

# **PRINCIPLES AND GUIDELINES FOR COLLABORATIVE PRACTICE**

## **1 INTRODUCTION**

1.01 The essence of Collaborative Practice in a Family Law setting is the shared belief of the participants that it is in the best interests of the parties and their family to resolve their differences directly, without adversarial legal proceedings, by participating in a conflict resolution process that does not rely on a court-imposed solution. Collaborative Practice relies on an atmosphere of honesty, cooperation, and integrity, geared toward the future well being of the parties and their children.

1.02 By signing this document the divorcing parties commit themselves to participate in the Collaborative process and undertake to devote all their efforts to resolving their differences constructively, justly and equitably.

## **2 THE COLLABORATIVE DIVORCE TEAM**

2.01 We, the divorcing parties, acknowledge that we have been advised to use an interdisciplinary team approach that integrates the legal, emotional, and financial

aspects of a divorce. The Collaborative team of professionals utilizes a process of informal discussions and conferences that involve both parties directly in gathering information and resolving all issues. The Collaborative team approach fosters creativity and minimizes the negative economic, social, and emotional consequences for spouses and their families that traditional divorce litigation can cause.

2.02 We, the parties, understand that each of us must be separately represented by a Collaborative Lawyer and we also understand that we are each expected to retain, or at minimum to have a preliminary consultation with, a Collaborative Divorce Coach. Where appropriate, we understand that (with the advice of the Collaborative Lawyers) we may be expected to retain a neutral Collaborative Financial Consultant to assist in gathering and evaluating financial information.

These Collaborative professionals are referred to collectively as the Collaborative Divorce Team.

2.03 All members of the Collaborative Divorce Team will sign a copy of this document, reflecting their intention to do their work pursuant to these principles and guidelines.

2.04 The roles of the Collaborative professionals who make up the core Collaborative Divorce Team are as follows:

**2.04.1 Collaborative Neutral Coach:**

- \* helps each party clarify concerns;
- \* helps each party manage emotions;
- \* helps each party develop and reinforce effective communication skills;
- \*

**2.04.3 Financial Consultant (one neutral)**

- \* gathers and analyzes financial data;
- \* develops different financial scenarios for clients to evaluate in consultation with lawyers;
- \* projects long term financial consequences of various settlement scenarios
- \* provides financial guidance, planning, support and budgeting throughout the divorce process, with follow up as needed.

#### **2.04.4 Collaborative Lawyer (one for each party)**

- \* assists each party in evaluating conflict resolution process choices
- \* assists each party in gathering and analyzing information;
- \* helps each party clarify and express needs and interests during negotiations in service of developing workable settlement options and packages;

- \* helps each party evaluate consequences and limitations of possible solutions;
- \* with the other lawyer, helps each party and both parties to understand the role and limits of the law in negotiating mutually acceptable solutions;
- \* helps each party weigh settlement options in relation to identified personal values and interests;
- \* with the other lawyer, guides and facilitates negotiations;
- \* with the other lawyer, manages conflicts and differences during negotiations process
- \* with the other lawyer, prepares the required legal documentation of the agreement and obtains agreed court orders and judgment; and
- \* helps each party negotiate post-divorce agreements as needed.

### **3 CONSTRUCTIVE CONFLICT RESOLUTION WITHOUT COURT OR OTHER INTERVENTION**

3.01 By electing to treat their Family Law matter as a Collaborative Divorce case, the parties, together with their Collaborative Divorce Team, intend to resolve all divorce-related issues without court intervention. The parties commit to give complete, full, honest, and open disclosure of all information having a material bearing on the case,

whether requested or not, and to engage in informal discussions and conferences for the purpose of reaching a settlement of all matters. All legal, financial, and mental health professionals working as a team in this matter pursuant to this document, as well as any appraisers, evaluators, and other consultants retained by the parties to assist in this Collaborative Divorce, will likewise be directed to work cooperatively to resolve issues constructively, without resort to litigation or any other third-party decision making process.

#### **4 LIMITATIONS OF COLLABORATIVE PRACTICE**

##### **6.3.4**

4.01 In choosing Collaborative Divorce, we — the divorcing couple each understand that there is no guarantee of success. We also understand that we cannot eliminate concerns about disharmony, distrust, and irreconcilable differences that have led to the current circumstances. While we all are intent on reaching a cooperative and complete resolution of all issues, we understand that our actual experience in our Collaborative Divorce may fall short of that goal.

4.02 Even though we have chosen Collaborative Divorce, we — the divorcing couple — understand that each of us is still expected to protect his or her respective interests and not to lapse into a false sense of security in the assumptions and expectations each holds about the other, the collaborative lawyers, or the Collaborative Divorce process. Subject to the requirements of applicable law and the good faith commitments of these Principles and Guidelines, each of us may and should continue to act in our own respective best interests, even where those interests may diverge from the other party's interests. These good faith undertakings address

how we will conduct ourselves during these Collaborative Divorce negotiations and are not a substitute for attending carefully to our own respective interests and concerns during all phases of the Collaborative process.

4.03 Each of us understands that while both of us, our respective lawyers, and all other Collaborative Team members signing this document are all affirming our good faith undertakings about how we will and will not behave during this Collaborative Divorce, this document does not give either of us enforceable legal rights that we did not already have, to hold anyone legally accountable for failing to meet the commitments set out in this document. We both understand that the good faith undertakings set out in this document are not legally enforceable contractual obligations. We also understand that other documents will be signed in the Collaborative Divorce process that are legally enforceable contracts, including the Stipulation and Order for Collaborative Divorce, and the retainer agreements we sign with our lawyers and other Collaborative Divorce professionals.

4.04 Each of us understands that we each have the power to



terminate this Collaborative process at any time, for any or no reason, and that a termination by one of us means that both Collaborative lawyers must cease representing us and we will each need to retain a new lawyer. The undertaking by both of us to honor the letter and spirit of these principles and guidelines is of great value to each of us. We each believe that the potential advantages of proceeding with a Collaborative Divorce outweigh the risks.

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4.05 Each of us understands that in the event the Collaborative process terminates, if financial resources are strained, it might be difficult for one or both of us to acquire the funds needed to start fresh with a new lawyer. The preference of both of us is to put our financial resources to work in service of reaching an amicable agreement resolving all divorce related issues through the collaborative divorce process. We each believe that the potential advantages of doing so outweigh the risks.

## **5 PARTICIPATION WITH INTEGRITY**

As participants in the Collaborative Divorce process, all signatories to these Principles and Guidelines will respect the privacy and dignity of all involved, including parties, lawyers, and if applicable, collaborative coaches, financial specialists, and any consulting professionals. Further, each of us will uphold a high standard of integrity. The parties and all Collaborative Divorce team members confirm that they will not take advantage of inconsistencies, misstatements of fact or law, or others' miscalculations, but will disclose them and seek to have them corrected at the earliest opportunity. In the event a

Collaborative Divorce team member discovers inconsistencies, misstatements of fact or law, withheld information, or miscalculations by a party or by any other professional, the Collaborative Divorce team member is expected to inform that person of the discovery and remind him or her of the obligations under these Principles and Guidelines to make the required disclosure. In the event a Collaborative Divorce team member discovers that she or he has made a misstatement of law or a miscalculation, he or she is expected to disclose and correct the same. In the event a Collaborative Divorce team member discovers that another Collaborative Divorce professional has made a misstatement of law or a miscalculation, she or he is expected to inform the other Collaborative Divorce professional of the discovery and request disclosure and correction.

## **6 WORKING WITH OUR COLLABORATIVE DIVORCE TEAM AND OTHER PROFESSIONALS**

### **6.3.6**

6.02 In securing additional professional assistance where needed, we, the parties understand that we are expected ordinarily to make use of only joint neutral experts and specialist consultants in the fact finding and negotiations in our Collaborative Divorce, as recommended by the Collaborative Lawyers and/or the Collaborative Divorce Coache. While neither of us and neither Collaborative Lawyer is precluded by these Principles and Guidelines from consulting privately with separate experts or consultants, each of us undertakes not to retain separate experts or specialist consultants without advising our respective Collaborative Lawyers of our intent to do so, during this Collaborative Divorce process, because of the potential negative impact on the good faith that supports successful collaborative negotiations.

6.03 We, the parties, understand the importance of clarifying with our respective Collaborative Divorce coaches and lawyers at the start of this process how private confidential communications will be handled by that professional so that we each understand what will be treated as confidential and what will not.

## **7 DUTIES OF CLIENTS AND LAWYERS REGARDING NEGOTIATION IN GOOD FAITH**

7.01 We, the parties and our Collaborative Divorce professional team will sign these Principles and Guidelines, and such other documents as the Collaborative Divorce team members request, including but not necessarily limited to fee agreements, a Coaching Agreement, and a Stipulation and Order Re: Collaborative Divorce, and we, the parties, and our Collaborative Divorce team members, undertake to act in accord with the letter and spirit of their terms and provisions. However, these Principles and Guidelines themselves do not give rise to any right of either of us for legal claims against any signatory.

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7.02 We, the parties, understand that even with full and honest disclosure, the Collaborative Divorce process will involve vigorous good faith negotiation. Each of us will be expected to take a reasoned and constructive approach on all disagreements and disputed matters in the interests of reaching consensus, for so long as the collaborative process continues, and if such approaches differ, or if negotiations appear stalled, each of us will be encouraged to consider whether modifying his or her approach would be appropriate in order to reach a resolution of all disputed matters. At the same time, we understand that throughout the Collaborative Divorce process each of us has the responsibility for asserting—constructively and forthrightly—our respective needs, interests, goals, and priorities, with the help of our Collaborative Lawyers and other Collaborative Divorce team members.

7.03 While we understand that our Collaborative Lawyers will inform us fully about applicable law and about the litigation process, we also understand that our Collaborative Divorce team will encourage us to use our own values,

interests and priorities rather than predictions about legal rights in a litigation context as the measure of the adequacy of settlement concepts. Neither of us and no Collaborative Divorce team member will use threats of going to court, or any other threats, as a way of forcing settlement. Our purpose during the collaborative divorce process is to seek mutually acceptable solutions that meet the reasonable needs of each of us and any children, and not to pressure either of us into accepting terms of agreement that do not serve that purpose.

7.04 We, the parties, understand that although our Collaborative Lawyers undertake to adhere to the letter and spirit of these principles and guidelines, each lawyer represents only his/her own client and has a professional obligation solely to that client. We each have instructed our respective lawyers that they are retained solely to help both of us , the parties, to reach an acceptable agreement resolving all our issues without court proceedings, and we understand that the job of each lawyer is to help his/her respective client to achieve his/her goals and priorities in that manner within the

collaborative process, in accord with these principles and guidelines, and to provide appropriate advice and counsel if it appears that our respective goals and interests are not being met within the Collaborative Divorce process. We both affirm our understanding that neither lawyer has a legal duty in this process except to his or her own client. Both parties understand that the Collaborative Lawyers each represent only one party and not both parties. Both parties understand and acknowledge that neither Collaborative Lawyer owes a legal duty to

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a party he or she does not represent. We both understand and agree that nothing in these Principles and Guidelines or in any of the documents establishing this as a Collaborative Divorce should be interpreted by either of us, or by any court, to mean that either of us could ever have a claim against the other party's lawyer with respect to any aspect of Collaborative Divorce, including, without limitation: disclosures, negotiations, and/or terms of settlement. Each lawyer's duty is to his/her own client to provide advice and counsel aimed at constructive resolution of all divorce-related issues and to provide appropriate advice and counsel if it appears that our respective goals and interests are not being met within the Collaborative Divorce process.

## **8 ABUSE OF COLLABORATIVE PROCESS**

8.01 Each of us understands that a party who wished to might be able to misuse the Collaborative Divorce process for purposes of delay or advantage over the other. We each prefer to proceed on a good faith basis in the Collaborative Divorce process unless and until

there is reason to believe that a party is acting in less than good faith. We each believe that the potential advantages of doing so outweigh the risks.

8.02 A Collaborative Lawyer is expected immediately either to withdraw from or terminate a Collaborative Divorce case upon learning that her or his client is knowingly withholding or misrepresenting information having a material bearing on the case or otherwise acting so as to undermine or take unfair advantage of the Collaborative Divorce process. Examples of such behavior include: the secret disposition of marital, quasi-marital, or non-marital property, failure to disclose the existence or the true nature of assets and / or obligations, ongoing emotional or physical abuse by either party, secret preparation to engage in litigation while appearing to participate in a Collaborative Divorce process, or withholding a secret plan or intention to leave the jurisdiction of the court with their children.

8.03 Each of us understands the need to clarify separately, in writing, with his and her respective Collaborative Lawyers whether the lawyer will withdraw from or terminate the

Collaborative Divorce process in the event his or her client abuses the process.

8.04 We, the parties, and all signing Collaborative Divorce professionals, understand that while other remedies may exist, the ultimate sanction against professionals who abuse the Collaborative Divorce process, or

condone and / or encourage such abuse by clients, is the diminution of that professional's reputation in the legal community, including the judiciary.

## **9 DISQUALIFICATION BY COURT INTERVENTION**

9.01 We, the parties, understand that the collaborative lawyers' representation is limited to the Collaborative Divorce process. Thus, while each Collaborative Lawyer is a counselor and advocate bound by all professional obligations of a lawyer practicing in this state, we have entered into a binding agreement that neither lawyer can ever represent a collaborative client in court in proceedings against the divorcing spouse, nor be named or remain as lawyer of record on any document filed with the court.

9.02 We understand that none of our Collaborative Divorce team members, including the Collaborative Lawyers, Collaborative Divorce Coaches, Collaborative Financial Consultant, and Child Specialist, and none of the other

jointly retained experts and specialist consultants participating in our Collaborative Divorce, may ever assist either of us in court proceedings against the other, nor give evidence in such a matter. We understand that we will be expected to sign a separate agreement with each Collaborative Divorce professional that is legally enforceable as to this prohibition against calling any such person as a witness in court.

9.03 In the event one of us ever unilaterally files adversary documents seeking orders from the court, we the parties understand that all Collaborative Divorce professionals will be disqualified from further representing or assisting their respective clients, and the Collaborative Divorce process will automatically terminate. We understand that this means actions by one of us can cause both collaborative lawyers to be disqualified from further participation. Upon termination of the Collaborative Divorce process, all Collaborative Professionals will be disqualified as witnesses and their work product and the work of all other jointly

retained experts and consultants will be inadmissible as evidence in any adversarial court proceeding between us.

6.3.9 6.3.10

## **10 WITHDRAWAL OF LAWYER**

10.01 If a Collaborative Lawyer deems it appropriate to withdraw from the case for any reason, he or she agrees to do so by a written Notice of Withdrawal to the parties, their coaches and lawyers, and the financial and child specialists, as well as any other participants and, if a Stipulation and Order has been filed, to the court. This may be done without terminating the status of the case as a Collaborative Divorce case.

10.02 The party losing her or his collaborative lawyer by virtue of withdrawal may continue in the Collaborative Divorce process by retaining a new collaborative lawyer who will agree in writing to be bound by these Principles and Guidelines and by the separate collaborative stipulation and order or participation agreement that we have signed.

## **11 ELECTION TO TERMINATE COLLABORATIVE PROCESS**

11.01 If either of us, the parties, decides that the Collaborative Divorce process is no longer appropriate and elects to terminate the

status of the matter as a Collaborative Divorce case, she or he agrees to do so by sending a written Termination Notice to all other parties, Collaborative Professionals, and other participants and, if a Stipulation and Order has been filed, to the court. Similarly, if a Collaborative Lawyer deems it necessary to terminate the Collaborative Divorce process, he or she will send a written Termination Notice to the recipients noted in the preceding sentence.

11.02 We, the parties, understand that termination of the Collaborative Divorce proceeding will occur automatically in the event either of us initiates an adversarial court proceeding against the other.



## **12 PROFESSIONAL FEES AND COSTS AND COMMUNICATIONS IN COLLABORATIVE DIVORCE**

12.01 We, the parties, understand that all Collaborative Divorce team members are independent of one another and have no financial connections, fee-setting, fee-sharing, or referral fee arrangements with one another. We also understand that each Collaborative Divorce professional must be paid separately for his and her services in this Collaborative Divorce pursuant to the terms set out in separate fee agreements we each will sign with each professional team member. Those financial terms are worked out separately with each professional and the fee arrangements with our respective lawyers and coaches may or may not be the same for each of us, the parties.

12.02 We, the parties, understand that imbalance in payment to our respective coaches or lawyers can adversely affect one party's access to advice and counsel as compared to the other party. For that

reason we both undertake to keep payment of all coaches' and lawyers' fees current. and Collaborative Financial Consultant and other jointly retained neutral expert consultants will also be paid in a timely manner. Any disagreements between us about ultimate responsibility for payment of such fees will be resolved as and when other financial issues are resolved. Each of us understands that no Collaborative Divorce team member can continue to provide services without being paid.

12.03 We, the parties, understand that the Collaborative Divorce professionals will confer with one another from time to time by telephone, in person, and via email, in service of ensuring full and complete disclosure of material information and in service of ensuring an effective Collaborative Divorce process. We each agree that such communications are appropriate and acceptable, except if a party specifically directs a team member not to disclose information. We each understand the necessity of entering into separate agreements with each

professional helper regarding how such a directive not to disclose will be handled by that professional. Each professional will bill for time spent in professional team communications as set out in his and her separate fee agreements.

12.04 We, the parties, each understand that the collaborative divorce process works most effectively if our professional team members are

given the discretion to determine the extent to which the specific content of professional team conferences will be disclosed to us, the parties. We each agree that they should and do have that discretion.

### **13 SELECTION OF NEW LAWYER; ADDITIONAL FEES**

13.01 We, the parties, understand that if our Collaborative Divorce matter terminates short of full resolution, the parties will return to their current litigation counsel of record,.

13.02 We, the parties, understand that if it should be necessary to return to their current litigation counsel in the event of the termination of the Collaborative Divorce matter prior to full resolution, we each will incur further professionals' fees—including but not necessarily limited to lawyers' fees--that may equal or exceed those paid during the Collaborative Divorce process. We understand that there is no guarantee of complete resolution of all our issues in the Collaborative Divorce process. We are aware that if our financial resources are scarce we may have difficulty retaining

litigation counsel should the Collaborative Divorce process terminate short of full resolution.

#### 14 **PLEDGE**

All parties, lawyers, coaches, financial consultants, child specialists, and other expert professional consultants who have signed below hereby affirm their understanding of and agreement with the letter and spirit of this document and affirm their intention to proceed in a manner consistent with it.

#### **Parties:**

Dated: \_\_\_\_\_

Wife

Dated: \_\_\_\_\_

Husband

#### **APPROVED:**

\_\_\_\_\_  
Collaborative Lawyer for Wife

\_\_\_\_\_  
Collaborative Lawyer for Husband