

# Introductory Interdisciplinary Collaborative Practice Training

May 27-28, June 3-4, June 10-11, 2021

## Index - Intro CP Training Manual

---

MANUAL-Introductory & Interdisciplinary Collaborative Practice Training. . . . .	3
Acknowledgments. . . . .	4
Table of Contents. . . . .	5
I. Defining Elements of Collaborative Practice. . . . .	7
In Collaborative Practice. . . . .	7
The hallmarks of the Collaborative Practice approach include. . . . .	8
II. Advantages and Cautions of Collaborative Practice. . . . .	10
Advantages of Collaborative Practice include. . . . .	10
Some Cautions Connected with the Collaborative Process. . . . .	12
III. Preparing to Practice Collaboratively. . . . .	14
A. The Paradigm Shift. . . . .	14
B. Skills Development. . . . .	15
IV. An Interdisciplinary Approach to Collaborative Practice. . . . .	17
A. Variations of Practice. . . . .	17
B. Role of the Collaborative Lawyer. . . . .	17
1) Educating and Counseling the Client. . . . .	18
2) Guiding Interest-Based/Principled Negotiation. . . . .	18
3) Managing Conflict. . . . .	19
4) Assisting the Parties in Implementing Agreements. . . . .	19
C. Roles of Mental Health or other Social Science Professionals. . . . .	19
1) Coach. . . . .	20
2) Child Specialist. . . . .	21
D. Mediator/Facilitator. . . . .	24
E. Role of the Neutral Financial Specialist. . . . .	24
F. Role of Other Third Party Experts and Consultants. . . . .	28
Roles for the Whole Team in Managing the Emotional Aspects of Divorce. . . . .	28
V. An Overview of the Collaborative Practice Process. . . . .	30
A. Case Screening. . . . .	31
1) Identifying the Collaborative Case. . . . .	32
B. Client Intake. . . . .	33
1) Providing the Client with Process Options. . . . .	33
2) Forming the Collaborative Relationship. . . . .	34
a) Lawyer. . . . .	34
b) Coach. . . . .	34
c) Child Specialist. . . . .	35
d) Neutral Financial Specialist. . . . .	35
C. Preparing for Joint Meetings. . . . .	35
1) Identifying the Major Issues: Triggers or Areas of Sensitivity. . . . .	36
2) Communication with the Collaborative Team. . . . .	36
D. Establishing the Collaborative Team. . . . .	37
E. The First Collaborative Meeting. . . . .	39
1) Understanding and Committing to the Process. . . . .	39
2) Providing Clients with a 'Roadmap'. . . . .	40
3) Attention to Temporary Issues. . . . .	40
F. Discussions Before and After Collaborative Conferences. . . . .	41
G. Collaborative Conferences/Meetings. . . . .	41
1) Practical Details. . . . .	41
a) Location. . . . .	42
b) Physical Arrangements. . . . .	42
c) Length. . . . .	43
d) Participation. . . . .	43
2) Agenda. . . . .	44
3) Conduct of Meeting. . . . .	45
Some Collaborative Communication Techniques. . . . .	45
A) Modeling Collaborative Behavior. . . . .	45

Introductory Interdisciplinary Collaborative Practice Training  
May 27-28, June 3-4, June 10-11, 2021  
Index - Intro CP Training Manual

---

B) Guiding Communication.....	46
C) Encouraging Participation.....	46
D) Minutes of Conference.....	46
E) " Homework" assignments.....	47
F) Scheduling of Additional Conferences.....	47
4) Dealing with Impasse.....	47
a) Refocus on Interests.....	47
b) The Power of Silence.....	48
c) Taking a Break.....	48
d) Private Meetings.....	49
e) Lawyer to Lawyer Caucus.....	49
f) Reality Check.....	49
VI. Conclusion of the Collaborative Process.....	51
VII. Ethical Considerations in Collaborative Practice.....	52
A. The Practical Application of the IACP Ethical Standards.....	52
1) Competence.....	53
2) Confidentiality.....	53
3) Withdrawal/Termination.....	54
4) Conflicts of Interest.....	55
5) Neutrals.....	55
VIII. Building a Collaborative Family Law Practice.....	56
A. It Starts with You.....	56
B. Hot Tips.....	58
Appendix A: Family Law Dispute Resolution Options.....	62
Appendix B: The Importance of Domestic Abuse Screening in the Collaborative Family Law Case.....	65
Appendix C: Sample Participation Agreements and Fee Agreements.....	68
Appendix D: Collaborative Process Memorandum.....	113
Appendix E: Other Documents.....	117
Appendix F: IACP Standards and Ethics.....	128

# INTRODUCTORY & INTERDISCIPLINARY COLLABORATIVE PRACTICE TRAINING

**COLLABORATIVE PRACTICE:**  
**Beginning to Collaborate in the Interdisciplinary Model**



COLLABORATIVE  
PRACTICE

I A C P INTERNATIONAL ACADEMY OF  
COLLABORATIVE PROFESSIONALS

[www.collaborativepractice.com](http://www.collaborativepractice.com)

# Acknowledgments

IACP gratefully acknowledges the contributions of many skilled Collaborative professionals in the creation of this manual. From its initial iteration in 2007 which relied heavily upon contributions made by the Collaborative Family Law Council of Wisconsin, the subsequent work of members of IACP's Professional Development Committees and the current version edited and revised by Rita Pollak and Anne Purcell, this training manual remains a work-in-progress and will continue to benefit from the experience and shared wisdom of the global Collaborative community.

# Table of Contents

<b>I. Defining Elements of Collaborative Practice .....</b>	<b>5</b>
<b>II. Advantages and Cautions of Collaborative Practice .....</b>	<b>8</b>
<b>III. Preparing to Practice Collaboratively .....</b>	<b>12</b>
A. The Paradigm Shift .....	12
B. Skills Development .....	13
<b>IV. An Interdisciplinary Approach to Collaborative Practice .....</b>	<b>15</b>
A. Variations of Practice .....	15
B. Role of the Collaborative Lawyer .....	15
C. Roles of Mental Health Professionals .....	17
D. Mediator/Facilitator .....	22
E. Role of the Financial Specialist .....	22
F. Role of Other Third Party Experts and Consultants .....	26
<b>V. An Overview of the Collaborative Practice Process .....</b>	<b>28</b>
A. Case Screening.....	29
B. Client Intake .....	31
C. Preparing for Four-Way Meetings .....	33
D. Establishing the Collaborative Team.....	35
E. The First Collaborative Meeting .....	37
F. Discussions Before and After Collaborative Conferences.....	39
G. Collaborative Conferences.....	39
<b>VI. Conclusion of the Collaborative Process .....</b>	<b>49</b>
<b>VII. Ethical Considerations in Collaborative Practice: .....</b>	<b>50</b>
The Practical Application of the IACP Ethical Standards	
A. The Practical Application of the IACP Ethical Standards .....	50
<b>VIII. Building a Collaborative Family Law Practice .....</b>	<b>54</b>
A. It Starts with You.....	54
B. Hot Tips .....	56
<b>Appendix A: Family Law Dispute Resolution Options Appendices .....</b>	<b>60</b>
<b>Appendix B: The Importance of Domestic Violence Screening in the .....</b>	<b>63</b>
<b>Collaborative Family Law Case</b>	
<b>Appendix C: Sample Participation Agreements .....</b>	<b>66</b>
<b>Appendix D: Collaborative Process Memorandum .....</b>	<b>111</b>
<b>Appendix E: Other Documents .....</b>	<b>115</b>
<b>Appendix F: IACP Standards and Ethics .....</b>	<b>126</b>

Preamble: this manual is a training resource for those learning about the basics of interdisciplinary Collaborative Practice, as well as for those teaching the fundamental concepts of this process. It is not designed to answer every question or anticipate every situation; rather, it is intended to provide an overview, or general introduction to Collaborative Practice. The goal of this manual is to highlight the differences between Collaborative Practice and other dispute settlement options, to describe the various roles that professionals play and to emphasize why this process relies on the participation of the clients as an integral part of reaching a durable agreement that satisfies the needs of both parties.

We have included sample documents, as well as references to the IACP web site, [www.collaborativepractice.com](http://www.collaborativepractice.com), where many more resources are available, in several languages.

As this manual is intended for a multicultural international audience, no one language and its associated conventions could cater to such diversity. For the sake of consistency, American spelling and grammatical conventions have been used as the default, and the feminine pronoun ‘her’ is used as representative of both sexes. However, we acknowledge that users, whose first or subsequent language is not American English, will use this manual. We expect that users will adapt what is presented here to the culture, legal system, language and community where they live and work.

By taking this first step to learn how to become a skillful practitioner, you are also joining a growing, vibrant international community of professionals who are dedicating themselves to “chang[ing] the way disputes are resolved, world-wide,” the mission statement of IACP.

Collaborative Practice has spread throughout the United States, Canada, the United Kingdom, Australia, New Zealand, Brazil, Asia, Europe and Israel. The International Academy of Collaborative Professionals (IACP), [www.collaborativepractice.com](http://www.collaborativepractice.com), is an international interdisciplinary organization. The IACP has promulgated a uniform definition of Collaborative Practice, standards for Collaborative practitioners and trainers, a model interdisciplinary code of ethics, as well as public and professional education programs.

Collaborative Practice originated in the context of family law cases, though its application may be expanded to other civil law areas such as employment, trusts and estates, medical error, and business law. This Manual will focus on the application of the Collaborative process in family law cases.

# I.

## Defining Elements of Collaborative Practice

Collaborative Practice is a voluntary dispute resolution process in which separating couples (parties) reach agreement without resort to litigation.

In Collaborative Practice:

1. The parties sign a Collaborative Participation Agreement describing and defining the nature and scope of the matter;
2. The parties voluntarily disclose all information which is relevant and material to the matter that must be decided;
3. The parties agree to use good faith efforts in their negotiations to reach a mutually acceptable agreement or resolution;
4. Each party must be represented by a Collaboratively trained lawyer whose representation terminates upon the undertaking of any contested court proceeding or, violation of the Participation Agreement which is not corrected;
5. The parties may engage mental health professionals or communication coaches, neutral financial specialists, as well as other agreed upon neutral professionals, whose engagement terminates upon the undertaking of any contested court proceeding or violation of the Participation Agreement, which is not corrected.

While Collaborative lawyers are always a part of collaboration, many family law approaches to Collaborative Practice provide for mental health professionals, other communication experts and neutral financial specialists as part of the clients' divorce team. The clients thereby benefit throughout the Collaborative process from the expertise, assistance and support of all of their professional team members.



The core elements of Collaborative Practice remain the same in all areas of law.



The hallmarks of the Collaborative Practice approach include:

- ❖ A shared commitment to proceed honestly, respectfully and in good faith.
- ❖ A commitment to voluntary disclosure of all facts and information material to the resolution of the issues.
- ❖ Active participation by the clients. Team meetings involving both clients and their professional team are the principal means by which gathering and sharing of information, negotiation and decision-making take place.
- ❖ Interest-based negotiation as distinct from positional bargaining: the identification of the shared goals and individual interests (i.e., needs, concerns, values and objectives) of both clients, with a search for resolutions that meet the needs of both clients.
- ❖ The opportunity to work with other professionals in an interdisciplinary team to assist in the effectiveness and efficiency of the resolution process, to maximize the potential for healthy outcomes, by utilizing the specialized training, skills and experience of each professional.
- ❖ Giving up the right to litigate during the Collaborative process and not using the



threat of litigation to leverage any advantage.

- ❖ Joint retention of any additional experts needed in the process.
- ❖ Disqualification of all team professionals involved in the Collaborative process from participation in any litigation proceedings between the clients.
- ❖ A commitment to understand and meet the needs of the children.

# II.

## Advantages of Collaborative Practice

Collaborative Practice is an alternative to litigation for clients who commit to the process with well-trained, skilled Collaborative professionals. Collaborative Practice works in appropriate traditional divorces, as well as for unwinding relations between unmarried same-sex or heterosexual couples where legal rights and remedies are not clear. Interest-based Collaborative Practice is also suited for negotiation of pre- and post-nuptial agreements. Professionals advising clients about process options should identify the distinguishing characteristics of Collaborative Practice, compared with other approaches, and should describe in detail, both the advantages and risks involved.

For an explanation of the spectrum of dispute resolution processes (*pro se*, mediation, Collaborative Practice, traditional lawyer negotiation/litigation, see [Appendix A](#))



Advantages of Collaborative Practice include:

- ❖ Collaborative Practice offers assurance to clients in a dispute that the lawyers and other professionals working on their behalf will provide service consistent with their settlement goals and objectives and not exacerbate any conflict which is

likely to arise. Clients know that the lawyers have joined with them in making a commitment to reaching a resolution that meets the needs of all family members.

- ❖ Legal information and advice remains bedrock to the process. Clients are entitled to legal information and the opportunity to understand the parameters of their options before making decisions. Education on every 'reference point for decision-making' is key to active participation in the Collaborative process. These reference points are included in item 2.c.6 of the IACP training standards.
- ❖ Collaborative Practice involves professionals who have taken training to help clients identify their interests and manage the challenges unique to negotiating and resolving issues in family law [and other] disputes.
- ❖ Interdisciplinary Collaborative Practice includes mental health professionals as aligned or neutral coaches, communication coaches and mediators, or family consultants, child specialists and neutral financial specialists for maximum effectiveness in addressing emotional and financial issues.
- ❖ Collaborative Practice significantly increases the likelihood that clients can resolve their issues, while preserving a positive post-separation relationship and avoiding post-judgment returns to court.
- ❖ Collaborative Practice is designed to minimize hostility and conflict, and to instead refocus the clients on constructive approaches to arrive at mutually acceptable outcomes. In family law, this is a significant benefit to the clients' children, since research has shown that conflict and hostility between parents, an almost inevitable consequence of adversarial litigation, is damaging to children.
- ❖ Collaborative Practice allows the clients to retain control over the dispute resolution process and to craft the eventual outcome that meets their particular interests, not just their legal entitlements. Thus, the clients are able to proceed without the risk or fear of an unknown, imposed decision or pressured last minute compromise, which they may neither truly endorse nor understand.
- ❖ Collaborative Practice is extremely flexible. It allows the clients, working together with their professional team, to explore creative solutions to fit their circumstances on both a short and long-term basis. This may well lead to agreements that are not constrained by the posturing, rigid positions and formulas, which characterize traditional negotiations or court-imposed results.
- ❖ Collaborative Practice maximizes the clients' privacy. In contrast to publicly filed motions and open court hearings, the information sharing, communication and negotiations in the process occurs in private meetings. In the event a matter

moves to litigation, materials produced in the Collaborative process are not admissible, unless mutually agreed upon between the parties.

- ❖ Collaborative Practice offers the potential for cost savings. While it is not an inexpensive model, the process focuses all professional resources on activities that advance resolution. If the Collaborative process results in a complete agreement, clients will spend less overall than they would in a contested process. Professional efforts are directly related to the clients' needs and the time necessary for them to negotiate a mutually acceptable agreement with the assistance of their Collaborative team. Also, clients may openly discuss and disclose their costs of the process.
- ❖ Collaborative Practice offers the potential for the clients to learn and improve their communication, negotiation and problem solving skills, which they can then carry forward into the future. These skills can help the clients avoid or minimize future conflict.
- ❖ The disqualification cause allows all participants to be invested in reaching resolution outside of Court.



#### **Some Cautions Connected with the Collaborative Process:**

- ❖ Collaborative Practice depends on the good faith participation of both parties and the skill of their team.

- ❖ Parties must be able to participate in face-to-face meetings, to communicate their needs and concerns honestly and openly, to listen to the advice of counsel and to consider the needs of their partner or spouse.
- ❖ Formal discovery and court orders to compel production of documents is not available if the process stalls or slows down. Compliance must be voluntary and rely on the good faith of the participants.
- ❖ There will be some costs if the process breaks down and the parties are referred to new counsel to complete the negotiations or to litigate the matter. Since experts are disqualified and their work product is disqualified, unless the parties mutually agree otherwise, there may be the cost of duplicating expert services.
- ❖ It does not feel good to fail at something where one has invested time, energy, hope of resolution and resources. If one side blames the other for the failure to reach resolution, that anger can carry over into the next process.

# III.

## Preparing to Practice Collaboratively

### A. The Paradigm Shift

In order to effectively provide Collaborative Practice services to a client, a professional must understand and adopt the principles that define Collaborative Practice. For some professionals, this will require significant "re-tooling." The shift is different for all the professionals. However, the shift from advocacy for the client's position to Collaborative problem-solving is especially significant for lawyers.

Lawyers have a duty to be an advocate for their clients. In litigation, this duty often translates to debates and court hearings over legal positions that may have substantial emotional underpinnings. In collaboration, the duty of advocacy shifts to educating the client about the law, along with all of the other 'reference points for decision-making,' providing legal advice and assisting the client to participate directly in the negotiation process. To assure informed decision-making, clients must be able to identify and contain the emotional components of their positions, look beyond short-term positions to long term goals and interests, and understand their options, as well as the consequences of their choices. The shift from championing a client's position to functioning as an educator and guide requires a significant shift in a lawyer's perspective on advocacy, and dependence a very different array of skills. With a formal Collaborative agreement which concretely embodies values such as honesty, respect and a commitment to an out-of-court settlement process, the client is able to request assistance from the lawyer that focuses on education and advice, rather than adversarial advocacy. This also allows clients to look at options for positive long-range outcomes, which may not always be the best "deal" from a legal perspective. Any resolution should uniquely encapsulate the interests of both of the parties and their family. Therefore, understanding how to assist a client to articulate their interests, and to separate these from positions, and further, to appreciate the interests of the other

party, is a critical skill set for Collaborative practitioners.

Collaborative Practice involves a lawyer formally agreeing to accept a client's specific directive to provide services to him or her in a way, which adopts education and a broader vision of self-interest. To genuinely undertake that responsibility requires more than a mere willingness to negotiate and adhere to the limited representation agreement to withdraw if the process is not successful; it requires recognition of the client's directive to abandon the narrow, "win-lose" orientation of the adversarial process, and to adopt the "win-win" orientation of collaboration. Collaborative Practice is a process choice by the client. By serving as Collaborative counsel, the lawyer is agreeing to honor that choice.

Other professional members of the Collaborative team, whether serving as coaches, child specialist, or neutral financial specialists, must also have an appreciation for this different orientation. All members of the Collaborative team share the obligation to assist the clients in meeting their explicit objective of resolving their case in a manner consistent with Collaborative principles and guidelines.

## **B. Skills Development**

Reading this manual and attending the training is designed to be an introduction to the underlying theory, mechanics and structure of the Collaborative Practice process. Developing the skills unique to a Collaborative approach to dispute resolution, however, requires a commitment to ongoing education, training, practice time, professional relationship-building, as well as openness to learning from experience. For lawyers, especially those without mediation training, the shift from traditional advocacy to an interest-based Collaborative approach might be more challenging than one could imagine. Being open to learning, advanced skill development and self-reflection will enhance the lawyer's experience and increase her ability to be an effective Collaborative practitioner.

The essence of Collaborative Practice dispute resolution is to seek "win-win" solutions by assisting the clients in utilizing an interest-based approach to negotiation. Interest-based negotiation is a process which involves focusing not on either client's desired outcome or end result (their "position" ), but rather on all of the underlying needs, desires, values, goals and objectives which together comprise the basis for **why** they seek that outcome (their "interests" ). Interest-based negotiation is



characterized by a process in which neither client rigidly asserts his or her position, but in which both clients do clearly articulate and identify their respective concerns, needs and interests, hear the concerns, needs and interests of the other, factoring in the interests of their children, and seek resolutions which are consistent with those interests. People are almost always conscious of their positions, but often are not clear about the interests which give rise to their positions. A position is the decision, and interests are what caused a person to make that decision. Clients may have shared or compatible interests even when their positions are opposed. Understanding the needs, hopes or desires, i.e., interests, which underlie and explain a position is an important step in moving beyond traditional positional bargaining to a process of principled negotiation.



This understanding is particularly essential in the emotionally charged environment of a divorce or family law issue. Substantial guidance and assistance is often required to help clients properly identify and communicate their interests. The strongest interests relate to basic human needs including security, economic well-being, and a sense of belonging, identity, recognition and control over one's life. For traditional lawyers, the narrow focus is too often simply quantified as more money or more time (if the case involves children). Many interests though, are not quantifiable. They can expand the issues that would ordinarily be considered relevant by traditional legal approaches. The transition to interest-based principled negotiation is challenging for some lawyers, who are trained in a communication style of debate and a negotiation style of positioning and compromise, rather than the active listening and detachment from outcomes that effective collaboration requires.

# IV.

## **An Interdisciplinary Approach to Collaborative Practice**

### **A. Variations of Practice**

A process can be Collaborative with only two lawyers and two clients. The interdisciplinary Collaborative approach to family issues includes roles for members of disciplines other than lawyers, including communication and parenting divorce coaches, mental health professionals, family consultants, child specialists and neutral financial specialists. One interdisciplinary team model includes a coach for each party, a child specialist and a neutral financial specialist. Another frequently utilized approach involves a single neutral coach who works with both parties and participates actively in joint-meetings. The interdisciplinary approach to Collaborative family law recognizes the value of all members of the Collaborative team in not only helping clients reach agreement on issues, but also improving communication between the parties, educating them on the range of options for each issue, and creating resolutions that best meet the needs and interests of the clients and their children. Clients and Collaborative professionals alike should be aware of options for involving a variety of disciplines in their individual case so that informed choices can be made to maximize the effectiveness of the process and quality of the outcome. The goal of any approach should be to assess the needs of the parties and their family and to implement a process which best meets those needs, taking into consideration their resources and preferences. The roles within the interdisciplinary model will continue to develop and new roles are likely to emerge in the quest to maximize value of the Collaborative process for clients.

### **B. Role of the Collaborative Lawyer**

The role of a lawyer in the litigation process has been compared to that of a "gladiator." The lawyer's duty is to determine the client's desired outcome, and to champion the client's cause through a process of advocacy, whether in court or

through negotiations prior to contested court proceedings. In contrast, the role of a lawyer in the Collaborative process involves facilitating interest-based negotiations as an educator and guide through the Collaborative process. As a part of an interdisciplinary team, the obligation of the lawyer her obligation is to be a full team member, which means communicating clearly with other team members, giving and receiving constructive feed-back and being prepared for and participating in all team meetings.

**1) Educating and Counseling the Client**

One of the most important and earliest functions a Collaborative lawyer has in representing a client is to help educate the client about process options available to them. This includes a thorough explanation of the Collaborative process, including what the client needs to learn and do in order to effectively participate in it. Active participation by the clients requires an understanding of: the legal foundation of issues, financial information, the impact of decisions on children, communication and family dynamics, including co-parenting after divorce, as well as an understanding of the process of collaboration and the role that interest-based negotiation serves in the process. As the Collaborative process proceeds, it is important for a Collaborative lawyer to continue to provide counsel to the client in order to help ensure that the process remains "on track" by assuring that all pertinent information is gathered and understood before settlement options are generated and the settlement agreement is created.

**2) Guiding Interest-Based/Principled Negotiation**

The primary vehicle for achieving agreement in the Collaborative process is interest-based negotiation, and it is the Collaborative lawyer's job to guide his or her client through that process.

The key steps in interest-based Collaborative negotiation are:

- a) Anchoring in the process: being committed to the hallmarks of principled, informed negotiations, returning to them throughout the process,
- b) Defining the issues as something to be resolved,
- c) Obtaining, organizing, understanding and analyzing information needed to consider issues,
- d) Identifying and communicating interests, short-term and long-range goals,

- e) Being the agent of reality,
- f) Facilitating the generation of a range of resolution options,
- g) Evaluating the resolution options in light of interests,
- h) Reaching agreement.

3) **Managing Conflict**

Conflict is inherent in family law cases. An important function for the Collaborative lawyer is to be able to effectively manage conflict within the process. The intense emotions and stresses of the divorce process could derail the negotiations. As an expert in Collaborative dispute resolution, a Collaborative lawyer's role includes the ability to assist the parties in understanding the sources of their conflict while giving them tools to move through the conflict to resolution.

The goal of managing conflict is approached in a number of different ways. One very useful "tool" is to thoroughly define and encourage adherence to the Collaborative Participation Agreement and to establish basic ground rules for the process. In the event that one or both of the clients strays from the path of principled negotiation, the Collaborative lawyer's function is to help them refocus and return to the commitments made in that Agreement. In dealing with a client who may be expressing ideas using negative or provocative language, a Collaborative lawyer can help manage conflict by reframing or rephrasing the client's ideas in a more constructive and forward looking fashion. The lawyer is ideally a model of respectful communication and active listening.

4) **Assisting the Parties in Implementing Agreements**

Once an agreement has been reached, it is the Collaborative lawyer's responsibility to assist the clients in implementing the agreement. This includes not only preparing a clearly written, legally binding document confirming the terms of the agreement, but also providing whatever assistance might be needed to implement the terms.

**C. Roles of Mental Health or other Social Science Professionals**

One of the strengths of the Collaborative family law process is that it allows for the direct inclusion of mental health professionals in the resolution of family law

disputes. As noted above, mental health roles are developing and maturing. An overview of the roles of a coach, communications expert, family consultant and child specialist as utilized in the Collaborative interdisciplinary team model are set forth in the following.

**1) Coach**

The Collaborative coach (also referred to as a family consultant, communication professional or other culturally appropriate designation) is a licensed mental health professional or mediator whose role is to help prepare the client to participate effectively within the Collaborative process. The coach does not act as a therapist. Rather, the coach uses his or her training and experience to assist the client in managing emotional or psychological issues that might otherwise impair the client's effective functioning and/or participation in the process. The coach also communicates with other team members to provide insight and assistance in helping to facilitate the process.

There are several ways a coach may work with the clients in a Collaborative process: each client can retain his or her own coach, or, one neutral coach may be retained to work with both parties. Regardless of the process model, the Collaborative coaches will typically first meet individually with their client(s), and will discuss the issues presented in the case as a beginning point in assisting them with the Collaborative effort. The coaches usually will also caucus with their coach counterparts (in a dual-coach model), and with their client's Collaborative lawyer and other team members, to relay relevant information and to make suggestions that facilitate the process. This might include providing information about how to best approach and respond to the client, their communication or processing styles, identifying sensitive issues and providing guidance as to how to address them. The means utilized by coaches may include individual meetings, four-way meetings (both clients and both coaches, where used), three-way meetings (coach with both clients), five-way meetings (coach(es), both clients, and the child specialist), other combinations, telephone conferences, and caucuses and/or team meetings with other Collaborative team members, always including the lawyers.



The paperwork required by coaches can differ somewhat, but generally includes a questionnaire about practical information and demographics, an informed consent form which explains the process, roles, fees, and expectations/limitations of Collaborative divorce, a release of information form allowing all members of the team to communicate, and in some cases, allowing for exchange of information with the client's therapist, and a marital history questionnaire. Most mental health professionals in the USA also require that HIPAA forms are read and signed

## 2) Child Specialist

The child specialist is a licensed mental health professional with specific training and experience in child development and family systems and in working with children, parents, and families who are in the midst of undergoing a divorce or other custody/placement related dispute. The role of the child specialist is to help parents clarify their children's needs and interests. The child specialist helps the parents make decisions that take their children's feelings and needs into account, giving the children a "voice" in a process that has in the past often ignored the child's point of view.

Overall, the child specialist has three responsibilities:

- 1) to provide the children with an opportunity to voice their feelings and concerns;
- 2) to provide parents with information, education and guidance to help

their children throughout the process; and to provide information to the Collaborative team that will help in developing an effective co-parenting plan that keeps the needs and interests of the children paramount,

With specific regard to the parents, the child specialist can assist the parents in their Collaborative negotiations concerning co-parenting issues by:

- 1) Informing the parents about common reactions children have to divorce;
- 2) Discussing age-related, developmental stage, attachment and adjustment issues, practical considerations bearing on custody/residential/time with each parent, parenting style issues, new partners and blended families (when necessary);
- 3) Working separately with children and providing parents with feedback about, and helping them to consider, their child's voice; and
- 4) Helping the parents to anticipate and plan for the future challenges they may face as they continue to co-parent after conclusion of the case.

As is the case with Collaborative coaches, child specialists may well develop their own forms for collection of initial information. The child specialist will usually interview each of the parents individually and perhaps together, and will also meet with each of the children involved. Most often, the child meetings are individual, although some practitioners initially meet with siblings together. The child specialist may also schedule additional meetings with the parents or children, which can in some cases involve joint meetings with both parents and/or with a parent or parents and the children.

Ultimately, the child specialist will communicate to the parents directly and through other team members and will convey information, insights and suggestions concerning the children. Often, the child specialist will participate directly in a "five-way" meeting with both parties and the parties' coaches [when using the 2 coach model] or come to a larger meeting with lawyers, clients and one coach in that approach, to be sure information is accurately heard and considered when developing a parenting plan. The child specialist maintains a neutral stance with both parents and serves as an advocate for the children but does not offer advice or recommendations that ultimately impact the outcome of the parenting decisions.



Child specialists do not prepare written reports of their observations and feedback. This is, in large part, because the process of family restructuring is a fluid process, particularly in Collaborative divorce. The absence of a report allows the family to make modifications without feeling "locked" into, or controlled by a report (that may become less meaningful over time). This is an important point of differentiation between the Collaborative process and a custody evaluation. The child specialist is not acting in the capacity of an evaluator but rather as a consultant to the family who has the ability to discuss sensitive issues that are raised by contact with the children.



A child specialist can offer a place and context within which the children can share their story, express feelings and discuss questions and concerns. Children are generally seen for only a few visits at most. Thus, the child specialist may help with short-term divorce adjustment issues, however, when serious problems are evident, the child specialist may refer one or more members of the family to a therapist for on-going treatment. The child specialist may serve as a consultant to the family after the divorce is resolved on matters pertaining to the children, but not as a therapist for the children or the family. This role can be an important future dispute resolution and educational tool for the family.

## D. Mediator/Facilitator

Another approach that is being used involves a mediator as a neutral process guide. The mediator functions as a case manager who facilitates team communication, manages conflict and assists in keeping the process on track and moving forward effectively. This is distinguished from the role of a mediator who is brought into the process to assist at impasse. This role is often filled by one of the coaches.

## E. Role of the Neutral Financial Specialist

The financial specialist is a neutral financial professional who assists the Collaborative family law process by helping the parties to gather, organize, list, understand and analyze financial data relevant to their case. Financial specialists often hold the Certified Financial Planner™, CPA, or similar designation [see IACP standards], with the requisite training and experience to assist parties with the unique financial challenges presented in divorce and family law cases.



The skills required of a Neutral Financial Specialist in Collaborative Practice include:

1. Introductory Interdisciplinary Collaborative Practice Training
2. Financial skills related to personal net worth and budgeting
3. Expertise with the tax laws of the jurisdiction as it relates to divorce

4. Ability to present analyses related to child support and spousal support;
5. Listening and communication skills
6. Educational skills around financial literacy and forecasting
7. Ability to work with a team and engage team building skills with a couple in dispute
8. Ability to remain neutral and detached from the outcome of the negotiation
9. Additional training in dispute resolution as listed by the IACP

A characteristic unique to the work of a financial specialist as a Collaborative team member is neutrality. The Neutral Financial Specialist works with both parties in collecting relevant financial data, educating the parties regarding their financial situation and guiding the clients toward establishing financial goals. Working with both clients allows the financial specialist to determine if financial issues are creating anxiety and fueling conflict. Working closely with both clients also allows the financial neutral to assess the financial savvy of each client, their history and relative comfort levels in addressing issues surround discussions on money as they relate to family finance.

Each party is encouraged to ask questions, voice concerns regarding financial matters, provide input as to possible resolutions with the goal of them participating in making educated decisions that impact the outcome of the divorce. If necessary, one or both clients may look to the financial specialist to help them more fully understand their financial situation.

Specifically, the financial specialist functions in a Collaborative family law case as follows:

1. Assisting the parties to understand their financial situation by:
  - a) Communicating with both parties about the specific kinds of information that is required, as well as explaining why certain documents are necessary for creating a complete picture of their financial circumstances,
  - b) Explaining the best or most convenient sources of financial documentation, and how to access them,
  - c) Discussing information and documentation provided by the clients to clarify it and ensure its accuracy,

d) Conducting discussions that give the parties an opportunity to express their questions and concerns related to finances,

2. Helping the clients and their lawyers to analyze financial information by:

- a) Drafting the financial disclosure statement and schedules of property division from the financial information provided by the clients,
- b) Preparing projections of cash flow, including income tax calculations and ranges of present or future value,
- c) Providing input to the other Collaborative team members for use in issue resolution.

3. Increasing the clients' understanding and effective use of financial information by:

- a) Addressing questions and concerns and presenting financial issues to the clients in a manner consistent with the Collaborative process,
- b) Educating the clients as to their financial situation, thereby reducing anxiety and increasing confidence in addressing financial issues and exploring financial options. This may include individual meetings with a clients who need additional assistance in understanding particular financial issues,
- d) Helping the clients consider how they will handle the financial responsibilities of raising children and anticipating the children's future needs,
- e) Helping the clients to consider about their own short-term and longer term financial needs.

Financial specialists may also provide more complex analyses regarding such issues as:

- 1. Valuation of retirement plan assets
- 2. Business valuations
- 3. Property classification & "tracing" issues
- 4. Impact of settlements on college education funding for children
- 5. Impact of settlements on retirement
- 6. Forensic accounting services

The neutral financial specialist's involvement in the Collaborative process often begins with a referral from any of the other Collaborative professionals. However, it may also begin via the referral of clients to their website or via other professional or business resources. In these situations, the couple typically has not yet committed to the

Collaborative process but may desire the more neutral format provided by a financial professional familiar with divorce to obtain a sense of the process from a financial perspective or to discuss alternative divorce processes. After initial discussion with the couple, the financial specialist is then in a position to refer the couple to collaboratively trained family law attorneys for representation.

Typically, a neutral financial specialist will be part of an initial team, or in some cases, may be asked to come on board at some point in the future if a very specific need arises. From their point of engagement, financial specialist may meet with a couple together or separately to begin the financial data gathering process while working with the Collaborative team to obtain and provide updates on particular items, issues and data as required based on case specifics. The neutral financial specialist utilizes various financial questionnaires and software to develop assets and liability or budgeting spreadsheet, and/or checklists, and develop a general plan of action as how the clients might proceed in working with the Collaborative team in presenting and discussing financial information. Additional "homework" or "To Do" lists may be assigned to the parties to collect and clarify information. Due dates are established and follow up time frames are developed.

Depending on the nature of the relationship of the clients, the degree of financial sophistication of each client and the financial issues at hand, the neutral financial specialist may elect to meet with the clients separately. An individual meeting can provide the financial specialist with the opportunity to work more closely with each client to discuss financial questions and concerns, obtain a sense of each client's goals and provide additional educational instruction as to alternatives. A neutral financial specialist can be particularly useful in cases in which one or both clients have fears or frustrations about finances, where either or both lack financial skills such as organizing, budgeting and record keeping, or where there is a significant disparity in the level of financial knowledge or sophistication between the clients. Financial specialists also offer a depth and quality of analysis regarding issues such as the long-term financial impact of settlements, business valuation, property classification 'tracing' issues, the effect of divorce resolutions on financial and retirement planning, and tax impact, which their training and experience make them uniquely suited to provide. This will often involve an explanation of the numbers and basis for calculations and a range of options and ramifications for the clients to consider in reaching agreements. It is important that the neutral financial specialist understand divorce dynamics. This understanding serves to reinforce the roles of all team

members and to maintain a "safe Collaborative container" in which the clients can operate.

#### **F. Role of Other Third Party Experts and Consultants**

Although not formally part of the Collaborative team, other neutral third party consultants and experts might also be engaged by the clients in a Collaborative family law case to provide assistance in resolving specific issues. For example, an actuary might be hired to provide options for valuing or dividing a pension. Vocational experts can be utilized to provide counseling and input to parties entering the job market or making career changes. Additional experts might include real estate appraisers, mortgage consultants or bankruptcy lawyers. If such other third party experts are desired, the Collaborative process contemplates that they will be retained by the clients jointly.

#### **Roles for the Whole Team in Managing the Emotional Aspects of Divorce**

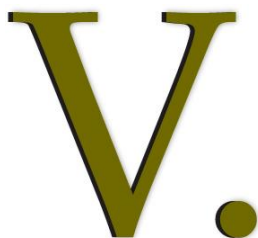
There are three aspects of every divorce: 1) the Emotional, 2) the Financial and 3) the Legal. Divorce is typically highly emotional, often centers around the division of the family finances (among other things), and is a process that must be finalized in the legal system. Because of this coaches might be expected to take the lead in the management of emotional issues. However, every team member has a role and responsibility here. All team members may need to sow seeds early that reasoned and reasonable positions are expected, that taking into consideration other points of view is part of the process and that finding a resolution that works for both parties is at the heart of this process. The language each team member uses, even subtly, can be influential, especially since it will be interpreted by clients who may be in an emotionally vulnerable place.

Team-work is a hallmark of the Collaborative process, and the area of finances is one place where it is crucial for the whole team to work together, interfacing their emotional, legal, and financial expertise. Clients seem to trust the authority of their own lawyer most in matters of finances. After all, this is the person they perceive as most charged with protecting their interests and being their champion, even within the Collaborative model. Thus, every professional involved in the process must be aware of how powerful their words can be. For example, if a client hears from one of the professionals, "This is what is fair or what you are supposed to get" when in fact the issue is grayer than that, it can be very hard for the client to subsequently show flexibility from this position. If for example, any team member, but in particular the lawyers shift to polarizing language between

themselves, in how they speak about the other party, such messages can interact very badly with the aforementioned psychological vulnerabilities, and contribute to polarization between clients and even between team members.

Words and phrases such as "fair", "entitled" and "it is my right" are rarely helpful, and quickly shift clients from their interests and remind them of their former positions. Rather, it may be more helpful to talk about "what is going to make sense here" or "what would come closest to meeting both of your most important goals" or "this would be in the range of what might commonly be done" rather than "this is what's fair." Lawyers must walk a balance between respecting the principle of 'letting go of the outcome' in that the clients are in charge of their own divorce, and using their authority to help keep them in the ballpark of what is likely to be feasible based on the reality of practical and legal considerations. The Collaborative process must remain 'client-centered,' but 'process-driven.





## **An Overview of the Collaborative Practice Process**

The general stages of the Collaborative Practice process are:

1. *Initial screening*
2. *Making a commitment to the Collaborative process*
3. *Engaging other Collaborative professionals*
4. *Gathering and sharing relevant, agreed upon information*
5. *Developing the interests of each client*
6. *Options generation for possible resolutions*
7. *Involving the assistance of third party experts / consultants*
8. *Evaluation of options in light of interests, as well as their practical application, including acceptance by the Court*
9. *Reaching Agreement*
10. *Implementing the Agreement*

The procedural steps in traditional litigation are well known and statutorily defined. Litigation has a beginning (the filing of a summons and petition), distinct and well defined procedures (e.g., pre-trial motions of specific types requiring a written explanation, basis and advance notice, formal discovery procedures, etc.), and a mechanism for reaching interim decisions (temporary hearings before a court commissioner or judge) and a final outcome (a final trial before a judge at which evidence and argument are introduced, again, according to well-defined rules of evidence).

By contrast, Collaborative procedures are less well defined. This manual suggests steps for the process that will provide structure for both the professionals and the clients. The Collaborative process can be likened to an elaborate "dance" requiring the effective participation and cooperation of a number of different people. This, in turn, requires

some form of "choreography." The following sections are intended as an outline of the practices, procedures, and the "building blocks" that define the choreography of an effective Collaborative process.

### **A. Case Screening**

Collaborative Practice is only one of a wide range of dispute resolution process options available to a person contemplating or involved in a divorce or other family law matter and may not be an appropriate option for every client. Understanding the kind of circumstances and characteristics that are predictive of success using Collaborative Practice and using that knowledge to actively screen new clients and cases is one of the most important factors in making Collaborative family law work.



Critical to the screening stage is an assessment of the individual client's ability to want the best outcome for themselves, their children AND the other client. An inability to put oneself in the other's shoes or a lack of desire for an effective future working relationship, or win-win outcome may signal a client whose case may not be a 'fit' for a Collaborative approach.

Domestic abuse screening is an essential component of any initial interview. The team process, with the expertise and support of mental health professionals, can be invaluable in addressing the dynamics and safety concerns that a history of domestic

abuse in a relationship presents. See **Appendix B**.

Finally, each professional should screen each case to determine whether his or her own professional experience in collaboration and skill set is appropriate to the issues presented. If not, can other members of the team complement the practitioner? Should the case be referred to a more experienced practitioner or one with a distinct skill set required by the case? It is clear that Collaborative Practice is a difficult and challenging alternative dispute resolution practice area. For optimal results, each professional will need to continuously consider his or her own role in the case as well as the roles of the other professionals and the clients, and be willing to practice self-reflection, accepting advice and insight from others.

Being aware of a history, chronic or current, of substance abuse and/or mental illness, the use of medication which might interfere with decision-making, or other unique needs of either client, or any other family member is critical to making a decision about the best process for the client and the family.

### **1) Identifying the Collaborative Case**

Overall, the fundamental requirement for a case to be appropriate for the Collaborative process is that the clients are both willing and able to participate in the process in good faith while maintaining adherence to the Collaborative Participation Agreement. Collaborative Practice particularly appeals to clients who want to maintain a measure of control over their own case, with the help of lawyers and possibly other professionals, and who have the ability to undertake that responsibility. Some Collaborative professionals contend that anyone who expresses an interest in this option should be afforded the opportunity to proceed in that way; others believe that certain situations or individuals are simply never appropriate for the model. Ultimately, the decision is up to the professionals and clients in any given case.

## **II. Cautions of Collaborative Practice (about p. 4).**

1. The client is not able to confirm a minimal level of trust in the honesty and good faith of the other party.

2. The client is not able or willing to participate in respectful meetings with their spouse/partner.
3. The Collaborative professional reasonably believes that there are issues present in the case which would threaten effective participation by either or both parties, such as untreated mental health concerns, addictions or domestic violence. In that case, the professionals should consider:
  - a. His or her ability, skill level, and willingness to handle the issues presented, and
  - b. The availability of skilled coaches or child specialists to involve in the Collaborative process to assist in assessing and addressing the issues.

## **B. Client Intake**

### **1) Providing the Client with Process Options**

Although ‘the word’ about Collaborative Practice is spreading rapidly, prospective clients may not have heard about it at the point of initial contact with their lawyers, mental health professionals, or other advisors. When a prospective client comes to a lawyer, mental health professional or other trusted advisor with a family law issue, the professional should present Collaborative Practice as one of the range of options in the continuum described in **Appendix A**. Which process option to adopt is an ultimate decision which each client must make for himself or herself, and if the choice is mediation or collaboration, the other partner must also agree.

The Collaborative professional can introduce the Collaborative and other process options to the client or prospective client by means of referral to the professional’s website, through telephone discussions and with written materials, including the informational brochure developed by the IACP, in advance of the initial meeting with the client. The process options should also be discussed in person with the client at the initial consultation. It is also always appropriate to refer prospective clients to your website, the website of the International Academy of Collaborative Professionals (IACP) ([www.collaborativepractice.com](http://www.collaborativepractice.com)) or the website of the practitioner’s practice group.

## 2) Forming the Collaborative Relationship

Providing Collaborative services, whether as a Collaborative lawyer, coach, child specialist or financial specialist, is a unique form of service. If a client has retained a professional to provide Collaborative services, the nature and scope of those services must be clearly communicated to the client, in writing.



### a) Lawyer

Clearly, the required practice for all family law representation is the use of a written representation agreement. The Collaborative representation agreement must include language that highlights the client's agreement that the lawyer's representation is limited to the Collaborative out-of-court settlement process and the lawyer will not participate in litigation. The fee agreement should address the parameters of privilege and team communication. The fee agreement should reference the Collaborative Participation Agreement. Examples of fee agreements for collaboration may be found at IACP website resource bank. See **Appendix C**.

### b) Coach

A mental health professional electing to serve as a coach or family consultant is not providing therapy, but rather filling a distinct role unique to the Collaborative process. Collaborative coaches should confirm the nature and

scope of services, including the limitations on confidentiality, in writing. The coach's fee agreement should also make clear that the coach's services terminate upon the termination of the Collaborative process and that the coach is not available to testify in any litigation between the clients and should cross reference the Collaborative Participation Agreement and/or Stipulation and Order. Coaches should include the statement that they will not offer therapy to any client or their children after the conclusion of the Collaborative process.

Coaches should set forth their fee agreement, including billing for time engaged in phone calls, travel, conferences and other activities. See **Appendix C**.

**c) Child Specialist**

Child specialists also need to set forth the scope of their services as well as their fee agreement, including billing for time engaged in phone calls, conferences and other activities, in writing to assure clients' clear understanding in advance. See **Appendix C**.

**d) Neutral Financial Specialist**

The financial specialist is compensated strictly on a fee for service basis in the Collaborative process. Compensation for his or her role and involvement in the Collaborative process therefore cannot be tied to the sale of securities or investment products, or the receipt of commissions. If applicable to the neutral financial specialist's particular profession, he or she must be fully qualified and licensed to provide fee-based services. As with other members of the Collaborative team, the neutral financial specialists should also confirm their relationship with the clients by means of a written retainer agreement containing a cross reference to the Participation Agreement on **Appendix C**.

**C. Preparing for Joint Meetings**

The importance of educating the client about the Collaborative process prior to the start of actual joint meetings cannot be overemphasized. In order to be effective, Collaborative Practice requires that both parties make a genuine commitment to the process. Until the client is properly educated about the process, no such commitment

can meaningfully be made. The education process for clients should include a discussion of the concept of interest-based/principled negotiation, based on the client's ability to identify and articulate their interests. In addition, client education should include information about the substance of the law, including such topics as property division, spousal maintenance or alimony, custody, parenting responsibility, placement and support. Providing this information is different than simply running "the numbers" or compartmentalizing children in common placement grids. The way such information is shared before the process has commenced may constrict the discussions, limit consideration of the interests of each client and reduce the possibility of finding creative options for settlement. In order to provide information that does not limit the discussions, but yet informs the client, the professional must detach from pre-conceived outcomes, and help the client to do so as well. This keeps the process creative and client-centered. This is also the time to find out what other influences may be having an impact on the client's thinking and who else might the client be consulting with or leaning on.

1) **Identifying the Major Issues: Triggers or Areas of Sensitivity**

Part of the Collaborative professional's communication with the client should include discussions that will help identify the major issues of most concern to the client, and any areas of particular sensitivity which might require special handling in order to avoid a breakdown in, or have a potentially counter-productive impact on, the process. Asking primarily open-ended questions might be the best form for eliciting such information. Each professional who gains insight into these special topics should share that information with colleagues so that a thoughtful way of dealing with them can be agreed upon.

2) **Communication with the Collaborative Team**

After a clear understanding of the client's circumstances, issues and concerns have been obtained, the Collaborative professionals should discuss the case with the other Collaborative team members prior to the initial meeting. By discussing these topics with his or her Collaborative counterpart prior to any joint meeting, the Collaborative coaches and Collaborative lawyers can better assess the particular areas to focus on, and each coach/lawyer can help establish the initial agenda to assist in making that meeting productive. In addition, if only certain team members are involved (such as a situation in which only Collaborative lawyers have been



retained), these early discussions can assist in assessing the extent to which involvement of other Collaborative professionals would be recommended or required.

#### **D. Establishing the Collaborative Team**

Clients may commence a Collaborative process using any of the Collaborative professionals as a point of entry. However, the most common point of entry is through the lawyer's office. In these scenarios, when appropriate, it is the responsibility of the Collaborative lawyers to explain the multidisciplinary nature of the process, and to make the clients aware of the potential benefits of including other professionals into the Collaborative team.



Clients may also be introduced to the concept of Collaborative divorce by a mental health professional, and decide to retain Collaborative coaches, or one neutral coach as their initial step in the process. If the mental health professional who recommended Collaborative divorce is the therapist for either or both of the parties, that person may not become a coach in the process. The coach(es) may recommend or help the clients select Collaborative lawyers to represent them. Alternately, the clients may initially seek help from a trusted financial professional active in the Collaborative process, who may likewise introduce the concept of Collaborative divorce to the clients and assist them in establishing the Collaborative team. However, if the financial

professionals has to maintain a professional relationship with one or both of the parties involved in the divorce, it is highly unlikely that the financial professional will be able to serve the critical neutral financial specialist role in the case and would need to consider referring the case to another collaboratively trained financial. Further, it is typically assumed that the neutral financial specialist serving in the Collaborative case will not maintain a professional relationship with either client once an agreement is reached. A continuation of a professional relationship with either of the clients would prevent the financial specialist from maintaining the role of neutrality in the event that a matter is brought back to the team for negotiation.

If other Collaborative professionals are to be brought in, to serve on the case, the decision to do so should be made mutually and as early in the process as possible; this promotes mutual respect for all team members and their roles. Lawyers should be cautioned against the notion that mental health professionals or coaches may be brought in later in the process "if the parties need them." If the clients need them later, it may mean that there has been a roadblock or other difficulty in the case which might have been avoided if the clients had started earlier developing better tools for emotional containment and communication. Bringing in mental health professionals or coaches only after stressful events demonstrate a 'need' also attaches a negative stigma to their inclusion. Furthermore, that professional would, in that event, be brought into the process after negative dynamics have already been experienced, and the ability of the mental health professionals or coaches to make a positive contribution may be compromised. Early inclusion of team members allows the professionals to potentially preempt problems rather than respond to problems in a reactionary mode. Having clients schedule at least one meeting with a mental health professional, family consultant or coach may be a way of endorsing the service, giving the client a 'taste' of the benefit of dealing with the emotional components of the divorce, and creating assurance that help is available if a crisis should develop.

The need for a financial neutral should also be discussed so that he or she is involved in information gathering and financial education from the beginning. Some clients initially resist the involvement of a financial neutral as they may have long-held relationships with their own financial advisors or accountants and cannot understand the need to bring in someone new. These other professionals can serve a valuable role in assisting the neutral financial specialist in obtaining and working through the presentation of the financial data to the team and the clients. These advisors often appreciate that a neutral financial specialist is working to facilitate and educate their clients through the process and in efficiently

doing so can enable their clients to be better prepared to continue the relationship with them once the process is complete.

### **E. The First Collaborative Meeting**

The initial topic of discussion at the first meeting is the written Collaborative Participation Agreement, the Collaborative contract, including the essential elements of:

1) a pledge/commitment not to go to court enforced by a written agreement requiring disqualification of the lawyers, coaches, child specialist and financial specialist if the case goes to litigation at any point, 2) an honest exchange of information by both spouses and 3) solutions that take into account the priorities and interests of both clients and their children. No family law dispute resolution process is "Collaborative" until and unless such an agreement has been entered into.

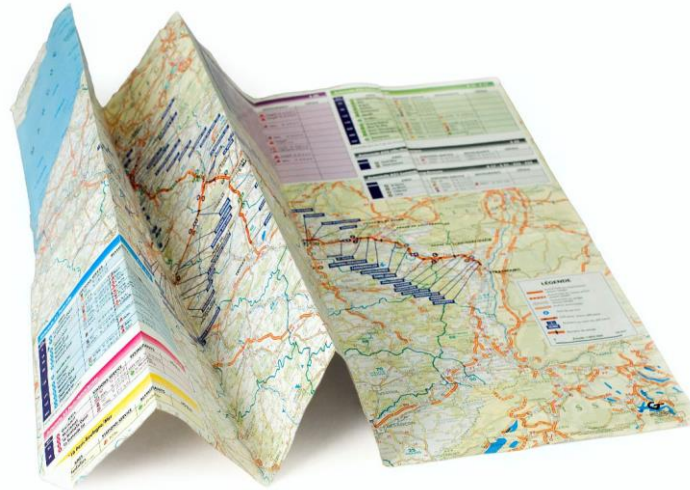
The major purpose of the joint meeting is to anchor the parties in the Collaborative Practice process, discuss the essentials, answer any questions and provide an opportunity for the clients to commit to the process by signing the Participation Agreement or Stipulation and Order for Collaborative Practice. **Sample Collaborative Agreements may be found in Appendix C and on the IACP website.** Prior to each initial joint meeting, the lawyers should discuss the agenda for the meeting with their clients, with one another, and the other team members. Typically, the agenda for the first joint meeting should include a review of the following components:

#### **1) Understanding and Committing to the Process**

Each client should have a copy of the Collaborative Participation Agreement immediately upon the signing of a fee agreement with the lawyer. There should be ample opportunity for each client to review the document and to consult with his/her own Collaborative lawyer before any joint meeting.

**The Collaborative Participation Agreement** is the foundation of the process; therefore, it is the responsibility of each lawyer to be sure that his/her own client fully understands the process and commitments and is going to sign the Agreement freely and without doubts. Each lawyer must carefully and thoroughly review the Agreement before the initial joint meeting where it will be signed. Ample opportunity should be given to

explore the clients' reasons for choosing the process, their understanding of what it entails and any areas of caution.



## 2) **Providing Clients with a 'Roadmap'**

The first joint meeting provides an excellent opportunity to provide an overview of the anticipated steps of the process. A general 'roadmap' of the Collaborative process is found in the Basic PowerPoint. This is very helpful in assisting the clients to forecast and anticipate the steps in the process. The lawyers in each case should supplement the general outline with information tailored to the facts of the case and needs of their clients.

## 3) **Attention to Temporary Issues**

In general, it is not advisable to address substantive issues in the initial joint meeting. An exception might be to address a temporary issue perceived as something that must be addressed immediately. Such topics should only be addressed at the first meeting with advance notice and joint planning. One approach to relieve the concerns of one or both clients is to identify such an issue and schedule future meetings to address the issue. Scheduling a series of meetings and establishing specific tasks for each client and an agreed upon agenda for the next meeting will assist in providing the structure necessary to move forward effectively and efficiently in the Collaborative process. An example of a meeting form in which upcoming meeting dates, homework and agenda items for the next meeting are identified is found at **Appendix D.**

## **F. Discussions Before and After Collaborative Conferences**

In the Collaborative process, team meetings with clients and Collaborative professionals are the principal means of conducting negotiations and reaching resolution of issues. Between such meetings, it is advisable for members of the Collaborative team to confer with each other and with the clients. These discussions help to ensure the client's understanding of the topics on the agenda, involve the client in the identification of issues, provide time for appropriate exchange information, alert the other team members to problems and facilitate productive meetings. Though the following sections may refer to lawyers for ease of reference, the general guidelines suggested for communicating and conducting team conferences apply equally to all professionals in the interdisciplinary Collaborative process.

A Collaborative lawyer should meet with his or her client and with his or her Collaborative counterpart and/or team between meetings. It is advisable for all team members to share information from individual meetings as well as to consult with each other as necessary. Keep in mind that the client's understanding of what might be kept confidential and what is shared, and by whom, must be clarified throughout the process and never taken for granted. Any of the team members may contact one another directly. Often communication between team members may simply be in the form of a voice mail or e-mail message. It is important to have an understanding of how team members of different disciplines handle such communications. Copies of meeting notes should be provided to all team members promptly. Weekly e-mails by a designated team member and periodic team conference calls can be very helpful in assuring case management and efficiency in the process. As explained earlier, some Collaborative Practice groups use case managers who coordinate meetings and direct the process. It is essential to keep all team members updated and apprised of case developments.

## **G. Collaborative Conferences/Meetings**

### **1) Practical Details**

The following considerations are offered regarding the practical details of Collaborative conferences.

**a) Location**

Collaborative meetings should be held at a location which is convenient, and which is likely to help the clients feel comfortable, thereby maximizing their ability to be effective participants. In some cases, the clients and lawyers or other professionals may alternate between offices. In some cases, due to logistics, travel time or other concerns all the conferences may occur at a single office. The location of the meetings should be chosen with deference to the needs of all participants. Pay special attention to accessibility needs.



**b) Physical Arrangements**

The physical arrangements selected for the Collaborative conference should be chosen with an eye toward what will help the clients participate effectively. Ready access to a telephone, computer, calculator and other tools is desirable as they may well allow the clients to immediately obtain information or perform calculations helpful to their negotiation.

The physical surroundings and logistics play an important role in setting the stage for a productive meeting. For example, a round table will facilitate each participant's ability to see all the other participants clearly during the meeting and will serve to avoid 'positional' seating. At meetings early in the process, some clients prefer their lawyer to be seated beside them and like to avoid sitting directly opposite their former spouse. Allowing the parties to choose where they will sit, no matter the shape of the table is useful. Some meetings occur without a table at all. Many Collaborative professionals have found that providing refreshments can have a positive effect on the tenor of communication and the process of negotiation. A white board, flip chart (preferred) or projector screen can provide a place for the clients to 'rest their eyes' away from the direct eye contact of the other party and is useful for capturing complicated information in the moment as well as serve as a means of confirming meeting results.

c) **Length**

Two hours is generally the maximum period of time to plan for a Collaborative conference. Collaboration is a challenging and rigorous process. It is often emotionally draining for clients and requires substantial focus and energy from the professionals. Establishing a time limit in advance of the meeting allows the clients and professionals to efficiently manage time in the meetings. The professionals should begin and end meetings promptly and on schedule.

d) **Participation**

Collaborative meetings should involve active participation by all attendees. Any participant in the conference may directly address any other participant. Any team member may "take the lead" at a given time. This kind of multi-directional communication is one of the advantages of Collaborative negotiation. When a particularly challenging topic is on the agenda, it is prudent to agree beforehand which professional will introduce the topic and guide the conversation. **This issue underscores the importance of team planning ahead of all joint meetings**

## 2) Agenda



All Collaborative conferences should have a specific, itemized agenda of all topics intended to be addressed. Team members need to be mindful of realistic time-frames and avoid overly ambitious or 'crowded' agendas in order to avoid time-pressure. The agenda is always discussed with and provided to both clients prior to the conference. Written agendas are an essential tool to help manage conflict, guide negotiation, help to anticipate and avert unproductive emotional moments. Clients experiencing difficult and stressful events need to be confident that they will not be unexpectedly confronted with painful or inflammatory issues. They need time prior to the meeting to consider the topics raised and clarify their interests regarding those topics. Clients need to feel safe in the process and know they will have time to weigh and prepare for discussion of issues with their respective lawyers, prior to the team meeting. Departing from the agreed upon agenda can run a risk of raising issues that neither the clients nor the professionals are prepared to address and which can then become counterproductive. It is important to remember that a primary role for all of the professionals is to maintain a 'safe container' for the clients to operate in. See sample Agenda in **Appendix D**.

It is appropriate to set dates and times and discuss the tentative agenda for upcoming Collaborative meetings near the conclusion of a conference in progress. Such agendas are tentative and are subject to revision, with the final agenda to be established by communications between the clients, lawyers and other team members. Any changes in the written agenda should be discussed and provided to the participants prior to the next meeting.



### 3) Conduct of Meeting

The Collaborative team works with the clients to identify issues, gather and understand information, define their interests, develop possible solutions, and consider possible solutions in light of their interests. The goal is to maximize the extent to which the clients themselves engage in active negotiation. Although each Collaborative professional may at times take a leading role in guiding the negotiation, conscious attention must be paid to ensure that overall a state of balance is achieved, especially where the layers are concerned. Neither Collaborative lawyer needs to posture and neither should dominate the process. If there is a difference of opinion about a legal issue, the lawyers should decide how this will be addressed, privately with each client and at the larger meeting. This is an important part of team norms and standards which should be designated at the beginning of each case.



#### Some Collaborative Communication Techniques:

##### A) Modeling Collaborative Behavior

Collaborative team members should strive as much as possible to model respectful listening, open-ended questioning, maintaining a focus on problem-solving behaviors throughout the process. Each participant should avoid posturing or blaming. Learning and modeling non-defensive communication is key to success as a Collaborative

practitioner. The influence of the example set by the Collaborative professionals on the clients and their approach to the process is very powerful.

**B) Guiding Communication**

Collaborative Practice is 'Client-centered and Process-driven.' It is therefore up to the Collaborative professionals to guide the clients through the resolution process. The role of a Collaborative lawyer in particular, is to educate their client, set the 'table' for constructive conversations and guide negotiation, not control it. The distinction is important. This is particularly challenging for lawyers with significant experience in traditional litigation. Lawyers may have become accustomed to directing a client to the lawyer's preferred definition of a "good deal." In Collaborative Practice, the ultimate goal is to guide the parties to creatively explore and define their own resolution. Instead of choosing one outcome over another or splitting the difference between two positions or ultimatums, there may be a wide range of possibilities, limited only by the clients' needs, interests and preferences, and the collective creativity of the Collaborative team.

**C) Encouraging Participation**

The professionals should be mindful of the particular personality of each client and help find ways to allow that client to participate meaningfully in the Collaborative process. Not all clients will be equally equipped or inclined to participate in a negotiation process. Some will require greater assistance, education or encouragement in order to communicate their interests and ideas. Involving other team members can also help establish or maintain balance while encouraging both parties to participate.

**D) Minutes of Conference**

Collaborative team members should keep accurate notes of what is discussed at each meeting. A record should be made as to any tentative or temporary agreements that are reached, as well as matters that need more work or information. A written memorandum of minutes from the conference should then be prepared and, disseminated to the clients and the rest of the team, in an agreed upon time frame (the sooner the better). The minutes serve as an essential reference and reminder of

what has been discussed and decided, serving not only as a reference to confirm the specifics of agreements, but also as the foundation and springboard for future negotiation. In addition, the written record provided by the minutes helps to avoid misunderstanding by forcing the clients to explicitly re-state what has occurred and give all involved the chance to review that language. See sample form **Appendix D**.

**E) "Homework" assignments**

In addition to tentative agreements that might be reached during a Collaborative conference, tasks that need to be completed, such as obtaining some form of financial documentation, retaining a real estate appraiser, etc. should be assigned and memorialized. These various tasks should be listed and included as part of the minutes from the conference. It should be clear who is responsible for each "homework" assignment and what the time frame is for completing the task. This clarifies tasks and keeps the process moving forward and should be followed up on by the professionals between meetings.

**F) Scheduling of Additional Conferences**

The scheduling of future meetings should be addressed before the conclusion of each meeting. Having a series of meetings scheduled keeps the process moving forward and avoids long gaps even if a meeting needs to be cancelled. Practice Tip: professionals should coordinate their respective schedules before offering scheduling options with the clients.

**4) Dealing with Impasse**

**a) Refocus on Interests**

As issues become more heated or contentious, it may become more challenging for the clients and lawyers to maintain an interest-based approach. Either or both may then revert to a position-based posture and begin taking positional stands that inhibit an interest-based approach and lead the clients toward impasse. When this occurs, the professionals should redirect the clients to an interest-based

approach. This might be accomplished by asking questions such as:

- How do you believe that statement will help us to move closer toward reaching your goals?
- What do you see as the consequences of that action?
- What do you see as your choices or options here?
- What do you think would be the most effective thing we could do next?

Clients should be reminded that the interest-based approach does not involve either client being compelled to be passive or capitulate or to take the traditional "split the difference" approach. Instead, best results are produced when both clients assertively advocate for their respective interests, but do so in a way that maintains a respectful and good faith attempt to understand and honor the other's interests as well as focusing on the interests of their children. One option to consider when the process is not moving forward effectively is to take a break, consider the need for gathering more information, consulting with other resources and explaining other process options that complement the Collaborative process, such as mediation.

#### **b) The Power of Silence**

If the Collaborative process has been well explained and structured, and the professionals have assisted both clients in effectively articulating their respective interests, the team should not necessarily seek to immediately fill the void created by silence. Not infrequently upon reaching a point of apparent impasse followed by a lengthy silence, one or both of the clients will propose an idea which may ultimately form the basis for agreement.

#### **c) Taking a Break**

At times, one of the best things to do in order to help facilitate negotiation is to take a break from the process. Taking a break can be a method to help manage conflict, give the clients time to cool down from a period of unusually emotional discussion, take care of a pressing need which is preventing them from being able to

concentrate, or just recharge a bit physically or emotionally. This can occur during a team meeting with a time out, client caucus or by concluding early. One caution is to not allow too much time to elapse between meetings--avoiding difficult conversations or issues can take responsibility away from the clients and derail the process.

**d) Private Meetings**

One-on-one meetings or telephone calls between lawyer and client may occur at any time in the process. Such meetings are particularly important when substantively complex areas with complicated options are on the agenda for the next meeting. Each client should be well informed and comfortable with the options and consequences of the options in preparation for those meetings. This applies to all team members.

**e) Lawyer to Lawyer Caucus**

Ideally, the team members will discuss the relevant considerations in a Collaborative case by means of informal communications and caucusing prior to the Collaborative meeting. There are times, however, when issues or concerns arise for which the professionals were not prepared. If this occurs, or if a meeting is not proceeding productively, it is sometimes helpful for the conference to be suspended for a short time, and during that time for the professionals to take the opportunity to discuss the situation. Professionals being able to give and receive constructive criticism are also vital to an effective process, and growth as a practitioner. The importance of proper preparation for team meetings cannot be overemphasized.

**f) Reality Check**

If all options fail and the clients have reached impasse, the ultimate result is likely to be termination of the Collaborative process. In that event, both Collaborative lawyers would be forced to withdraw, per the Participation Agreement, and the clients would each have to retain new counsel for litigation or some other process option of their choice. Directly facing this prospect and discussing all of its potential consequences may be an impetus for the clients to return to the Collaborative process with a renewed sense of commitment, purpose

and energy, which ultimately helps propel them to a successful agreement.

# VI.

## **Conclusion of the Collaborative Process**

This section outlines the various possible outcomes of a Collaborative case. The professional's involvement in the Collaborative case can conclude in only one of four ways: 1) the parties reconcile and the case is dismissed outright, 2) the lawyer withdraws to allow another Collaborative lawyer to assume representation of the client, 3) one of the parties to the proceeding elects to terminate the Collaborative process, or 4) the case results in a complete, negotiated agreement.

Most often the Collaborative process will result in a complete, negotiated resolution. Once a settlement agreement has been reached, it is the responsibility of the lawyers to coordinate the preparation of a written document with other team members which reflects that agreement, and which allows the parties to demonstrate compliance with any applicable provisions of law. In many cases, marital settlement agreements are jointly drafted or reviewed by all professionals to avoid any misunderstandings, competing perspectives about how to write something or dueling language issues.

# VII.

## **Ethical Considerations in Collaborative Practice:**

### **A. The Practical Application of the IACP Ethical Standards**

In the beginning, Collaborative Practice was the product of experienced professionals who saw the impact of traditional divorce practices on the family. The experience and wisdom of the founders of Collaborative Practice led to early efforts to insure that the quality of practice would be reflective of the highest levels of professionalism. The ongoing development of Ethics, Standards and guidelines is one of the efforts by IACP to provide an ethical compass for practice at the highest levels. The underlying guiding principle of the Standards is that in the event of a conflict between the Standards and the ethical code pertinent to the professional, the individual professional's code must be followed.

The IACP began developing its Ethical Standards for Collaborative Practitioners in 2002 with involvement by members of the IACP legal, financial and mental health communities. The Ethical Standards were most recently restated by the IACP Board in January, 2007 and revised in October, 2014. The Standards may be found on the IACP website: [www.collaborativepractice.com](http://www.collaborativepractice.com). The IACP Ethical Standards provide a framework to assure best interdisciplinary practices. The Standards are not binding, but form a starting point in understanding the ethical considerations surrounding collaboration for each discipline. See **Appendix F**.

The goals of the Ethical Standards are to provide a common set of values and principles to guide Collaborative practitioners in making decisions and conducting a case, to create a framework of basic tenants for ethical and professional conduct by the practitioner and to identify responsibilities of Collaborative practitioners to their clients, to their colleagues and to the



public. Consistent with the underlying codes of ethics for each Collaborative profession, the Standards address the core values of Competency, Confidentiality, and Conflicts of Interest and the key questions confronted by Collaborative practitioners both as they represent individual clients in the process and as they work as neutrals in the process.

### 1) **Competence**

Competence is an essential and key component of professionalism. The Standards require that each Collaborative practitioner maintain in good standing the minimum licensure or certification required to practice his or her profession. In addition, the Standards provide a minimum threshold for training of 14 hours of training consistent with IACP Minimum Standards for Collaborative practitioners before working as a team member.

### 2) **Confidentiality**

The professional disciplines in Collaborative Practice are built around a core value of confidentiality. The most basic understanding a client has of her relationship with her lawyer or therapist is that the lawyer and therapist must not divulge confidential information. Since the mental health professional is not acting as a therapist this distinction should be made clear. However, for the lawyer how does Collaborative Practice reconcile the basic value of confidentiality with the requirements of full disclosure and transparency inherent in the process? This topic is addressed in several sections of the Standards.

The IACP Ethical Standards require confirmation of "informed consent" about confidentiality. Section 4 directs the Collaborative professional to "inform the client(s) about confidentiality requirements and practices" of the practitioner's profession and requires the professional to secure the clear written consent of the client in the Participation Agreement to disclosure of privileged information. The comment to Section 4 lays out the task for the skilled Collaborative practitioner and highlights the importance of the discussion with the client.

The rules of confidentiality are among the most important core values of the legal and mental health professions. Those standards may be modified by the terms of the Collaborative practitioner's fee and/or Participation Agreement with the client(s),

so long as the modifications are consistent with the ethical standards of the practitioner's discipline. A competent Collaborative practitioner will be knowledgeable regarding the requirements of his/her professional standards pertaining to the necessity of obtaining a client's informed consent, and shall provide sufficient information to enable the client to give informed consent.

Section 7 of the Ethical Standards seeks to ensure the client's informed consent by requiring that the written Collaborative Participation Agreement and/or written fee agreement contain terms expressing the prohibition against withholding or misrepresenting information and the possibility of the termination of the process if the client persists in such a course of conduct.

Section 8 requires the practitioner to secure the client's written consent to share Information as appropriate to the process with all other Collaborative professionals in the case.

### 3) **Withdrawal/Termination**

What happens if a client in the midst of a Collaborative process refuses to permit disclosure of material information? Legal ethics scholars generally agree that a general waiver of confidentiality would not adequately protect the lawyer if the client orally revoked the general waiver of privilege and specifically instructed the lawyer not to divulge the information. In such case, what is the duty of the Collaborative lawyer?

Section 7.1.A.2 imposes a duty on the Collaborative practitioner to advise the client of the client's duty to proceed honestly and not to act in a way that undermines the Collaborative process. If the practitioner advises the client of the client's duty and believes that the client will not honor their commitments to the process, Section 7.1.A.2 then allows the Collaborative practitioner to withdraw, or terminate the process.

The Standards provide Practice Protocols to address the Withdrawal/Termination dilemma. Section 9 of the Standards requires the Collaborative practitioner who learns that the client is withholding or misrepresenting information to clearly advise and counsel the client that the client's conduct is contrary to the principles of Collaborative Practice and that the continuation of that conduct will mandate the

withdrawal of the practitioner. Section 9.2 provides that if the client continues in violation of the principles of disclosure and/or good faith, then the practitioner shall withdraw from the case, or, as set forth in 9.2(B)

Where permitted by the terms of the Collaborative practitioner's contract with the client, the practitioner shall give notice to the other participants in the matter that the client has terminated the Collaborative process.

#### 4) Conflicts of Interest

The Collaborative process works because the professionals balance the negotiating table for resolving all issues. Conflicts of interest inherently unbalance the table. The Standards mandate the disclosure of any conflicts of interest, as required by the practitioner's own discipline and further mandate that practitioners not share a financial relationship with other Collaborative professionals on a case which is contrary to the practitioner's own professional ethics.

#### 5) Neutrals

The clients in the Collaborative process benefit from the role of neutral financial specialists, child specialists and in some areas, neutral coaches. The Standards address the unique role played by Neutrals and assign a high value to the continuation of neutrality beyond the granting of a divorce. Thus, in Sections 10 and 11, the Standards provide that a practitioner who serves as a neutral must adhere to that role and "**shall not**" engage in any continuing client relationship that would compromise the practitioner's neutrality. Does this mean obtaining the consent of both parties before proceeding with any future engagement?

# VIII.

## **Building a Collaborative Family Law Practice**

Collaborative Practice is still a relatively new dispute resolution process. Although there has been publicity about the process and word is beginning to spread, some prospective clients have not heard of it. Professionals interested in offering Collaborative services therefore need to find effective ways to market that segment of their practice. The following suggestions are offered to assist professionals in developing and building a Collaborative Practice.

### **A. It Starts with You**

As you begin to think about building a Collaborative Practice, it is helpful to ask yourself the following questions: Why should a client choose the Collaborative process? Why should someone refer a Collaborative case to you or include you on a Collaborative team?

The goal of posing such questions is to develop a thorough understanding of the value that Collaborative Practice can offer to clients. It will not be possible for any professional to convey a sense of that value to prospective clients, referral sources, or the public at large unless that professional has a thorough understanding himself or herself.



Here's the Key Point:

**Q:** What is the biggest difference between Collaborative professionals who are participating in a lot of Collaborative cases and those who are not?

**A:** They understand and believe in the value of the Collaborative process, they support a client-centered approach to decision-making and appreciate networking with like-minded professionals. They have a clear understanding of the uniqueness of the process and can articulate it. They appreciate the enormity and nature of the shift, both internal and external, that they must master in order to become an effective Collaborative practitioner, and are focused on developing those skills. This is the foundation for successfully building a Collaborative Practice.

Clients come to us for education, advice and counsel. The initial step is providing information about the choice the client has regarding dispute resolution options – including *pro se*, mediation, Collaborative Practice and lawyer negotiation/litigation. Collaborative professionals must develop an understanding of the dispute resolution options available to the client, and incorporate that information into every new client consultation.



The most important message about how to get started in building a Collaborative Practice is: know that you are now empowered to contribute to the development of Collaborative divorce in your area! Do not sit back and wait for cases to come to you from your organization or other professionals. This recommendation applies to all the

disciplines. There are many professionals in each discipline who will not participate in the Collaborative process, but who will be an excellent source of referral to a process they see as healthy for clients. Providing information to individuals and organizations about Collaborative Practice is an effective way to build a referral network. All of the professions can suffer from discomfort around the term "marketing." However, professionals who are in any type of private practice know that, whether you call it marketing, networking or public education, it is vital to any expansion in this area to contribute to the availability and flow of accurate information.

Most of us already have some ideas, experience, and skills in how to develop new areas of practice. As an example, most mental health professionals have, at some point, developed an interest in a new clinical area, began to have some training in it, let people know about their interest and then began to receive more referrals. For mental health professionals and financial specialists, there has been a tendency to see lawyers as the initiators of cases and source of referrals, perhaps because it is a legal process. The most effective growth has occurred in areas where all professionals participate in public and professional education about the option of Collaborative Practice and cross-referrals.

What we know for sure is that professionals of any discipline who have been most proactive and enthusiastic about Collaborative Practice have developed their practices most quickly. It does start with a philosophical commitment and a belief in the value of what we can offer to families in the midst of a divorce or other family law dispute, as well as a belief in the value of the Collaborative process. It is not about being a slick marketer, it is about being yourself; most of us have very strong convictions about the value of handling divorces or other family issues in a humane and non-destructive way. Obviously, it is also not about pushing clients to select the Collaborative process. Clients need ownership of the process in order for it to work. However, when we are willing to provide information, when we are willing to describe the potential benefits of the Collaborative process, we are giving clients more choices. We are giving them an important option that they might not have been aware of. It has been our experience that many clients are relieved to find that they can receive professional support through the divorce process without losing control and privacy in an adversarial process.

## **B. Hot Tips**

- 1) Create a plan. Set clear goals- short term and long term and write them down. For

example: in 3 months, I want to have two new Collaborative cases; or, in two years I want to be doing only Collaborative divorces. Some experienced practitioners have limited their practice to mediation and collaboration. Setting your intention is powerful for getting results. You'll never get there if you don't know where you are going!

2) Develop and execute specific strategies for meeting those goals along with a timetable. Be accountable to yourself for the progress you make toward achieving your goals.

3) Identify your target market (who is most likely to choose the Collaborative process and who are the most likely referrers of clients to the Collaborative process) and list strategies that will connect with them. For example, the target market for mental health professionals is broader than for their therapy practice. They cannot bill insurance for their Collaborative work, and, thus, are not limited to people who belong to certain insurance networks. Many mental health professionals have not typically connected with therapists outside their own insurance or practice group, but providing information about the Collaborative process at clinic staffing and other meetings can be an effective networking tool.

4) Contact your current referral sources and let them know that you are a trained Collaborative practitioner and tell them what unique benefit clients derive from the Collaborative process. The IACP brochures are an excellent way to provide information. Also, the first conversation a couple has with a professional about the Collaborative process need not only be with a lawyer. Cases can begin with a mental health professional, family consultant or financial specialist who then refers the couple to Collaborative lawyers.

5) Get to know your Collaborative colleagues:

- a) Enhance your referral network by being involved in your local practice group. These are interdisciplinary groups in your local area who meet on a regular basis to discuss Collaborative Practice, their work and business development, case debriefs, mentoring and plan future networking and educational and marketing events
- b) Be sure to join any state organization as well as IACP. Attend local meetings and join a committee. Colleagues who know you are more likely to refer cases to

you. In turn, you will develop resources for your Collaborative teams. Participation in these organizations will also enhance your skill development as a Collaborative professional.

- c) Set up individual or practice group social and/or educational events with other members of your group. This often results in referrals as well as more effective teamwork.
  
- 6) Publish articles in professional journals and newsletters. The IACP publishes the *Collaborative Review*, a scholarly journal devoted to Collaborative Practice. Your local group may have or could launch a newsletter. There are many professionals and public media sources, and many are looking for contributors.
  
- 7) Contact groups who might be interested in hearing about the Collaborative process and offer to give an informational presentation about Collaborative Practice. The ideal is for at least two professionals from two different disciplines to give the presentation.
  
- 8) Have a presence on the internet by creating a website and joining IACP, which will list your name and contact information on its website. If you already have a website, be sure to update it to provide information about Collaborative Practice; add links to the IACP website and your local group's website.
  
- 9) Advertise in the media via radio, television and/or print ads that will reach those who are most likely to have an interest in the Collaborative process. Do more than just use the words "Collaborative Practice" in your ad. This is a new process and people need to understand what it means. In a few words, describe the unique benefits of the process. Display the CP logo in your ads and identify yourself as a member. Use the IACP public education materials, including brochures, radio ads, and the billboard/print ad, which are available to members.
  
- 10) Talk about process in your initial consults with prospective clients. Their most important decision -- after deciding to divorce -- is what process to use. Provide written information on the Collaborative process along with all divorce process options. Be prepared to offer clients a specific explanation of the unique benefits of the Collaborative process. Use metaphors and stories to simplify and make the concept more compelling.



11) Display IACP Collaborative brochures in a prominent place in your office and make them available as handouts at professional and community events or for display in the offices of referring professionals.

12) Talk about the Collaborative process every chance you get. Develop a brief two or three sentence 'talking points' description of what you do, including what a person needs to know about the benefits of the Collaborative process. For example, 'My practice includes Collaborative divorce cases where clients choose to stay out of court and instead work together with their lawyers to create solutions that will meet the needs of all family members.'

13) Monitor your progress – keep track of cases, how many and where they come from. Talk with other Collaborative practitioners about what works, and share information and advice. This is a team process – more cases for one means more cases for everyone. This is about teamwork, not competition.

# Appendix A: Family Law Dispute Resolution Options

## DIVORCE PROCESS MODELS

*Pro Se Divorce... Mediation... Collaborative... Lawyer  
Negotiation/Litigation*

### HOW DO DIVORCE ISSUES GET DECIDED?

There are a number of procedural models, which may be used to reach resolution of these issues. The methods vary in degree of lawyer and court involvement, conflict and cost. Each issue in a divorce case may be resolved by: (a) the parties reaching an agreement that must be approved by the court; or (b) having a contested hearing after which a judge or court commissioner makes a decision. These models include: (1) *Pro Se* divorce; (2) mediation; (3) Collaborative divorce; and (4) lawyer negotiation/litigation.

#### 1. *Pro Se* Divorce.

'*Pro se*' literally means 'for oneself'. The term *pro se* has thus come to mean an option in which the parties do not retain lawyers but instead represent themselves in the legal and settlement process. This process has also been called the 'kitchen table' approach. The parties draft and file all necessary court documents to process their case, including the initial pleadings, motions and affidavits, required court forms, financial disclosure, written stipulations and settlement agreements, and any final judgment. If a final court hearing is required in their jurisdiction, they attend the hearing on their own. In some jurisdictions, *pro se* form kits are available at the courthouse. Parties may also turn to books, internet resources or a myriad of 'information provider' type services which are available for a fee, to get through the legal process without the assistance of a professional. If the parties are not able to resolve issues, the parties must appear at any necessary hearings and be able to present their own evidence and legal arguments to the court. A primary concern of courts and professionals with respect to *pro se* cases is whether both parties have made all decisions and agreements knowingly and voluntarily. There are particular concerns in divorce cases when the issues involve children, retirement benefits, substantial assets or significant disparities in income. Additional concerns may exist with respect to educational, emotional and power imbalances

## **2. Mediation.**

Mediation is a process in which the parties hire a neutral third party to assist them in reaching agreements. The mediator may or may not be a lawyer. A mediator can provide information about the law and the legal process and guide a discussion to help the parties resolve issues. A mediator does not, however, represent either party and cannot provide legal advice. Mediation may occur with parties who have retained lawyers as well as parties who are not represented. Generally, parties exchange information, brainstorm and negotiate with one another in the presence of the mediator. The goal of mediation is to assist the parties in reaching agreements that meet the needs of both parties without the financial and emotional cost of contested or protracted legal proceedings. The parties must still prepare the pleadings and other required court forms, sometimes with the assistance of the mediator, unless one or both also retain a lawyer.

Mediation and Collaborative Practice share some common characteristics. Both processes use an interest-based problem-solving approach to negotiation, which seeks to identify outcomes that meet the needs and objectives of all parties. Both have the goal of guiding the parties to a personalized, respectful resolution that facilitates communication and minimizes conflict. Both emphasize client education, leveling the balance of power to assure the parties' effective participation, listening skills and creative problem solving. Finally, both mediation and collaboration allow the parties to retain privacy and control throughout the course of the process.

## **3. Collaborative Practice.**

In the Collaborative process each party hires a trained Collaborative lawyer and other Collaborative professionals as needed to work together in an out-of-court, problem-solving, non-adversarial process. The binding Collaborative commitment made by both parties and their respective lawyers to voluntarily disclose all relevant information, proceed respectfully and in good faith in settlement negotiations, and refrain from the threat or actual resort to court does not waive either party's right to use the traditional litigation process but does require that if either party makes that choice, both Collaborative lawyers must withdraw and each party must retain a litigation lawyer to proceed with the case and represent them in any contested court hearing. In Collaborative Practice, the parties and their professional team communicate and negotiate directly with one another in a structured settlement process. The Collaborative process is designed to allow for innovative solutions and approaches to assist in reaching settlement.

Thus, the Collaborative process can be narrowly defined as two clients and two lawyers who have made a formal written agreement to adopt a Collaborative approach and to not submit contested issues to the court. Collaborative Practice in family cases at its best is a flexible process in which professionals from other disciplines are incorporated as team members to maximize the benefit for families.

#### **4. Lawyer Negotiation/Litigation.**

Litigation is the traditional legal process. Both parties hire lawyers who provide legal advice and advocate the positions of their clients in negotiations and court hearings. Negotiation occurs in the context of the legal adversarial system, and the parties and lawyers retain the option of turning to the court as a third-party decision maker if resolution is not reached on all issues. The parties generally communicate through their lawyers regarding their positions, proposals and counter-proposals. Most negotiations occur within the confines of statutory and case law precedent and legal formulas and against the backdrop potential of court intervention and decision-making.

The lawyer negotiations/litigation process may involve the use of formal legal procedures, known as 'discovery' to obtain financial and other relevant information. Discovery may include the use of depositions (a formal taking of testimony before a court reporter), interrogatories (answering lists of questions in writing under oath) and the subpoenaing of documents or other materials believed to be relevant to the issues. Further, each party may hire experts to support their positions. In some jurisdictions in cases with child custody or placement issues, the court will appoint a third party, called a Guardian ad Litem, to advocate for the interests of the children. Ultimately, if agreements are not reached, parties and other witnesses testify before a judge, who makes a ruling on each disputed issue. If either party is dissatisfied with the final court decision, they have the right to ask the court to reconsider its decision and to take an appeal of the final ruling to a higher court. Most litigation cases are eventually settled. Over 98% of all divorces are resolved short of trial. Unfortunately, settlement often occurs after substantial time, money and emotion have been spent in legal conflict. Further, one or both parties may be dissatisfied with the court outcome, and they are then likely to appeal the judgment or return to court in the future to argue for modifications of specific orders. In cases involving placement of children or payment of child or spousal support, parties frequently return to court after the initial determination to seek modification of those terms in ongoing post-judgment litigation.

## Appendix B: The Importance of Domestic Abuse Screening in the Collaborative Family Law Case

### THE IMPORTANCE OF DOMESTIC ABUSE SCREENING IN THE COLLABORATIVE FAMILY LAW CASE

Domestic abuse crosses ethnic, gender, race and economic lines. **Every** client should be screened for domestic violence issues. In Collaborative family law cases, where the majority of work is done in face-to-face meetings, and clients may feel **and be** more vulnerable to abuse, threats of violence or intimidation, screening is especially critical.

**Domestic abuse can turn the Collaborative process upside down.**

COLLABORATIVE VALUES	DOMESTIC ABUSE REALITIES
Win/win, good faith	Win/lose, bad faith
Transparency and accountability	Power and control
Equality and decision-making	Imbalance of power
Constructive conflict	Destructive conflict
Mutual trust	Distrust
Self-determination	Lack of self esteem
Naming/blaming	Brainstorming
Safe place	Safety planning

A nonjudgmental attitude which conveys the message that you are willing to accept the client's disclosures is essential. An opening statement that normalizes the questions such as 'Because abuse and violence are so common, I've begun to ask about it routinely' may be helpful. Both women and men should be questioned about domestic abuse. Whether they are victims or perpetrators, the information is important for you to have to competently represent a client.

## SCREENING QUESTIONS

- How do you and your partner resolve disagreements? Deal with anger?
- How are decisions made in your relationship? Does one partner control all the major decisions – about finances or child guidance, for example? Or are the decisions shared between the two of you?
- How do you resolve conflict in the relationship or in making decisions?
- Have you ever been afraid of your partner? Are your children afraid of your partner? How does your partner discipline?
- Who wants to end the relationship? Why?
- Do you have freedom in your relationship? Do you have access to friends, family, free time?
- Is there a history of violence in your family – parents, brothers, sisters? Is there a history of violence in your partner’s family?
- Do you ever alter your behavior to protect yourself from your partner’s behavior?
- Has there been any other litigation between the two of you? Explain.
- Do you or your spouse/ex-spouse have a prior record of any criminal or child abuse charges or convictions?
- Have you ever called the police, had a protective order issued on your behalf by the court, or sought help for yourself as a result of abuse by your partner? If so, did the abuser abide by the order?
- Do you or your partner use alcohol or drugs? To what extent?

## CLARIFYING QUESTIONS

If any of the above questions reveal fear, unequal power, substance abuse, criminal or mental health history, the following questions can be used to clarify:

- Has your partner ever threatened to hurt you, your children, a pet or belongings?
- Has your partner ever threatened suicide and/or make an attempt?
- Does your partner control all of the money/property/the car or other resources?
- Is your partner jealous or possessive of you and your relationships with other people?
- Does your partner attempt to control your time with friends, family, community, resources, health professionals, etc.?
- Has your partner ever thrown things/punched the wall or a door?
- Has your partner ever hit, kicked, punched, bitten or pushed you?
- Has your partner ever hurt anyone else – family member or otherwise?
- Has your partner ever forced you to have sex?
- Do you have guns in your house? Has your spouse ever threatened to use them when he was angry?
- Does your spouse constantly belittle or criticize you or embarrass you in front of others?
- Do you or your partner have any history of mental illness?

# **Appendix C: Sample Participation Agreements and Fee Agreements**

## **COLLABORATIVE FAMILY LAW PROCESS AGREEMENT**

### **I. GOAL**

We acknowledge that the essence of "Collaborative Law" is the shared belief by participants that it is in the best interests of parties in typical Family Law matters to commit themselves to avoiding litigation.

We, therefore, adopt the Collaborative Law conflict resolution process, which does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, integrity and professionalism, geared toward ensuring the future well-being of the participants.

Our goal is to avoid the negative economic, social, and emotional consequences to the participants of protracted litigation.

We commit ourselves to the Collaborative Law Process and agree to use this process to resolve our differences fairly and equitably.

### **II. PROCESS AND INFORMATION EXCHANGE**

We will make every reasonable effort to settle our case without court intervention.

We agree to give full, prompt, honest and open disclosure of all information pertinent to our case, whether requested or not, and to exchange Rule 401 Financial Statements in a timely manner. We agree to provide promptly to each other all information which may affect any of the issues to be resolved. We agree to provide promptly to each other all information which may affect the choices either of us make while participating in the Collaborative Process.

We agree to engage in informal discussions and conferences with the goal of settling all issues.

### **III. PRESERVATION OF STATUS QUO**

We agree that commencing immediately, neither party will borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy or permit any existing coverage to lapse, including life, health, automobile and/or disability held for the benefit of either party without the prior written consent of the other party.

We agree that commencing immediately, neither party will change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other party or an order of the court.



We agree that commencing immediately, neither party will sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by either party, without the prior written consent of the other party, except in the usual course of business or investing, payment of reasonable attorney's fees and costs, or for the necessities of life.

We agree that neither party will incur any further debts that would burden the credit of the other, including but not limited to further borrowing against any credit line secured by the marital residence, or unreasonably using credit cards or cash advances against credit or bank cards or will incur any liabilities for which the other may be responsible, other than in the ordinary course of business or for the necessities of life without the prior written consent of the other.

#### **IV. THE CHILDREN**

In resolving issues concerning a child or children, we agree to make every effort to craft resolutions that promote their interests and supports a caring, loving and involved relationship between the child(ren) and both parents.

We agree that inappropriate communications regarding the divorce can be harmful to children. Therefore, we agree that settlement negotiations will not be discussed in their presence. We further agree that discussions which include the children will only be done by agreement or with the advice of a child specialist. We agree not to make any changes to the residence of the child(ren) without first obtaining the written agreement of the other parent.

#### **IV. CAUTIONS**

The parties understand that there is no guarantee that the process will be successful in resolving our case.

We understand that the process cannot eliminate concerns about the irreconcilable differences that have led to the current conflict.

We understand that we are each still expected to assert our own interests and that our respective attorneys will help each of us to do so.

We recognize that, while the attorneys share a commitment to the process described in this Agreement, (a) each of the lawyers has an attorney-client relationship solely with, and a professional duty to diligently represent, his or her client and not the other party; (b) each of us must rely solely on the advice of our own lawyers and not the other party's lawyer; (c) each of the lawyers has a confidential and privileged relationship with his/her client; and (d) as such, confidential communications between attorneys and clients are not inconsistent with the Collaborative process.

We understand that there are advantages as well as disadvantages to the Collaborative Law Process. Among the disadvantages are that (a) if the process breaks down and litigation ensues, the parties will likely incur some expense because of the need to hire new counsel; (b)

by agreeing not to go to court, the parties cannot use formal discovery procedures and therefore must trust in each other's good faith about exchanging relevant documents and information in a timely and complete manner; and (c) without the ability to use the authority of the court to prevent the transfer or dissipation of marital assets, the parties must trust in each other's honesty with regard to those assets.

Among the advantages are that a) your privacy will be respected and protected, b) you will be represented every step of the way in a process in which no one can use the threat of litigation as a way to force settlement, c) you will be supported by other neutral professionals such as a coach and a financial specialist, d) you will be able to control the pacing of the process and e) you will only be asked to sign an Agreement which is acceptable to you.

## **V. PROFESSIONALS' FEES AND COSTS**

We agree that both parties' attorneys and all other professionals are entitled to be paid for their services, and an initial task in a Collaborative matter is to ensure payment to each of them in the form of retainers which may be replenished from time to time. We agree to make funds available for this purpose.

## **VI. PARTICIPATION WITH INTEGRITY**

We will work to protect the privacy and dignity of all involved, including parties, attorneys your coach, financial neutral and other consultants, if any.

We shall maintain a high standard of integrity and, specifically, shall not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall acknowledge and correct them.

## **VII. EXPERTS AND CONSULTANTS**

If experts are needed to assist in the negotiation of disputed issues (such as the value of an asset, tax questions, or parenting issues), the parties will retain them jointly, ensure their payment, and share their work product. We agree to direct all attorneys, accountants, therapists, appraisers, as well as experts and other consultants retained by us, to work in a cooperative effort to resolve issues, without resort to litigation.

## **VIII. NEGOTIATION IN GOOD FAITH**

The parties acknowledge that each of our attorneys is independent from the other and represents only one party in the Collaborative Law process.

We understand that the process, even with full and honest disclosure, will involve vigorous good-faith negotiation to take place at the meetings of the parties and the Team, unless

specifically agreed otherwise.

We will take a reasoned position in all disputes. We will use our best efforts to create proposals that meet the fundamental needs of both of the parties. We recognize that compromise may be needed in order to reach a settlement of all issues.

Although we may discuss the likely outcome of a litigated result, none of us will use the threat of litigation as a way of forcing settlement.

## **IX. CONFIDENTIALITY**

The parties agree that the entire Collaborative Law Process, including all written submissions and communications, is confidential and without prejudice, and shall be treated as a compromise negotiation for the purposes of the rules of evidence and other relevant provisions of state and federal law. The parties and counsel will not disclose any information including offers, promises, conduct, statements or settlement terms whether oral or written, made by any of the parties, their attorneys or any experts in connection with the Collaborative Law Process, except where disclosure is required by law or court rule.

There are professional and ethical limitations to what attorneys must keep confidential, in accordance with the Professional Rules of Conduct. Clients are encouraged to explore these limitations with her/his respective counsel.

The parties may disclose information about the negotiation to their respective family members, financial advisors or counselors, provided however that all such individuals shall be informed by the party providing them with the information that it is confidential and governed by the terms of this Agreement.

If subsequent litigation occurs, the parties mutually agree that (a) neither party will introduce as evidence in Court information disclosed during the Collaborative Law Process, offers or proposals for settlement, or other statements by any of the parties to the Process or their attorneys, except for information and documents that are otherwise discoverable; (b) neither party will offer as evidence the testimony of either Collaborative attorney, nor will they subpoena either of the lawyers to testify, in connection with this matter; (c) neither party will offer as evidence the testimony of any other member of the Collaborative team, including but not limited to the divorce coach, or financial neutral, nor will they subpoena any such Collaborative team professional to testify, in connection with this matter; and (d) neither party will subpoena the production at any Court proceedings of any notes, records, or documents in the lawyer's possession or in the possession of one of the consultants.

## **X. VOLUNTARY TERMINATION OF COLLABORATIVE PROCESS**

Either party may unilaterally and without cause terminate the Collaborative Law Process by

giving written notice of such election to his or her attorney and the other party.

Either attorney may withdraw unilaterally from the Collaborative Law Process by giving fifteen (15) days written notice to his or her client and the other attorney. Notice of withdrawal of an attorney does not terminate the Collaborative Law Process; to continue the process, the Party whose attorney withdraws will seek to retain another Collaborative attorney who will agree in writing to be bound by this Agreement.

Upon termination of the Collaborative process or withdrawal of either counsel, the withdrawing attorney will promptly cooperate to facilitate the transfer of the client's file and any information needed for continued representation of the client to successor counsel.

## **XI. ABUSE OF THE COLLABORATIVE PROCESS**

We enter the Collaborative Law Process with the expectation of honesty and full disclosure in all dealings by all individuals involved in the spirit of the Collaborative process.

Each party understands that his/her Collaborative Law attorney will withdraw from our case as soon as possible upon learning that his or her client has failed to uphold this Agreement or acted so as to undermine or take unfair advantage of the Collaborative Law Process. Such failure or abuse of the process would include the withholding or misrepresentation of information, the secret disposition of marital property, the failure to disclose the existence or the true nature of assets and or obligations, or otherwise acting to undermine or take unfair advantage of the Collaborative Law Process.

## **XII. DISQUALIFICATION BY COURT INTERVENTION**

We understand that neither of our attorneys, nor other attorneys from the same firm, can ever represent us in court in a proceeding against the other spouse in connection with this matter.

In the event that a court filing occurs prior to settlement, both attorneys will be disqualified from representing either client, except for filing and assenting to uncontested motions, stipulations, or petitions to which both parties agree.

Any resort to litigation prior to settlement shall result in the automatic termination of the Collaborative Law Process on the date that either party or his or her attorney unilaterally seeks court intervention, provided however that the provisions of this Agreement relating to confidentiality and disqualification/withdrawal of counsel shall remain in effect.

In the event that the Collaborative Law Process terminates, all other professionals, including neutral coaches and financial specialists, as well as consultants and experts will be disqualified as witnesses, and their work product will be inadmissible as evidence, unless the parties agree otherwise in writing.

We acknowledge that, following settlement, our attorneys may represent us as counsel of record for purposes of filing a joint petition for an uncontested, no-fault divorce and at an uncontested hearing on our divorce.

**XIV. PLEDGE**

BOTH PARTIES, HEREBY PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND LETTER OF THIS AGREEMENT.

LAWYERS, THE COACH AND OTHER EXPERTS AGREE TO USE OUR SKILLS AND OUR PROFESSIONAL TRAINING, CONSISTENT WITH OUR ETHICAL OBLIGATIONS, TO ASSIST THE PARTIES TO ABIDE BY THE TERMS OF THIS AGREEMENT AND WE AGREE TO BE BOUND BY THE TERMS AS PARTICIPANTS IN THE COLLABORATIVE PROCESS.

\_\_\_\_\_  
Client

Date:

\_\_\_\_\_  
Client

Date:

\_\_\_\_\_  
Attorney

Date:

\_\_\_\_\_  
Attorney

Date:

\_\_\_\_\_  
Coach

Date:

\_\_\_\_\_  
Financial Professional

Date:

ADDENDUM TO COLLABORATIVE LAW AGREEMENT:  
ACKNOWLEDGMENT OF INFORMED CONSENT

The persons designated as Wife and Husband below have individually and collectively decided to enter into a collaborative law agreement. In doing so, Wife and Husband have individually and collectively determined that it is in their best interest to avoid litigation and to utilize a collaborative process as their alternative dispute resolution process of choice.

Both Wife and Husband acknowledge that, prior to entering into a collaborative law agreement, she/he has individually received, from her or his own counsel of choice, information concerning the possible risks and possible benefits of litigation and each alternative dispute resolution process available. Each party hereby acknowledges the following *summary* to be consistent with her or his understanding of the options available and some of the possible risks and benefits associated with each option:

\_\_\_ H I LITIGATION  
\_\_\_ W

A. Possible benefits may include:

1. The court can issue temporary orders restraining, among other things, the wrongful dissipation of assets, generally on an immediate basis.
2. The court can issue other temporary orders, regarding matters such as parenting rights and support obligations, although such orders may take weeks or months.
3. The court can enforce the discovery of necessary information and may impose sanctions for failure to comply with the discovery process.
4. If any issues are not ultimately settled, the court will hear evidence at a trial, apply whatever mandates are prescribed by the law, and then make a decision disposing of all remaining disputes.

B. Possible risks may include:

1. Adversarial process, in a non-private forum, and position-based bargaining increase relational costs (i.e., increase likelihood of long-term impairment of the parties' ability to directly communicate and interact with each other in a dignified, effective manner).
2. Increased conflict between the parties increases the negative impact upon their children.
3. The parties cede control in favor of the court making decisions for them, which decisions are necessarily made from a more limited, non-customized set of options, after consideration of only the information that is admissible under technical rules of evidence, and often neither party emerges as a clear winner.
4. The time consumed by, and resulting legal fees involved in, pursuing formal discovery proceedings, temporary order contests, trial and possible appellate court proceedings can take a substantial toll, emotionally and financially, upon both parties.

\_\_\_ H II ARBITRATION  
\_\_\_ W

A. Possible benefits may include:

1. Unlike litigation, a third party lawyer is selected and hired to act as a private judge, so that the case can be heard in a private forum and on a time schedule determined by the parties.
2. The scope of an arbitrator's powers and role is determined by the parties' agreement to utilize arbitration.

B. Possible risks may include:

1. Parenting disputes and child support amounts cannot be absolutely determined by an arbitrator, meaning that court intervention will still be required on these issues if they are not settled by agreement.
2. Arbitration utilizes the adversarial process, like litigation, and therefore many of the same risks of litigation (increased relational costs, ceding control over decision-making, etc.) still apply.

\_\_\_ H III PRINCIPLED NEGOTIATION  
\_\_\_ W

A. Possible benefits may include:

1. Parties may choose to use interest-based or position-based bargaining, and negotiations can take place either in four-way meetings or between the lawyers.
2. Unlike a collaborative process, the lawyers are not retained for a limited purpose and each party can keep her or his same counsel to litigate unresolved issues.



## **NEUTRAL COMMUNICATION PROFESSIONAL AGREEMENT**

\_\_\_\_\_ ("The Clients") have chosen to use the Collaborative law process to resolve their family differences.

\_\_\_\_\_ Collaborative lawyer is \_\_\_\_\_, of \_\_\_\_\_ (lawyer #1); and

\_\_\_\_\_ Collaborative lawyer is \_\_\_\_\_, of \_\_\_\_\_ (lawyer #2).

The Clients and their respective Collaborative lawyers plan to use the Collaborative Team Model. The Clients have agreed to engage \_\_\_\_\_, as a Communication Professional ("the CP") to assist them with their Collaborative family law matter. The CP, the Collaborative lawyers and any other professional engaged in the process are collectively referred to herein as the "Collaborative Team".

The Clients also agree to the following:

- (a) to provide a full and candid exchange of information between them and their lawyers as necessary to make a proper evaluation of the case;
- (b) to suspend court intervention while the Clients are using Collaborative law procedures;
- (c) to hire experts and other Collaborative professionals, as jointly agreed, to assist in the Collaborative law process; to the withdrawal of all members of the Collaborative Team if the Collaborative law procedure does not result in a settlement of the matter.

This case is being conducted using Collaborative law procedures, effective upon the signing by the Clients and the lawyers of the first Collaborative participation agreement, whether it be this or some other Collaborative participation agreement.

### **Engagement of Communication Professional**

The CP agrees that he/she will act as a neutral communication facilitator and will not align with either client or any lawyer in this Collaborative matter. Any work product, prepared by the CP and provided to one client and his/her lawyer, shall be provided to the other client and his/her lawyer.

Working as a Collaborative Team member, the CP's objective is to facilitate communication and problem-solving among the Clients and the Collaborative Team members. Specifically, the CP's duties may involve the following:

- (i) assisting the Clients to achieve outcomes that reflect their goals and interests [and address the best interests of their children, *if any*];
- (ii) improving the Clients' negotiation and problem-solving skills;
- (iii) increasing effective communication among family members;
- (iv) enhancing the Collaborative Team's effectiveness;
- (v) assisting the Clients in recognising their respective parenting strengths and weaknesses to enhance their future co-parenting relationship (*where appropriate*);
- (vi) assisting the Clients and Collaborative Team to develop a workable parenting plan that helps meet the child[ren],s developmental needs (*where appropriate*); and
- (vii) communicating to the Clients the option of establishing an ongoing relationship with a parenting coordinator after the family law matter concludes (*where appropriate*).

### **Disclosures**

Any past, present or discussed future relationship(s) between the Clients, the lawyers, the other professionals who have signed a participation agreement in this matter, and the CP that may represent a conflict of interest shall be disclosed in the space provided



below, if known, and, if subsequently discovered, shall be disclosed to the Collaborative Team immediately upon discovery.

**Disclosures:**

The CP previously acted as a Mediator for Neville and Annette Williamson

**Fees**

The Clients agree to pay the CP an initial retainer \$\_\_\_\_\_ (incl. GST) to cover 10 hours of work. This should be banked into the following bank account immediately following the first meeting:

BSB

Account number

The CP's hourly rate is \_\_\_\_\_ (plus GST)). The CP will issue invoices after each joint meeting and more frequently if the retainer will not be sufficient to cover ongoing work. Both \_\_\_\_\_ are jointly and severally liable for the CP's total costs. The CP's costs will be paid in the first instance by \_\_\_\_\_ from \_\_\_\_\_ joint bank account. Any failure to make payment within 14 days of the issuing of a tax invoice (or such shorter period as advised if there is insufficient in the CP's retainer to cover ongoing work) will entitle the CP to cease work immediately.

On conclusion of the matter, if there are any remaining funds they will be refunded to the person who paid those fees or otherwise as agreed in writing by both of the clients.

**Cooperation Regarding Providing Information**

Each client promptly agrees to provide to the CP all necessary and reasonable information requested by the CP. Each client agrees to sign all authorisations requested by the CP after review by his/her respective Collaborative lawyer.

**Testimony and Future Consulting**

The Clients and the CP agree that if the Collaborative matter terminates and the case is litigated, the CP, or the CPs work product, may not be called as a witness by either client in any future litigation between the Clients. The Clients and the CP further agree that, if the Collaborative matter terminates, the CP may not be further consulted by either client, unless both agree. If there is a conflict between the Collaborative Participation Agreement and this Agreement, this Agreement shall control with respect to the terms of this section.

**Future Professional Services**

The Clients and the CP further agree that after the Clients finalise their Collaborative matter by way of legally binding documents or a parenting plan (as the case may be) the Clients may jointly engage the services of the CP with the consent of the CP either in a further Collaborative matter or as a mediator if the terms of their Collaborative Participation Agreement permit.

If the Collaborative matter is terminated without the Clients having reached a legally binding agreement or parenting plan, the CP shall provide no further professional services to either client, unless the Clients reinstitute a Collaborative process, or otherwise agree if the terms of their Collaborative Participation Agreement permit.

**Confidentiality**

The Clients agree to maintain the confidentiality of all oral and written communications relating to the subject matter of the case made by the Clients or the Collaborative Team, whether or not formal judicial proceedings are ever instituted and whether made before or after the institution of formal judicial proceedings. The Clients agree that all oral

communication and written material in the Collaborative law process will only be admissible or discoverable if it is admissible or discoverable independent of the Collaborative law process. This paragraph does not apply to reports of abuse or neglect required by law, agreed formal discovery, sworn documents prepared in this matter, a fully executed Collaborative law settlement agreement or evidence of fraud.

A client and his or her Collaborative lawyer are free to disclose all information, including information and opinions obtained from or provided by the CP, to a lawyer hired to render a second opinion for that client in the Collaborative law process or to that client's successor Collaborative lawyer. In the event the Collaborative law process is terminated, a Client and his or her Collaborative lawyer are free to disclose all information to that client's litigation lawyer. However, the CP is not authorised to communicate with either client's successor litigation lawyer other than to deliver to successor lawyer written work product, if any, unless, upon request by both clients and/or their respective litigation lawyer, the CP simultaneously communicates with both clients' respective successor litigation lawyer.

This provision does not prohibit disclosure by a member of the Collaborative Team of case information for educational purposes without disclosing the identities of the Clients, nor does it prohibit participation by the Clients or either of them in educational forums or media interviews to discuss the Collaborative law process.

#### **Work Product of Communication Professional**

The Clients, the Collaborative lawyers and the CP agree that all notes, work papers, summaries, written or oral opinions, written or oral reports of the CP (collectively referred to as work product), if any, shall be confidential and shall not be released to any person or entity outside of the Collaborative process (other than successor litigation lawyer) without the express written permission of both clients and the CP. This confidentiality does not prohibit the furnishing, upon request, of such work product to any member of the Collaborative Team or to any successor Collaborative counsel and to any lawyer who renders an opinion for either party.

If the Collaborative matter is terminated, a client and his/her Collaborative lawyer are authorised to disclose all CP work product to that client's successor litigation lawyer. The CP is authorised to disclose work product so long as it is disclosed simultaneously to both clients' respective successor litigation lawyer.

The parties release their respective Collaborative lawyers and the CP to make such disclosures. However, such work product shall not be admissible into evidence in any legal matter between the Clients, including any hearing or trial, unless the Clients and the CP agree in writing otherwise.

#### **Open Communication**

The CP may communicate among the team members including, but not limited to, communicating with each client individually or together, a client with his or her Collaborative lawyer present, each Collaborative lawyer individually or together with the other Collaborative lawyer, any lawyers consulted for an opinion during the Collaborative law process, and any other professionals retained by the Clients who have signed a participation agreement in this matter.

The Clients hereby release the CP and the Collaborative lawyers to share any information, opinions and/or communications regarding this matter with any of the participants, specifically with each other, individually or collectively; with any lawyers consulted for an opinion during the Collaborative law process; with other Collaborative professionals who have signed a participation agreement in this matter; and/or with the

Clients, together or individually. The Clients understand and agree that the CP, at his/her discretion, may reveal to one client what has been communicated by the other [or by the children, *when applicable*]. However, lawyer-client privileged communication that a client specifically instructs his/her Collaborative lawyer not to reveal will not be revealed by the CP.

**Written Team Communications**

In order to facilitate the process, there are times that the Collaborative Team may engage in written internal communications intended only for the Collaborative Team. A written communication designated as a "team communication" will not be communicated to the Clients nor is it discoverable.

**Meetings without Collaborative Lawyers**

It is contemplated that the CP may meet with the Clients without the Collaborative lawyers present. The CP promptly shall update the lawyers on any such meetings, and shall communicate any preliminary understandings reached in those meetings to the Collaborative lawyers. The CP may communicate such preliminary understandings in writing to the lawyers with a copy to the parties (email suffices) or verbally, but shall not draft any agreements except for a draft parenting plan if applicable. The CP will be paid for the time it takes to prepare such correspondence and engage in such communications. The Clients will not be asked to memorialise such understandings. The Clients will not sign any binding agreement without both lawyers' review.

---

**Communication Professional**

**Dated**

---

**Dated**

---

**Dated**

---

**Dated**

---

**Dated**

**NEUTRAL COMMUNICATION PROFESSIONAL COSTS AGREEMENT**

\_\_\_\_\_ ("The Clients") agree to the following costs for engagement of communication professional \_\_\_\_\_:

**Fees**

The Clients agree to pay the Communication Professional (CP), \_\_\_\_\_ an initial retainer \$\_\_\_\_\_ (incl. GST). This should be banked into the following bank account immediately following the first meeting:

BSB

Account number

The CP's hourly rate is \$\_\_\_ (plus GST)). The CP will issue invoices after each joint meeting and more frequently if the retainer will not be sufficient to cover ongoing work. Both \_\_\_\_\_ are jointly and severally liable for the CP's total costs. The CP's costs will be paid in the first instance by \_\_\_\_\_ from \_\_\_\_\_ joint bank account. Any failure to make payment within 7 days of the issuing of a tax invoice (or such shorter period as advised if there is insufficient in the CP's retainer to cover ongoing work) will entitle the CP to cease work immediately. In the event recovery action needs to be taken, the clients will be responsible for all costs associated with same.

On conclusion of the matter, if there are any remaining funds they will be refunded to the person who paid those fees or otherwise as agreed in writing by both of the clients.

\_\_\_\_\_

**Communication Professional**

**Dated**

\_\_\_\_\_

**Dated**

\_\_\_\_\_

**Dated**

## COLLABORATIVE ENGAGEMENT AGREEMENT - FINANCIAL

Date

Mr.

Ms.

email address:

email address:

Dear Clients:

### 1. Overall

You have both chosen the Collaborative Divorce Process and have signed a Collaborative Participation Agreement. Thank you for choosing our firm to assist you with the tax, financial planning and other financial issues related to your divorce. This letter constitutes an agreement between both of you and **FIRM NAME**, under which we will provide divorce consulting services as a financial neutral to both of you in conjunction with the Collaborative Process. Our services will be directed by you and/or your attorneys.

As discussed, please understand that both of you are retaining **FIRM NAME**. As such, you consent to our sharing all information and communications from either of you with the other. All of our communications will be with both of you, and we will coordinate with you to schedule conference calls and meetings at mutually convenient times. All financial related emails, letters and reports shall be sent to both of you, as well as to your attorneys and any other team members, as appropriate. You also authorize us to have conferences, phone calls or other correspondence with any team members, as we deem necessary. We would be willing to meet or speak with you individually provided that both of you and the other team members authorize us to do so; however, after each such individual meeting or discussion, we will provide a report to all parties.

### 2. Conflict of Interest

Each of you hereby waives any conflict of interest that might arise as a result of our representation of both of you jointly in the Collaborative Process. Each of you hereby acknowledges that any introductory conversations or emails that may have occurred with either one of you was for the purposes of establishing the Collaborative Engagement only, and you hereby waive any conflict of interest that might arise as a result of those introductory communications. As discussed in Paragraph 7, we will not provide any services for either of you other than our joint representation of both of you in the Collaborative Process and assistance with completion of the terms of the agreement reached in the Collaborative Process and, if requested and agreed by both of you, tax services for the year of transition.

### 3. Full Cooperation of Parties

Each of the parties agrees to cooperate fully with our firm, to be open and truthful in their statements and to provide our firm with complete, accurate and reliable financial information as requested.

The parties agree not to omit any material financial information or documents that may adversely affect our ability to perform the services for which we are engaged.

The parties further agree to provide information requested in a timely manner and to be available for

meetings and phone calls as needed within a reasonable time frame in an effort to facilitate the process.

The parties acknowledge that our firm will rely exclusively on the information provided, and that our firm shall not be responsible, nor subject to liability for any errors or omissions in our work product that result from the failure of either or both of the parties to provide complete, accurate and reliable information.

#### **4. Scope of Engagement/Disclosure**

Our role as a financial neutral professional is to be an educator/facilitator in all matters relating to finance. In addition, we will gather any financial information we deem necessary to help the team work together to achieve a mutually agreeable settlement for the family. As discussed above, we require full disclosure and that information requested be provided in a timely manner. Our work does not include an “audit” of the financial information nor do we perform a “forensic” review of the financial information. Our work is limited to the Collaborative Process only. All information provided will be made available to both parties and to the Collaborative team upon request. The professional consulting services we may provide, in consultation with you and/or your counsel may include:

1. Preparing, reviewing, and/or updating a schedule of your disposable income and personal living expenses and those of your spouse.
2. Preparing, reviewing, and/or updating a schedule of your assets, liabilities, and net worth and those of your spouse.
3. Preparing a proposed property settlement schedule for use during the process.
4. Providing tax planning assistance regarding payment of alimony, child support, and property distributions, as applicable. Tax planning requires that future changes in tax laws and regulations be anticipated; however, the actual future statutory, administrative, or judicial authority may differ from those that will be anticipated. Accordingly, the actual tax consequences of divorce related transactions may differ from those originally planned.

During the course of our engagement, it may be necessary for us to prepare schedules and other written reports that support our conclusions. These reports will only be used in connection with your Collaborative Process and may not be published or used in any other manner without the written consent of this firm. None of the schedules, outlines, or other documents produced, or discussions that we may have with you or your attorney, constitute legal advice or representation in any form.

It is the client’s responsibility to review reports and financial schedules and note any incorrect information or missing information during the engagement to the best of your ability.

It may become necessary during our engagement to recommend input from other financial experts in certain areas. We do not warrant the qualification of any other financial expert involved in the process or that of any other team member. The inclusion of another financial expert will be discussed with the team and agreed upon as part of the Collaborative Process. *Any fees incurred for other financial experts will be at the clients’ expense.* The clients agree not to seek outside financial services without consulting the team.

#### **5. Tax Issues**

The parties acknowledge that discussion of tax issues requires anticipation of future changes in tax law and regulations. However, the actual future statutory, administrative or judicial authority may differ from those originally planned. Such differences may produce significant unfavorable income tax consequences.

#### **6. Professional Fees**

Since each of you is retaining **FIRM NAME**, each of you is individually responsible for all of the fees that may be incurred by our firm in the course of this engagement. We do assume that all the work performed for this engagement is approved by both of you and is billable to both of you. None of the fees associated with this engagement will be billed separately to one party, unless a new and separate engagement is entered into with a separate engagement letter and retainer in such an event. You must *both* inform us, in writing, if you wish to enter into a separate engagement for services that will be billed solely to just one of you.

Please provide us with a retainer fee of **AMOUNT**. We will deduct our fees and costs which appear on your monthly bill from your retainer, up to **AMOUNT**. **AMOUNT** of your retainer will be held and applied to your final invoice. Any unearned portion of your retainer will be refunded at the conclusion of our work or at such time as you elect to terminate our relationship for any reason.

We will submit bills to you periodically, at least monthly. Payment is due upon receipt. Please review your bills from our office and notify us in writing within thirty (30) days from the date of the invoice if you have any objections to the charges shown.

Due to the nature of divorce financial consulting, it is difficult to predict our total fees and costs. We make no representation or guarantee concerning the outcome for matters for which we have been engaged, nor your total fees, costs and expenses relating to this matter. Payment of fees and costs owed is not dependent or contingent upon your spouse.

We do request that if either party needs to cancel a meeting for any reason that requires my or any other staff member's attendance that the party will give notice as soon as possible, but not less than 48 hours prior to a meeting. If such notice is not given, we reserve the right to bill for the meeting time scheduled.

## **7. Termination of Services**

After you have reached a settlement using this Collaborative engagement, we will not provide any future services for either of you, other than assistance with completion of the terms of the agreement reached in the Collaborative Process and, if requested and agreed by both of you, tax services for the year of transition.

If you are unable to reach a settlement during the Collaborative process, and you terminate the process, **FIRM NAME** will not be able to represent or assist either one of you, or your attorney. **FIRM NAME** cannot be called to be a witness in court in any areas involving the litigation of your divorce. The parties agree that our work product, including all content (written and oral), will be inadmissible as evidence in any court proceeding.

The Client may terminate our services in writing at any point. **FIRM NAME** will not engage in any other services after that time the written communication is received. All work done up to the time the termination correspondence is received will be billed and is payable immediately.

We reserve the right to withdraw. If we exercised this right to withdraw, we would inform your attorneys of our decision and give both of you three business days written notice of such decision prior to withdrawal. In addition, if either of you decide to terminate our services all fees incurred to date will be due and payable immediately. Any financial information that we have gathered and work products developed will be turned over to any future financial neutral within a reasonable time frame, and we will acquaint any successor Collaborative financial professional with the financial facts of the case.

**8. Retention of Records**

We will retain your records, possibly in an electronic format, for 5 years after the end of your engagement. Administrative time to scan or copy documents that we need to retain will be billed. After that time, they will be destroyed. Any of your original documents held by **FIRM NAME** will be returned to the client where practical.

We enclose duplicate originals of this agreement. Please execute one copy and return it to us, together with the appropriate retainer fee. This agreement will enter into effect upon receipt of the executed original and fee. If the need for additional services arises, we will revise the terms hereof. Again, thank you for the confidence you have placed in our firm.

You may expect to receive a termination letter at the end of your engagement. Such termination does not relieve you of the obligation to pay for all services rendered and costs or expenses paid or incurred on your behalf prior to the date of termination.

Regards,

**PROFESSIONAL NAME**

\_\_\_\_\_  
Read, understood and accepted:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Read, understood and accepted:

\_\_\_\_\_  
Date:

[AWW-0003] - [Collaborative - D.C. Metro Protocols] 542095\_5

**COLLABORATIVE PRACTICE PARTICIPATION AGREEMENT**

[full name of client]  
and his/her lawyer  
xx



- and -  
[full name of client]  
and his/her lawyer  
ZZ

**1. Choosing Collaborative Practice**

We choose Collaborative Practice to resolve the issues arising from our separation. In doing so, we agree to be respectful in our negotiations and to work together to achieve a mutually acceptable out of court settlement. We realize that we are responsible for the decisions we make. We understand that the process of separation takes place on legal, financial and emotional levels. We recognize that achieving our goals may require the assistance of professionals other than our lawyers.

**2. Guidelines for Participation in the Collaborative Process**

We will deal with each other in good faith.

Written and verbal communication will be respectful and constructive.

We agree to follow the problem-solving steps set out in Schedule "A" to resolve our concerns.

We will express our individual interests, needs, goals and proposals and seek to understand those of the other.

We will develop an array of options for settlement and use our best efforts to negotiate a mutually acceptable settlement.

We will not use the threat to withdraw from the Collaborative process or to go to court as a means of achieving a desired outcome or forcing a settlement.

We will not take advantage of mistakes made by another, but will disclose them and seek to have them corrected. We will immediately correct mistakes and advise of changes to information previously given.

**3. Collaborative Lawyers**

(a) While the lawyers share a commitment to the Collaborative process and the well-being of the family, each lawyer has a professional duty to represent his or her own client diligently, and is not the lawyer for the other party.

(b) The Lawyers' representation is limited to providing services within the Collaborative process. Neither lawyer, nor any member of his or her law firm, may represent either party in a court or other contested proceeding between them related to issues arising from their separation, including a review, variation or separation arising after a future reconciliation.

**4. Collaborative Professionals**

(a) When needed, we may engage a Family Professional and/or a Financial Professional. Upon retaining a Financial Professional, Schedule B will be signed. Upon retaining a Family Professional, Schedule C will be signed.

(b) Neither of us may unilaterally terminate the services of a neutral Family Professional or a neutral Financial Professional. If either of us wish to do so, that person will advise his or her lawyer who will convene a meeting with the team and other spouse to explore the impact of termination on the Collaborative process and canvas options to address the concerns.

**5. Other Professionals**

When needed, we may engage other neutral professionals such as actuaries,

business valuers, tax experts, mediators, experts regarding children's special needs.

**6. Exchange of Information/Communication**

- (a) We agree to exchange, on a prompt and ongoing basis, all information which may affect any choices or decisions either of us have to make in this process.
- (b) We will decide together how to collect and exchange all information and documentation regarding income, assets and debts. The form of this information exchange may be by:
  - Net Family Property Statements;
  - Net Worth Statements;
  - Asset and Debt Summaries;
  - Monthly Budget Summaries;
  - Sworn Financial Statements; or
  - Other agreed upon formats.

**7. Team Communications**

When other professionals are engaged, we consent to the exchange of information between the Collaborative lawyers and other Collaborative professionals. We understand it will be necessary for the Collaborative lawyers and the Collaborative professionals to communicate in order to co-ordinate efforts on our behalf.

**8. Confidentiality**

All communication and information exchanged within the Collaborative process is confidential and without prejudice. Unless we agree otherwise in writing, if subsequent litigation or other contested proceeding occurs, only the fact that Collaborative process was attempted and settlement was not reached may be introduced into evidence in court. In particular we agree that:

- (a) Neither of us will introduce as evidence in court any written or oral information or documents prepared or disclosed during the Collaborative process, including any notes, records, e-mails, voice mails, letters, progress notes, meeting notes, budgets and projections and proposals for settlement. Only documents otherwise compellable by law such as sworn financial statements and original financial documents may be introduced in court;
- (b) Neither of us will introduce as evidence in court or require the production of any reports, opinions or notes of any other professional prepared in the Collaborative process;
- (c) Neither of us will compel either lawyer or any other professional retained in the Collaborative process to produce notes records or documents in their possession, attend court to testify, or attend for examination under oath, with regard to matters discussed in the Collaborative process;
- (d) The confidentiality clause does not apply in the event that either of us or a Collaborative professional is obliged by law to report to the Superintendent of Family and Child Services information arising out of the collaborative process which gives either of us or a Collaborative professional reasonable grounds to believe that a child may be in need of protection;
- (e) The verbal agreements, concessions or statements of any kind whatsoever which may be made during the Collaborative Process are confidential and without prejudice; and

- (f) We agree that this paragraph applies to any subsequent litigation, arbitration, or other contested process.

**9. Withdrawal from Collaborative Process**

- (a) If either of us decides to withdraw from the Collaborative process, he or she will provide written notice of the intention to withdraw and wait thirty days before starting any contested proceeding, to permit both of us to retain new lawyers and make an orderly transition. Either of us may bring this provision to the attention of the court to request a postponement of a hearing. Both of us will provide a copy of this Agreement to our new lawyer.
- (b) If either of us ends our professional relationship with our lawyer, but wishes to continue with the Collaborative process, we will provide written notice of this intention to everyone. The new lawyer will sign a new Participation Agreement within 30 days of the party giving notice. If a new Agreement is not signed within 30 days, the other person will be entitled to proceed as if the Collaborative process was terminated as of the date written notice was given.
- (c) A lawyer must withdraw from the Collaborative process if his or her client has withheld or misrepresented important information and continues to do so; refuses to honour agreements; delays without reason; or otherwise acts contrary to the principles of the collaborative process. A lawyer withdrawing under this section will only advise that they are withdrawing from the process.

**10. Responsibilities Pending Settlement**

During the Collaborative process, unless agreed otherwise in writing, we will:

- (a) maintain assets and property;
- (b) maintain all existing insurance coverage without change in coverage or beneficiary designations;
- (c) maintain all existing health and dental benefit coverage;
- (d) maintain the ordinary residence of the children;
- (e) refrain from incurring any debts for which the other may be held responsible;
- (f) We do/do not wish to sever the joint tenancy of (*address of property*).

**11. Enforceability of Agreements**

We may enter into temporary, partial, or final agreements during the Collaborative process. Temporary, partial or final agreements must be in writing, signed by both of us and witnessed by our lawyers. If either of us withdraws from the Collaborative process or the process terminates, a temporary, partial, or final agreement is enforceable and may be presented to the court as a basis for an Order. Only written agreements signed by both of us and witnessed will be enforceable in a court of competent jurisdiction.

**12. Privacy Policy**

- (a) We consent to allow the lawyers and Collaborative professionals to collect, use, disclose and retain personal information in order to provide services to either of us, and to administer client time and billing data bases.
- (b) We may withdraw our consent to the collection, use, disclosure and retention of our personal information as described above by giving the lawyers and Collaborative professionals reasonable written notice. Our withdrawal of consent still allows the lawyers and Collaborative professionals to use and

disclose our personal information to collect or enforce payment of amounts owing as a result of our prior or continuing use of the Collaborative law firm or Collaborative professionals.

**13. Limitation Period**

- (a) This process is without prejudice to any rights either of us has arising from our cohabitation, marriage, or separation. We acknowledge that our lawyers have advised each of us as to the possible application of limitation periods; and in particular that no applications for a division of property shall be brought after the earliest of two years after from a divorce or six years after the date of separation (applies to married spouses only). We acknowledge our understanding that a court may or may not extend these limitation periods.
- (b) Our agreement to negotiate using the Collaborative Process is without prejudice to any rights either of us has to receive ongoing or retroactive child or spousal support. Neither of us will raise the lack of written notice as a defense to any such claim for retroactive support.

**14. Acknowledgement of Commitment to Collaborative Process**

We have read this Agreement in its entirety, understand its content and agree to its terms.

In the collaborative process hereunder wyw will be represented by Lawyer 1, and yxy will be represented by Lawyer 2.

**DATED** at this day of 2015.

---

(Signature - Client 1)

I, Lawyer 1, confirm that I will represent (full name of Client 1) in the collaborative process hereunder.

---

Signature - Lawyer 1

---

(Signature - Client 2)

I, Lawyer 2, confirm that I will represent (full name of Client 2) in the collaborative process hereunder.

---

Signature - Lawyer 2

## **Schedule "A"**

### **Collaborative Negotiation Steps For Effective Problem-solving**

#### **Step 1 BUILD THE FOUNDATION**

- Introduction and overview of the collaborative process
- Decide problems to be solved
- Discuss the role for other professionals, such as family, child and/or financial specialists

#### **Step 2 GATHER AND EXCHANGE INFORMATION**

- Identify goals, needs and interests
- Identify what financial information is needed
- Agree upon and initiate any joint valuations

#### **Step 3 IDENTIFY INTERESTS**

- Prioritize goals, needs and interests - immediate and long-term - regarding issues and process

#### **Step 4 IDENTIFY CHOICES**

- Explore widest range of possible solutions
- Consider everything, rule out nothing

#### **Step 5 EVALUATE CONSEQUENCES OF EACH CHOICE**

- How would each option affect each person and the children?
- Consider immediate, intermediate, long-term impacts

#### **Step 6 COME TO A DECISION AND IMPLEMENT DECISION**

- Generate settlement proposals that satisfy interests of both
- What do you see as the best solution for both?
- Prepare Separation Agreement incorporating joint decisions

## **Schedule "B"**

### **Financial Professional Agreement**

The Financial Professional will assist clients and their legal representatives in reaching a financial settlement that reflects the needs of the clients and their family. In this role the Financial Professional has no authority or decision-making power but can help to ensure that financial outcomes meet client expectations by providing critical financial information. The Financial Professional can help the clients gather and understand financial information and examine options developed during the Collaborative process. More specifically, the Financial Professional can:

- Help clients gather relevant financial information
- Help the clients identify needs
- Help clients understand the financial information and various options developed
- Develop realistic budgets that reflect accurate future needs
- Provide long-term cash-flow analysis
- Illustrate potential long-term consequences of various settlement options

#### **Obligation to Provide Relevant Information:**

The clients agree to provide the Financial Professional with relevant financial information and understand that the Financial Professional will rely on this information, along with agreed upon assumptions, to develop her/his analysis. The clients agree that the Financial Professional will not be held accountable for any errors or omissions in his/her work product resulting from the client's failure to provide accurate, reliable and complete financial information.

#### **Independent Legal Advice:**

The Financial Professional provides supporting financial information and evaluations to be utilized by both the clients and their respective lawyers. The Financial Professional does not provide legal advice.

#### **Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the exchange of information between the Financial Professional and other Collaborative team professionals. Clients must provide written consent for the release of any information to anyone who is not a Collaborative team professional.

#### **No Court Appearance:**

Should either client decide to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Financial Professional will remain confidential and may not be used in any court proceedings between wxw and yxy. The clients agree that they will not require the Financial Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation between wxw and yxy. If either client

subpoenas the Financial Professional and/or any of the records, notes or documentation produced by the Financial Professional during the Collaborative process, then the client who has issued the subpoena shall be deemed to have agreed to pay all the costs required for the Financial Professional to quash the said subpoena.

**Withdrawal From the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable, he or she agrees to immediately inform the other client, the Financial Professional and all Collaborative team members in writing, about the decision to end the Collaborative process.

If either client wishes to end the engagement with the Financial Professional, in order to retain the services of a new Financial Professional or to proceed without the services of a Financial Professional, the client agrees to immediately inform the other client and all Collaborative team members in writing.

The Financial Professional reserves the right to withdraw from the case for any reason.

The Financial Professional has an obligation to withdraw from the case if either client is not acting in good faith. Should the Financial Professional decide to withdraw, he/she agrees to inform the clients and all Collaborative team members in writing. If the Collaborative process has not been terminated, the withdrawing Financial Professional will make every effort to provide suitable referrals to other Financial Professionals to facilitate the engagement of a new financial Professional.

In the event of a decision to withdraw by any person, all incurred fees are due and payable.

**No Product Sales and No Future Dealings:**

The Financial Professional's responsibility in this role terminates once the settlement has been reached or the Collaborative process has been terminated. The Financial Professional may not work with either client post-settlement excepting as noted in this paragraph. The Financial Professional shall not take assets under administration or sell any financial products. The Financial Professional may assist either or both clients in the implementation of their settlement agreement and in a post-settlement evaluation if agreed upon as part of the Collaborative proceedings. It is critical that the Financial Professional maintain his/her neutrality even after negotiations have been concluded.

We have read the above agreement in its entirety, understand the content and agree to the terms.

Dated on \_\_\_\_\_ 2015

Clients:

Financial Professional:

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_

## **Schedule "C"**

### **Collaborative Family Professional Agreement**

#### **1. The Role of the Collaborative Family Professional:**

The Collaborative Family Professional can be helpful in assisting family members to move through the separation process in a positive way. Their role may include:

##### **The Separation Coach**

- helps clients clarify their concerns;
- helps clients manage their emotions;
- helps clients develop effective communication skills and reinforce those skills;
- helps clients develop effective co- parenting skills; and
- helps clients develop a parenting plan.

##### **The Child Consultant**

- is neutral;
- listens to each child;
- sensitizes parents to the needs of each child in the context of the divorce; and
- provides information to parents to help them in the development of their parenting plan.

##### **The Facilitator**

- is neutral
- helps members of the Collaborative team to communicate more effectively at and between meetings
- helps manage client emotions to enable the process to be more productive and resolution-focused

Although the work may continue when the legal intervention is completed, Collaborative Family Professionals remain focused on assisting family members with the separation related issues.

#### **2 Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the



exchange of information between the Collaborative Family Professionals and other Collaborative team professionals. Clients must provide written consent for the release of any information to anyone who is not a Collaborative team professional.

Should either client elect to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Collaborative Family Professionals, will remain confidential and may not be used in any court proceedings between the clients.

The clients agree that they will not require the Collaborative Family Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation.

If either client subpoenas the Collaborative Family Professional's records or notes in any legal or administrative proceeding, then the client, who has issued the subpoena, shall be deemed to have agreed to pay all the costs required for the Collaborative Family Professional to quash the said subpoena.

### **3. Confidentiality of Work with Children:**

Should parents request that a neutral Child Consultant meet with the children, they agree that the Child Consultant will only provide them with verbal feedback about the children's concerns or thoughts. The parents further agree that the Child Consultant will not provide verbatim comments from the children, nor will he/she provide a written report.

Although the Child Consultant will encourage open communication between the children and their parents, the parents agree that the Child Consultant will not release information to them or to anyone, that the children have asked her to keep confidential unless she has reason to believe that the children's safety, or any other person's safety, is in danger.

### **4. Limitations to Confidentiality:**

The clients have been made aware that there are certain times when the Collaborative Family Professional may disclose or are required to disclose information. These include reporting suspicions of child abuse to the Children's Aid Society; reporting information that suggests an actual or potential danger to human life or safety to the appropriate authorities; providing information to the courts as directed through subpoena, search warrant, or other legal order; for research or educational purposes on an anonymous basis.

**5. Withdrawal from the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable and decides to end the Collaborative process, he or she agrees to immediately inform the other client, the Collaborative Family Professional, and all Collaborative team members in writing, about the decision to end the Collaborative process.

If either client decides to withdraw from the collaborative process, the clients acknowledge and understand that any agreements reached in mediating a parenting plan are not legally binding without the completion of a separation agreement with legal counsel.

The Collaborative Family Professional reserves the right to withdraw from the case for any reason. Should the Collaborative Family Professional decide to withdraw, he/she agrees to provide written notice of withdrawal to the clients and their lawyers.

If the Collaborative process has not been terminated, the withdrawing Collaborative Family Professional will make every effort to provide suitable referrals to other Collaborative Family Professionals to facilitate the engagement of a new Collaborative Family Professional.

We have read the above schedule in its entirety, understand the content and agree to its terms.

Dated on \_\_\_\_\_ 2015

Clients:

Collaborative Family Professional(s):

\_\_\_\_\_  
[full name of client]

\_\_\_\_\_  
[full name of client]

\_\_\_\_\_  
[full name of client]

\_\_\_\_\_  
[full name of client]

Maria Alba-Fisch, PhD

Child Specialist

845-896-7787

914-666-9433

The undersigned agree that they have entered into a consultation with Dr. Maria Alba-Fisch as Child Specialist on behalf of their child/ren and as part of their agreement to participate in a Collaborative Divorce, with the voluntary mutual agreement that any form of communication with Dr. Alba-Fisch will not be used for any purpose other than to facilitate their arrangements for their children as they divorce. The undersigned further represent that Dr. Alba-Fisch will not be called by any member of the family, or their attorneys, or any other representative to provide records, information or testimony about anything discussed, disclosed, or discovered in the consultation. The purpose of this consultation is to advise \_\_\_\_\_ about their children's needs, feelings and interests in the course of this divorce and with regard to their needs during and after this divorce. Dr. Alba-Fisch will also try to advise \_\_\_\_\_ about how they might help their children and facilitate their growth during and in adjusting to the divorce. If appropriate, immediate interventions might be suggested and/or provided to assist the children of \_\_\_\_\_ during and immediately following the divorce.

The undersigned further agree that, if their work with her is terminated and \_\_\_\_\_ go to court to settle their divorce and expert testimony is required, that a different psychologist or expert not involved in this consultation will be used to advise the Judge. Should there be any way that Dr. Alba-Fisch is required to appear or provide records, she will be paid at the rate of per hour by the party requiring her appearance. Should it be, in any way, required by a judge, the fee would be shared equally by both parties.

In signing this, I have read, understand and agree to the terms above.

Signed \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

The Collaborative Team of the Hudson Valley  
Maria Alba-Fisch, PhD  
Child Specialist  
914-666-9433

The undersigned agree that they have entered into a consultation with Dr. Maria Alba-Fisch as Child Specialist on behalf of their child/ren with the voluntary mutual agreement that any form of communication with Dr. Alba-Fisch will not be used for any purpose other than to facilitate the Mediation of their marital separation. The undersigned further represent that Dr. Alba-Fisch will not be called by any member of the family, or their attorneys, or any other representative to provide records, information or testimony about anything discussed, disclosed, or discovered in the consultation. The purpose of this consultation is to advise \_\_\_\_\_ about their children's needs, feelings and interests in the course of this separation and with regard to their needs during and after this separation. Dr. Alba-Fisch will also try to advise \_\_\_\_\_ about how they might help their children and facilitate their growth during and after the separation. If appropriate, immediate interventions might be suggested and/or provided to assist the children of \_\_\_\_\_ during and immediately following the separation.

The undersigned further agree that, if the mediation process is terminated and \_\_\_\_\_ go to court to settle their separation and expert testimony is required, that a different psychologist or expert not involved in this consultation will be used to advise the Judge. Should there be any way that Dr. Alba-Fisch is required to appear or provide records, she will be paid at the rate of 400.00 per hour by the party requiring her appearance. Should it be, in any way, required by a judge, the fee would be shared equally by both parties.

It is understood that, though Dr. Alba-Fisch is a psychologist and is offering consultation as such, she is no way is functioning as a therapist or psychotherapist for any parties involved, including the child/ren.

In signing this, I have read, understand and agree to the terms above.

Signed \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Maria Alba-Fisch, PhD  
Child Specialist  
914-666-9433  
845-896-7787

The undersigned agree that they have entered into a consultation with Dr. Maria Alba-Fisch as Child Specialist on behalf of their child/ren with the voluntary mutual agreement that any form of communication with Dr. Alba-Fisch will not be used for any purpose other than to improve their communication as the parents of their child/ren and to enable them to construct parenting arrangements and visitation for their child/ren that are to the benefit of their child/ren's best interest, growth and development. The undersigned further represent that Dr. Alba-Fisch will not be called by any member of the family, or their attorneys, or any other representative to provide records, information or testimony about anything discussed, disclosed, or discovered in the consultation. The purpose of this consultation is to advise \_\_\_\_\_ about their child/ren's needs, feelings and interests and to help them facilitate their child/ren's relationship with both parents, assuring that each parent has time and the conditions appropriate to furthering a constructive relationship with their child/ren. If appropriate, immediate interventions might be suggested and/or provided to assist the child/ren of \_\_\_\_\_.

The undersigned further agree that, if the consultative process is terminated and \_\_\_\_\_ return to court to settle the parenting arrangements and expert testimony is required, that a different psychologist or expert not involved in this consultation will be used to advise the judge. Should there be any way that Dr. Alba-Fisch is required to appear or provide records, she will be paid at the rate of 400.00 per hour by the party requiring her appearance. Should it be, in any way, required by a judge, the fee would be shared equally by both parties.

It is understood that, though Dr. Alba-Fisch is a psychologist and is offering an initial consultation as such, she in no way is functioning as a therapist or psychotherapist for any parties involved, including the child/ren. Further, she is to be held harmless for any outcome issuing from this consultation or any use made of it by the parties involved. She will communicate only that the parties have attended the consultation and only recommendations that have been made public to the parties.

In signing this, I have read, understand and agree to the terms above.

Signed \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Maria Alba-Fisch, PhD

66 Cliffside Lane  
Mount Kisco, New York 10549  
914-666-9433

12 Broad Street  
Fishkill New York, 12524  
845-896-7787

The following is my fee policy for the work I do with divorcing families when helping them navigate the terms of their involvement.

**Fees**

I charge \_\_\$230\_\_ for 60 minutes and prorate the fee if sessions are longer or shorter. I do need to be paid at the time of service. While routine phone calls and arranging appointments simply are not charged separately, any substantial phone work that is required, necessary paperwork, and all conferencing, whether by phone or by e-mail on your behalf with either of you or other professionals will be charged at the same rate.

**Lateness, Re-scheduling, Cancellations**

When appointments are arranged, they should be agreed upon with the assumption that they are a time reserved for you and your partner or your family. I begin on time and end on time. Because of the nature of my practice, I cannot extend the time without advanced planning. So if you are late, there will be less time to meet, but you will be charged for the full time.

If you need to reschedule, I am happy to do that and am more likely to be able to do so with advanced notice. It is very unlikely that I can do so at the last minute. Further, the time reserved for you, cannot be used by anyone else and will be charged for unless it is rescheduled in advance. "In advance" means 48 hours prior to the meeting time. Cancellations are charged unless the appointment is cancelled 48 hours in advance. Habitual cancellations, even 48 hours in advance, will be discussed but may result in my charging for all scheduled appointments or the termination of my availability.

Any appointment made but, simply, not kept will be charged, and payment is expected prior to the next appointment. If both members of the couple are scheduled and only one person cancels at the last minute or does not show up but the other member of the couple does show up, the party who fails to attend will be responsible for payment, unless the other partner willingly assumes responsibility for this.

In signing this, I have read, understand and agree to these terms of payment.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_

Maria Alba-Fisch, PhD

12 Broad Street  
Fishkill, New York 12524  
845-896-7787

66 Cliffside Lane  
Mt Kisco, New York 10549  
914-666-9433

I \_\_\_\_\_ give permission to Dr. Maria Alba-Fisch in her capacity as a child specialist for my child/ren in the family dispute resolution process currently under way, and \_\_\_\_\_ to exchange information regarding myself, my family, diagnosis and treatment. This will include information regarding my child and family history, medication and other matters relevant to my or their therapy with \_\_\_\_\_.

If not rescinded before, this will expire on 12/31/08.

By signing this form, I have read, understand and agree to its contents.

\_\_\_\_\_

\_\_\_\_\_

## APPLIED DIVORCE SOLUTIONS, LLC

We, \_\_\_\_\_, hereafter called the Clients; hereby retain Donna Smalldon, to provide financial consulting in the matter of my divorce/separation.

The Clients agree to the following guidelines for the purposes of these discussions:

1. **Neutral Facilitator:** Donna Smalldon is retained to act in the role of neutral facilitator and resource person for discussions relating to the financial issues of this collaborative process.
2. **Purpose of Discussions:** The discussions between Clients and Donna Smalldon are for the sole purpose of resolving the financial issues in dispute and assisting the Clients to consider the potential impact of their choices.
3. **These discussions and any consensus reached are without prejudice to the Clients.** The contents of the discussions will not be used against either Client in the future. Should litigation occur the Clients will not call Donna Smalldon as a witness.
4. **Full Disclosure:** All pertinent information will be fully disclosed. This includes but is not limited to accurate, reliable and complete financial statements and information. All financial information will be relied upon by Donna Smalldon and as such the Clients agree to not hold Donna Smalldon accountable for any errors or omissions in her work product resulting from the Clients failure to provide accurate, reliable and complete information to her.
5. **Seek Independent Financial Advice:** Both clients are advised to obtain independent financial advice: As such the Clients are advised to implement strategies that are identified or formulated in the collaborative process. Donna Smalldon will not be available to implement any of the strategies but will remain available to the team for future consultation if required.
6. **Individual consultations:** Donna Smalldon will not work with either client individually following resolution of the issues considered in the collaborative process unless both clients agree to such an assignment.
7. **Collaborative team formation:** If this agreement is created with Donna Smalldon prior to the completed formation of a collaborative team Donna Smalldon reserves the right to withdraw from the case if it becomes apparent that team members don't share a cohesive philosophy in the collaborative process. All completed work product done prior to this decision will remain with the client.



8. **Confidential:** The clients agree that matters discussed in sessions with Donna Smalldon are confidential with the exception that where necessary as determined by Donna Smalldon information may be shared with the lawyers and coaches making up the collaborative law team.
9. **Full Responsibility:** The Clients take full responsibility for understanding their rights and negotiating the outcome of the discussions.
10. **Hourly Fee Schedule:** \$ \_\_\_\_\_
11. **Retainer and Payments:** The Clients agree to advance the sum of \_\_\_\_\_ as a deposit against fees and costs of the consultation. All work accomplished will be charged against said deposit until such time as the deposit is exhausted. I understand that the deposit may not pay all the fees and costs necessary to complete the consultation. Donna Smalldon will bill on a monthly basis for work completed. Any part of the deposit which is not used will be refunded.

The Clients agree that any charges in excess of the deposit will be due and payable in full within thirty (30) days of the final notice. In the event of a delay in final court orders, The Clients agree to bring their account current within thirty (30) days of being invoiced. Any invoice not paid within thirty (30) days will be assessed interest at the rate of 18% per annum (1.5% per month) plus costs of collection.

AGREED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20

---

Client Name	Client Signature	Date
-------------	------------------	------

---

Client Name	Client Signature	Date
-------------	------------------	------

---

Donna J Smalldon	Date
------------------	------

**COLLABORATIVE DIVORCE COACHING PARTICIPATION AGREEMENT**

Between: Maria Alba-Fisch, PhD, Divorce Coach

\_\_\_\_\_, Client

Date: \_\_\_\_\_

The client has decided to use a Collaborative Divorce Team for the purpose of working out a settlement with their spouse of one or more of the following matters: division of property, including any residence, investments, retirement accounts, and life insurance; arrangements involving the children of the marriage, including living arrangements, access to both parents, and support arrangements; and spousal support issues.

This agreement is entered into between the Divorce Coach and the client, to make clear their respective understandings of their roles and responsibilities during this process.

The Goal of the Collaborative Divorce Team:

The goal of the Collaborative Divorce Team is to assist the divorcing couple to work successfully within the Collaborative Divorce model to achieve a resolution of all issues that minimizes the negative economic, social and emotional consequences that families often experience in the traditional adversarial divorce process.

In order to achieve this goal, three independent disciplines work together as a team to integrate the legal, emotional and financial aspects of divorce. This agreement is between the client and their Divorce Coach, who is part of the Team. Each party shall have her/his own Divorce Coach.

The Role of the Divorce Coach:

The divorce coaches will work with the members of the couple to:

1. Identify and prioritize the concerns of each person.
2. Make effective use of conflict resolution skills.

3. Develop effective co-parenting skills.
4. Work collaboratively with the couple and their attorneys and any other involved professionals to enhance communication and reduce misunderstandings.
5. Direct their best efforts towards keeping the collaborative process moving toward resolution in a manner that is consistent with their client's interest.

The Responsibility of the Client

Each client utilizing the Collaborative Divorce Team divorce agrees to:

1. To work for the best interest of the family as a whole.
2. Sign confidentiality waivers with the Divorce Coaches, any child specialist, the financial advisor, and their respective attorneys to waive the privilege restricting each professional involved in the process with respect to each other professional on the Team. The purpose of having signed waivers is to permit the Team professionals to speak freely together in order to facilitate a satisfactory resolution of the matter.
3. To communicate openly and honestly with their Divorce Coach to maximize the likelihood that a workable arrangement addressing each parties' underlying concerns can be developed.

Understandings

1. The Divorce Coach has been retained for the limited purpose of assisting the client through the Collaborative Divorce process. If therapy or counseling is desired, the Divorce Coach will refer the client to another person for longer term or more generalized assistance.

2. The Divorce Coach is expected to discuss the client's issues and concerns with the other professionals on the team. The client has signed a separate document, attached hereto, waiving his/her confidentiality privileges between all members of the Collaborative Divorce Team.

- i. The Divorce Coach will be paid by the client on the following terms:

\$\_\_\_\_\_ per \_\_\_\_\_ minute meeting, or a prorated calculation of this, depending on the length of the meeting..

---

3. A 24-hour advance notice of cancellation is required. Because appointment times are

reserved exclusively for the client, the client will pay the full fee for a late cancellation or missed appointment.

4. If the client decides that the Collaborative Divorce process is no longer viable and elects to terminate the status of the case as a Collaborative Divorce matter, he/she agrees, in writing, to immediately inform the other party, the Divorce Coaches, and the attorneys.

5. Under no circumstances will the Divorce Coach testify on behalf of or against any party who has signed this Agreement. The client hereby waives any right to have the Divorce Coach testify in any Court of Law. The client agrees that they shall not subpoena the Coach to Court.

6. Both the Divorce coach and the client acknowledge that they have read this agreement, understand all the terms and conditions, and agree to abide by them. The parties understand that by agreeing to have the Divorce Coach provide the services identified here, the Divorce Coach, though a trained mental health practitioner, will not be providing psychotherapy or a psychodiagnostic evaluation, and will not be assuming the professional responsibilities of a psychotherapist.

In signing this, I have read, understand and agree to the terms of this agreement.

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date

## **Collaborative Law Participation Agreement**

WIFE and HUSBAND (“the Parties”) have chosen to use the Collaborative Law Process to settle the issues arising from the dissolution of the Parties’ legal relationship. They have selected Nancy Retsinas and \_\_\_\_\_ (“the Lawyers”) to assist them. The terms of the Washington Uniform Collaborative Law Act, Title 7.77 RCW, (“UCLA”) apply to this Collaborative Process.

### **A. Principles**

We agree that these principles form the foundation of this Process:

1. Acting with honesty, transparency, and candor;
2. Demonstrating cooperation, respect, integrity and dignity;
3. Identifying and addressing the interests and needs of all;
4. Focusing on the future well-being of ourselves and our children;
5. Committing to resolve matters directly and without court intervention.
6. We are each voluntarily choosing the Collaborative process and the responsibilities that these principles entail.

### **B. Disclosure of Information**

The Parties agree to promptly provide all information that would reasonably be material for settlement, even if not requested, including full disclosure of all assets, income, expectancies, debts, budgeting and other material information. Additionally, the Parties will promptly provide all reasonably requested information.

Because the Parties are expected to provide complete and accurate information, the final settlement documents will include sworn statements that the Parties have fully and fairly disclosed all assets, income, expectancies, debts, budgeting and other material information.

### **C. No Court Intervention or Adversarial Process**

The Collaborative Law Process involves voluntarily foregoing most court procedures, including all contested proceedings including motions (requests to the court), restraining orders, trial, and other procedures and protections of the court system.

During the Collaborative Law Process neither the Parties nor Lawyers shall take any court action or utilize any other court process other than that which is mutually agreed or mandated by an applicable court rule or court order. No formal “discovery” procedures (court-rule based information gathering) will be used unless specifically agreed by the Parties.

#### **D. Participation with Integrity**

The Parties will work to protect the privacy and dignity of all involved in this process, including parties and collaborative professionals.

The Parties will maintain a high standard of integrity. Neither the Parties nor the Lawyers will take advantage of the other participants, nor of the miscalculations, misperceptions or mistakes of others, but will point them out and correct them.

If a Party knowingly withholds or misrepresents information material to the Collaborative process, or otherwise acts or fails to act in a way that undermines or takes unfair advantage of the Collaborative process, and continues after being advised of his or her obligations, continuing conduct will mandate withdrawal of the Collaborative practitioner and termination of the Collaborative process.

#### **E. Communication**

The Parties commit to explore their interests, speak freely, and express their goals, interests, desires, and options without criticism from the other. Written and verbal communications will be respectful and constructive and will not contain accusations or claims not based in fact.

The Parties authorize the Lawyers to communicate directly with either of us, including the Party who is not their own client.

#### **F. Role of Lawyers**

The Lawyers have been retained for a limited purpose, which is solely to provide services within the Collaborative Law process. Each Party represents to the other that he or she has an agreement with his or her Lawyer that the Lawyer shall be disqualified from representing that Party in any adversarial court proceeding.

The Parties understand that each Lawyer has a professional duty to represent solely his or her own client, and is not the lawyer for the other Party. Neither Party is a third party beneficiary of a lawyer's work for his/her own client.

The role of the Lawyers is to provide an organized framework that will assist the Parties in reaching agreements. The Lawyers will help the Parties communicate with each other, identify issues, collect and help interpret data, locate experts, ask questions, make observations, suggest options, help express needs, goals and feelings, check the workability of the proposed solutions and prepare and file all written paperwork for the court.

#### **G. Other Collaborative Professionals**

The Parties will jointly retain neutral facilitators, neutral consultants and neutral experts as needed (such as consultants, appraisers, facilitators, financial planners/analysts, child specialists and mental health professionals); however, if the Parties agree there will be two Coaches, then each party will have a Coach. If the Collaborative Law Process termi-

nates, all team members and experts will be disqualified as witnesses and their opinions and work product will not be admissible in court, unless otherwise agreed by both Parties *and* by the team member or expert. All parties understand and agree that non-lawyer team members and experts are disqualified from rendering services outside or after the Collaborative Law Process.

All collaborative professionals will work in a cooperative effort to resolve issues, and will provide all conclusions and results to all parties equally.

When another collaborative professional is engaged, the Parties agree the expert and the Lawyers may engage in whatever discussions and disclosures are necessary for resolution of the case.

#### **H. Professional Fees and Services**

All attorneys, team members, and professionals are independent of one another and have no financial connections, fee-setting, fee-sharing, or referral fee arrangements with one another. The Parties understand that each Collaborative team member must be paid separately for his/her services under the terms of their agreements with each professional, and that some professional fees may be incurred in team briefings before the Parties have met with the professionals. The fee arrangements with the parties' respective lawyers are likely not identical.

Imbalance in payments to lawyers can adversely affect one party's access to advice and counsel as compared to the other party. For that reason, the Parties undertake to keep payment of all lawyers' fees current. The Divorce Coach(es), Neutral Facilitators, Child Specialist and/or Neutral Financial Specialist and other jointly retained expert consultants will also be paid in a timely manner. Any disagreements between us about ultimate responsibility, and allocation for payment of such fees, will be resolved when other financial issues are resolved. The Parties understand that no Collaborative professional can continue to provide services without being paid.

#### **I. Issues Concerning Children**

The Parties agree to make every effort to keep their children's best interests in the forefront when discussing children's issues. They acknowledge that inappropriate communications can be harmful to their children, and that settlement issues are inappropriate and will not be discussed in the presence of their children. Any communication with children regarding settlement issues will occur only if by mutual agreement or with the advice of a child specialist.

#### **J. Negotiation in Good Faith**

The Lawyers have found that in order to increase trust and reduce stress during the Collaborative Divorce Process, the following rules support a foundation for an effective, efficient and less distressing transition for the Parties. Each Parties' initials under each rule of good faith conveys his or her understanding of the following Rules of Good Faith:

1. The Parties agree to proceed in “Good Faith”. “Good Faith” means to abide by the rules of common courtesy, to keep an open mind, be willing to explore options without holding a fixed position, and share all pertinent information; financially, emotionally and regarding the children.  
\_\_\_\_\_
2. The Parties agree to voice any concerns or questions that may arise during the Collaborative Law Process about the overall process, direction or any interactions between the Parties and any collaborative team members – Lawyers, Divorce Coach/Facilitator, Financial Specialist or Child Specialist.  
\_\_\_\_\_
3. The Parties agree to convert complaints into neutral requests, and to refrain from blaming and negative assumptions based on the past behavior of the other. The Parties will work productively in the “here and now” keeping the future in mind, while refraining from bringing up past hurts, challenges or situations.  
\_\_\_\_\_
4. The Parties agree to maintain the confidentiality of all content (written or oral) of the sessions and understand that under no circumstances will any of this content be used in any future adversarial process.  
\_\_\_\_\_
5. The Parties agree to share their most important priorities, goals, and concerns, so that they can be considered and addressed. The Parties agree to take the priorities, goals, and concerns of their partner into account.  
\_\_\_\_\_
6. In communications outside of joint sessions, the Parties agree to communicate respectfully, and to honor any requests to defer a discussion to a later time.  
\_\_\_\_\_
7. The Parties agree not to threaten to withdraw from the Collaborative Law Process or to go to court as a means of achieving a desired outcome or forcing a settlement.  
\_\_\_\_\_
8. The Parties agree not to destroy any documents or data that could be relevant.  
\_\_\_\_\_
9. The Parties agree not to remove a minor child or children from the state without prior Agreement in writing.  
\_\_\_\_\_



10. The Parties agree not to dispose of any assets without prior Agreement in writing.

11. The Parties agree not to incur additional debt without prior Agreement in writing.

12. The Parties agree not to harass or disturb the peace of the other.

13. The Parties agree to maintain available insurance coverage without change in coverage or beneficiary designation without an Agreement in writing.

### **K. Temporary Agreements**

Some temporary agreements may be necessary and may include bilateral, mutual agreements. The Parties will work in the collaborative process to reach those agreements to allow both to proceed with safety and security while permanent agreements are negotiated.

### **L. Termination of Agreement and Disqualification of Collaborative Professionals**

The Parties agree that the Collaborative Process begins when they sign this Participation Agreement and ends (a) upon reaching resolution in a signed writing, or (b) upon termination of the Collaborative Process. The beginning and end of the Collaborative Process does not define the relationship between parties and professionals.

If one of the Parties seeks court intervention to resolve differences, violates the Rules of Good Faith, spends marital assets without agreement of the other Party, or refuses to pay a team member, this Agreement is terminated and the Lawyers and collaborative professionals will take all steps necessary to withdraw services.

If this process terminates for any reason, all collaborative professionals, including the Lawyers, will be disqualified as witnesses and work product will be inadmissible as evidence in any subsequent court action.

If this process is terminated for any reason, the Parties understand they will likely incur additional retainers for new lawyers and this matter may be delayed while new lawyers become familiar with the Parties' case.

Either one of the Parties may withdraw from this process at any time. If so, prompt written notice shall be given to the other through his or her Lawyer. Such a withdrawal terminates this process. The termination shall be effective the date notice is given, unless another date is specified. In that event, the Parties agree to attend one more joint session within thirty days of the termination notice, unless waived by agreement.

If the Collaborative Law Process terminates, the following rights and obligations pending settlement shall remain in effect until changed by mutual agreement or court order:

1. Each Party will honor the other's privacy, including belongings and living space;
2. Each Party will treat the other Party and their minor children with respect;
3. The Parties will make changes to the residence of the children only with written agreement;
4. Major assets may be transferred only by agreement;
5. Major expenses, including anything above normal expenses, will be incurred only by agreement;
6. All insurance coverage will be maintained and continued without change in coverage or beneficiary designation; and
7. Any changes made to utilities, accounts of any kind, or credit card accounts will be changed only by written agreement.

#### **M. Waiting Period**

Upon termination of this process for any reason, the Parties will wait thirty days (unless there is an emergency) before any court hearing, to permit the Parties to retain new lawyers and make an orderly transition. This Agreement will remain in full force and effect during this period. Either Party may bring this provision to the attention of the Court to request a postponement of a hearing or proceeding.

#### **N. Confidentiality**

Collaborative Law proceedings are confidential. In any subsequent court or administrative proceeding between the Parties, neither will:

1. Offer evidence of any information created for use in the Collaborative Law Process, except for signed agreements, and documents that are signed under penalty of perjury, or as otherwise agreed;
2. Ask or seek to compel any Lawyer, team member, or expert retained as part of the Collaborative Law Process to testify about any communication made during the Collaborative Law Process, or to provide any document created for use in the Collaborative Law Process;
3. Ask or seek to compel the other Party to provide testimony or discovery concerning any communications made during the Collaborative Law Process;
4. Offer evidence of any oral statements, admissions, or offers made by either party in the course of the Collaborative Law Process.

Information provided by and between the Lawyers or the Parties during this process shall not be a waiver of any privilege in any subsequent court or administrative proceeding between the parties.

These provisions do not apply to communications initiated by a lawyer or other professional that are required or authorized by law (such as reporting abuse).

**N. Enforceability of Agreements**

Signed agreements reached in the Collaborative Process are intended to be enforceable and therefore may be presented to the court as a basis for an order, which may be retroactive to the date of the agreement. **Unsigned agreements are not intended to be enforceable absent agreement of the Parties.**

**PLEDGE**

**Both parties and legal counsel pledge to comply with and to promote the spirit and written word of this Agreement.**

Date: \_\_\_\_\_  
Wife

Date: \_\_\_\_\_  
Husband

Date: \_\_\_\_\_  
Attorney

Date: \_\_\_\_\_  
Attorney

## Authorization and Consent Form

### Professional Team Communications Authorized.

The Parties understand that communication and cooperation among professional team members is an integral part of the Collaborative Law Process, and that the express goal of such communication is to assist us in managing the process so the Parties can resolve all issues. The Parties hereby authorize each member of the Collaborative Professional Team (Professionals and Experts, including but not limited to attorneys, coaches, financial specialist, etc.) to communicate by any means, including e-mail, with all other members of the team, including potential future members of the team, relating to the Collaborative Law Process. These communications are essential to the process and are confidential and will not be disclosed to anyone, including the clients. The Parties further agree that the team may confidentially discuss your case following termination for quality control and peer review purposes.

### No Confidentiality Between Professional Team Members.

The Parties understand that there is no confidentiality or privilege as to communications made to any neutral team members (financial specialist, neutral facilitator, or child specialist) as to other team members. Additionally, non-neutral team members (attorneys and coaches in a two-coach model) are authorized to provide information to other team members that they deem beneficial to the process unless specifically instructed not to provide information.

### Confidentiality As To Others.

This part of the authorization and consent does not allow any team member to communicate about your case with anyone outside the Collaborative Law Process.

### Electronic Communications.

The professional team is authorized to use electronic means, including email, to communicate about your case, including the transmission of digitized documents. The Parties recognize that due to the nature of the Internet and computers, there is a risk that emails and other electronic communications may be intercepted, accidentally misdirected, and/or read by third parties. Absent an express request, the professional team is authorized to use such means for communications, including confidential communications.

---

Wife

---

Husband





## Frequently Asked Questions

1. Do the clients receive legal advice from their lawyers. Is this confidential? Yes, clients receive legal information and advice from their lawyers. What clients tell lawyers and what lawyers tell clients is confidential. In the Collaborative process lawyers explain to clients the need for open, frank disclosure and get their explicit permission to share information. Lawyers should check with their clients regularly to be sure that the client remembers and acknowledges that disclosure is necessary for the process to succeed.
2. Do the clients leave the process with a legally binding agreement? Yes, when the process concludes with a full resolution of all the issues, one or both lawyers draw up a legally binding document, which will, along with other required documents, be filed with the proper court and become the basis for the divorce orders.
3. If the process terminates without resolution, can information gleaned from the process be used in any other forum? Yes, if both parties, with advice of counsel, agree that certain information and work product can be retained and shared with successor counsel then that information is part of the transfer of the case. For example, if a co-parenting plan has been agreed upon, and the case fails because of an unrelated financial issue, the parties can agree to preserve the co-parenting plan.
4. Do the team members tell each other everything? Collaborative team members use their professional judgment and years of experience to determine what details need to be shared in order to achieve the outcome desired by both parties.
5. Will I lose revenue if I practice Collaboratively? Re-structuring a practice, whether it be legal, financial or a counseling practice takes time and commitment. With a business plan, realistic expectations and goals, one should be able to add Collaborative Practice to one's offerings and not lose income. Transitioning to a purely Collaborative Practice, if that is a goal, could certainly result in a dip in income for an interim period.
6. The training seems very –'lawyer-focused'. Are other professionals accounted for and included in the training and materials? Yes, other professionals, financial specialists, coaches, family consultants, communication experts,

mental health professionals, mediators, are included in a basic training. There may be a stronger focus on the role of the Collaborative attorney because 1) divorce is a legal process so having a lawyer on the team is required, 2) shifting one's focus from an adversarial to a Collaborative way of practicing law takes a lot of thought, practice and commitment. The other professionals may need a different level of shift within their own fields to become skilled Collaborative practitioners.

7. I did the training but can't get my first case. What should I do?  
(see 'Hot Tips' p.56)
8. Do we need to adhere strictly to the process options of an interdisciplinary approach? (see 'variations on practice' pg.15)
9. What are my options for further training? Always check out the trainings offered by IACP at the annual Forum and annual Institute. Check out local workshops and trainings and encourage your own Practice Group to offer the level of trainings needed.
10. Where can I find sample documentation? Check out the IACP web site, the Appendices in the back of this manual and your local Practice Group.



## Appendix E: Other Documents

### NEGOTIATION TERMS

<b>Positions:</b>	What you want
<b>Interests:</b>	Why you want it
<b>Criteria:</b>	How you get it
<b>BATNA:</b>	What will happen if you don't get it? (best case scenario)
<b>WATNA:</b>	What will happen if you don't get it? (worst case scenario)
<b>Satisfaction:</b>	What will happen if you get it?
<b>Collaborative bargaining:</b>	Working together to get what you <b>both</b> want
<b>Adversarial bargaining:</b>	Working against the other side to get only what <b>you</b> want

Kenneth Cloke

## Client Letter – 1

Dear Dan and Rachel,

Thank you both for your time yesterday. We covered a lot of ground. I thought it might be helpful to you both if I reiterated some of our discussion here. The topics that were the focus of our attention were *process*, *communication* and *managing emotions*. Please allow me to address some of the more salient points we discussed:

### PROCESS

After discussing the distinction between a collaborative process and other dispute resolution processes, we ‘drilled down’ to the issue that was at the heart of matter for you, Rachel. You felt that the phrase ‘the process’ was used repeatedly, but you were unsure what that actually meant. We identified that it was important for you to have clear expectations about not only the *steps and timeline* of the process, but also the meeting *types*. So, we started by talking about the potential steps in the process and what was likely to be the focus of each meeting, or phase of meetings.

This prompted you, Dan to ask about the meeting ‘types’. You had heard some ‘lingo’ thrown around but you felt unsure about what it all meant. We discussed that there are 4 different meeting ‘types’, and the potential intent or aim of each of the following:

- Lawyer/client meetings;
- Offline meetings with neutrals;
- Joint (or 5-way) meetings; and
- Team meetings.

Once you understood more clearly ‘the language’ of the process, your attention then turned to how each of these meeting types ‘fit’ into the collaborative process. We created a ‘process map’ that illustrated where each of the meetings ‘sit’ in the process. Dan, now that I know that you are a visual learner, I’ll aim to give you more charts and roap maps along the way.

### COMMUNICATION

Our discussion about the parts of the process lead us to consider *communication within the process*. We discussed the boundaries of confidentiality. It was leasing that you both stated you gained clarity about what is kept confidential between each of you and your respective lawyers, and how this is distinguished from the role of the neutral who will share all information that is likely to impact the process in any way.

We discussed that each of you can meet with me separately or together, at your behest, or mine, and that I will use progress notes to include the professional team of any developments. I showed you sample progress notes and we discussed that these are similar to the ones that are generated in joint meetings (but different to ‘minutes’ that many of us are familiar with from business-like forums).

The discussion about communication also prompted some interest from you both about my role. We discussed that a therapist, child consultant, or other expert may be brought in on ‘as needed’ basis but that my role was to facilitate communication, and to address conflict or barriers to communication:

- between the both of you;
- with each of you and your respective lawyers, if necessary; and
- amongst the professional team.

Importantly - and of joint concern to you both - I will assist you to develop a child-focused

parenting plan. You highlighted your joint desire that this is done on a careful, staged and Interim approach so you could both assess how each of the children was adjusting to the many changes going on in their young lives.

I was especially buoyed by the fact that you were able to articulate so clearly how best I could assist you. You weren't so interested in regular check-in phone calls from me but we quickly established that you are both voracious readers and that you would like me to 'drip-feed' you literature about child development and separation, sample parenting plans, and books on how to co-parent respectfully after separation. You wanted to be 'let loose' on my professional library. We agreed you both would read Separating Respectfully before our meeting next week.

### EMOTIONS

Finally, we discussed that the first meeting next week will likely be difficult for you both. So, we looked at the agenda and discussed what each of you may need to consider, or prepare for, or raise with your lawyers ahead of time. Dan, you were interested in knowing 'when to speak' and said you felt a little nervous about what might be expect from Rachel's lawyer, as you didn't know her very well yet and had not established a rapport. We highlighted that the meeting will go for about 2 hours but that asking for a break to gather your thoughts, or talk to me, or your lawyer was also a regular occurrence. Rachel, you have never been to the venue so we arranged that we would meet at the coffee shop nearby at 1pm so I could escort you in and show you where the meeting room is located. I will also leave with you at the conclusion of the meeting and ensure you find the where to find a cab as it can be difficult to find one in that part of town. You won't need to bring anything other than a note pad and pen, as you, me and your team have been preparing and disclosing documents in preparation for the meeting. I was pleased to see that knowing your team was working co-operatively 'behind the scenes' gave you both significant comfort. Still though, Rachel in particular was concerned about 'getting emotional'. You were worried that this could 'chew into' meeting time and that would escalate your costs (another concern for you both). I agreed I would help you stay on track by keeping to the agenda or arranging offline meetings prior to the meetings to help you plan for, and have clear expectation about the outcomes you were aiming for that day. To further assist, your lawyer will also 'debrief' with you individually at the conclusion of the meetings.

You wanted more information about the role of the financial neutral. We discussed that his role is to work each of you through your finances, the options for moving forward, and evaluating those options, all with a focus on your stated needs and interests. We discussed Rachel's concern that she might 'slow the process down' if there was a need for more time to consider, or understand something. I will raise with John, our neutral that you are particularly concerned about the valuation of the house and together you can discuss how he and your lawyers might chose the appropriate firm to assist you.

I am aware there was a lot of information and no doubt, you will have more questions once you have had a chance to consider everything we spoke of yesterday, so please be in touch if I can assist. I can be difficult to reach by phone during the day but do leave a message with my paging service. Thank you for agreeing to accept my return phone call after hours, if necessary.

I hope this overview of our discussion is helpful. I do hope we can assist you reach the outcomes you each want for yourselves and your family.

Kindest Regards,

Anne

## Client Letter – 2

Dear Dan,

Thank you for meeting with me yesterday, as we prepared for the first full meeting on Friday of next week at 2:30. Please be sure to arrive 20 minutes before the start of the meeting so you and I can spend that time together, as well as allowing 20 minutes after the meeting is over so we can talk before you leave.

Checking in before and immediately following each meeting is an important part of our work together.

We talked about a number of significant issues yesterday and I want to summarize them in this letter so we can both refer to it again, if needed.

Because you are understandably nervous as we plan to begin, I want to clearly re-state some of the most important parts of the collaborative process so we are on the same page about what you can expect.

One of the elements of the collaborative process that we discussed was the **concept of confidentiality**. Our lawyer/client relationship is protected by a very strong privilege. I cannot reveal what you and I talk about without your permission. Since it can be very awkward to get your explicit permission every time we speak, you and I agreed that I have your permission, in this process, to share information, as well as the essence of conversations we have which are relevant to settling your divorce **unless** you explicitly instruct me **not** to share what you tell me. I will check in with you from time to time to make sure that we still have the same understanding about this arrangement.

We also talked about the need to be open and transparent in the collaborative process and you expressed some confusion about how confidentiality and transparency ‘square up.’ I explained that in order to get a settlement that meets your needs, Rachel’s needs and creates a good future for your whole family, all information that makes such a settlement possible must be shared, whether asked for or not.

The example I used was if something had happened in your past that had no bearing on the divorce then even if you tell me, I don’t have to tell Rachel’s counsel. But if you want me to withhold current information which could lead to a settlement not based on full disclosure, such as a bank account in your own name that Rachel doesn’t know about, I will remind you about the reasons you both chose this process, including that you want to be fair with each other so you can co-parent well after this divorce.

I will be bound by the confidentiality we have but, if I believe you are asking *me* to withhold, or *you* are withholding something that must be disclosed, I will have to withdraw as your collaborative representative.

Dan, I doubt any of this will come to pass and if we get close to that line, we will meet in person to fully air the problem and come to a decision based on the law and what this process requires.

We also talked about not changing the financial status quo during this process without a conversation and agreement between you and Rachel. You can continue to pay all the bills and make the investments you have typically made. You can't open or close accounts, make large purchases, create debts or change the beneficiary designations on any accounts, on your will or other legal documents. If you have any doubts about how to proceed on a financial decision, please call or send an e-mail so we can be sure that there is no opposition to the move you want to make. Rachel's attorney will be reminding her that she must also maintain the status quo and we will all go over this together in the first full meeting, before signing the Collaborative Participation Agreement.

I know there was a lot to absorb during our meeting so be assured we will re-visit all these topics as often as needed.

Any time you have a question or need to go over anything we have talked about, please don't hesitate to initiate a conversation. I am happy to reiterate or explain anything which might be unclear. The best way to reach me if there is some urgency, is to call the office. If you don't require an immediate response then send an e-mail and you will receive a reply within 24 hours. My office staff and paralegal Karen, are all available to you as well.

I look forward to working with you and hope that you will be satisfied with the outcome that you and Rachel craft with the help of your Team.

Sincerely, Rita S. Pollak

## Client Letter – 3

Dear Dan and Rachel,

Thank you for meeting with me today. As a follow up to the meeting and in preparation for our work together, I'd like to review a few key items with as I understand how difficult it can be to retain everything that is coming at you during this process:

- 1) Our Agreement & relationship – I will be depending on the two of you to be open and honest with me about financial issues. The collaborative process functions at its best when both clients maintain this as a priority. This will include providing me with verbal and written (preferable) information on the following: bank accounts, investments, debt, retirement accounts, income and expenditures. Remember, it's better to ask me if I need something or may have forgotten to ask you about something than to simply assume that it doesn't matter. It would be helpful if you contact both your tax and/or financial advisors to let them know what we're doing and assure them that I will be working with you both through this process only and will not be taking either of you on as long-term clients. This will relieve any suspicions regarding our relationship and will pave the way for their cooperation, especially if they understand that a key part of my responsibility is to educate both you and the collaborative team in areas related to the decisions the two of you must make regarding financial issues for what will become your re-structured family.
- 2) Our work together – As we discussed, there will be times when I will be working with one of you more than the other on various topics and issues. The reason for this because each of you bring different levels of understanding and information regarding financial information and issues and it will be important for us to both draw that information from you as well as address specific areas that you may not understand. This type of information sharing will serve to achieve the goal of my educating each of you and the team regarding each of the financial issues to be addressed.

I will be giving you homework assignments with reasonable deadlines as we proceed through the process and will be depending on each of you to follow through with their completion or status updates regarding their completion. This may sometimes seem arduous and downright inconvenient. If that becomes the case, you have my permission to let me know. This will allow us to make necessary adjustments in our expectations and possibly our scheduling.

- 3) My work independently – Much of the work that I will be doing related to your financial information will be done after we have talked and or met (ie...developing draft reports, spreadsheets, etc.). The more thorough the information the information that you provide to me, the more complete the information that you and the team will receive. I will do my best to insure that you receive feedback and reports for review prior to their use in any scheduled conferences or meetings. The better and more efficient we are at processing this information, the better we will be able to control the time and expense of the process.
- 4) Your expenses for the process – You have provided me with a retainer which, as we discussed, is based on a general estimate of the time typically required to bring collaborative divorce clients to a point where they are ready to begin discussions on issues

related to financial matters. Additionally, we have agreed that ongoing fees will be deducted from this retainer and that you will both be receive monthly of the status of the account. Our efficiency on moving through this important preparation and subsequent steps will obviously determine the need for additions to the retainer.

- 5) Next Steps – I have provided you with a list of additional items that I'll need to continue our work in developing your initial Draft Income and Expense Reports as well as your initial Draft Assets & Liabilities Reports. We agreed that you each had individual items outstanding regarding development of these reports and that you would do your best to provide this to me by close of business next this coming Monday. We have also scheduled a meeting on Monday of the following week at 10:00 a.m. to review these reports and to address your mandatory and discretionary expenses in preparation for developing your Draft Temporary Budgets for you both.

I look forward to working with you both. Please let me know if you have any questions or needs.

My best to you both,

Lonnie J. Broussard CFP®, CDFA™

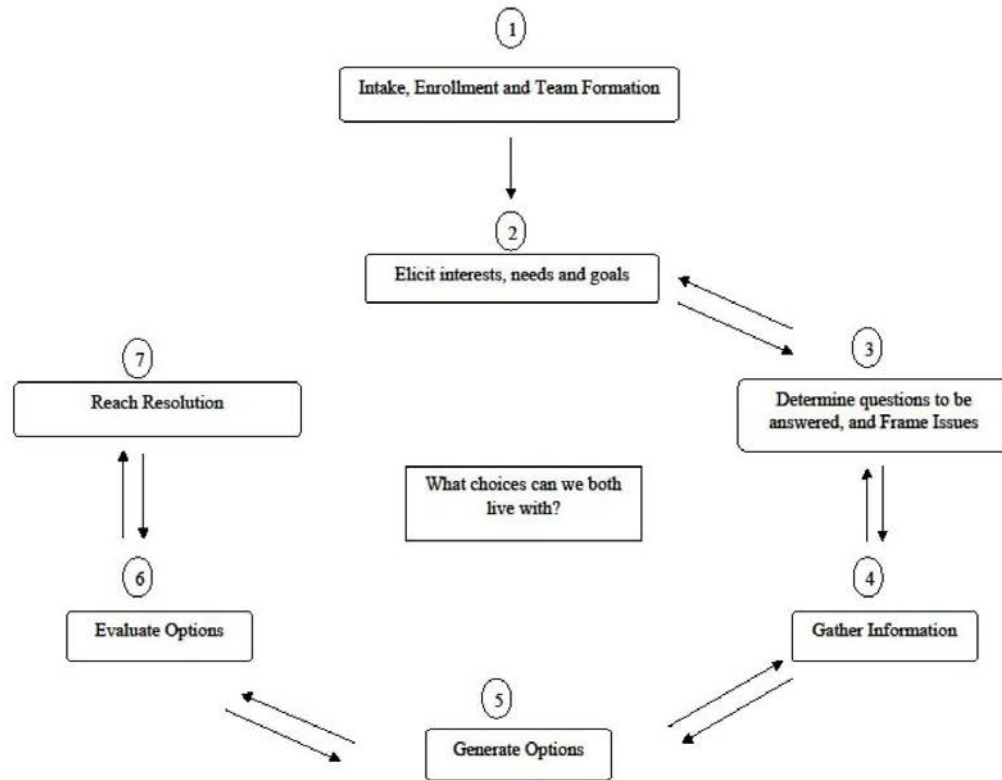
## BREAKING THE PROCESS DOWN: STEP BY STEP

1. Taking a phone inquiry; briefly describe process options which you offer
2. Scheduling an in-person consult
3. Describing all the process options, while staying away from content
4. Sending a letter to your client's unrepresented spouse or
5. Being in touch with the collaborative colleague who represents your client's spouse
6. Engaging your client with a Collaborative Fee Agreement
7. Scheduling a first conversation with your collaborative colleague
8. Discussion about bringing other collaborative professionals onto the TEAM: coach, financial neutral, child specialist
9. Schedule another meeting with your client to go over the Process Agreement, to have an extended interview about what their needs, interests, goals and concerns are, to gather information
10. Follow up this meeting with a letter to client summarizing meeting
11. Professionals meet to start building the Team and creating Team norms for this particular case, preferably in person
12. The coach, financial professional and/or the child specialist has an initial in -person consult with the clients, individually; this includes a conversation about their respective Fee Agreements (all Fee Agreements should be signed before the first meeting)
13. The TEAM creates the Agenda for the first meeting which is distributed to the clients in plenty of time to confer with their lawyers
14. Clients meet with their respective counsel to prepare for the first meeting
15. First Meeting: Welcome, describe the process and how we will move through the Agenda (see example of First Meeting Agenda)
16. Before the meeting ends, sketch out the Agenda for the next meeting

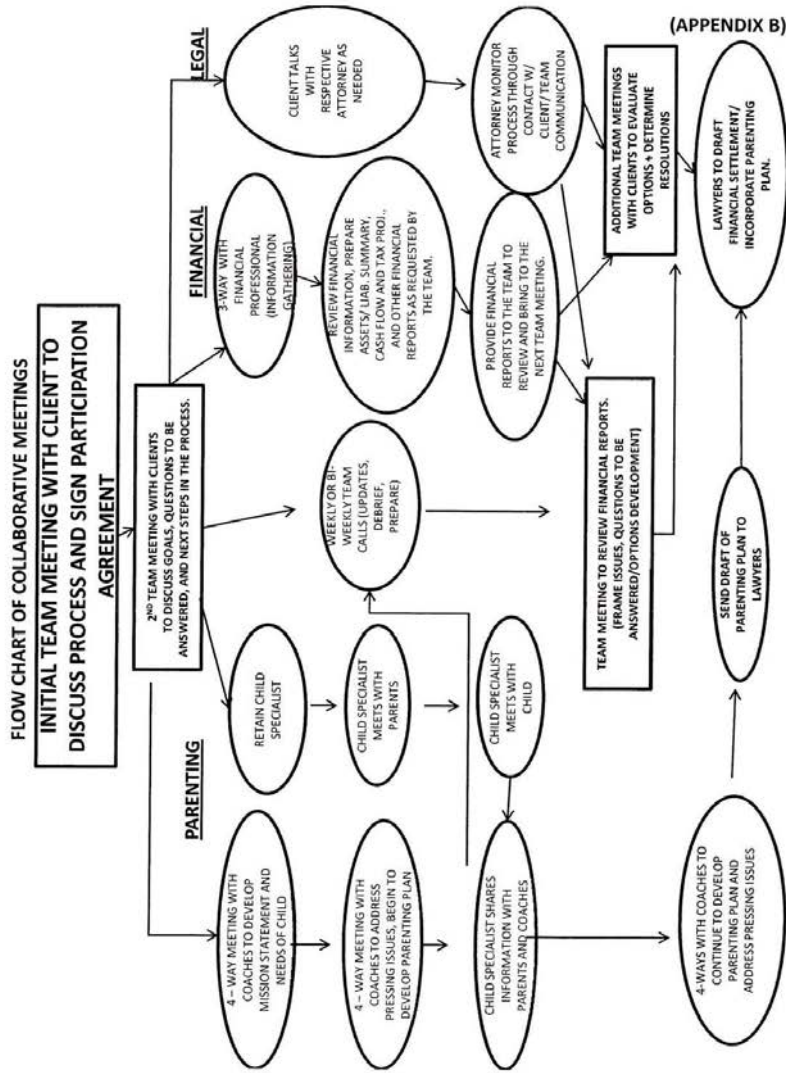


17. Book 3-4 meetings with everyone present
18. Have the coach end the meeting with some observations, framed in a constructive manner
19. De-brief with your own client immediately following the meeting
20. Team de-briefs immediately after meeting with clients
21. The attorney who took the Minutes gets them out to the other TEAM members within 48 hours for review and editing; once the TEAM agrees, they are distributed to the clients for comments
22. The lawyers and clients prepare privately for the next meeting
23. The TEAM members talk before each meeting and the Agenda is distributed well in advance of each meeting
24. The coach begins each meeting with a review of the GOALS and what went well in the prior meeting; sets the intention for each meeting
25. Everyone moves through the Agenda, lead by the attorneys with the coach and other professionals who are present, participating as needed
26. Once agreements start to be developed, one attorney begins to draft the Agreement; the draft is edited by collaborative counter-part attorney until both lawyers agree the draft is ready to be shared with the clients. The coach or child specialist reviews the Parenting Plan language. The financial neutral reviews the financial agreements language
27. Once the Agreement , and all other required documents are ready to be signed, a final signing meeting is set up
28. Both lawyers and the coach (and child specialist if there was one) are present at that final meeting with the clients. This is an opportunity to review the Goals and to affirm that the clients' Goals have been met
29. If everyone is comfortable, some kind of 'closing' moment is shared, especially an expression of appreciation for the work that has been done

APPENDIX A: FLOW CHART OF COLLABORATIVE PROCESS



APPENDIX B: FLOW CHART OF COLLABORATIVE MEETINGS



## Appendix F: IACP Standards and Ethics



International Academy of Collaborative Professionals  
**Standards and Ethics**  
(as of September 2015)

**Contents:**

1. Prefatory Comments to Standards and Ethics
2. Definition of Collaborative Practice (2011)
3. Ethical Standards for Collaborative Practitioners
4. Minimum Standards for Collaborative Practitioners (October 2014)
5. Interim Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings (October 2014)
6. Interim Minimum Standards for Collaborative Trainers (October 2014; clarified February 2015)

## Prefatory Comments to Standards and Ethics

IACP's mission is to transform how conflict is resolved worldwide through Collaborative Practice. Collaborative Practice involves a fundamentally different approach than traditional methods of conflict resolution, resulting in the need for unique Standards and Ethics.

IACP has adopted these Standards and Ethics to promote the essential elements of Collaborative Practice and to establish core principles and requirements designed to advance:

- consistency of practice
- a common set of expectations for professionals and clients
- a high level of integrity for the benefits of clients

The Standards and Ethics consist of these parts:

1. *Definition of Collaborative Practice* identifies the fundamentals of the process.
2. *Ethical Standards for Collaborative Practitioners* provides guidance to professionals regarding competence, confidentiality, advocacy, and professional roles with respect to questions and situations not addressed by other traditional rules of professional conduct.
3. *Minimum Standards for Collaborative Practitioners* delineates essential training, licensure, and experience for professionals.
4. *Interim Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings* provides the elements that introductory Collaborative trainings must include.
5. *Interim Minimum Standards for Collaborative Trainers* specifies minimum qualifications that trainers should have in order to provide an effective training.

IACP Standards and Ethics are designed to establish minimum expectations for professionals, and to support the goal of ensuring that Collaborative Practice retains quality, consistency, and integrity.

IACP is not a regulatory body. IACP Standards and Ethics do not form a basis for determining whether a practitioner is subject to legal liability or disciplinary action.

## **International Academy of Collaborative Professionals Definition of Collaborative Practice**

Collaborative Practice is a voluntary dispute resolution process in which parties settle without resort to litigation. In Collaborative Practice:

1. The parties sign a collaborative participation agreement describing the nature and scope of the matter;
2. The parties voluntarily disclose all information which is relevant and material to the matter that must be decided;
3. The parties agree to use good faith efforts in their negotiations to reach a mutually acceptable settlement;
4. Each party must be represented by a lawyer whose representation terminates upon the undertaking of any contested court proceeding;
5. The parties may engage mental health and financial professionals whose engagement terminates upon the undertaking of any contested court proceeding; and
6. The parties may jointly engage other experts as needed.

***IACP Ethical Standards for Collaborative Practitioners***

**Preamble** Collaborative Practice differs greatly from adversarial dispute resolution practice. It challenges practitioners in ways not necessarily addressed by the ethics of individual disciplines. The standards that follow:

- 1) Provide a common set of values, principles, and standards to guide the Collaborative practitioner in his or her professional decisions and conduct,
- 2) Create a framework of basic tenets for ethical and professional conduct by the Collaborative practitioner, and
- 3) Identify responsibilities of Collaborative practitioners to their clients, to Collaborative colleagues, and to the public.

**GENERAL STANDARDS**

**1. Resolution of Conflicts between ethical standards.**

1.1 Any apparent or actual conflict between the Ethical Standards governing the practitioner’s discipline and these Standards should be resolved by the practitioner consistent with the Ethical Standards governing the practitioner’s profession.

**2. Competence.**

2.1 A Collaborative practitioner shall maintain the licensure or certification required by the practitioner’s profession in good standing and shall adhere to the Ethical Standards governing the practitioner’s discipline.

2.2 A Collaborative practitioner shall have completed a minimum of twelve hours of Collaborative Practice/ Collaborative Law training or Interdisciplinary Collaborative training consistent with IACP Minimum Standards for Collaborative practitioners, prior to commencing a Collaborative case or engaging in Interdisciplinary Collaborative Practice.

2.3 A Collaborative practitioner shall practice within the scope of the Collaborative practitioner’s training, competency, and professional mandate of practice, as specified by the IACP Minimum Standards for Collaborative practitioners. The practitioner shall be mindful

of the client’s individual circumstances and the over-all circumstances of the case that may require the involvement of other professionals, both within and outside of the Collaborative process.

**Comment**

As Collaborative practitioners experience a greater diversity in their client population they become confronted by more complexity in physical, psychological and emotional factors affecting the client. It is important for the practitioner to be able to recognize these factors, as they will necessarily influence the Collaborative process and the client’s decision making. It is even more important for the practitioner to recognize the limits of his or her ability to effectively deal with these factors and with the client’s response to them. In fully addressing the client’s needs, interests and goals, the Collaborative practitioner must be willing to turn to other professionals both within and outside of the Collaborative process, such as mental health professionals, medical professionals, financial professionals, vocational specialists and possibly rehabilitation counselors in the areas of physical disability, substance abuse, and domestic violence.

**3. Conflicts of Interest.**

3.1. A Collaborative practitioner shall disclose any conflicts of interest as defined by the practitioner’s respective professional guidelines and Ethical Standards.

**Comment**

Upon full disclosure of a conflict of interest, the client(s) affected may waive the conflict in writing consistent with the practitioner’s professional guidelines.

**4. Confidentiality.**

4.1 A Collaborative practitioner shall fully inform the client(s) about confidentiality requirements and practices in the specific Collaborative process that will be offered to the clients.

4.2 A Collaborative practitioner may reveal privileged information only with permission of the client(s), according to guidelines set out clearly in the Collaborative practitioner’s Participation Agreement(s) or as required by law.



### Comment

The rules of confidentiality are among the most important core values of the legal and mental health professions. Those standards may be modified by the terms of the Collaborative practitioner's fee and/or Participation Agreement with the client(s), so long as the modifications are consistent with the ethical standards of the practitioner's discipline. A competent Collaborative practitioner will be knowledgeable regarding the requirements of his/her professional standards pertaining to the necessity of obtaining a client's informed consent, and shall provide sufficient information to enable the client to give informed consent.

#### 5. Scope of Advocacy.

- 5.1 A Collaborative lawyer shall inform the client(s) of the full spectrum of process options available for resolving disputed legal issues in their case.
- 5.2 A Collaborative practitioner shall provide a clear explanation of the Collaborative process, which includes the obligations of the practitioner and of the client(s) in the process, so that the client(s) may make an informed decision about choice of process.
- 5.3 A Collaborative practitioner shall assist the client(s) in establishing realistic expectations in the Collaborative process and shall respect the clients' self determination; understanding that ultimately the client(s) is/are responsible for making the decisions that resolve their issues.
- 5.4 A Collaborative practitioner shall encourage parents to remain mindful of the needs and best interests of their child(ren).
- 5.5 A Collaborative practitioner shall avoid contributing to the conflict of the client(s).

### Comment

This section highlights the special obligations undertaken by the Collaborative practitioner that specifically result from the unique nature of Collaborative Practice. Psychologists and social workers are free to recommend outcomes to their client(s) believed to be in the client(s)' (or the clients' family's) best interest, provided that they take care to do no harm. The traditional model of lawyering includes advocacy by the lawyer for the client's position so long as that position is legally supportable. Thus, this sec-

tion has particular impact for lawyers because it reflects the considerations underlying law society and bar association rules in a number of jurisdictions. For example, Rule 2.1 of the American Bar Association's Model Rules of Professional Conduct recognizes that the role of the attorney encompasses more than providing purely technical legal advice. As the Comment to Rule 2.1 explains, the attorney's advice can properly include moral, ethical, and practical considerations, and may indicate that there is more involved in resolving a particular dispute or even the client's entire case than strictly legal considerations. In Collaborative Practice, the practitioner specifically contracts with the client(s) to provide advice that recognizes a full range of options for dispute resolution and takes into consideration relationship and family structures when looking at the possible outcomes for the client(s).

#### 6. Disclosure of Business Practices.

- 6.1 A Collaborative practitioner shall fully disclose to the client(s) in writing his/her respective fee structure, related costs, and billing practices involved in the case.
- 6.2 A Collaborative practitioner shall be truthful in advertising his/her Collaborative Practice and in the solicitation of Collaborative clients.

#### 7. Minimum Elements of a Collaborative Participation and/or Fee Agreement.

- 7.1 A Collaborative Participation Agreement and/or Fee Agreement shall be in writing, signed by the parties and the Collaborative practitioners, and must include provisions containing the following elements:

##### A. Pertaining to Full Disclosure of Information

1. No participant in a Collaborative case, whether a Collaborative practitioner or a client, may knowingly withhold or misrepresent information material to the Collaborative process or otherwise act or fail to act in a way that knowingly undermines or takes unfair advantage of the Collaborative process;
2. If a client knowingly withholds or misrepresents information material to the Collaborative process, or otherwise acts or fails to act in a way that undermines or takes unfair advantage



of the Collaborative process, and the client continues in such conduct after being duly advised of his or her obligations in the Collaborative process, such continuing conduct will mandate withdrawal of the Collaborative practitioner and if such result was clearly stated in the Participation and/or Fee Agreement, the conduct shall result in termination of the Collaborative process.

3. In the event of a withdrawal from or termination of the Collaborative process, the Collaborative practitioner shall notify the other professionals in the case.

#### B. Prohibiting Contested Court Procedures

1. Undertaking any contested court procedure automatically terminates the Collaborative process;
2. A Collaborative practitioner shall not threaten to undertake any contested court procedure related to the Collaborative case nor shall a Collaborative practitioner continue to represent a client who makes such a threat in a manner that undermines the Collaborative process.
3. Upon termination of the Collaborative process, the representing Collaborative practitioners and all other professionals working within the Collaborative process are prohibited from participating in any aspect of the contested proceedings between the parties.

#### **PRACTICE PROTOCOLS**

##### **8. Consent.**

- 8.1 Each Collaborative practitioner shall obtain written permission from his/her client(s) to share information as appropriate to the process with all other Collaborative professionals working on the case.

##### **9. Withdrawal/Termination.**

- 9.1 If a Collaborative practitioner learns that his or her client is withholding or misrepresenting information material to the Collaborative process, or is otherwise acting or failing to act in a way that knowingly undermines or takes unfair advantage of the Collaborative

process, the Collaborative practitioner shall advise and counsel the client that:

- A. Such conduct is contrary to the principles of Collaborative Practice; and
- B. The client's continuing violation of such principles will mandate the withdrawal of the Collaborative practitioner from the Collaborative process, and, where permitted by the terms of the Collaborative practitioner's contract with the client, the termination of the Collaborative case.

- 9.2 If, after the advice and counsel described in Section 9.1, above, the client continues in the violation of the Collaborative Practice principles of disclosure and/or good faith, then the Collaborative practitioner shall:

- A. Withdraw from the Collaborative case; and
- B. Where permitted by the terms of the Collaborative practitioner's contract with the client, give notice to the other participants in the matter that the client has terminated the Collaborative process.

- 9.3 Nothing in these ethical standards shall be deemed to require a Collaborative practitioner to disclose the underlying reasons for either the professional's withdrawal or the termination of the Collaborative process.

- 9.4 A Collaborative practitioner must suspend or withdraw from the Collaborative process if the practitioner believes that a Collaborative client is unable to effectively participate in the process.

- 9.5 Upon termination of the Collaborative process, a Collaborative practitioner shall offer to provide his/her client(s) with a list of professional resources from the Collaborative practitioner's respective discipline from whom the client(s) may choose to receive professional advice or representation unless a client advises that he or she does not want or need such information.

#### **ETHICAL STANDARDS SPECIFIC TO PARTICULAR COLLABORATIVE ROLES**

##### **10. Neutral Roles.**

- 10.1 A Collaborative practitioner who serves on a Collaborative case in a neutral role shall adhere to that role, and shall not engage in any continuing client relationship that would compromise the Collaborative practitioner's neutrality. Working with either or both client(s) or with their child(ren) outside of the Collaborative process is inconsistent with that neutral role.
- A. A Collaborative practitioner serving as a neutral financial specialist in a Collaborative case shall not have an ongoing business relationship with a Collaborative client during or after the completion of the Collaborative case, but may assist the clients in completing the tasks specifically assigned to them by the clients' written, final agreement. Such assistance may not include the sale of financial products or other services.
  - B. A Collaborative practitioner serving as a child specialist may assist the family in divorce related matters for the child(ren). Such assistance may not include becoming the child(ren)'s therapist.
  - C. A Collaborative practitioner serving as a neutral coach may assist the family in divorce related matters. Such assistance may not include acting as a therapist for one or both parties.

#### 11. Coaches/Child Specialists.

- 11.1 A Collaborative practitioner who serves in the role of coach on a Collaborative case shall not function as a therapist to the Collaborative practitioner's client after the case has ended. Coaches should remain available to continue to help the clients/family address specific divorce issues after the divorce is final. A therapist for a client shall not serve in the role of coach or child specialist on a Collaborative case involving a client with whom the therapist has acted in a therapeutic role.
- 11.2 A Collaborative practitioner serving as a child specialist shall inform the child about the child specialist's role and the limits of confidentiality as appropriate, taking into account the child's age and level of maturity.

***IACP Minimum Standards for Collaborative Practitioners (Adopted July 13, 2004; Revised October 22, 2014)***

*The IACP Standards for Trainers, Trainings, and Practitioners are drafted with an awareness of the aggregate nature of learning. Knowledge comes from the interface between education and practical experience. Skill is acquired from the successive application of education to experience. With those principles in mind, these Standards should be understood as a point of departure in a continuing journey of education and practice for Collaborative practitioners and trainers.*

The IACP sets the following basic requirements for a professional to hold herself/himself out as a practitioner who satisfies IACP Standards for Collaborative Practice in family related disputes.

**1. General Requirements:**

1.1 The Collaborative practitioner is a member in good standing of:

- IACP; and
- A local Collaborative Practice group.

1.2 The Collaborative practitioner accepts the IACP Mission Statement.

1.3 The Collaborative practitioner diligently strives to practice in a manner consistent with the IACP Ethical Standards for Collaborative practitioners.

1.4 The trainings referred to in 2.2, 3.3 and 4.3 must be trainings that meet the IACP Minimum Standards for trainings delivered by trainers who meet the IACP Minimum Standards for Collaborative Trainers.

**2. IACP Minimum Standards for Collaborative Lawyer Practitioners:**

2.1 Membership in good standing in the administrative body regulating and governing lawyers in the lawyer's own jurisdiction.

2.2 Completion of an Introductory Collaborative Practice Training or an Introductory Interdisciplinary

Collaborative Practice Training that meets the requirements of IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings. For practitioners who commenced Collaborative Practice prior to January 1, 2015, completion of training that met the requirements of the IACP Minimum Standards for a Collaborative Basic Training then in effect.

2.3 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).

2.4 In addition to the above, an accumulation or aggregate of fifteen further hours of training in any of the following areas:

- Interest-based negotiation training
- Communication skills training
- Collaborative training beyond minimum twelve hours of Initial Collaborative training
- Advanced mediation training
- Basic professional coach training

**3. IACP Minimum Standards for Collaborative Mental Health Practitioners:**

3.1 Mental Health professional license in good standing in one of the following:

- LCSW - Licensed Clinical Social Worker
- RSW - Registered Social Worker
- LMFT – Licensed Marriage and Family Therapist
- RCC - Registered Clinical Counsellor
- CCC - Canadian Clinical Counsellor
- R Psych - Registered Psychologist
- C Psych - Chartered Psychologist
- Licensed Psychologist
- LEP - Licensed Educational Psychologist
- LPC - Licensed Professional Counsellor

Or such other equivalent license in a state, province or country that requires an advanced degree in a recognized clinical mental health field, requires continuing education, and is

regulated by a governing body under a code of ethics.

3.2 Background, education and experience in:

- Family systems theory
- Individual and family life cycle and development
- Assessment of individual and family strengths
- Assessment and challenges of family dynamics in separation and divorce
- Challenges of restructuring families after separation

For child specialists: expertise in child development, clinical experience with a specialty focus on children and an in-depth understanding of children's unique issues in divorce

3.3 Completion of an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training that meets the requirements of IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings. For practitioners who commenced Collaborative Practice prior to January 1, 2015, completion of training that met the requirements of the IACP Minimum Standards for a Collaborative Basic Training then in effect.

3.4 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).

3.5 In addition to the above, an accumulation or aggregate of fifteen hours of training in any or all of the following areas:

- Basic professional coach training
- Communication skills training
- Collaborative training beyond minimum twelve hours of initial Collaborative training
- Advanced mediation training

3.6 A minimum of three hours aimed at giving the mental health professional a basic

understanding of family law in his/her own jurisdiction.

**4. IACP Minimum Standards for Collaborative Financial Practitioners:**

4.1 Professional license or designation in good standing in one of the following:

- CFP – Certified Financial Planner
- CPA – Certified Public Accountant
- CA – Chartered Accountant
- CMA – Certified Management Accountant
- CGA – Certified General Accountant
- ChFC – Chartered Financial Consultant

or such other equivalent license or designation in a state, province or country that requires a broad-based financial background and continuing education, and that is regulated by a governing body under a code of ethics.

4.2 Background, education and experience in:

- Financial aspects of divorce
- Cash management and spending plans
- Retirement and pension plans
- Income tax
- Investments
- Real estate
- Insurance
- Property division
- Individual and family financial planning concepts

4.3 Completion of an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training that meets the requirements of IACP Minimum Standards for Introductory Collaborative Practice Trainings and Introductory Interdisciplinary Collaborative Practice Trainings. For practitioners who commenced Collaborative Practice prior to January 1, 2015, completion of training that met the requirements of the IACP Minimum Standards for a Collaborative Basic Training then in effect.

4.4 In addition to the above, an accumulation or aggregate of twenty hours of education in the financial fundamentals of divorce giving the financial professional a basic understanding of family law in his/her own jurisdiction, including:

- Divorce procedures
- Property - valuation and division
- Pensions and retirement plans
- Budgeting - income and expenses
- Child and spousal support
- Future income projections
- Financial implications of different scenarios for settlement

4.5 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).

4.6 In addition to the above, an accumulation or aggregate of fifteen hours of training in any or all of the following areas:

- Communication skills training
- Collaborative training beyond minimum twelve hours of initial Collaborative training
- Advanced mediation training
- Basic professional coach training

INTERNATIONAL ACADEMY OF  
COLLABORATIVE PROFESSIONALS

**Interim Minimum Standards for  
Introductory Collaborative Practice Trainings and  
Introductory Interdisciplinary Collaborative Practice Trainings**

**Adopted by the Board of Directors on October 22, 2014**

**1. Introduction.** These standards are established with an awareness of the aggregate nature of learning. Skill is acquired from actual application of education to experience over time and continuing education to enhance skill.

A trainer must be familiar with the following definitions, principles and standards adopted by the International Academy of Collaborative Professionals (IACP):

Definition of Collaborative Practice  
Ethical Standards for Collaborative Practitioners  
Minimum Standards for Collaborative Practitioners  
Minimum Standards for an Introductory Collaborative Practice Training  
Minimum Standards for Collaborative Practice Trainers

A training in the Collaborative Practice process satisfies the Minimum Standards for an Introductory Collaborative Practice Training or an Introductory Interdisciplinary Collaborative Practice Training when it complies with the requirements prescribed herein. This training will introduce the Collaborative Practice process while recognizing that proficiency or skill cannot be attained from this training alone.

Trainers will familiarize participants with the theories, practices and skills so participants can begin to develop the self-awareness and understand the core requirements for effective Collaborative Practice.

**2. Core Curriculum.** Trainers will provide instruction to the participants on the following subjects:

**(a) Process.** The training will include the following subjects concerning process:

- (1) The Collaborative Practice process as a structure to create working relationships to reach agreements and resolve disputes;
- (2) The range of process options and Collaborative Practice professional team configurations available to clients given their situation;
- (3) Organizational considerations in managing a Collaborative Practice matter, including—
  - (i) providing a structure, options, and protocols for the process;
  - (ii) managing the case within the structure established by the professionals;
  - (iii) setting expectations for clients and professionals;

Adopted by the Board  
IACP Introductory Training Standards

- (iv) defining issues and determining tasks; and
- (v) planning, conferring and coordinating among professionals including pre-meeting and post-meeting briefings with the professionals and clients.

(4) Considerations when working as a team, including as an interdisciplinary team, and the contribution and role of each professional;

(5) Recognition of the emotional, financial, and legal elements of the clients' conflict in all cases and how each element might impact the process; and

(6) The applicability of local law to the process.

**(b) Skills Required for the Collaborative Practice Professional.** The training will include the following subjects concerning skills:

(1) The professional's responsibility to maintain a safe and productive environment for all;

(2) The professional's responsibility to educate clients how to engage in productive behavior;

(3) The impact of professional language and modeling behavior to improve the clients' ability to effectively participate in the Collaborative Practice process;

(4) The professional's duty to assist the client in developing effective communication skills to enhance the prospects for reaching agreements during the Collaborative Practice process and in the future;

(5) The professional's ability to effectively assess the capacity of the client for effective participation in the Collaborative Practice process;

(6) The professional's awareness of power dynamics and imbalances that may exist in the Collaborative Practice process, the impact on the process, and how the professionals can address such issues; and

(7) The professional's awareness of the need for assessment of coercive and violent relationships.

**(c) Theory and Ethics.** The training will include the following subjects concerning theory and ethics:

(1) Dynamics of interpersonal conflict. For trainings focused on domestic relations matters, divorce as a life transition and the dynamics of divorce, and for other family matters the impact of transitions on interpersonal dynamics and relationships;

(2) The future-focused decision-making orientation of Collaborative Practice. For trainings focused on domestic relations matters, concepts related to restructuring families;

Adopted by the Board  
IACP Introductory Training Standards



(3) The difference between facilitative negotiation, including interest-based theory and methods as contrasted with positional negotiation, including rights-based theory and methods;

(4) Ethical considerations including the need to discuss carefully the available process options with the client, informed consent, integrity, professionalism, diligence, competence, advocacy, and confidentiality;

(5) Recognition that each professional has different ethical considerations;

(6) The role of the law as one of multiple reference points for decision-making. Other reference points include the interests and needs of each client, each client's sense of fairness, practical and economic realities, prior agreements, the goals of the clients, and cultural, emotional, and other factors; and

(7) IACP standards that are applicable to practitioners, including Minimum Standards for Collaborative Practitioners and Ethical Standards for Collaborative Practitioners.

**(d) Process Value and Costs.** The training will include the following subjects concerning process value and costs:

(1) Understanding the broader interests which can be addressed in Collaborative Practice, including the long-term benefits of client self-determination, reaching a durable agreement, preserving relationships, and the comparative economic and relational consequences of process choices;

(2) Conveying to clients the value of Collaborative Practice including, where applicable, the value of an interdisciplinary professional team, as distinct from and together with consideration of professional fees and financial cost variables of process choices;

(3) Making realistic statements to clients about financial realities of dispute resolution processes, and the clients' contributions to cost containment throughout the process; and

(4) Awareness that individual professional choices and behavior can have a significant impact on the efficiency, value, and cost of the process.

**(e) Professional Teamwork.** As used herein, a "team" can be any configuration of professionals, whether lawyers-only or interdisciplinary. The training will include the following subjects concerning professional teamwork:

(1) Professional team development, formation, configuration, and dynamics and the responsibility of each professional to establish and maintain a collaborative environment;

(2) The professional and interpersonal differences between working as an independent professional and working as part of a Collaborative Practice team, including a team with members from different disciplines;

Adopted by the Board  
IACP Introductory Training Standards



(3) The nature of the roles and work performed by each professional discipline in an interdisciplinary Collaborative Practice matter, and how to maximize the knowledge and skills of each team member, both individually and together, in order to effectively work on a matter; and

(4) For professional team members from different disciplines, the specific boundaries and ethics common to each profession, and the unique considerations these pose when working together as a team.

**(f) Practice Development and Practice Groups.** The training will include the following subjects concerning practice development and practice groups:

(1) Initiation of Collaborative Practice matters in the professional's unique communities, and the responsibility for each professional to develop his/her own practice;

(2) The benefits, structure and role of practice groups, and the individual responsibility for involvement in practice group activities;

(3) The importance of developing and expanding Collaborative Practice skills through additional trainings, experience, and interactions with experienced practitioners, and how an Introductory Collaborative Practice Training serves solely as a foundation; and

(4) The role of IACP as the international organization that promulgates standards and advances Collaborative Practice, and the resources IACP makes available to support practitioners.

### **3. Introductory Interdisciplinary Collaborative Practice Training.**

(a) An Introductory Interdisciplinary Collaborative Practice Training shall meet all requirements of an Introductory Collaborative Practice Training plus the requirements of this Section 3. The core curriculum for an Introductory Interdisciplinary Collaborative Practice Training is the same as the core curriculum for an Introductory Collaborative Practice Training.

(b) In an Introductory Interdisciplinary Collaborative Practice Training in the area of domestic relations, the faculty will be composed of a minimum of 1 professional from each of the legal, mental health, and financial disciplines. Otherwise, the faculty will be composed of those interdisciplinary professionals appropriate to the subject matter.

(c) An Introductory Interdisciplinary Collaborative Practice Training should include instruction of participants from each discipline by members of each of the other disciplines.

### **4. Training Organization and Procedures**

**(a) Duration.** An Introductory Collaborative Practice Training will be a minimum of 14 hours of classroom time (excluding break times) completed over no more than 90 days, and preferably over 2 or 3 consecutive days. Participants will attend in person.

Adopted by the Board  
IACP Introductory Training Standards

**(b) Methods.** An Introductory Collaborative Practice Training should include multiple learning modalities – interactive, experiential, and lecture elements. Examples include demonstrations, role plays, small group exercises, interactive dialogues, fish bowls, and educational games.

**(c) Materials.** An Introductory Collaborative Practice Training should include written materials that are useful for reference and practice by the Collaborative Practice practitioner after the training and will include the IACP Minimum Standards for Collaborative Practitioners and IACP Ethical Standards for Collaborative Practitioners.

**(d) Evaluations.** An Introductory Collaborative Practice Training should include evaluations of the training and trainer(s) by the participants.

Adopted by the Board  
IACP Introductory Training Standards

**INTERNATIONAL ACADEMY OF  
COLLABORATIVE PROFESSIONALS**

**Interim Minimum Standards for Collaborative Practice Trainers**

**Adopted by the Board of Directors on October 22, 2014**

These standards are established with an awareness of the aggregate nature of learning. Skill is acquired from the successive application of education to experience over time and continuing education to enhance skill. The IACP sets the following minimum standards for trainers after January 1, 2015, to conduct a training that meets IACP Minimum Standards for an Introductory Training:

**1. Minimum Experience for Trainers:**

- 1.1 A trainer will have completed at least 10 different Collaborative Practice matters of which at least 6 will have been in the interdisciplinary model, accumulating at least 50 hours of practice in Collaborative Practice. For trainings that are focused solely on practice areas other than domestic relations, trainers will have completed at least 8 different Collaborative Practice matters, accumulating at least 50 hours of practice in the Collaborative Practice.
- 1.2 During the 5 years prior to first conducting trainings, a trainer will have taken primary responsibility for preparing and making educational presentations that total at least 15 hours in presentation time, with 1 presentation lasting no less than 3 hours and each other presentation lasting no less than 45 minutes.
- 1.3 Prior to conducting trainings, a trainer will have attended a minimum of two Introductory Collaborative Practice trainings. At least one such training will be introductory training in the interdisciplinary model to provide the trainer the experience of observing the principles, methodology and practice of teaching.

**2. Minimum Training for Trainers:**

- 2.1 A trainer will have satisfied all training requirements set forth in the Minimum Standards for Collaborative Practitioners.
- 2.2 A trainer will have completed at least 10 hours of client-centered facilitative conflict resolution training beyond those set forth in the Minimum Standards for Collaborative Practitioners. If a trainer is conducting trainings in the domestic relations area, such training completed will include a substantial amount pertinent to domestic relations dispute resolution.
- 2.3 A trainer will have a minimum of 9 additional hours of relevant education on advanced Collaborative Practice topics.

**3. Licensing/Certification:** A trainer will be licensed or certified for his/her field of practice, and be in good standing and not restricted in practice or subject to any conditions or monitoring of his or her conduct by the licensing board governing the trainer's field of practice. A trainer will have no public record of discipline of any nature within the last 5 years.

Approved by Board  
Trainer Standards (Clarified Feb. 2015)

**4. IACP Training Standards:** A trainer will be familiar with the Minimum Standards for an Introductory Training and have the skills to conduct that training.

**5. Skills Training:** A trainer shall be qualified by education, training, and experience to inform and educate about skills relative to communication, problem-solving, facilitative dispute resolution, mediation, interpersonal relationships, conflict management and resolution, interest-based negotiation, teamwork, and process.

A trainer should attend educational courses or workshops that emphasize adult learning principles. A trainer should be able to teach adults through meaningful dialogue and didactic presentations, set up demonstrations, structure role plays, and employ other experiential learning models.

**6. Knowledge about Area of Dispute:** A trainer will have an appropriate understanding of the general area to which the dispute relates, including, a recognition that financial decisions may have far-reaching and long-term financial and tax implications and, when training in the domestic relations area, knowledge of the grief process, child development, and the dynamics of the divorcing/restructuring family.

**7. Particular Professions:** In addition to the above, those offering training in particular disciplines as part of the Collaborative Practice process will satisfy the following:

7.1 Attorney:

- A minimum of 5 years in active practice, including 5 years of experience in the particular discipline which is the subject of the training (e.g., 5 years of domestic relations experience for Collaborative Practice trainings dealing with divorce and separation).

7.2 Child Specialist:

- A minimum of 5 years clinical experience with specialty focus on children.
- In-depth understanding of children's unique issues in domestic relations.

7.3 Financial:

- A minimum of 5 years in financial consulting with significant experience in the financial and tax aspects of the general area to which the dispute relates.

7.4 Divorce Coach:

- A minimum of 5 years of clinical experience focusing on couples and families, and in-depth knowledge of: 1) short-term therapy and coaching models, 2) divorce and the psychosocial impact of divorce on families, and 3) basic elements and guidelines for creating parenting plans.
- In depth knowledge of family dynamics and systems theory and child development.

7.5 Other Professionals:

- A minimum of 5 years experience in their field.

Approved by Board  
Trainer Standards (Clarified Feb. 2015)

**8. Trainers in the Interdisciplinary Model of Collaborative Practice:** The interdisciplinary model of Collaborative Practice for domestic relations matters includes the mental health, financial, and legal disciplines as part of the Collaborative team. In addition to the requirements above, each trainer in the interdisciplinary team model will have knowledge of team interactions and specific issues unique to the interdisciplinary model.

**9. Checklist.** To assist potential trainers in assessing whether they meet the requirements, the following checklist is provided as a convenience:

***Summary of IACP Trainer Requirements***

- 50 hours of Collaborative Practice work.
- 10 completed Collaborative matters, 6 of which are interdisciplinary. For trainings focused solely on non-domestic relations areas, 8 completed Collaborative matters.
- 15 hours of educational presentations in last 5 years of which one is at least 3 hours in duration, and the remainder at least 45 minutes each.
- Attend at least 2 Introductory trainings, at least one of which is an Interdisciplinary Introductory Collaborative Practice training.
- 10 additional hours of facilitative dispute resolution training in addition to the 30 hours required for all Collaborative Practice professionals.
- 9 hours additional education on relevant advanced Collaborative Practice topics.
- A trainer should attend educational courses or workshops that emphasize adult learning principles.

Approved by Board  
Trainer Standards (Clarified Feb. 2015)