re: *SJ 22 — Uniform Collaborative Law Act (UCLA)*

Honorable Committee Members:

I write this letter in support of enactment of the Uniform Collaborative Law Act in Montana.

For identification purposes only, I formerly served as Chairperson of the Family Law Section of the Washington State Bar Association, and as Secretary-Trustee of the King County Bar Association. I am a Fellow of the American Academy of Matrimonial Lawyers and currently serve as a Board Member of the International Academy of Collaborative Professionals. I write this letter as an individual and not on behalf of any organization.

I have practiced Family Law in the State of Washington since 1987, having practiced conventional family law for nearly two decades prior to shifting my practice primarily to Collaborative Law. I started practicing Collaborative Law in 2003, and since 2007 about 90% of my full-time practice has been as a Collaborative Law attorney.

Since its initial development in 1990, Collaborative Law is today practiced throughout North America, and has spread to Europe, Asia, and Australia. The process offers the opportunity for divorcing parties to work together to solve a common problem—how to create two functional post-divorce families. I am convinced that the Collaborative Law process is the most compassionate and durable way for lawyers to help families in divorce, especially those with children.

As a practicing family law attorney, I have personally witnessed the value of the Collaborative Law process for my clients. I have often seen divorcing parties arrive at durable solutions for their families in Collaborative Law cases. Compared to conventional practice, the contrast is stark—the level of entrenchment and resentment that is so routine in divorce, is the exception in Collaborative cases.

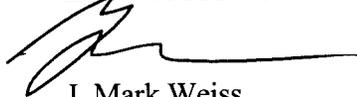
Collaborative Law allows parties and lawyers to focus their efforts on problem-solving without the distraction or risk of possible imminent court proceedings. The Uniform Collaborative Law Act contains provisions that are important to the Collaborative Law process and the public including:

- Confidentiality for the Collaborative Law process.
- A stay of judicial proceedings during the process, similar to the stay in the Uniform Arbitration Act.
- Privilege for Collaborative Law communications, which can only be provided by statute.
- Consumer protection by providing a statutory definition for Collaborative Law, thereby avoiding confusion of the public.
- Advancing the public policy of having parties resolve disputes themselves without the need for judicial resources.

I urge you to support enactment of the Uniform Collaborative Law Act in Montana.

Sincerely yours,

LAW OFFICE OF J. MARK WEISS, P.S.



J. Mark Weiss
Attorney at Law

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June 10, 2014

Honorable Committee Members:

As a former client of a Collaborative Divorce, I was moved last year to testify on behalf of Washington State's adoption of the Uniform Collaborative Law Act (UCLA). I am now writing in support of Montana's adoption of the UCLA.

When my divorce began five years ago, I felt angry, betrayed and, thinking about my 1-year-old son sleeping peacefully upstairs, terrified. Suffice to say I was not feeling particularly cooperative towards my now former husband and, despite being an experienced mental health professional, I was not acting, or intending to act entirely reasonable. I agreed to use Collaborative Law at my husband's suggestion, and though I was not in agreement with divorcing, I am ever grateful for his choice to pursue the dissolution with Collaborative support.

The Collaborative process and skilled professionals provided me the support I needed to move from my stance of anger and distrust to one of engagement and willingness to work together to reduce the conflict and create a future vision for our new family. If we had chosen a different route, I am certain I would have used the legal process as a weapon and my lawyer as a proxy to vent my rage and fear against my former husband. It took me a long time and a lot of support to understand my "rights" were not necessarily the best foundation to chart the future of my family.

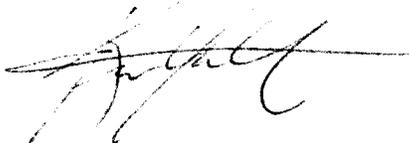
The Collaborative professionals skillfully guided me through this process. Through transparency they assured me that the process was fair and with concrete skills they helped me to protect my own well-being and that of my child. They allowed me to grieve the loss of my dreams for my one home family and create a new path towards a healthy future that was different, yes, but a more realistic and positive one that my family can benefit from for years to come.

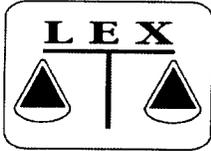
As a mental health professional who has spent 17 years working to help children cope with conflict in their families, I find that Collaborative Law actually works to prevent the damage to daily life and family relationships typical in divorce and afford children and families the chance to thrive even in difficult circumstances. After my divorce, I became a Collaborative Child Specialist for this reason and am passionate about helping families create a positive future focus and develop skills that strengthen family bonds during and after the changes their families' experience.

If it were not for Collaborative Law, my former husband and I would not have gained a settlement that met the unique needs of our family and, most importantly, would not have been able to enjoy the past holidays together in peace and with warmth and support for each others new circumstances. Celebrating together with my former husband, his partner and their new baby, my parents and extended family has become our new tradition. If not for Collaborative Law, it may have happened eventually, but it may have taken years, during which my child and my family would have suffered.

As an experienced Licensed Mental Health Counselor I was persuaded by the benefits to my family and, combined with my professional experience with children and families in crisis, decided to become a part of the Collaborative Law profession as a Child Specialist. I heartily believe that our work in Washington State provides a viable option for divorcing couples that wish to challenge themselves to work together instead of deepening conflict. I hope that you can support parents in maintaining the stability and bonds of their family in the face of difficult change, and I hope you will support the Collaborative professionals who serve them at a time of great need by enacting the UCLA in Montana

Sincerely, Kristin Little, Mom, LMHC

A handwritten signature in black ink, appearing to read "Kristin Little". The signature is fluid and cursive, with a long horizontal stroke extending to the right.



WESTERN MONTANA BAR ASSOCIATION

P.O. Box 7451, Missoula, MT 59807

June 26, 2014

Law and Justice Interim Committee
63rd Montana Legislature
c/o Rachel Weiss, Lead Staff
PO Box 201706
Helena, MT 59620-1706

Re: *SJ 22 — Uniform Collaborative Law Act (UCLA)*

Honorable Committee Members:

We write to urge the enactment of the UCLA in Montana. The UCLA is a uniform law that codifies a formal alternative dispute resolution (ADR) process known as collaborative law practice (Collaborative Law).

Collaborative Law is a voluntary, contractually based ADR process for parties wishing to negotiate a mutually beneficial resolution to a legal problem and avoid having a resolution imposed upon them by the win-lose adversarial court system. Collaborative Law is distinguished from other forms of mediation and the traditional litigation approach in several critical ways:

- Collaboratively trained attorneys represent each party throughout negotiations;
- Collaboratively trained subject matter specialists, such as accountants and mental health professionals, serve as neutral advisors and coaches either as an integral part of the collaborative team or on an as needed basis;
- The parties and their attorneys sign a participation agreement agreeing to participate in the Collaborative Law process in good faith; to fully disclose pertinent information; to mutually explore available options for resolution; and not to use litigation or the threat of litigation during the Collaborative Law process;
- Collaborative law attorneys limit the scope of their representation to negotiations only and agree not to engage in litigation or the threat of litigation except in specific emergencies defined in the UCLA.
- Under the UCLA, parties cannot be court ordered to participate in Collaborative Law.

Over the past 20 years, Collaborative Law has emerged and matured as an important ADR tool. Collaborative Law enhances traditional mediation's focus on meeting the mutual interests of parties by ensuring each party benefits from the advice of legal counsel and neutral specialists while exploring mutually beneficial solutions in an open environment where the focus is on collaborative problem solving rather than mitigating the risks associated with litigation.

Because the focus is on reaching mutually beneficial solutions, research indicates Collaborative Law increases parties' satisfaction with the legal process while decreasing the personal and systemic burdens of litigation—both in the initial case and in later proceedings to enforce or modify unsatisfactory resolutions reached through traditional legal approaches. Moreover, Collaborative Law is effective in maintaining continuing relationships between the parties after the legal matter is concluded.

Collaborative Law as codified in the UCLA addresses many of systemic problems and goals identified in SJ 22. The UCLA is currently adopted in 9 states and was introduced in seven other states in 2014. Several other states have statutes codifying Collaborative Law outside the UCLA. While Collaborative Law is not limited to family law matters, and is effective in many areas where the parties will have a continuing relationship at the conclusion of the matter, it is most commonly employed in the family law context. In contrast to the adversarial court system, using Collaborative Law in family law matters:

- Reduces, rather than increases, conflict;
- Assists the parties in understanding effective methods for resolving future conflict and avoiding litigation;
- Reduces the potential of contentious litigation for causing harmful psychological effects on children and draining the financial and emotional resources of all involved;
- Eases the caseload of overburdened courts by minimizing contested matters both in initial disputes and in subsequent enforcement or modification actions.

The UCLA was approved by the Uniform Law Commission (ULC) in 2009 and amended in 2010. The ULC, now over 120 years old, is a national organization of attorneys appointed by U.S. state and territorial governments to research, draft, and promote enactment of uniform state laws that are well-conceived, carefully drafted and non-partisan. Members of the ULC are drawn from the practicing bar, the judiciary, the legislature, legislative staff and law professors. ULC Uniform Laws have been widely adopted in Montana, including the Uniform (now Model) Marriage and Divorce Act, the Uniform Probate Code, the Uniform Commercial Code and many others. Adoption of uniform laws is particularly beneficial in states like Montana, with less developed bodies of case law. Uniform laws allow Montana courts, attorneys, and parties to obtain guidance from other courts' interpretations of uniform provisions where Montana courts have not examined an issue.

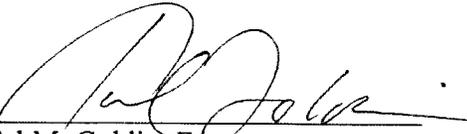
The UCLA provides important benefits to the public, parties, the courts and attorneys. The UCLA codifies the minimum requirements of a collaborative law participation agreement; provides guidance for determining the appropriate use of the collaborative process; sets out clear rules to guide attorneys and clients on the mechanics of this limited-scope practice; ensures information exchanged in the collaborative process is kept confidential except as otherwise discoverable; requires timely, candid and full disclosure of information related to the matter without formal discovery; and disqualifies collaborative attorneys from participating in litigation if the matter is not resolved in the collaborative process. The UCLA also provides screening mechanisms and guidelines for cases involving coercive or violent relationships.

Adoption of the UCLA in Montana is a significant step toward addressing the issues identified in SJ22. The UCLA enables parties to utilize Collaborative Law to resolve disputes outside the

adversarial system in a process focused on each party's interests through the exploration of mutually beneficial solutions. We strongly urge the honorable members of this Committee to recommend the UCLA for enactment in the 64th Legislature.

Sincerely,

The Western Montana Bar Association Executive Board

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District Court Judge, Montana 7th Judicial District

/s/ Stephan Edwards
Executive Director, Community Dispute Resolution Center of Missoula County

/s/ Kimberly Parrow
Volunteer Coordinator, Community Dispute Resolution Center of Missoula County

Note: The signatories above sign in their individual capacity except where noted. Unless noted, titles of individual signatories are given for reference only and do not indicate consent or support of the organization or agencies with which the signatories are associated.

Conflict Resolution Options

 = Parties

 = Mediator

 = Specialist(s)

 = Attorneys

 = Judge

Seattle
Collaborative Law
Training Group
www.colabtraining.com

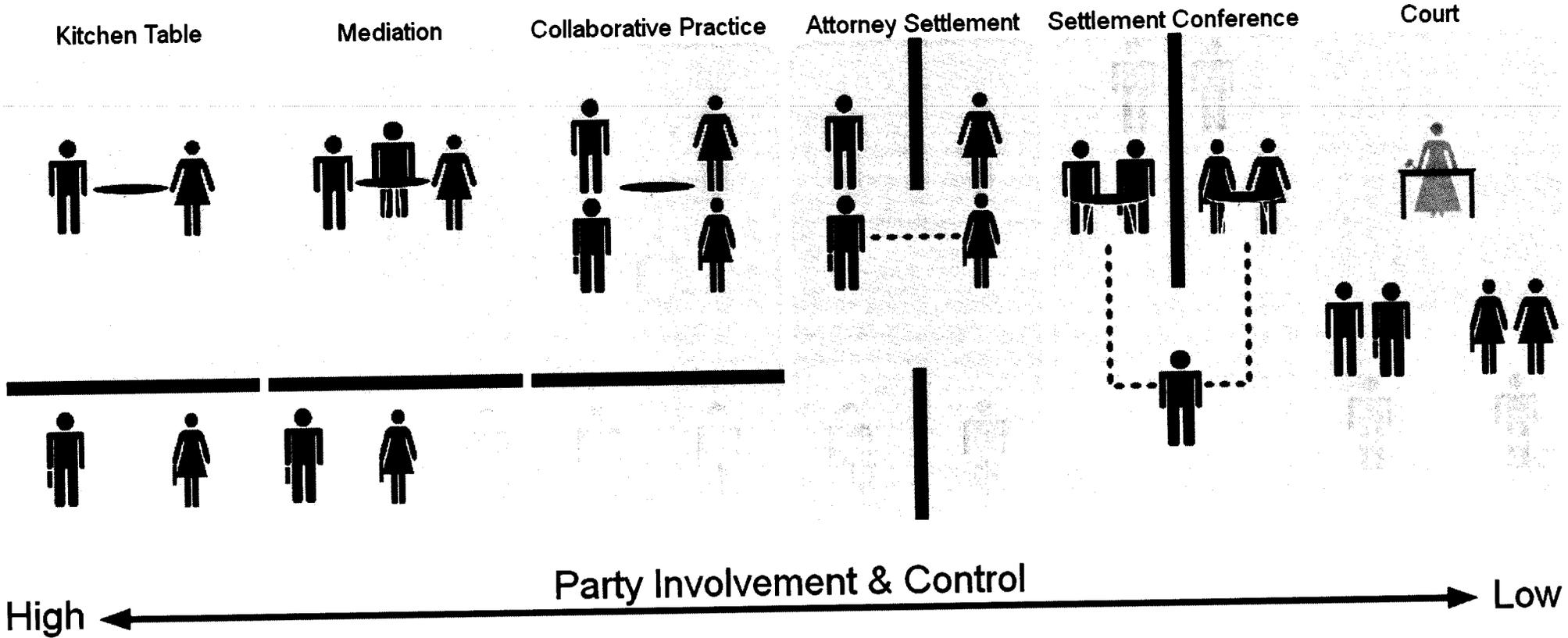
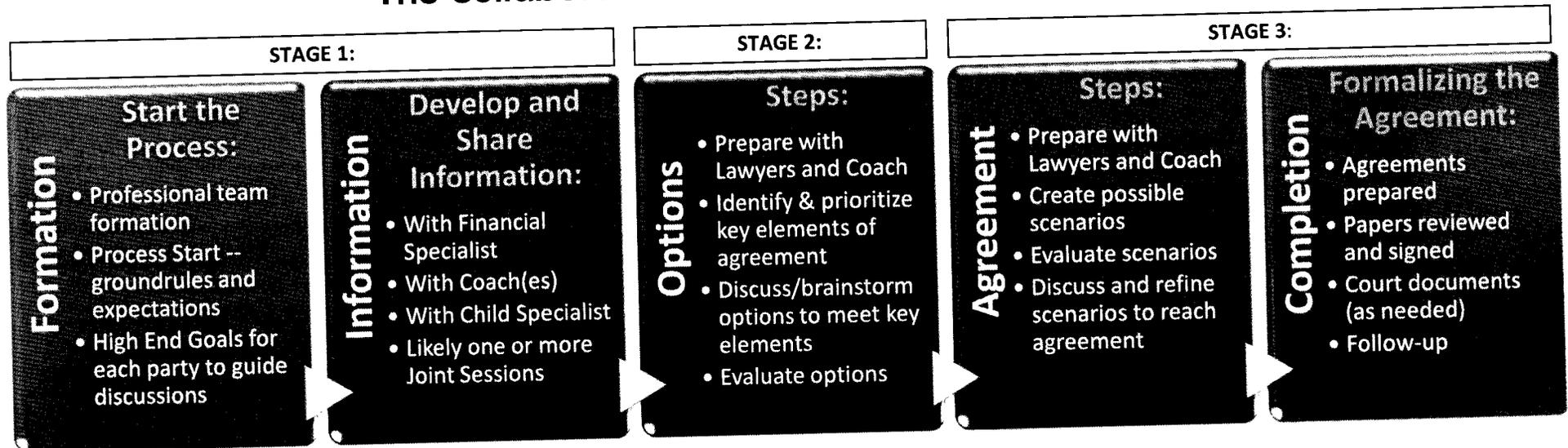


Fig. 1

The Collaborative Practice Process Progression



Stage 1 – Formation and Information. The formation phase of Stage 1 lays the foundations for the Collaborative Law process. Initial work is performed to start the process, including the necessary commitments, formation of the professional team, and setting of High End Goals.

The goal of the information phase of Stage 1 is to ensure all participants will have an understanding of the financial, parenting, and legal information, to effectively participate in the process. This phase involves work by the clients to gather information and meet with all of the professionals. After meetings with the financial specialist, coach, and child specialist, there will be at least one joint sessions with both attorneys to discuss the depth and implications of the information as it relates to a larger agreement. It can take some time to do the necessary groundwork of this phase.

Stage 2 – Options. When ready, we move to the Options Stage. This stage has several distinct steps. First, to focus the discussions on the key elements of what an agreement will need to cover– the general components for each party, and any concerns that might need to be addressed. Those components are then often prioritized. Then we discuss and brainstorm possible options that could address what needs to be achieved given the factual information developed in Stage 1. Options are evaluated. The Options Stage usually consists of one to three joint sessions.

Stage 3 -- Agreement and Completion. The Agreement phase of Stage 3 has us addressing identified the key elements with hypothetical agreement scenarios, and then evaluating them. This way everyone understands the implications of various scenarios. The scenarios are then refined and discussions continued until we reach an agreement that addresses everyone’s interests. This stage usually consists of one to three joint sessions.

We then enter the completion phase, which includes addressing the final details and formalities needed to conclude the divorce, including preparing and signing agreements and other legal formalities. It is not uncommon for there to be some final fine-tuning of the agreement prior to signing.

Fig. 2

A COMPARISON OF PROCESSES

	Collaborative Divorce	Interest- Based Mediation	Adversarial Settlement Conference	Litigation
Basis for decisions	What is important to client	What is important to client	Legal framework (local law, court rules, positions, mediator's perspective)	Legal framework (local law, court rules, positions, Judge's perspective)
Goal and Measure of Success	Durable Agreement (requires meeting reasonable needs and interests of all)	Durable Agreement (requires meeting reasonable needs and interests of all)	Settlement. Biggest possible measurable outcome for self (before costs)	Biggest possible measurable outcome for self (before costs)
Issues that may be addressed	Any issue that concerns a client's interest or need	Any issue that concerns a client's interest or need	Only issues that fit within the legal framework	Only issues that fit within the legal framework and for which there is admissible evidence
Who makes final decision	Clients	Clients	Client and lawyer	Judge
Role of Lawyer	Educate clients; facilitate/guide negotiations; advocate towards settlement; identify info for exchange; complete legal formalities	Independent advice and review of agreement; complete formalities; rarely participates in negotiations	Prepare for trial; bring motions; obtain evidence and shape arguments; advise client about law; negotiations (usu. with adversarial arguments); complete legal formalities	Prepare for trial; bring motions; obtain evidence and shape arguments; advise client about law; present evidence to court; advocate in post-trial phase; complete legal formalities
Neutral Team Support	Common	Rare	Very rare	Very rare
Likelihood of Post-Agreement Litigation of New Issues	Very low. The team helps ensure that the financial, emotional, and legal aspects are addressed to the extent possible	Low	Moderate	High
Cost	Moderate – generally less than Adversarial Settlement Conference	Moderate – generally less than Adversarial Settlement Conference	Expensive	Very Expensive (easily \$30,000-120,000+ per side)
Who Controls the Process	Lawyers and Clients	Mediator(s) and Clients	Lawyers and Settlement Conference Master	Lawyers, Judge, and court rules
Degree of Adversity	Clients pledge mutual respect and openness	Clients pledge mutual respect and openness	Based on an adversarial system	Based on an adversarial system

Fig. 3

Divorce: Collaborative vs. Litigation

	Collaborative	Litigation
<i>Who Controls the Process</i>	You and your spouse control the process and make final decisions	Judge controls process and makes final decisions
<i>Degree of Adversity</i>	You and your spouse pledge mutual respect and openness	Court process is based on an adversarial system
<i>Cost</i>	Costs are manageable, usually less expensive than litigation; team model is financially efficient in use of experts	Costs are unpredictable and can escalate rapidly including frequency of post-judgment litigation
<i>Timetable</i>	You and your spouse create the timetable	Judge sets the timetable; often delays given crowded court calendars
<i>Use of Outside Experts</i>	Jointly retained specialists provide information and guidance helping you and your spouse develop informed, mutually beneficial solutions	Separate experts are hired to support the litigants' positions, often at great expense to each
<i>Involvement of Lawyers</i>	Your lawyers work toward a mutually created settlement	Lawyers fight to win, but someone loses
<i>Privacy</i>	The process and discussion or negotiation details are kept private	Dispute becomes a matter of public record and, sometimes, media attention
<i>Facilitation of Communication</i>	Team of collaborative practice specialists educate and assist you and your spouse on how to effectively communicate with each other	No process designed to facilitate communication
<i>Voluntary vs. Mandatory</i>	Voluntary	Mandatory if no agreement
<i>Lines of Communication</i>	You and your spouse communicate directly with the assistance of members of your team	You and your spouse negotiate through your lawyers
<i>Court Involvement</i>	Outside court	Court-based

Fig. 5