

Collaborative Law: The First Option for Resolving Probate Disputes

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The collaborative process is a structured, voluntary, non-adversarial approach to resolving disputes, based upon cooperation between the parties, team work, full disclosure, honesty, integrity, respect, civility and parity of costs. The process is tailor made for resolving probate disputes which typically involve ongoing, personal relationships such as will contests, contested guardianships and claims of breach of fiduciary duty.

When probate disputes arise, most parties want to get things settled as quickly as possible. Spending time in protracted litigation can destroy important relationships and result in significant legal fees greatly diminishing an estate or trust. In the collaborative process, parties are able to control costs and scheduling, and the process is private and confidential.

Prior to entering into the process, collaborative lawyers are obligated to provide prospective clients with sufficient information to enable them to make an informed decision about the material benefits and risks of the collaborative process as compared to other reasonably available processes, such as mediation or litigation. Further, the parties understand that the collaborative lawyers are independent from each other, and no attorney-client relationship exists between one party's lawyer and any other party.

The collaborative process is initiated by the parties and their lawyers signing a Participation Agreement which describes the nature and scope of the dispute, states the parties' intention to resolve the dispute without resorting to a court imposed resolution, and includes an agreement to make timely, full and candid disclosure of necessary information without formal discovery. A fundamental defining characteristic of the process is the requirement that, should the dispute not be settled in the process, the collaborative lawyers must withdraw from representation and cannot represent a party in any court proceeding which is substantially related to the subject matter of the dispute.

The withdrawal provision benefits all parties since the collaborative lawyers are able to devote 100 percent of their time assisting their clients in resolving the dispute, rather than spending their time and their client's money in endless discovery fights in preparation for a trial. Further, the withdrawal provision discourages parties who are not serious about settling from engaging in the collaborative process.

Steps of the Collaborative Process

One: Determine the Goals, Interests and Concerns

In the first face-to-face meeting, participants determine the goals, interests and concerns of all parties. The parties, not their lawyers, have an opportunity to state what they want and, perhaps more importantly, why they want it. Hearing first hand saves time, eliminates misunderstandings and any "spin" that frequently accompanies hearsay.

Two: Gather Relevant Information

Having determined the goals and interests, the parties gather the documents and other information that will be needed to resolve the dispute. Participants agree to request only the production of those documents necessary to resolve the dispute; voluntary compliance with requests are mandatory. When an expert opinion will be beneficial, the parties agree to jointly retain a single expert, thereby eliminating the costly battle of the hired guns.

Three : Develop Options

The parties are now in a position to develop as many options as are reasonably possible. Since the process is confidential, the parties are free to engage in speculation and conjecture without fear that later their words will be used against them. Brainstorming options will lead to out-of-the-box thinking resulting in opportunities for formulating creative solutions.

Four: Evaluate Options

Options may be modified or combined with other options as the parties use their best efforts to satisfy as many of the goals and interests of all parties as possible. Solutions are explored that would never be considered or possible in litigation.

Five: Negotiate a Settlement

As a result of the commitment of the parties and lawyers to work in good faith and a non-adversarial manner, a settlement can be negotiated that satisfies as many of the parties' goals, interests and concerns as possible.

The uses and advantages of the collaborative process are too numerous to mention. The process is especially effective in disputes where money is not the sole issue. In addition, probate lawyers can employ the steps of the process when negotiating and drafting wills, trusts, guardianship and other probate documents.

The only way to know if a party or a party's matter is appropriate for the collaborative process is to visit with a lawyer or other professional trained in the process. A roster of collaborative lawyers, additional details about the civil collaborative process and numerous articles on the process are available on the website of the Dallas-based Global Collaborative Law Council: www.collaborativelaw.us.

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