

PRINCIPLES AND GUIDELINES FOR COLLABORATIVE PRACTICE

I. INTRODUCTION

- 1.01 The essence of “Collaborative Practice” is the participants’ shared belief that it is in the best interest of their family to commit to avoiding adversarial legal proceedings. By resolving to adopt a conflict resolution process that does not rely on a Court or other third party imposed solution, they are choosing to commit to resolving differences justly and equitably. The success of this approach requires an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well being of the parties and their children. The Collaborative Team (see Section V below) is committed to engaging in informal discussions and conferences with clients to resolve all issues.
- 1.02 The Collaborative process attempts to minimize, if not eliminate, the negative economic, social, and emotional consequences of the traditional adversarial legal process. The Team’s role is to provide an organized framework to make it easier for parties to reach agreement on each issue to be decided. The participation of the parties in this process includes signing these Principles and Guidelines and a Stipulation and Order Re: Collaborative Practice.

II. NO COURT OR OTHER INTERVENTION

By electing to treat their Family Law matter as a Collaborative case, the parties are committing themselves to settling the case without Court or other third party intervention. The parties agree 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 involved in the Collaborative process, and any specialists or consultants engaged by the parties to assist in the Collaborative Process, will likewise agree to work in a collaborative manner to resolve disputes without resorting to litigation or any other externally imposed decision making process.

III. LIMITATIONS OF COLLABORATIVE PRACTICE

- 3.01 In choosing the Collaborative process, the parties understand there is no guaranty of success. They also understand that electing a Collaborative process does not promise to eliminate concerns about the disharmony, distrust and irreconcilable differences that have led to their current circumstances. While all participants in the Collaborative process are intent on striving to reach a solution that is mutually acceptable to the parties, actual performance may fall short.

- 3.02 Participation in the Collaborative process does not relieve a party from being attentive to his or her own needs and interests post divorce. In areas that are personal to each party and that are outside of areas of mutual interest and concern, such as individual estate planning and future financial and personal decisions, the parties are encouraged to consider their own best interests, subject to the requirements of applicable law and these Principles and Guidelines.

IV. PARTICIPATION WITH INTEGRITY

Participants in the Collaborative process commit to respecting the privacy and dignity of all involved, including the parties, Collaborative team members, and consulting professionals and all agree to uphold a high standard of integrity. The parties and all Collaborative and consulting professionals specifically agree that they shall not take advantage of inconsistencies, misstatements of fact or law, or others' miscalculations, but shall disclose them and seek to have them corrected. In the event a Collaborative professional discovers a client's inconsistencies, misstatements of fact or law, or miscalculations, the Collaborative professional shall inform the client of the discovery, remind him or her of the obligations under this Agreement and request the client to make the required disclosure. In the event a Collaborative professional discovers she or he has made a misstatement of law or fact, or a miscalculation, that professional shall disclose and correct same. In the event a Collaborative professional discovers any other Collaborative or consulting professional involved in the case has made a misstatement of law or fact, or a miscalculation, the professional shall inform that person of the discovery and request that professional to disclose and correct same.

V. COLLABORATIVE TEAM AND CONSULTING PROFESSIONALS

- 5.01 As is appropriate to their case and their circumstances, in addition to engaging Collaborative Lawyers, the parties shall also engage Collaborative Coaches, a Financial Specialist, and, if there is/are a child or children, a Child Specialist. These professionals will constitute the core Collaborative professional team. They will assist the parties to reach the optimum settlement that the parties are willing and able to attain.
- 5.02 When selecting additional professionals to assist them, the parties are encouraged to retain joint experts and consultants. In the event separate experts or consultants are retained, each of them shall follow the spirit and direction of these Principles and Guidelines, and, if agreed to by the parties, shall collaborate with each other, meet and confer, and render joint statements on the matters in question.

- 5.03 In addressing concerns about sharing the enjoyment of and responsibility for the parties' children, the Collaborative professional team shall make every reasonable effort to assist the parties to reach amicable and well informed solutions that promote the best interests of their children. The parties agree to act quickly to discuss and resolve all issues related to their children in a manner that will promote the best interests of their children and create and maintain a caring, loving and involved relationship between the children and both parents.

VI. NEGOTIATION IN GOOD FAITH

The parties understand that even with full and honest disclosure, the Collaborative process will involve vigorous, good faith negotiation. Each party will be expected to take a reasoned approach on all disputed matters and, where their approaches differ, each party will be encouraged to modify their approach when necessary to reach resolution. At the same time, we understand that throughout the Collaborative process each of use has the responsibility for asserting- constructively- our respective needs, interests, goals, and priorities with the help of our Collaborative Team. Although the parties will be informed about the litigation process by their lawyers and any other Collaborative professional involved in the case that has expertise on the topic, a party, lawyer, or other Collaborative professional may not use threats of going to court as a way of inducing or forcing settlement. Our purpose during the collaborative process is to seek mutually acceptable solutions that meet the reasonable needs of each of use and any children, and not to pressure either of us into accepting terms of agreement that do not serve that purpose.

VII. ROLES OF THE COLLABORATIVE PROFESSIONALS

- 7.01 INITIAL TASKS We recognize that among the initial tasks to be accomplished are establishing a temporary parenting agreement; temporary financial arrangements, including payments on debts and support; temporary use of property; and an agreement for payment of fees for the Collaborative Team. We agree to make funds available for these purposes.
- 7.02 COLLABORATIVE LAWYER. The role of the Collaborative lawyers is to provide an organized framework and a safe environment that will optimize the party's ability to reach agreement on all matters germane to their case. The lawyers will assist the parties to communicate with each other and express needs, goals and concerns; the lawyers will also identify and clarify areas of disagreement, ask questions, make observations, assist in generating options, and explore the practicality and feasibility of proposed solutions. The lawyers will jointly prepare a Settlement Agreement and other required documents, and will file all necessary paperwork on behalf of the parties to obtain a Judgment or other Court Order related to their case. The lawyers are available to help develop post-divorce

agreements as needed. The Collaborative lawyers and the parties work together to reach a solution which serves the needs of both parties, and when there are children, that considers their interests and gives them priority.

Each party has retained their own Collaborative lawyer and that lawyer represents only the party who has retained him or her. Although the lawyers work cooperatively together within the framework of the Collaborative process, each remains independent from the other.

The parties understand that their respective lawyer's representation is limited to participation in the Collaborative process. Thus, while each party's Collaborative lawyer is his or her advisor, counselor and advocate, the lawyer cannot go with the client to court in person, represent his or her client in any court proceeding, or be named or remain identified as a party's lawyer of record on any document filed with the court.

- 7.03 COLLABORATIVE COACHES AND CHILD SPECIALIST. The role of the Coaches is to support a framework that is conducive to good decision-making. The Coaches will help the parties to improve their communication and listening skills, to develop and improve their negotiating and problem solving skills, and will assist them to identify and manage their respective feelings. In addition, the Coaches, with the Child Specialist, will assist the parties to create and maintain their parenting goals, and help to create a Parenting Plan suitable for the entire family.

The role of the Child Specialist is to provide a safe place for the children to be heard and to listen to the children in order to give a voice to their needs and concerns. The Child Specialist will help the parties understand what is going on for their children in the parents divorce process, and will provide the parties with information needed to make important parenting decisions.

The Coaches and the Child Specialist are available to help the family in their after-divorce adjustment with 6 and 12 month follow-ups.

- 7.04 FINANCIAL SPECIALIST. The role of the Financial Specialist is to help both parties clearly understand their current financial circumstances by collecting and organizing their financial information in a way that is meaningful to each of them, the process, as well as satisfying the California disclosure requirements. The Financial Specialist is a neutral professional who does not represent the separate interests of either party and is equally available to both parties as a source of information and options. The Financial Specialist supports good decision-making by assisting the parties to understand their financial choices and the possible impact of those choices both for now and in the future. The Financial Specialist remains available to the family post-divorce should the need arise.

VIII. ABUSE OF COLLABORATIVE PROCESS

A Collaborative professional shall immediately withdraw from a case upon learning that their client has knowingly withheld or misrepresented information having a material bearing on the case and upon request refuses to divulge such information to the other party, or otherwise acted so as to undermine or take unfair advantage of the Collaborative process. For example, secretly hiding or disposing of property in violation of the agreements contained in these Principles and Guidelines; failing to disclose the existence or the true value or nature of assets and/or obligations; engaging in on-going emotional or physical abuse toward the other party; intending or planning to flee the jurisdiction of the court with the child or children of the parties, or the community assets.

IX. DISQUALIFICATION BY COURT INTERVENTION

In the event a party files adversary documents with the court or initiates adversary court proceedings, the Collaborative process will automatically terminate, the Collaborative lawyers will be disqualified from further representing their respective clients, and all of the other Collaborative professional team members and any consultants to the parties who have signed these Principles and Guidelines will be disqualified from further participating in the case. Except upon mutual written agreement of the parties, the work product of Collaborative professionals, and of consultants to the parties who have signed these Principles and Guidelines, shall be inadmissible as evidence in the court proceeding. Except as may be required by law or as may be necessary to explain or enforce a written agreement of the parties made in the course of their Collaborative process, Collaborative lawyers, other Collaborative professionals, and any consultants to the parties who have signed these Principles and Guidelines, shall not be required to participate in any discovery process nor appear as witnesses in the case.

X. WITHDRAWAL OF COLLABORATIVE PROFESSIONAL

- 10.01 If a Collaborative professional deems it appropriate to withdraw from the case for any reason, he or she agrees to do so by sending a written Notice of Withdrawal to the parties, their lawyers, and all other participants in the case. If a Stipulation and Order has been filed with the court and the withdrawing Collaborative professional is a lawyer, such Notice of Withdrawal shall also be filed with the court. A withdrawal under this section may be done without terminating the status of the case as a Collaborative Practice case.

10.2 The party losing her/his Collaborative professional may continue in the collaborative process by retaining a new, replacement, Collaborative professional who will agree in writing to be bound by these Principles and Guidelines and the Collaborative Stipulation and Order.

XI. WITHDRAWAL OR ELECTION TO TERMINATE PARTICIPATION IN COLLABORATIVE PROCESS

11.1 If either of us, the parties, decide 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..

11.2 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.

XII. PROFESSIONAL FEES AND COSTS IN COLLABORATIVE DIVORCE

12.01 We, the parties, understand that all Collaborative Divorce professionals 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 helper. 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 and agree to keep payments to all Collaborative professionals' fees current. Each of us understands that Collaborative Divorce professionals cannot continue to provide services without being paid. Any disagreements about ultimate responsibility for payment of such fees will be resolved prior to the beginning of the Collaborative Process.

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. Each professional will bill for time spent in such communications as set out in his and her separate fee agreements.

XIII. SELECTION OF NEW COLLABORATIVE PROFESSIONAL; ADDITIONAL FEES

13.01 We, the parties, understand that if our Collaborative Divorce matter terminates short of full resolution, the Collaborative Lawyers will assist their respective clients in the selection of new lawyers. Similarly, the other collaborative professionals will assist the parties to find other professionals who may assist them outside of the Collaborative Process.

13.02 We, the parties, understand that if it is necessary to retain new lawyers or other professionals in the event of the termination of the Collaborative Divorce matter prior to full resolution, we each will incur further professional fees—including but not necessarily limited to professional' 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.

XIV. PLEDGE

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

All parties agree to aspire to the highest ethical principles while using the Collaborative Process and to abide by the spirit and letter of these Principles and Guidelines.

Parties:

Dated: _____

Husband or Parent 1

Dated: _____

Wife or Parent 2

Collaborative Divorce Professionals:

Collaborative Attorney-Husband

Collaborative Attorney-Wife

Collaborative Divorce Coach-Husband

Collaborative Divorce Coach-Wife

Collaborative Financial Consultant

Child Specialist

Other Expert Professional Consultants:

Real Estate or Other Appraiser

Actuary

Vocational Consultant

Certified Public Accountant

Other

Authorization and Consent

We hereby authorize each member of the Collaborative Team to communicate by any means, including e-mail, with all other members of the team during the Collaborative Process. We understand that communication and cooperation among professional team members is an integral part of the Collaborative Process and that the express goal of such communication is to assist us in understanding and resolving all issues surrounding settlement. We also understand that safeguards will be used in e-mail communication to protect our privacy. This authorization and consent will terminate upon termination of the Collaborative Process.

Date: _____

[*Wife's name]

Date: _____

[*Husband's name]

[*Attorney's name]
Collaborative Attorney for
[*Wife's name]

[*Attorney's name]
Collaborative Attorney for
[*Husband's name]

[*Coach's name]
Collaborative Coach for
[*Wife's name]

[*Coach's name]
Collaborative Coach for
[*Husband's name]

[*Financial Specialist's name]
Financial Specialist/Planner/Consultant