



# Center for Efficient Collaboration

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## Transforming polarized politics in the Minnesota state legislature

A Convergent Facilitation case study



When statehouse adversaries began working together with a facilitator from the Center for Efficient Collaboration, a gridlocked political debate gave way to a remarkable shared win.

The Minnesota Child Custody Dialogue Group transcended deeply entrenched positions and a history of personal mistrust to resolve an issue that had seemed intractable for years. The one new factor was Convergent Facilitation, the CEC’s three-step framework for group decision-making. First the dialogue group translated their differing views into deeper principles that all agreed on. Then those principles inspired new proposals. Finally, they used their newfound mutual understanding to craft a collaborative solution.

Like abortion and gay marriage, child custody is often a battleground in the culture wars of our time. Mutual accusations are rife in this territory, not only between couples in court but also in [legislative debates across the U.S.](#)

The pressure of high divorce rates intersects with passionate arguments about the treatment of fathers, the handling of domestic abuse claims, and men’s and women’s evolving roles and rights.

In Minnesota, these struggles have gone on for more than a decade. Eventually, some weary opponents just avoided each other. Brian Ulrich, a divorced father and activist with the Center for Parental Responsibility, remembers spotting an

opposing legislator through an opening elevator door at the capitol. “The legislator turned around and took the stairs instead of getting on the elevator with us,” he recalls.

When Brian’s group was invited to join their adversaries for collaborative dialogues, he says he laughed. “I thought, you’re just wasting your time,” he explains. “We were so entirely opposed. I had seen the lobbying. I had seen the emotions of the presentations at

the committee hearings, the unpleasant glances, the unwillingness to sit down and talk before that. It was just a recipe for failure.”

Other stakeholders shared his pessimism. Rep. Tim Mahoney later told a House committee: “I really had no interest nor any belief that it would actually do anything. One of my opening statements was that I didn’t trust anybody in the room.”

Yet at their very first meeting in early 2013, advocates from all sides uncovered a wide swath of common ground. They used [Convergent Facilitation](#), an approach developed at the Center for Efficient Collaboration to support collaborative decision-making even in conflict-prone settings. Guided by facilitator Miki Kashtan, the group drafted criteria for child custody reform that all could agree on.

Over the next two years they built on this foundation, eventually co-authoring legislation that the [Minnesota Lawyer](#) called “a complete overhaul of the custody and parenting time factors in Minnesota.” In May 2015 their package of bills, supported by each constituency involved, passed the House of Representatives 121-0 and the Senate 61-3.

“The trust that this process built has been quite amazing to me,” says Rep. Tim Mahoney. “I wouldn’t have believed it was possible, but we achieved more collaboratively than we were able to do as adversaries.”

*“I wouldn’t have believed it was possible, but we achieved more collaboratively than we were able to do as adversaries.”*

*~ Rep. Tim Mahoney*

## Road to consensus

The persistent battle around child custody had reached a head in 2012. “Shared parenting” advocates proposed a bill that would have judges presume a nearly equal split of parenting time, absent something serious like domestic abuse. The change would particularly help fathers, who ordinarily don’t get the largest share of parenting time.

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### Timeline of Minnesota child custody dialogues

**May 2012:** Governor Mark Dayton vetoes proposed child custody legislation, calling on opposing groups to work together.

**November 2012:** Judge Bruce Peterson convenes a dialogue group facilitated by the Center for Efficient Collaboration’s Miki Kashtan.

**January 2013–May 2014:** Phase 1. The group produces a set of 26 shared principles. Subcommittees operationalize the principles, leading to unanimous passage of preliminary legislation.

**June 2014–May 2015:** Phase 2. The group dramatically revises “best interest of the child” laws and finds a solution to its core conflict over when and how to keep both parents in their children’s lives. A second legislative package passes nearly unanimously, and the governor signs it within days.

**June 2015 onward:** Phase 3. Former opponents continue working together to educate lawyers and judges, ensuring their legislation is implemented in line with their intentions.

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Opponents argued that the rule was too broad for complex family conflicts, and the Minnesota Senate lowered the default split to 35/65. But when the compromise bill passed, the governor declined to sign the legislation, citing compelling arguments on both sides and calling on the factions to break their impasse.

It was a former family court judge, Bruce Peterson, who first convened a meeting with a prospective facilitator. A few years before, Bruce had watched the state tackle child custody by creating a task force. “There was a very nice report, but it didn’t produce any resolution,” he says. “I was very distressed about all the energy that was poured into this issue year after year. I thought the veto was an opportunity to do something more productive.”

Bruce invited legislators representing both parties and opposing positions, lawyers, judges, domestic violence workers, and parent activists, among others. In the initial phone calls, facilitator Miki Kashtan recalls, “We were going back and forth and round and round ... with people being, at best, lukewarm about the prospect of sitting in a meeting for a day with other stakeholders. The tension, and the mistrust that gave rise to it, were high.”

Finally a lawyer threw down the gauntlet. “There’s a philosophical difference here, and there’s no point in dialogue,” he stated flatly. “Some of us think that a presumption of joint custody is just not a wise thing to do, and that’s all there is to it.”

This was an opening for one of the central tools of Convergent Facilitation: identifying the “[non-controversial essence](#)” behind a contentious claim. Miki describes probing for the principle underlying the lawyer’s position – he wished for each family to be handled according to its specific circumstances.

When his opponents also affirmed this principle, the unexpected glimpse of a shared purpose carried the group into face-to-face talks. They spent one day converting their arguments into [shared principles](#) that ranged from reducing familial conflict to developing evidence-based solutions. After some feedback and tinkering, their diverse constituents all endorsed the principles. The dialogue group now had a common set of benchmarks for the laws they would be writing.

**Convergent Facilitation step 1: Translate each argument into a “noncontroversial essence” and collect these as decision-making criteria.**

### Early success

Finding agreement on common aspirations transformed the atmosphere in the group. “We started with deeply entrenched views and distrust, and ended up with friendships and understanding,” says Rep. Carolyn Laine. Many participants became actively interested in finding solutions that truly attended to everyone’s needs and hopes.

The next step was for subcommittees to put the principles into practice. One committee developed legislation that passed unopposed in mid-2014. “The legislative changes were not earth-shattering, but they were confidence-builders,” says Mike Dittberner, an attorney representing the American Academy of Matrimonial Lawyers. “I knew the process was working when I was part of this small group with perhaps the most avid advocates of equal parenting time” – the policy the Academy had been fighting – “and we started coming up with baby steps that we could agree on.” When some constituencies challenged one provision of the proposed legislation, the group stuck to its commitment to only go as far as they could go together, and submitted a smaller package.

Whenever the larger group convened, Mike noticed that Miki’s facilitation kept them moving forward. “She wouldn’t allow somebody to go off on some tangent, and if they were reacting negatively she’d try to probe why,” he says. “She’s trying to get that

person to come up with a solution rather than leaving a problem out there festering. And she's not just working with that person – she's causing everybody else to be more solution-oriented.”

Brian Ulrich says these moments seemed downright magical. “I don't know what kind of pixie dust she threw in the room,” he says. “At times where it appeared we were heading into a nosedive, her process allowed us to pull out of it and reach even greater heights than before.”

When talks did get rough, the group's shared principles served as an anchor. “We had the most common ground when we would center on the benefits to kids. And we had the principles to come back to and point to,” says Brian.

**Convergent Facilitation step 2: Develop new proposals that aim to satisfy the shared criteria.**

### **Converging on a solution**

Buoyed by progress, the group invited state custody evaluators and family therapists into the dialogues. They set their sights on broader issues like child support and the legal definition of a child's best interest, as well as non-legislative goals like improving access to family mediators.

But they had yet to resolve the stickiest problem, the one that caused legislative breakdown in 2012. Brian recalls, “Despite the trust and the goodwill that clearly existed by that point, in December 2014 I thought it might all still collapse, because we still hadn't gotten to the core issue of parenting time.”

More parenting time was what Brian's group had come to the table for. But the first round of legislation sidestepped it, instructing judges not to presume either joint custody or sole custody. Opponents still did not want to predetermine family court rulings.

Nonetheless, some opponents now began advocating for legislative language to address the concerns of people like Brian. While revising the list of factors used by judges and custody evaluators to determine the “best interest of the child,” the group reached a breakthrough. At the suggestion of a participant who had always resisted 50/50 parenting-time prescriptions, they added a new factor: “The benefit to the child in maximizing time with both parents and the detriment to the child in limiting time with either parent.”

“That is probably the only language that we all could have found good agreement on,” says Brian. “And ironically, someone who stood so adamantly opposed to our thinking was the one who put it out there.”

Mike Dittberner explains, “Part of the reason the group was able to reach consensus is because that type of problem-solving was really facilitated by Miki. It occurred as a result of a cooperative group effort, thinking and problem-solving right there on the spot.”

Judge Bruce Peterson says this kind of cooperation was the most memorable part of the process: “It was so apparent to me when people became problem-solvers rather than position-staters.”

*“People became problem-solvers rather than position-staters.”*

*~ Bruce Peterson,  
former family court judge*

**Convergent Facilitation step 3: Problem-solve until the group reaches an agreement that everyone can wholeheartedly support.**

### **Ripple effects**

The revised best interest factors form the heart of the legislation that passed nearly unanimously in 2015. They aim to move courts from a parent-centered to a child-centered view: for example, the former first factor, “The wishes of the parents,” is replaced with “a child's physical, emotional, cultural, spiritual, and other needs.” The [Minnesota Lawyer](#) commented that the new law “is catching up with the last 40 years worth of social science, in focusing on child development, conflict resolution, and the importance of both parents in the life of a child.”

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### **When do we reach consensus?**

For the Minnesota dialogue group, consensus came to mean more than agreeing on specific proposals. At the outset of Phase 2 in mid-2014, they established this definition.

*The group will reach consensus on an issue when it agrees upon a single proposal and each member can honestly say:*

- I believe that other members understand what is important to me and my constituency.
  - I believe I understand what is important to other members and their constituencies.
  - I believe the process as a whole has allowed for all needs and concerns to surface and be included in the development of this proposal.
  - Whether or not I prefer this decision, I support it because it attends to more needs and concerns than any other proposal we explored, and because I trust the process that brought us to this point.
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Andrea Niemi, a family mediator, says the legislation will change how she thinks about her cases. “I’ve never been able to truly understand the old best interest factors,” she says. “Every time I had to apply them I would go, ‘What does that really mean?’ Now it’s much clearer that we’re looking at what’s best for the children. And absent something pretty severe, I think we need to make sure that both parents are substantially in the children’s lives.”

This clarity is possible even though the dialogue

*“I went in thinking it was going to be a disaster and came out with hope.”*

*~ Brian Ulrich,  
parent advocate*

group never went in the direction of a legal presumption about parenting time. The beauty of the group’s solution is that it does not focus on how much parenting time will actually be awarded – that’s left to the family court system to decide. Instead, the new law focuses on helping the courts work with each case to maximize the possible benefit to a child of a relationship with each parent, as circumstances allow.

Dialogue participants are continuing work on goals beyond the statehouse. Brian Ulrich heads a subcommittee on “cultural change,” tasked with educating lawyers and judges about the new law. He says the relationships built through the process support ongoing collaboration across the former political divide: “Miki’s process not only makes it

possible to find solutions – the doors have been opened wide enough, and we’ve even developed enough friendship, to allow us to accomplish these other items together.”

The legislators involved see potential to tackle other divisive debates with a more collaborative approach. “We discovered that if we take an issue we’re fighting over and dig deeper, we find a way to say things that can work for everyone,” says Rep. Peggy Scott.

### **Advice to others**

Warring groups who want dialogue-based solutions should seek out a patient, focused facilitator, advises Mike Dittberner: “Somebody who puts in the effort to make people feel heard, and who has an outlook towards problem solving. Often what that means, at least at first, is allowing people to vent a little bit, where they are able to voice their frustrations with each other but do it in a way that’s civil. You want a facilitator who has mastered that.”

Brian Ulrich says the one thing he would tell other frustrated groups is “the importance of trying this process in scenarios that look otherwise hopeless to solve.”

“I know there are other very emotionally charged issues out there,” he adds, “but this one had plenty of emotion and demonstrated that it’s possible. I went in thinking it was going to be a disaster and came out with hope.”

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### **In summary, Convergent Facilitation brought four key practices to this group that moved them from “impossible” to “milestone achievement”:**

- Searching for the noncontroversial principles underlying people’s preferred solutions instead of arguing with positions.
  - Pragmatically seeking language that integrates without ever trying to convince anyone. Participants could maintain their opinions and still achieve a breakthrough legislative package.
  - Moving beyond “sides” to look out for each other’s interests. More than once, people pointed out that a proposal they themselves favored would not address the concerns of another party.
  - Overall commitment to a solution that works for everyone, and nothing less.
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