

Chapter 1

GENERAL PROVISIONS

SECTION 1.01. DEFINITIONS

(a) “Collaborative law” means a structured, voluntary, non-adversarial dispute resolution process in which the parties and their lawyers sign an agreement to negotiate in good faith giving consideration to the interests of all parties, to resolve their dispute without resort to a court imposed resolution, to disclose all relevant information, and to engage neutral experts, as needed, for assistance in resolving issues. The process envisions the use of other non-adversarial dispute resolution methods such as mediation to facilitate negotiations when needed. The written agreement must provide that the lawyers shall withdraw if the collaborative process is terminated.

(b) “Collaborative lawyer” means a lawyer who represents a client in the collaborative process.

(c) “Participation Agreement” means a contract among the parties and their lawyers setting out the guidelines to be followed in the collaborative process.

(d) “Retained expert” means an individual, qualified by knowledge, skill, experience, training, or education, who is jointly or separately engaged by the parties to provide neutral and unbiased information, research, opinions, or inferences on a subject relevant to the dispute.

(e) “Consulting-only expert” means an individual who (i) has no firsthand knowledge about the dispute; (ii) has no factual knowledge about the dispute except for knowledge that was acquired through the consultation; and (iii) whose work product, opinions, or mental impressions have not been reviewed jointly or separately by a retained expert.

(t) “Outside legal opinion attorney” means an attorney who gives an opinion on a specific issue or issues who is privately engaged outside of the collaborative process by a party or group of parties. This attorney may be a litigation attorney.

SECTION 1.02. APPLICATION OF PROFESSIONAL RULES. These protocols are subordinate to the rules of professional conduct governing the lawyers and retained/consulting-only experts.

SECTION 1.03. COMPLIANCE WITH PROTOCOLS.

These protocols are designed to be used by lawyers and parties on a voluntary basis for Collaborative Divorces.

SECTION 1.04. APPROVED FORMS

Use of standardized forms in the collaborative process assists in compliance with these protocols, assures that all participants are working from a common set of material, and enhances the quality of meeting and communications. Standardized forms may be obtained from a board member or by download at “www.collaborativedivorceteam.com.”

CHAPTER 2. THE COLLABORATIVE LAWYER/CLIENT RELATIONSHIP

SECTION 2.01. INFORMING THE CLIENT

Prior to engaging in the collaborative divorce, the collaborative lawyer should inform prospective clients about all legal alternatives for resolving the client’s dispute, including the collaborative process, other alternative dispute resolution methods, and litigation.

SECTION 2.02. SUITABILITY OF THE DISPUTE FOR THE COLLABORATIVE PROCESS.

(a) The collaborative lawyer should be aware that certain matters may be inappropriate for the collaborative process, e.g., client objectives that are inconsistent with the principles of collaboration. The collaborative lawyer should use careful judgment in accepting or declining clients in a collaborative matter.

(b) The collaborative lawyer should not represent a client in the collaborative process unless all parties are represented by a lawyer. If a party’s lawyer withdraws after the collaborative process has begun, the party may retain a new collaborative lawyer. If new counsel is not retained within thirty (30) days, it is presumed, unless otherwise agreed in writing, that the collaborative process has been terminated.

SECTION 2.03. DILIGENT REPRESENTATION OF CLIENT.

(a) The collaborative lawyer should commit the time and resources necessary to assist the client in identifying and articulating the client’s interests and goals, and to explore means by which the collaborative process can satisfy the client’s interests and achieve the stated goals in a constructive manner.

(b) The collaborative lawyer should inform the client as soon as feasible about interest-based negotiation as opposed to positional bargaining, the priority the collaborative process gives to nonadversarial resolution of the clients' disputes and, when desired, preservation of ongoing relationships.

(c) The collaborative lawyer should inform the client about the law and its application to the client's matter on a continuing basis, preserve confidential communications, and assist the client to develop approaches, collaborative¹)' with the other participants, to resolve the dispute without resort to adversarial proceedings.

(d) The collaborative lawyer should explain to the client that the process allows resolution of disputes outside the limits of a judicially imposed solution, subject to securing court approval of the settlement.

CHAPTER 3. THE COLLABORATIVE LAWYERS' RELATIONSHIP

SECTION 3.01. RESPECT FOR THE OTHER LAWYER AND CLIENT.

The collaborative lawyer recognizes the heightened requirement to be respectful at all times to the other parties and lawyers. A collaborative lawyer should engage in practices to foster a positive interaction between the respective attorneys and their clients.

SECTION 3.02. MUTUAL RELIANCE.

Representation of a client in the collaborative process means the lawyer, in good *faith*, believes the client will act and is acting in a manner consistent with the objectives of the collaborative dispute resolution process. If the collaborative lawyer discovers that the client is acting in bad faith, and counseling by the lawyer does not remedy the problem, the collaborative lawyer should terminate the process by providing written notice to all team members.

SECTION 3.03. PRIVATE MEETING WITH OTHER LAWYERS.

(a) The collaborative lawyer recognizes the need, on occasion, to meet privately with the other participating lawyers to address issues related to the dispute. The collaborative lawyer should explain to the client that such meetings are commonplace and are intended to assist in the collaborative process.

(b) The collaborative lawyer should confer with the other lawyer(s) to set the first agenda. Subsequent agendas may be set by the lawyer(s) and the clients at the end of each meeting, or subsequent thereto, provided that the agenda is provided to all participants for review and input.

SECTION 3.04. SHARING OF COMMUNICATIONS.

The collaborative lawyer recognizes that clients in the collaborative process may or may not choose to communicate directly with each other. A collaborative lawyer should not discourage direct client communications so long as the parties have agreed to communicate and the communications assist the collaborative process. The collaborative lawyer should promptly forward, or otherwise disclose, to the other lawyer all direct communications between the clients. The collaborative lawyer should encourage open and efficient communications, especially by use of e-mail and fax to schedule meetings, share documents, and relay procedural information.

CHAPTER 4. THE COLLABORATIVE LAWYER- EXPERT RELATIONSHIP

SECTION 4.01. ROLE OF EXPERTS.

The collaborative lawyer acknowledges that the interests of the client may best be served by engaging experts to participate in the collaborative process. The participation of retained experts must be a joint decision of the parties and the lawyers, unless otherwise agreed.

SECTION 4.02. DEFINING RESPONSIBILITY.

The terms of the engagement of experts must be in writing and clearly define their scope of responsibility in the collaborative process, including such matters as attendance at meetings; communications with the parties, lawyers, witnesses; and the relationship with other experts who may be engaged in the matter, method of payment for experts and responsibility for payment of experts.

CHAPTER 5. PROTECTING THE INTEGRITY OF THE COLLABORATIVE PROCESS

SECTION 5.01. INTEGRITY OF THE PROCESS.

The objective of the collaborative process is to achieve an ethical and enduring resolution for the clients' dispute. The collaborative lawyer should assist the client to develop alternatives for settlement that meet the objectives of his client, and wherever possible without creating a conflict of interest, of both parties. The collaborative lawyer acknowledges that the ultimate decision of the collaborative agreement rests with the parties.

SECTION 5.02. HONESTY AND FULL DISCLOSURE.

The collaborative lawyer recognizes that honesty and full disclosure of relevant or requested information are critical to a successful outcome. The collaborative lawyer should

assist the client in complying with the requirement of making a full and candid disclosure of all relevant, mandatory or requested documents and information, including but not limited to financial disclosure.

SECTION 5.03. CONFIDENTIALITY.

Any and all oral and written negotiations between the parties or their lawyers or other participants in the collaborative process are confidential as to all persons not a party to the process. Such confidentiality continues after the process terminates, unless agreed otherwise in writing by the parties.

SECTION 5.04. CORRECTION OF MISTAKES.

The collaborative lawyer shall identify known mistakes, errors of fact or law, miscalculations and other inconsistencies and correct them for all participants, as soon as such are discovered.

SECTION 5.05. CIVILITY AND PREPARATION.

The collaborative lawyer should strive at all times to be courteous, punctual, and prepared for meetings.

SECTION 5.06. PROFESSIONAL FEES.

The agenda for the first meeting in the collaborative process should include payment of attorney fees, filing fees, retained experts and other costs. These issues should also be addressed periodically during the collaborative process.

CHAPTER 6. FUNDAMENTALS OF THE COLLABORATIVE PROCESS

SECTION 6.01. STAGES OF THE COLLABORATIVE PROCESS.

The collaborative process consists of five stages which although appearing separate and distinct may occur simultaneously:

- (a) Determining the clients' goals and interests;
- (b) Information gathering;
- (c) Development of settlement options;
- (d) Evaluation of the options; and
- (e) Negotiation of the settlement.

The collaborative lawyer prepares the client for each stage, helps the client communicate

effectively with the other parties throughout the process, and protects the integrity of the process by requiring the parties to proceed chronologically through the stages.

SECTION 6.02. DETERMINATION OF THE PARTIES' GOALS AND INTERESTS.

The first stage of the collaborative process is defining the parties' goals and interests. The collaborative lawyers assist the parties in differentiating between their bargaining positions regarding settlement and their fundamental interests. The goals of collaborative lawyers is to enable their client to recognize areas of commonality in the dispute, and to not only understand but also acknowledge each party's interests.

SECTION 6.03. INFORMATION GATHERING.

Gathering, organizing, and analyzing all relevant and mandatory information are central to the collaborative process. The collaborative lawyer assists the client in these tasks.

SECTION 6.04. DEVELOPMENT OF SETTLEMENT OPTIONS.

Upon completion of the exchange and organization of all relevant information, the parties shall propose and develop all possible options for settlement of the issues in face-to-face meetings. The collaborative lawyers should assist the client in developing such options; with the understanding that any option proffered for consideration is ultimately the client's decision.

SECTION 6.05. EVALUATION OF THE OPTIONS.

When the parties are satisfied that all possible options have been proposed, the collaborative lawyers and retained experts should assist the clients in evaluating the options, analyzing how the options meet the clients' interests and goals, and determining whether an option is realistically achievable.

SECTION 6.06. NEGOTIATION OF THE SETTLEMENT.

The focus of the final stage should be determining which options for resolution best serve the parties' interests and common goals. The ultimate goal of the process should be the achievement of the best possible outcome for the parties. The parties, with assistance of the lawyers and retained experts, should fashion the terms of the agreement, and, upon resolution of

all issues, the lawyers shall promptly draft all of the necessary documents to finalize the settlement.

SECTION 6.07. IMPASSE AVOIDANCE TECHNIQUES.

(a) A collaborative lawyer should not threaten to terminate the collaborative process and should advise the client to avoid similar threats.

(b) Before terminating the process, the collaborative lawyers should explore deadlock breaking techniques, such as: partial settlement, mediation, securing the opinion of another lawyer, arbitration or referral to a special master for limited issues, a courthouse trip to view a trial, or consulting with a litigation lawyer.

SECTION 6.08. FUTURE ADVERSARIAL MATTERS.

After conclusion of the collaborative process, whether by settlement or termination, no collaborative lawyer and/or jointly retained expert shall serve in any adversarial proceeding involving the subject matter of the dispute. However, if the parties engage in the collaborative process, then they may use the same lawyers to assist on pre-filing non-adversarial negotiations.

CHAPTER 7. MEETINGS AND SCHEDULING

SECTION 7.01. IMPORTANCE OF MEETINGS.

The collaborative lawyer acknowledges the importance of face-to-face meetings of all participants to facilitate the collaborative process and to achieve a successful outcome. The collaborative lawyer should emphasize to the client the importance of attending all meetings and participating in good faith. Although meetings of all clients and lawyers are preferred, circumstances may arise where other arrangements are necessary.

SECTION 7.02. SCHEDULING AND ARRANGEMENTS.

Meetings of all parties and lawyers should be scheduled at mutually convenient times and locations. Meeting should not be adjourned without scheduling at least one subsequent meeting, whenever possible.

**CHAPTER 8.
AGENDAS AND MINUTES**

SECTION 8.01 AGENDA FOR MEETINGS.

(a) A written agenda prepared in advance and distributed by the collaborative lawyers in consultation with their respective clients should govern each meeting. The parties should be encouraged to schedule agenda items in advance through their lawyers. The collaborative lawyer should discourage raising issues in the meeting which are not on the agenda, to avoid the element of surprise. Matters that arise during a meeting that are not on the agenda should be deferred until the next meeting's agenda unless the parties agree otherwise.

(b) The agenda of the first meeting should include the reading aloud of the Participation Agreement by the parties and lawyers, the signing of the Participation Agreement and any Addendums.

SECTION 8.02. MINUTES

Minutes should be prepared after each meeting by a designated collaborative lawyer and distributed to all participants in a timely fashion. The minutes should document the items discussed any agreement reached. Editorial bias should be avoided. The minutes should serve as a running record of documents, disclosures, and information still needed and remaining issues to be resolved.

**CHAPTER 9.
LEGAL DOCUMENTS AND PROCEEDINGS**

SECTION 9.01. PENDING LAWSUIT.

While it is preferred that the collaborative process be initiated prior to filing, there may be situations where a party needs to file suit before signing the Participation Agreement, such as to fix the venue, to toll limitations, to preserve causes of action or defenses, or to obtain injunctive relief.

SECTION 9.02. NOTICE TO THE COURT.

When a court proceeding is pending, the parties should file a joint notice to advise the court that the parties have signed a Participation Agreement, and if required, request that the

court abate or continue the court action while the parties are engaged in the collaborative process. The collaborative process may be engaged at any stage of litigation, and any case may be a collaborative case, if the parties are willing and agree to participate in the process. The collaborative lawyers should cooperate to ensure that any required status reports are timely filed with the court.

SECTION 9.03. NECESSARY ORDERS.

The collaborative lawyer recognizes that in some situations court orders may be necessary. If a party desires the entry of a court order, the terms of such order are to be negotiated in a collaborative manner, and the order is to be presented to the court as an agreed order.

CHAPTER 10 RETAINED EXPERTS

SECTION 10.01. JOINT ENGAGEMENT- RETAINED EXPERTS.

The parties will jointly retain neutral experts by written agreement. Such experts are considered retained experts.

SECTION 10.02. NEUTRALITY.

The retained expert must be neutral. The retained expert should be instructed to disclose prior relationships, business dealings or any other involvement with a party or parties as well as any reason that may exist that could raise a question about the individual's impartiality. The scope and terms of the engagement should be in writing, signed by the participants and the retained expert. The retained expert should be advised on the need to be available for discussion of the opinions or findings with the parties. If future business dealings are solicited or offered, such conversation offer shall be communicated to all parties. All retained experts must sign a Retained Expert Participation Agreement with the expert.

SECTION 10.03. EFFECT OF OPINION OF FINDINGS

The opinion of finding of a neutral expert engaged in the collaborative process is not binding on the parties, unless the parties agree in writing to be bound by such opinion or finding.

SECTION 10.04. WORK PRODUCT AND OPINIONS OF RETAINED EXPERTS.

A retained expert's work product, opinions, mental impressions, and the *facts* upon which they are based are to be made available to all parties and their lawyers in the collaborative process. A retained expert is free to communicate with the parties, their lawyers, and other retained experts. The retained experts work product, opinions, mental impressions, and the facts on which they are based are not discoverable and are inadmissible in any adversarial proceeding resulting from the dispute, or in any other adversarial proceeding among any of the parties.

SECTION 10.05. RETAINED EXPERTS MAY NOT TESTIFY.

Retained experts are prohibited from testifying as fact or expert witnesses regarding the subject matter of the dispute in any adversarial proceeding.

SECTION 10.06. LAWYER MAY NOT SERVE AS LITIGATION COUNSEL.

A retained expert who is a lawyer, and any lawyer associated in the practice of law with such lawyer, shall not serve as the litigation lawyer for any party in any adversarial proceeding arising from the subject matter of the dispute.

CHAPTER 11. CONSULTING-ONLY EXPERTS

SECTION 11.01 ROLE DEFINED.

A party may privately seek the advice of an expert who is engaged for consultation purposes only. A consulting-only expert is an expert who has specialized knowledge or skills, but no firsthand knowledge of the dispute, and no factual knowledge of the dispute except for what the expert has learned through the consultation with the engaging party and the lawyer.

SECTION 11.02. DISCLOSURE OF IDENTITY..

Any party utilizing a consulting-only expert must disclose the identity of the expert to the other parties prior to that party engaging such expert.

SECTION 11.03. WORK PRODUCT AND COMMUNICATIONS PRIVILEGED.

The work product of a consulting-only expert, and communications between a party, the

party's collaborative lawyer and their privately engaged consulting-only expert, are privileged, as to the other party, other party's attorney and jointly retained experts.

SECTION 11.04. TESTIMONY.

Consulting-only experts are prohibited from testifying as fact or expert witnesses in any adversarial proceeding regarding the subject matter of the dispute, or in any other adversarial proceeding among the parties, unless the parties agree otherwise.

SECTION 11.05. LOSS OF CONSULTING-ONLY STATUS.

If a retained expert reviews the work product or opinions of a consulting-only expert, the consulting-only expert loses the status of a consulting-only expert and becomes a retained expert whose work product and underlying opinions must be disclosed to all parties.

SECTION 11.06. LAWYER MAY NOT SERVE AS LITIGATION COUNSEL.

A consulting-only expert who is a lawyer, and any attorney in his or her law firm, shall not serve as the litigation lawyer for the engaging party in any adversarial proceeding arising from the subject matter of the dispute.

CHAPTER 12. SETTLEMENT DOCUMENTS AND CLOSING THE MATTER

SECTION 12.01. GOOD FAITH DRAFTING.

(a) A collaborative lawyer should in good faith draft settlement documents and agreed court orders in a manner that honestly and completely reflects the parties' intentions.

(b) A collaborative lawyer should correct any drafting mistakes made by another party or an expert or advisor and should promptly notify all other lawyers of the mistake.

SECTION 12.02. SIGNING THE SETTLEMENT DOCUMENTS.

The settlement documents should be signed in the final meeting of all the parties and attorneys. Any remaining issues between or among the parties should be resolved during such meeting.

**CHAPTER 13.
WITHDRAWAL AND TERMINATION**

SECTION 13.01. WITHDRAWAL.

A collaborative lawyer, subject to the terms of engagement, may withdraw from a collaborative process as in any other client matter and written notice to all participants.

SECTION 13.02 SUCCEEDING ANOTHER COLLABORATIVE LAWYER.

The party whose attorney withdraws from the case must obtain a successor attorney for the collaborative process within thirty (30) days from receipt of the withdrawal notice. A collaborative lawyer who is succeeding another collaborative lawyer must sign the Participation Agreement.

SECTION 13.03. TERMINATION TO PRESERVE INTEGRITY OF THE PROCESS.

(a) A collaborative lawyer should explain to the client that the collaborative process is entirely voluntary and maybe terminated by the client or the lawyer at any time for any reason.

(b) Collaborative lawyers should incorporate into the Participation Agreement authority for the lawyer to terminate the collaborative process on behalf of their respective clients, without giving a reason, if the lawyer discovers the client has violated or proposes to violate the Participation Agreement in a manner that would compromise the integrity of the collaborative process, and if the client continues to engage in such conduct after counseling by the lawyer.