

# THE COLLABORATIVE DIVORCE PROCESS

## Overview

Collaborative divorce is a voluntary, contractually based alternative dispute resolution method that utilizes interest-based negotiation techniques that allow parties to reach an agreement respectfully and without a third party adjudicator. The Collaborative model has as its core element an agreement that no participants, neither lawyers nor clients, will threaten or resort to court intervention during the pendency of the collaborative work; all efforts take place entirely outside the court system. Other essential elements of the Collaborative process include: identification of the goals and interests of the parties; full and complete disclosure of relevant information; efficient communications; the parties' empowerment to make decisions on a level playing field; confidentiality; and good faith negotiations. Family lawyers, judges, and clients alike praise collaborative law as a viable method for better meeting the needs of those involved in the divorce process with the added benefit of being less destructive to parties than traditional divorce proceedings.

## Who is Involved in the Collaborative Process



### Parties

The parties involved generally select this collaborative process to negotiate a resolution of their matter without having a ruling imposed on them by a court or arbitrator. Both parties should retain an attorney who is trained in the collaborative method, and must agree to the terms of the participation agreement prior to beginning the process (see sample in the addendum). Both parties should be fully educated on the process and how collaborative law works before they fully commit to the process. The spouses should understand that the process involve vigorous good faith negotiation in face-to-face settlement conferences involving solely the parties,

their respective lawyers, and any other professional members of the collaborative team. Both spouses must also agree to any other personnel who may be present to help assist in the collaborative process.

All parties are empowered to take the resolution process into their own hands and should look to their legal professional and other personnel involved in the meetings for guidance in the process. The collaborative law process calls for the parties to advocate for their respective interests and speak on behalf of themselves as much as possible. The client should speak on topics concerning his or her needs together with the options that may be needed to meet these needs. Parties who likely are unable to speak for themselves or on their own behalf might lack the capacity to fully engage in the process of a collaborative divorce. Parties should not expect their attorneys to speak or advocate on their behalf and their interests but look to them to guide them through the process. Should the parties not be assertive, or lack the ability to speak on their own behalf they should seek guidance from their respective attorneys and the collaborative team to develop these necessary tools to maximize their potential benefits of this process. Both parties should be presented with support, protection and guidance from their lawyer and the rest of the collaborative team during the entire process.



### **Counsel**

For a lawyer to be a successful candidate for the collaborative law process they should study the collaborative process model and the distinct commitments of their role as a lawyer on a collaborative process case. Lawyers who engage in the collaborative law process should be trained in the field of collaborative law practice before taking on cases or new clients seeking this form of dispute resolution. Depending on which jurisdiction you are practicing in, there may be different rules and regulations regarding practicing the collaborative method. The training requirements may also vary in each jurisdiction; States and organizations range from one

to three day training sessions on interest-based negotiation and mediation skills. However, the International Academy of Collaborative Professionals (known as the IACP) requires professionals undergo mediation and interdisciplinary training before representing clients in the collaborative process.

The role of the lawyer in the collaborative process is vastly different from that in the traditional adversarial role of a divorce lawyer. The goal of a collaborative lawyer should be to achieve a fair and hopefully mutually satisfied outcome by both spouses in a safe environment. The lawyers should generally steer clear of making decisions for their clients or contacting the other party's lawyers and making decisions on behalf of their clients. Lawyers will confer with all members of the collaborative professionals' team to plan the agendas for the conferences and each other to draft or review documents. But, no agreements shall be made by the lawyers or on behalf of the parties.

The lawyers must agree to adhere to the Protocols of Practice for Collaborative Lawyers adopted by the IACP as well as any laws or rules of court governing the collaborative practice in the jurisdiction of the dispute. Under the broad umbrella of the IACP, there are practice groups throughout the country that are associations of professionals that facilitate collaborative practice. One example is the Missouri Collaborative Institute. Other states and localities have their own practice groups, which can be found on the IACP webpage.

The lawyer should provide their client with not only the information about the collaborative process, but all of the options available to handle their case. Under the broad of the A collaborative lawyer should not serve as a lawyer in any adversarial proceedings regarding the subject matter of the dispute, unless otherwise agreed upon. Attorneys should act as advocates, legal advisors, negotiators, drafters and consultants for their clients during the collaborative process.



## **Experts/Advisors**

A team of professionals is assembled to help the parties understand and resolve their disputes in many different contexts. The disputes may be legal disputes or emotional so the team of professionals may include: mental health counselors/coaches for each party, neutral financial advisors, accountants, parenting specialists, child specialists, vocational experts, and appraisers, if needed. Expert and advisers joining the team should be that of a neutral party not obligated or bound to an individual. These experts can be critical in terms of helping the parties resolve the underlying issues of the case. It is critical to a team's overall success to determine what each professional's role will be and what talents each brings to the team. The experts and advisers should meet with each party individually prior to meeting with the team as a whole. This way the professionals have a better understanding of what each party's needs are to better understand the team as a whole.

One professional member of the team that is of particular importance is the divorce coach. A collaborative divorce coach is a licensed mental health professional who has experience in issues related to separation, divorce and marriage. This background enables the coach to help one or both members of a divorcing couple deal with the emotional and psychological challenges of their divorce. The coach should initially meet with the parties individually, then together and be present at every team meeting. The coach should be a neutral party who has no relationship to either party. The coach should connect with the parties individually and together as a team.

In a divorce case involving children another professional that should be included in the team is a child specialist. The child specialist is typically a child therapist who has extensive experience with separation and divorce. The specialist should gather information about the child's emotional state and experience, and bring the information to the clients to use in the collaborative process. Note they are not an

advocate or custody evaluator but a neutral member of the team. A child specialist generally plays a very important role in the collaborative process. During a divorce, children often become the unintended victims during proceedings. A child specialist works with the children of divorcing parents, it is their job to assist children in understanding the parental dispute and relieving the feeling of guilt that usually falls on the child. Specialists generally teach them how to cope and how to talk to their parents, giving them a voice in the proceedings and becoming apart of the team process.

Another important professional of the team is the financial neutral. The financial neutral in the collaborative process is truly a neutral, whose role is to financially assist the spouses involved in grasping the financial issues and generating considerable options for the team to resolve the financial issues involved in the dispute. Generally, this individual is a neutral adviser unaffiliated with either party.

## The Collaborative Participation Agreement



### Scope

The scope of the Collaborative Participation Agreement (CPA) involves the following key elements: commitment to the process, no litigation, full disclosure, use of experts and third party consultants, confidentiality, maintaining the status quo, and termination.

**Commitment to the Process:** The agreement should reflect that parties are committed to settling the issues arising from the dissolution of their marriage in a non-adversarial, private, and respectful manner. Also, the agreement should show that the parties agree to conduct themselves with honesty, cooperation, integrity,

and civility, with a focus on the well-being of the entire family.

**No Litigation:** The whole point of the process is to avoid litigation. Therefore, parties should agree that while negotiations are ongoing, they will not file for divorce or otherwise seek any relief from the court. Attorneys may also agree that they will not represent either party in the event that the matter proceed to litigation.

**Full Disclosure:** The process is dependent on the openness and honesty of the parties. Full, and complete disclosure of the parties' financial and other circumstances is essential. All assets, debts, and other information necessary for an informed settlement, and failure to disclose can be the basis for termination of the process.

**Use of Experts and Third Party Consultants:** Insight and opinion of experts can be necessary for complex issues involved. Mental health professionals may also participate to support families and children. Parties should outline in the agreement the desired use of these professionals and how they will be compensated.

**Confidentiality:** The openness required in this process can only be maintained if both parties commit to keeping all information and discussions confidential.

**Maintaining the Status Quo:** It is difficult to complete the process if a lot of changes occur during it. Therefore, parties should agree to make no major changes during the process, such as selling or purchasing major assets, incurring debt, changing insurance coverage, or changing residence of minor children.

**Termination:** The success rate is high, but not every couple is able to reach an agreement. The agreement, therefore, should set forward the terms regarding how and why the agreement may be terminated.



## Disclosure

As noted previously, disclosure of all pertinent information is crucial to the process being successful. An example of such a disclosure statement might state:

“We agree to make such full and candid exchange of information as is necessary to make a proper evaluation of the case, including, but not limited to, full disclosure of the nature, extent, value of – and all developments affecting – the parties’ [income,] assets and liabilities [and all relevant matters concerning the parties’ child[ren].] Any material change in information previously provided must be promptly updated. The parties authorize their respective lawyers to fully disclose all information which in the lawyer’s judgment must be provided to other participants in order to fulfill this commitment.”

As noted in the sample statement, parties must disclose all information regarding income, assets, liabilities, and any changes in these areas. Additionally, parties need to disclose anything affects their children. It is best if parties authorize their lawyers to disclose all of this information on their behalf. No formal discovery procedures will be used unless specifically agreed to in advance. However, the parties may be required to sign a sworn statement making full and fair disclosure of their [income,] assets and debts.



## Ethical Considerations for Counsel

While this process seems different from a typical divorce proceeding, and is in many ways, there are still several ethical considerations for the attorneys involved.

Each collaborative lawyer is independent from the other and represents only their client in the process. While the lawyers will work together during the process, there is no legal duty, by contract or otherwise, owed to one party by the other party's lawyer. No lawyer-client relationship exists between one party and the other party's lawyer by virtue of the CPA or collaborative process.

Lawyers typically must agree to cease representation of parties if the process is unsuccessful and the matter proceeds to court. This is permitted as "limited scope representation" as long as the client gives informed consent (see sample in the addendum). Lawyers must effectively advocate for their clients and should clearly outline both risks of the process and alternatives to the process.

*An IACP study shows that 86% of collaborative divorce cases settled with an agreement on all issues.*

## **Benefits of the Collaborative Process**

There are various procedural, substantive, and psychological benefits to using the collaborative law model in the divorce process such as: it encompasses a client-centered and interest-based approach; it is empowering; this model promotes integrity, honesty and transparency among the parties; and it is beneficial if there are children involved. Additionally, the process generally tends to resolve communication differences between the parties as it tends to build a relationship between the parties rather than break each of the parties down physically and emotionally. Also, the process generally tends to be less expensive on both parties compared



to that of a lengthy litigated divorce as parties involved in the collaborative process generally tend to result in a settlement and parties are encouraged to stay on path and come up with a plan that is encompassing of both the parties' needs. The collaborative process also allows for creativity, allowing the parties to craft a resolution tailored to their own needs and through the help of advisers and coaches each party is able to express their comments and concerns about the topics being divided in the divorce. An additional benefit of the collaborative process is that it reduces the production of conflict; with the presence of coaches and advisers it helps the parties reach a seemingly calmer understanding of the means to an end as it generally helps to build a stronger relationship versus destroying one in the process of a divorce, and it generally helps reduce the parental conflict, which tends to have devastating effects on the children.

In the collaborative process the spouses are generally likely to resolve their case in a settlement versus going to court. This cuts down on preparation and court costs, long with the emotional hardships that comes with a divorce and the lengthy process of going to court. Parties are also able to achieve quicker results at a more convenient schedule; setting a schedule around judges, and lawyers can often be a difficult task, but in the collaborative process parties are generally able to produce an easy schedule of meetings that works with them, their coaches, and their attorneys, and parties are able to set the meetings at their own pace. Along with setting meetings at a custom pace, the parties that create a custom solution. The collaborative process allows for arrangements that courts sometimes cannot provide for spouses; the parties are able to come up with a settlement that works for them and is not granted or delivered by a judge. Depending on the jurisdiction sometimes a court is unable to award a party what they need.

*Another important benefit of the collaborative process is privacy. Due to the lack of resolution in a court room that parties are able to maintain their privacy; the meetings during the collaborative process generally take place at one of the collaborative attorney's offices, allowing the individuals involved to maintain their privacy, and parties are allowed to decide what goes into the paperwork which becomes public record. Clients can also control the terms of their own agreements with the help from their teams; a final agreement will not be reached unless both clients agree to it.*

Each party in the collaborative process retains their own attorney who is with them every step of the way. This differs from mediation where attorneys are generally not always present in every jurisdiction. Further, while mediation might be more well-known, the devil is in the details (and mediators cannot make parties settle). Even where settlement is reached in mediation, the parties still need lawyers to submit the settlement paperwork. While collaborative attorneys involved in this process are involved every step of the way, collaborative law cases can cost less than litigated cases. This can be true as well because parties are less apt to come back to court on motions for contempt and modifications where there was an amicable settlement. Since the collaborative process requires everyone to be open, honest and upfront about things in the divorce, attorneys do not have to spend extra time and money to produce discovery about the other party.

On an emotional level the collaborative process has the benefit of parties tending to be less bitter about the situation. With a traditional divorce, wounds may never fully heal. While in the beginning parties may be emotionally worked up, the collaborative process allows the parties to work through these issues and come to a final solution equally admirable for both spouses. Additionally, this process helps preserve relationships. Individuals are able to problem solve and coordinate these meetings together to achieve an end goal and work together in producing a solution. This helps build a fundamental and strong relationship rather than breaking it apart in litigation, which is generally what the litigation process usually does to the spouses.

The collaborative process also is very beneficial for children should there be any involved. While the divorce process is hard on the parties involved, the children generally tend to believe they are at fault and to blame for the divorce. The collaborative process benefits not only the parents in the process but the children as well as it promotes conflict in a healthy and peaceful manner. The collaborative team is there to help co parents make healthier agreements with more control for the benefit of their children and not just themselves. This process increases self-awareness, and a beginning to make more confident decisions with a collaborative approach to create a much stronger and healthier parent at the end of the process. Litigation

can generally result in distasteful comments made by both parties about the child's parents, emotionally damaging the child and their view on the entire divorce. Parents generally learn to be more understanding about the emotional responses to the divorce and how to support their children once the divorce is settled.

## **Limitations to the Collaborative Process**

In regards to termination, according to the American Bar Association: all parties have the right to unilaterally terminate a collaborative law process for any reason; the collaborative process terminates if any party initiates or intervenes in a legal proceeding related to the collaborative case; if the collaborative process terminates, the collaborative lawyers for all parties and any lawyer in a law firm with which the collaborative lawyer is associated may not represent a party in a legal proceeding. In a multiparty dispute, a party may give notice that the process is terminated and the other parties may sign new participation agreements and continue without that party; and there may be additional time and costs involved with hiring new lawyer if the collaborative process terminates. As a result, parties may feel pressured to settle to avoid hiring new lawyers.

Termination may be necessary as not all attorneys are equipped to represent a client in a collaborative process divorce. Attorneys should receive ample training (mediation and interdisciplinary training) before taking on a case to represent a client in a collaborative divorce. Attorneys should also screen clients before referring a client to the process and assuming it will be best for their situation; this process is not always right for every situation.

One limitation to the collaborative process are lawyers who are not trained in the collaborative divorce process. Attorneys fully step into the role of advocating for their client, but in a collaborative divorce process an attorney also takes on the role of counseling their client and stepping away from the general position of "winning for their client". While the attorney should want the best for their client he may not

do so by communicating on behalf of their client. Similarly, a lack of training could also be a limitation. Training that attorneys should attend before representing their clients in collaborative divorce process (interdisciplinary training), address the paradigm shift from the general attorney doing the negotiating to the parties themselves, with the help of the team, developing a mutually acceptable agreement in an atmosphere of dignity and respect. Without training, most attorneys resort to the traditional adversarial tactics they are taught in law school and practice. Attorneys are supposed to fully embrace the role of a counselor as well as an advocate for their client, without this an attorney may lose sight of the paradigm shift from adversarial tactics to the collaborative process.

*If termination is needed this can lead to a limitation as client generally agree to a condition in their participation agreement that they will have to seek new counsel if the collaborative process is terminated. This accrues much larger costs to the clients forcing them to both find new counsel and bring the new attorney on their case up to speed. When one or more parties engage in terminating the collaboration process the costs of hiring new counsel to represent them become costly when combining the fees from the collaborative process and then the fees acquired with litigation.*

An additional limitation of the process is in regards to fairness. Generally the parties come to a fully negotiated agreement that is compiled and agreed to by both parties. However, in this process the parties do not go in front of a judge and receive their opinion on any of the matters. Thus, while they may come to an agreement, the parties are not aware if they would have received more had they gone to court. Also, there is no guarantee that the parties will come to an equally combined solution and resolve their case in a settlement. The process is entirely voluntary and the parties are able to withdraw their consent to the collaborative process. In this instance, the parties hire new attorneys to litigate the case. The collaborative lawyers are engaged on a limited scope representation and participate in contested court proceedings. If, on the other hand, a settlement is reached, the collaborative lawyers can present the settlement to the court on an uncontested basis by affidavits or through an uncontested hearing.

In terms of parties who do not wish to get a divorce, they can slow down the process. While no one can stop someone from receiving a divorce, the party who is not keen on the divorce may drag out the process. They may slow down providing information and documents, or rescheduling meetings, driving the cost up and making it difficult to further the collaborative process and reach a settlement.

On a more emotional level one limitation is that it is sometimes hard to get parties to address the future and the relationship they are working for if they are still stuck on the past. It may be hard to steer parties away from placing the blame on one another or accusations back and forth regarding "who is at fault". The team dynamic is established to help with this during the process addressing the behavior and how to correct it. Additionally, trust can be a limitation. Some parties may feel that the opposing party will not be fully forthcoming to releasing all of the information required of them, this may be a setback for the process. Parties must be able to trust that the other will be fully forthcoming with all and any information needed to come to a beneficial agreement between both parties.

## **Addendum**

### **COLLABORATIVE PROCESS: SCOPE OF SERVICE**

#### **NOTICE & CONSENT TO LIMITED REPRESENTATION**

\_\_\_\_\_ ("Client") and \_\_\_\_\_ ("Law Firm") agree that Law Firm will limit the representation to helping Client with a Collaborative \_\_\_\_\_ (type of case). LAW FIRM WILL PROVIDE SERVICES ONLY AS AGREED UPON IN THIS DOCUMENT.

Client and Law Firm agree to adhere to the terms of the Collaborative Family Law Association Participation Agreement ("Participation Agreement"). By initialing the

provisions below and by signing below, Client agrees to participate in the Collaborative Process pursuant to the Participation Agreement, which will be subsequently signed by the parties.

Assuming the other party agrees to proceed via the Collaborative Process, Law Firm will represent Client's interests through the final settlement and entry of a judgment in a non-contested court proceeding unless the Collaborative Process is otherwise terminated. Law Firm's representation of Client as a Collaborative Lawyer differs in some important respects from conventional representation by a Litigation Lawyer:

#### **A. LIMITED SCOPE REPRESENTATION:**

1. Client's retention of Law Firm is a "limited representation." **Law Firm is retained to assist Client in reaching a Comprehensive Settlement Agreement with the other party, to submit the Agreement and necessary settlement documents to the court for entry of a judgment in a non-contested proceeding and for no other purpose.** Law Firm will not be Client's lawyer of record with the court, except for purposes of submitting necessary court documents to have Client's settlement agreement entered as a court judgment and if necessary to appear at non-contested hearings. If this limited representation is not reasonable, Law Firm may give advice, but will also tell you of the need to get more or other legal counsel.
2. Client acknowledges that Law Firm has advised Client of the right to participate in an adversarial court proceeding and Client is knowingly and voluntarily waiving that right at this time in order to participate in the Collaborative Process.
3. Client retains the right to terminate the Collaborative Process at any time and to proceed with contested litigation of this matter, but doing so ends Law Firm's representation of Client. Should the other party elect to litigate this matter, this also terminates the Collaborative Process, and Law Firm will no longer represent Client. In that event, Client should promptly retain a Litigation Lawyer to represent Client in court.

4. Client understands that for so long as Client participates in the Collaborative Process, Client is waiving rights to contested litigation, which include, but are not limited to, retention of Client's own experts, discovery requests, subpoenas, depositions, the rights to call and cross-examine witnesses, etc., and the right to formally object to the production of documents and other information.

5. Client agrees to participate in good faith in the Collaborative Process and to make full disclosure of the nature, extent, and value of Client's income, assets and liabilities. Client authorizes Law Firm to fully disclose any and all such information to the other party and his or her Law Firm. If Client declines to make disclosures or if Client fails to participate in good faith, Law Firm shall withdraw from the Collaborative Process and notify the other party and Law Firm of the termination.

6. The Collaborative Process depends upon both parties' participation in good faith. Law Firm and Client will alert the other of any concern that any participant in the Collaborative Process is acting in bad faith.

7. Client and Law Firm retain the right to withdraw from this contract if either cannot abide by the terms of the Participation Agreement or feels that the Collaborative Process is not functioning satisfactorily by notifying the other in writing.

8. If the other party declines to proceed in a Collaborative Process, this Notice & Consent will be terminated and Client and Law Firm will need to enter into a new contract for conventional representation before Law Firm proceeds to represent Client.

9. In addition to the limitations placed upon Law Firm's representation in this Collaborative case, Law Firm, and those Law Firms in association with Law Firm, WILL NOT provide services for Client in any future adversarial proceeding against the other party to this case.

## B. FINANCIAL PROVISIONS

**INITIAL DEPOSIT (ADVANCED FEE):** Client agrees to pay Law Firm an initial deposit (advanced fee) of \$\_\_\_\_\_ exclusive of court costs and filing fees. Client authorizes Law Firm to use the money deposited to pay the fees and other charges as they are incurred. The initial deposit must be paid before any work can commence on the case. Client understands that there is a filing fee for this matter. Any refund of court costs may be applied against any balance due at the sole discretion of the Law Firm. Client acknowledges that the deposit (advanced fee) is not an estimate of total fees and costs, but merely an advance for security. Client understands that any figures quoted for the total cost of services are merely estimates. No matter where Client resides, Client understands and consents that all deposits/advanced fees paid to Law Firm during the case will be kept in a trust account in the State of Missouri for all matters pending in Missouri or Illinois; and in the State of Kansas for all matters pending in Kansas. Client agrees to inform any third person, who is helping them pay their legal fees and bills, of the terms contained in the previous sentence prior to them making any payments on their behalf. Any unused deposit (advanced fee) at the conclusion of Law Firm's services will be refunded to Client a reasonable time after the conclusion of Client's case and not any third parties who paid Client's bill. However, Client further understands as well that, as it relates to the refund of any trust account balance with Law Firm, Client's case is typically not over with Law Firm until appeal deadlines have passed, after a judgment was entered, and/or all necessary work on the case is completed.

**FEE BASIS:** Legal services for staff and Law Firms will be billed on an hourly basis, with time being charged in increments of tenths of an hour and rounded up. Law Firm will use their discretion in using staff and/or attorneys with the Law Firm to provide services for the benefit of Client's case in the most reasonable, diligent and communicative manner, including but not limited, to the drafting of legal documents, pleadings and correspondence and appearances in court. Client understands that they will be billed for all time spent on his/her behalf, including but not limited to telephone calls/messages (made and received), drafting of documents, correspondence and pleadings, email communications, negotiations, legal



research, court appearances, travel, discovery review, filing (electronic and otherwise) and case management/strategy, case review/meetings and time to close the matter with the Law Firm at the end of the case. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. For the benefit of Client relative to the ensuring they are always up-to-date on the status of their case, Law Firm provides copies of case documents and communication to Client, related to Client's case, through an online portal (accessible to the client 24/7) called NetSuite ("Your Case Tracker") and charges for electronic filing to upload documents and maintain Client's online file. Law Firm will charge for waiting time in court and elsewhere and for travel time. Client may be charged for third party costs, including but not limited to, photocopying, delivery services, computerized research, copying, postage, long distance charges, facsimiles, parking charges, exhibit fees, mileage and all other incidental expenses incurred on Client's behalf. Legal services are billed on an hourly basis billed in tenth of an hour increments rounded up as noted in the Standard Rate Schedule, which is attached and incorporated herein fully.

If, while this agreement is in effect, Law Firm increases the hourly rates being charged to clients generally for legal services, that increase may be applied to fees incurred under this agreement, but only with respect to services provided 30 days or more after written notice of the increase is mailed to Client. If Client choose not to consent to the increased rates, Client may terminate Law Firm's services under this agreement by written notice effective when received by Law Firm, provided Client execute and return a substitution-of-Law Firm form immediately on its receipt from Law Firm if Law Firm is Clients' Law Firm of record in any proceeding.

Client agrees to maintain a minimum trust account balance in the amount of \$\_\_\_\_\_ at all times. Once Client's trust account balance has been reduced below the amount of Client's initial deposit, as referenced above, Client shall be required to pay the balance due in full and replenish the trust account balance to the initial deposit amount. Client understands that if they do not maintain this minimum account balance, the Law Firm has the right to withdraw and/or disengage from the case.

The parties may agree that the opposing party shall pay part or all of Client's Law Firm's fees and costs in some matters. Client understands that such agreements are unpredictable. Client is responsible for payment of his/her Law Firms' fees and costs. Any amount received from the opposing party because of an agreement and/or consent court order will be credited to Client's account or refunded to Client if the Law Firm has already been paid in full.

**BILLING STATEMENTS:** Law Firm will e-mail Client periodic statements for fees and costs incurred (unless Client directs Law Firm in writing to mail them instead). The statements shall include the amount, rate, basis of calculation or other method of determination of fees and costs, which costs will be clearly identified by item and amount. If Client objects to any charges to be credited against the deposit (advanced fee), Client shall notify Law Firm in writing within 30 days. All balances are due and payable upon receipt. Client understands that if Client does not pay his/her account balance and maintain his/her minimum trust account balance or pay any necessary increase trust account balance as noted in this agreement, Law Firm has the right, at their discretion, to withdraw from Client's case. There is a \$25.00 fee on all returned checks.

**RETENTION OF MY FILE BY LAW FIRM:** Law Firm will retain Client's paper file for two (2) years after this matter is concluded. Client may request their paper file at any time prior to two (2) years after their case has concluded. After two (2) years from the date of this Agreement, Client's paper file may be destroyed without further notice by Law Firm. Client acknowledges that the "Your Case Tracker" account associated with the Client's file (Client's online file maintained by Law Firm while Client's case is pending) will be disabled at the conclusion of Client's case or the ending of Law Firm's representation of Client.

**SEVERABILITY IN EVENT OF PARTIAL INVALIDITY:** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

**BINDING AGREEMENT:** I \_\_\_\_\_ understand this is a legally binding agreement; and that I have reviewed the agreement in its entirety. I understand that this agreement is the full and complete agreement of employment and it may only be modified in writing and signed by the parties. Further, it is understood that if more than one Client signs below that each shall be jointly and severally liable for all obligations under this Agreement further acknowledge that Law Firm has made no specific representation, estimate or guarantee of the actual Law Firm's fees and/or costs to be incurred during this representation and that any statement of approximate fees to be incurred is an estimate only.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
LAW FIRM

By: \_\_\_\_\_  
CLIENT

**STANDARD RATE SCHEDULE/HOURLY RATES/LEGAL AND ADMINISTRATIVE SERVICES**

*Rates*

Name of Service: \$370.00

Name of Service: \$380.00

Name of Service: \$420.00

Name of Service: \$400.00

Name of Service: \$390.00

Paralegals/Legal Assistants/Law Clerks/Legal Secretaries/Other Law Firm

Staff: \$145.00

*Any other attorney or staff member from the firm designated to work on a case will bill at their designated rate.*

**I. GOALS**

A. The essence of the "Collaborative Process" is the shared belief by participants that it is in the best interests of Clients and their families in typical family law matters

to commit themselves to avoid litigation and to work together to reach a settlement that is acceptable to both Clients.

B. Therefore we adopt this resolution process, which does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well-being of those involved in this process.

C. Our goal is to minimize, if not eliminate, the negative economic, social and emotional consequences of protracted litigation to the participants and their families.

D. We commit ourselves to the Collaborative Process as described in these principles and guidelines and agree to resolve our differences justly and equitably.

## **II. LIMITED REPRESENTATION**

A. Each Client has retained an independent Attorney who represents only that Client in the Collaborative Process. The Collaborative Professionals will assist each Client to identify his or her interests. Even though the Attorneys share a commitment to the Collaborative Process, each of them has a professional duty to represent his or her Client diligently and is not an Attorney for the other Client.

B. Each Attorney's representation of the Client is a limited representation. Neither Attorney can represent the Client against the other Client in an adversarial court proceeding. If an adversarial court proceeding is commenced, both Clients' Attorneys are disqualified from representing either client in any such proceeding against the other. The disqualification includes but is not limited to actions for modification, enforcement or appeals.

C. For purposes of the disqualification provision, the word Attorney includes the Attorney and any attorneys in association with that Attorney. An Attorney shall be considered "in association" if he or she would be considered as having a conflict of interest in representing the other Client to this action under the Missouri Rules of

Professional Conduct.

D. If a full and complete settlement of all issues is achieved, the Attorneys will draft a written document reflecting the Agreement and all necessary related documents. The Attorneys will prepare the necessary pleadings and will submit the matter to the court as an uncontested case.

### **III. NO COURT INVOLVEMENT**

A. The Clients commit to settle their case without court involvement and agree to meet together with their Attorneys and other Collaborative Professionals to work towards a settlement.

B. The Clients are aware of their rights to participate in an adversarial court proceeding and each Client is knowingly and voluntarily waiving those rights while participating in the Collaborative Process.

C. Unless the Collaborative Process is terminated or the Clients specifically agree otherwise, no participant in this process shall file any document related to this matter with any court until the Clients have reached and executed a settlement agreement. All court filings shall be consistent with the settlement agreements of the Clients.

### **IV. VOLUNTARY FULL DISCLOSURE**

A. We agree to deal with each other in good faith and to promptly provide all necessary and reasonable financial information required. The Clients agree to make full and complete disclosure of all relevant financial information, whether requested or not.

B. Participation in the Collaborative Process, and any settlement reached, are based upon the assumptions that both Clients have acted in good faith and have provided complete and accurate financial information to the best of their abilities.

C. We will not conduct formal discovery procedures (such as depositions, interrogatories, requests for admissions and requests for production of documents, motions to enforce, motions for sanctions, subpoenas of witnesses and/or for documents, etc.) unless the Clients agree to do so in advance.

D. Conduct issues may be raised, discussed and considered during the Collaborative Process and the decision whether or not to do so belongs to the Clients.

E. The Clients agree to provide authorizations and releases as requested, allowing the Attorneys and other Collaborative Professionals to obtain relevant information. Such authorizations and releases may be directed to professionals such as therapists and teachers and to entities such as employers, schools and health care providers.

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

G. We shall cooperate to correct any clerical errors in any court filings.

## **V. CAUTION**

The Clients understand that there is no guarantee that the Collaborative Process will be successful in resolving their case.

## **VI. COLLABORATIVE PROFESSIONALS**

A. Each Client has retained an Attorney for the Collaborative Process. Each Client may retain a Coach for the Collaborative Process or the Clients may retain a Coach jointly. The Clients may decide to retain jointly other professionals for the Collaborative Process such as Child Specialists, Financial Professionals, Mediators, and Appraisers. All professionals described in this Agreement are referred to as Collaborative Professionals.

B. Should the Collaborative Process end without resolution, no Collaborative Professional shall be permitted to testify in any court matter between the Clients, unless otherwise agreed to in writing by the Clients and consented to by the Collaborative Professional.

C. The Clients will sign Agreements and contracts as reasonably requested to secure the services of the Collaborative Professionals and to abide by those Agreements.

## **VII. FEES AND COSTS**

A. Clients are required to sign fee agreements with the Collaborative Professionals, individually or jointly, as appropriate.

B. Collaborative Professionals will send statements on no less than a monthly basis and clients are expected to pay professional fees as they are billed.

C. The Collaborative Professionals will be paid for their services whether or not a final agreement is reached.

D. The ongoing payment of fees will be discussed during the collaborative client-team meetings.

E. The Collaborative Professional team may suspend or terminate services to the Clients for non-payment of fees and costs.

## **VIII. NEGOTIATION PROCESS**

A. The Clients shall negotiate in good faith.

B. The Clients understand that at times their perspectives may differ and they will make every effort to understand the other person's perspective.

C. The Clients will use their best efforts to create proposals that meet the fundamental needs of both Clients and will compromise when appropriate to reach a settlement of all issues. There may be non-financial issues that one or both of the parties consider important to the decision-making process. The parties and their Collaborative Professionals will decide how to address these issues when raised.

## **IX. TERMINATION OF SERVICES AND/OR OF THE COLLABORATIVE PROCESS**

A. Each Client retains the right to terminate the Collaborative Process unilaterally and without explanation by giving written notice of such election to his or her Attorney, who shall then notify the other Client's Attorney. This election terminates the Collaborative Process under this Agreement.

B. Each Client has the right to terminate the services of any professional retained by that Client at any time. Terminating the services of a retained professional ends the role of the professional and can, at the election of either Client, terminate the Collaborative Process.

C. Either Attorney may withdraw from this matter without explanation by giving written notice of withdrawal to his or her Client and the other Client's Attorney. This withdrawal terminates the Collaborative Process under this Agreement.

D. If a Client's Attorney knows that the Client is withholding relevant information, misrepresenting information or otherwise acting to undermine the Collaborative Process, the Attorney shall withdraw. This withdrawal terminates the Collaborative Process under this Agreement.

E. Upon termination of the Collaborative Process by a Client or an Attorney, the Attorney for each Client will promptly cooperate to facilitate the transfer of the matter to a successor attorney. The transfer may cause delay and additional fees and costs.



## **X. CONFIDENTIALITY & ATTORNEY/CLIENT PRIVILEGE**

A. All communications in the Collaborative Process and work product (such as notes, work papers, summaries, proposals and reports) of the Collaborative Professionals shall be considered as settlement discussions, shall not be subject to discovery and shall not be admissible as evidence in any court proceeding involving the Clients, unless specifically agreed otherwise by the Clients in writing and consented to by the Collaborative Professional.

### **EXCEPTION:**

A. Statements by a Client in collaborative meetings that indicate an intent or disposition to endanger the health or safety of the other Client or a child or to conceal or change the residence of a child without agreement will not be considered confidential settlement discussions. All mental health professionals in the Collaborative Process are statutorily mandated reporters and are required to report any incidences of suspected child abuse or neglect.

B. Evidence or information that is otherwise admissible or subject to discovery in a court process does not become inadmissible or protected from discovery solely by reason of its disclosure or use in this Collaborative Process.

C. The Clients shall not request testimony of any participant in this Collaborative Process with regard to the communications and negotiations in the Collaborative Process in any legal proceeding not associated with the Collaborative Process.

D. The Clients agree that their Attorneys and their Coaches may share with all retained Collaborative Professionals any information that could be disclosed to the other Client in the Collaborative Process. The Collaborative Professionals may have group discussions from time to time.

E. No waiver of the Attorney/Client privilege shall occur as a result of participation in the Collaboration Process.

F. This Participation Agreement shall be admissible in any court proceeding involving the Clients or the Collaborative Professionals.

## **XI. CLIENT SURVEY**

We are interested in learning about your experience with the Collaborative Process in order to help us continue to improve the services we provide. At the end of your case, you will receive an email from your lawyer with a link to a survey about the Collaborative Process. There will be no identifying data attached to your responses. However, if you choose to do so, you may share your answers with any members of your team. Responses from all the surveys will be gathered in a collective format to produce statistical data for review by our organization. These compiled results will not include individual answers. We hope that you will help us by taking the time to complete the survey.

## **XII. ACKNOWLEDGMENT**

We have read this Agreement, understand its terms and conditions, and agree to abide by them.

**WE PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND WRITTEN WORD OF THIS DOCUMENT.**

\_\_\_\_\_  
Client 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney 2

\_\_\_\_\_  
Date

*IACP Introductory and introductory Interdisciplinary Collaborative Practice Training, available at <https://www.collaborativepractice.com/sites/default/files/Training%20FAQs.pdf>*

*International Academy of Collaborative Professionals, available at <https://www.collaborativepractice.com>*

*Missouri Collaborative Institute, available at <https://missouricollaborativeinstitute.com>*