PROTOCOL RESOURCE FOR A FULL TEAM MODEL: COLLABORATIVE DIVORCE

D.C. METRO PROTOCOLS COMMITTEE

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Section V and Appendices G and H updated July 2021
to reflect enactment of Virginia UCLA

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Introduction to the 2015 Protocols

In 2014 Maryland enacted key provisions of the Uniform Collaborative Law Act ("UCLA") by statute, followed by adoption of additional UCLA provisions by Court Rules in 2015. As a result, the D. C. Metro Protocols Committee ("Protocols Committee") revised the participation agreements and engagement agreements, creating two participation agreements (one with children, one without children) for each of the three jurisdictions: the District of Columbia, Maryland, and Virginia. We also updated and revised the Best Practices Protocol Resource for a Full Team Model: Collaborative Divorce ("Protocols").

The membership of the 2015 Protocols Committee is as follows:

Anne (Jan) White, Chair	CPNV, DCACP, CDRP
Sue Soler, Chair, Process Subcommittee	CDRP, CDA, DCACP
Susan Butler	CPNV
Karen Freed	CDRP, CDA, DCACP
Marjorie Just	DCACP, CDA
Debbie May	CDRP, CDA, DCACP, CPNV
Daniel Renart	
Paul Smollar	DCACP, CPNV
Sarah Zimmerman	DCACP

The original Introductions from 2010 and 2013 are below.

Introduction to 2013 Protocols

In January 2010 the D. C. Metro Protocols Committee ("Protocols Committee") published Best Practices Protocol Resource for a Full Team Model: Collaborative Divorce ("Protocols"). In September 1, 2010, the Committee published an update in time for the IACP Forum in Washington, D.C. *See* Best Practice Protocol Resource for a Full Team Model: Collaborative Divorce, D.C. Metro Protocols Committee, September 1, 2010 It was the intent of the Committee to update the Protocols annually. Meanwhile, as Collaborative professionals in the Washington, D.C. area gained experience in Collaborative Cases and dealt with more complex issues, the Maryland Collaborative Practice Council responded by forming an Ethics Committe. The Ethics Committee committed itself to researching and advising on ethics issues of Collaborative Practice. This was in contrast to the Protocols Committee, which addressed practice protocols. The work of the Ethics Committee and the passage of the Uniform Collaborative Law Act by the District of Columbia in 2012 supported the work of the Protocols Committee and led to certain major revisions in the Protocols Committee's recommendations, particularly in the following areas: privilege and confidentiality, the client's right to his/her file, termination of a case, and who signs the participation agreement. Now that the Ethics Committee has published its Ethics Guidelines, the Protocols Committee cites it as a source. The Protocols Committee is indebted to MCPC and its Ethics Committee for providing this much needed work. Collaborative Professionals are working together to expand our knowledge, improve our practices, and share

our experiences and advice with each other. We continue to intend that the Protocols be available to anyone who wants to use them. We welcome further input and consider the Protocols to be an evolving document, which we will continue to update as needed.

The membership of the D.C. Metro Protocols Committee is as follows:

Jan White, Chair	CPNV, DCACP, CDRP
Sue Soler, Chair, Process Subcommittee	CDRP, CDA, DCACP
Susan Butler	CPNV
Betsy J. Case	CCP, HCCP
Ali Doyle	CCP, CRAB, HCCP
Karen Freed	CDRP CDA, DCACP
Marjorie Just	DCACP, CDA
Debbie May	CDRP, CDA, DCACP, CPNV
Paul Smollar	DCACP, CPNV
Sarah Zimmerman	DCACP

Our original introduction from January 2010 is below.

I. INTRODUCTION AND PREMISE

This Best Practice Protocol Resource for a Full Team Model: Collaborative Divorce (hereafter "Protocol" or "Protocols") has been drafted by the D.C. Metro Protocols Committee, which was formed by a group of volunteers representing Washington, D.C. area collaborative practice groups. The membership of the Committee is as follows:

Jan White, Chair	CPNV, DCACP, CDRP
Sue Soler, Chair, Process Subcommittee	CDRP, CDA, DCACP
Susan Butler	CPNV
Betsy J. Case	CCP, HCCP
Marge Coffey	CDRP, DCACP, HCCP, CDA
Ali Doyle	CCP, CRAB, HCCP
Karen Freed	CDRP CDA, DCACP
Marjorie Just	DCACP, CDA
Anne LoPiano	CDRP, HCCP
Debbie May	CDRP, CDA, DCACP, CPNV
Daniel Renart	CPSM
Paul Smollar	DCACP, CPNV
Sarah Zimmerman	DCACP

The DC Metro Protocols Committee has been working for well over a year to develop these Protocols. In October 2009 the Committee distributed the draft Protocols to the Boards of all the above-listed practice groups as well as to the Standards Committee of the Virginia Collaborative Professionals (VaCP) and received extensive thoughtful and helpful comments. The Committee revised the Protocols in response to these comments in order to produce this final Best Practice Protocol Resource for a Full Team Model: Collaborative Divorce. The

Committee is distributing these Protocols to the membership of all the above-listed practice groups and is meeting with each interested practice group for discussion and questions about the Protocols.

The primary tasks of the D.C. Metro Protocols Committee for 2009 were to develop 1) a Best Practice Protocol Resource for a Full Team Model and 2) a Collaborative Participation Agreement and complementary engagement agreements for the full team model in a divorce matter. The Protocol is a "how to" manual for practitioners who choose to use this model. The Committee selected the full team model because 1) it is the most complex and fully comprehensive model and therefore most in need of a "how to" manual for practitioners and 2) many experienced practitioners in our area and nationwide follow this model.

This document defines the full team model as including two lawyers, two coaches, one financial neutral, and one child specialist (when there are children).

The full team model is a unique, comprehensive approach to divorce. It has many features, which cannot all be described in this document. Some of the basic principles guiding the full team model are as follows. In this model, all team members are treated as equals. No one professional makes unilateral decisions. The model is based on regular communication, updates and consultation among team members. The team works to create an environment where professionals on the team can give each other feedback and issues can be resolved in a way that integrates interdisciplinary perspectives. The team proactively identifies issues and uses all team resources to assist the parties to resolve their issues. Team members model the Collaborative Process. All team members must be trained in the collaborative team process and meet the standards the IACP established for their respective profession. In this model, the team drives the process while the parties determine the conversation within the process. For example, the team determines the best configuration of professionals at each meeting, the team keeps the parties in information gathering before moving to option development, and the team ensures that any resolutions are ones that meet the needs of both parties and the family. The parties advise the team as to their goals, the questions they want to answer in the process, the concerns they want addressed in the process, and whether they want to focus on parenting or financial or both at the same time.

We recognize that some practitioners in individual cases or as a consistent practice use other models. This Protocol does not address other models. It is not intended to persuade practitioners to change their preferred practices, but rather to serve as a resource and a starting point to assist practitioners in working together.

II. GLOSSARY OF TERMS

Agreements To Be Relied Upon

On occasion, parties want to commit to a binding, legal agreement that will be enforceable even if the process fails. These agreements are to be signed by the parties and titled “Agreement To Be Relied Upon” in order to distinguish them from the temporary agreements that they make during the Collaborative Process.

Child Specialist

Collaboratively trained mental health professional team member engaged by both parties for the specific and limited purposes of advocating for the child during the divorce process and, in order to aid in developing an appropriate parenting plan, providing direct information to the parties, coaches, and attorneys from the child about the child's needs. (See the *Comment* in Section III.c.)

Collaborative Attorney

Collaboratively trained attorney engaged by a party for the limited purpose of assisting that party in reaching an agreement with the other spouse or partner through the Collaborative Process. The collaborative attorney's role is controlled by the engagement agreement and the collaborative participation agreement. As provided in the collaborative participation agreement, the collaborative attorney will not represent the party in any litigation against the party's spouse or partner other than an uncontested divorce and/or presenting the parties' consent agreement to the Court and, in jurisdictions where the UCLA has passed (*e.g.*, D.C. and Maryland), in limited emergency situations.

Collaborative Communication

An oral, written, or recorded statement that is made to conduct, participate in, continue, or reconvene a Collaborative Process after the collaborative participation agreement is signed and before the Collaborative Process is concluded.

Collaborative Divorce Coach

Collaboratively trained mental health professional team member engaged by each party to support the party through the process, to help deal with emotions which block resolution of issues, to aid in strengthening communication among the parties and team, and, when there are children, to work on developing a parenting plan.

Collaborative Divorce Process

Conflict resolution process conducted according to a participation agreement signed by the parties which provides that the parties will work to resolve differences directly, without adversarial legal proceedings or reliance on a court-imposed solution, and will engage their attorneys for the limited scope of representing them for this purpose only. A Collaborative Divorce Process has two requirements: two Collaboratively trained attorneys and a participation agreement signed by the parties that requires the attorneys to withdraw in the case of contested litigation of the Collaborative or related matter.

Collaborative Participation Agreement

Agreement signed by the parties which defines the Collaborative Process, communication within the process, roles and obligations of parties and professionals within the process, disclosure within the process, confidentiality, enforceability of agreements, withdrawal of attorney in the event of contested litigation, and conditions for termination of the process.

Collaborative Process Structure (see Appendix B)

A series of (usually) two-hour meetings to address and resolve the parties' issues, which progress as follows:

- Sign the Participation Agreement
- Address any urgent issues/matters
- Elicit interests, needs and goals
- Determine questions to be answered and frame issues
- Gather information
- Generate options
- Evaluate options
- Reach resolution

Collaborative Team (or Collaborative Professional Team)

A group of interdisciplinary professionals engaged by the parties to facilitate the collaborative divorce process. The configuration of a full team model is two attorneys, two divorce coaches, one child specialist, and one financial neutral.

Collateral Contact

Contact with people (usually professionals) who are not participating in the Collaborative Process and who might provide helpful information to the coaches or child specialist to aid in their work with the parties (*e.g.,* a therapist).

Confidentiality

The Collaborative Participation Agreement provides that communications exchanged within the Collaborative Process will not be disclosed by the professionals to anyone outside of the collaborative team, the parties, and any allied professionals brought in by the team or parties to facilitate the process, with certain limited exceptions primarily involving threat of bodily injury, harm to a child, or commission of a crime, or disputes with a collaborative professional. The Uniform Collaborative Law Act recognizes that the parties may revise their participation agreement to direct their team to maintain confidentiality according to their restrictions in the agreement.

Evaluating Options

Looking at each of the options generated and expressing preferences and concerns about the possible options in order to determine a resolution that the couple and family can live with.

Financial neutral

CPA or Certified Financial Planner who is Collaboratively trained and engaged by both parties to aid the parties in gathering information about and documentation of financial assets, liabilities, income, and expenses and in developing and evaluating financial options.

Generating Options

Brainstorming different ways to resolve an issue without evaluating the options.

Global options:

Options that combine all or most of the important financial issues into one package. Global options may be created after individual options have been generated and evaluated for each question to be answered.

Informed Consent

The agreement by a party to a proposed course of conduct after the lawyer, coach, child specialist, financial neutral or other professional working with a party has communicated adequate information and explanation about alternatives and the material risks and benefits, including the risks 1) that the process will end and the party will have to start over with a new attorney, 2) that the party will have to disclose information he or she does not want the other person to know and must be aware of the consequences, 3) that a party may be in a coercive or violent relationship and may not be safe in the Collaborative Process or may be unable to provide informed consent (the attorney must also determine if he/she reasonably believes the party's safety can be protected during the Collaborative Process); and 4) that if the process terminates, the party can no longer use the services of any of the team members (coach, child specialist, financial neutral, or lawyer). The ABA Formal Opinion 07-447, "Ethical Considerations in Collaborative Law Practice," sets forth the ethical requirements for attorneys in obtaining informed consent.

Meetings in the Collaborative Process (with the parties)

3-way: 2 parties and either the financial neutral or child specialist

1 party and his/her coach and his/her attorney

4-way: 2 parties, 2 coaches or

2 parties, 2 attorneys

5-way: 2 parties, 2 coaches, and the child specialist or financial neutral or

2 parties, 2 attorneys and the financial neutral

6-way: 2 parties, 2 attorneys, and 2 coaches

7-way: 2 parties, 2 attorneys, 2 coaches, and 1 financial neutral

Mission Statement

A statement of the goals the parties would like to achieve. Goals can be overarching for what the parties want to achieve at the end of the divorce process or may be goals related to parenting or a subset of the issues. Mission statements developed as part of the parenting plan may be used to help measure options proposed as a way of determining which options meet goals and which do not. The mission statement can therefore be used as a neutral way of assessing options and of helping to keep the focus on what the parties have already agreed upon. Mission statements may be related to the parenting plan and the parties' roles as co-parents or may be related to all issues between the parties.

Paradigm Shift

Adjustment in attitude and behavior on the part of the professional team members to emphasize problem-solving and understanding of both parties' needs and perspectives in lieu of the traditional positional behavior on the part of the attorneys or therapeutic relationship on the part of the mental health professionals.

The paradigm shift requires a commitment to reaching a resolution without going to Court.

Parallel Process

A series of meetings among coaches and parties on emotional issues and/or parenting plan AND, during the same time period, meetings among parties and attorneys and/or the financial neutral and/or divorce coaches on financial issues. See below for the Successive Process.

Parenting Plan

A written agreement by which the parties define time sharing (including regular schedule, holidays and vacations) and decision-making arrangements for their children and establish protocols to aid in co-parenting. It is usually made part of the parties' Settlement Agreement.

Process Anchors

Essential and distinguishing characteristics that define and guide the Collaborative Process, for example, full disclosure; transparency and openness among the parties, attorneys and other team members; client-centered decision-making; and attorneys' disqualification from further representation if the case results in contested litigation.

Recorded Statement

Information which is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Reference points

Considerations that the parties use in evaluating options and making decisions, including sense of fairness; interests and needs of the parties and children; the parties' relationship and how their decisions will affect it; the law and its underlying principles; practical and economic realities; prior agreements; cultural, emotional and other issues; and the goals of the parties.

Successive Process

A series of meetings among coaches and parties on emotional issues and/or a parenting plan followed by a series of meetings at a later time among parties and attorneys and/or the financial neutral on financial issues. (The order may be reversed so that the meetings with coaches follow the financial meetings.) The two areas of focus can be dealt with consecutively rather than concurrently, as described above in Parallel Process.

Temporary Agreement

Generally, parties make temporary agreements during the Collaborative Process on financial, parenting and other issues. Although the parties are expected to abide by these agreements during the process, and during any waiting period after the Collaborative Process is terminated, they are not legally enforceable. The parties can decide to change them prior to final resolution. Temporary agreements need to be reduced to writing, either in minutes or otherwise. If the parties intend that their agreement shall survive the Collaborative Process, even if it fails, they need to label their agreement as an Agreement to be Relied Upon and sign it. (See Agreements to be Relied Upon above.)

Transparency

Open communication among team members and parties including sharing of information and documents between the parties and sharing and cooperation between the attorneys with respect to discussing the law and possible outcomes with the parties. The Uniform Collaborative Law Act provides that,"upon the request of the another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery." D.C. Code §16-4012; MD CJP § 3-2006. "Information related to the collaborative matter" is not defined; however, it would seem to at least include information and documents which the other party might need to make an informed decision about each issue in dispute.[1]

"Voice" of the Child

Information gathered by the child specialist, by meeting with the child, and shared with the coaches and parties to aid the parties in developing an appropriate parenting plan.

[1] Examples would be important information relating to the romantic relationship of a party with another person, financial information, and information relating to a parent's addiction or diagnosed mental condition or intent to relocate. The Uniform Collaborative Law Act § 2 Definitions says" "[r]elated to a collaborative matter" or "related to a matter" means involving the same parties, transaction, or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter." The Comments indicate that this definition was intended to define the reach of what court cases a lawyer and his/her firm are disqualified from if the collaborative case terminates (Comments p. 24), not for what information must be disclosed in the Collaborative Process (§ 12 Disclosure of Information). With respect to disclosure during the Collaborative Process, the Comments provide only the following guidance:

> [Subject to existing legal requirements for disclosure such as fraud], Section 13 also allows the parties to reach their own agreement on the scope of disclosure during the collaborative law process. The standards for what must be disclosed during a collaborative law process will thus vary depending on the nature of the matter, the participation agreement, and the assessment by parties and their counsel about their need for more information to make an informed settlement. Should the parties choose to provide more detailed standards for their voluntary disclosure or to require formal or semi formal discovery demands they can do so in their collaborative law participation agreement. [Comment p. 29].

III. ROLES AND DUTIES OF EACH PROFESSIONAL ON THE TEAM

a. Attorney

- Assures that the party enters the Collaborative Process with informed consent, after consideration of the risks and benefits of the Collaborative Process and alternative processes and after assessment of whether the party is in a coercive or violent relationship which might negate informed consent, which requires a determination as to whether the safety of the party can be protected adequately during the Collaborative Process
- Educates the party about the process options of achieving divorce
- Provides limited scope representation limited to Collaborative negotiation toward settlement and representation in uncontested proceedings and, in jurisdictions where the UCLA has passed, in emergency situations
- Maintains competence and diligence in the representation
- Maintains attorney-client privilege except as authorized by the party
- Educates the party about the law and the role the law plays in the process
- With the other attorney, jointly presents information about the law and the role the law plays in the process to the parties
- Educates the party about the party's obligations in the Collaborative Process and the risks of the process
- Assists the party in identifying the party's needs, goals, and interests
- Assists the party in expressing the party's needs, goals, and interests
- Works to ensure that the Collaborative Process proceeds in the proper manner
- Listens to the party to hear what the party, at his or her best self, truly wants for the future
- Makes sure that the party's voice is heard in the Collaborative Process
- Cautions the party when the party's actions deviate from the party's needs, goals, and interests
- Guides and enforces the structure of the Collaborative Process and assists the professional team in promoting the Collaborative Process
- Refrains from positional arguments
- Shifts the focus from party's rights to party's needs
- Encourages the party to look at multiple reference points for decision-making (See Appendix M)
- Assures that the party is adequately informed about the law, finances and facts necessary to make informed decisions to resolve the issues
- Assists the parties and professional team in problem-solving to resolve the party’s questions in a way to meet the needs of both parties and their family
- Advocates for the long range goals of the party's best self and the party's family
- Assists the party in making his or her decisions, in generating and evaluating options for resolving issues, in interest based negotiating, and in reaching resolutions that meet the needs of both parties and their family
- Assists the party in evaluating whether the settlement option meets his/her interests, goals, and needs
- Assists the party in generating global resolutions that combine proposed options for multiple issues

- Assures that the settlement meets court requirements
- Drafts the settlement agreement and orders necessary to effectuate the settlement (*e.g.,* retirement orders)
- Drafts the agreement sufficiently clearly to avoid disputes beween the parties as to its interpretation
- Represents party in uncontested divorce proceedings

A Collaborative lawyer has the duty to advise his or her client on the law and the role of the law in the Collaborative Process. Collaborative attorneys vary in how they give legal advice, depending on the jurisdiction, practice group, familiarity of the attorneys with each other, and other factors. Some practitioners have concluded that legal advice should primarily be provided in meetings of both parties and lawyers and that a lawyer may also provide legal advice privately to his or her client provided that the lawyer promptly informs the other lawyer of the substance of the advice. Other practitioners have concluded that they may privately discuss with their clients the law and the role of the law in the Collaborative Process, but that they should first work out with the other Collaborative lawyer how this should be done in a way to further the Collaborative Process. For example, the two lawyers might discuss their joint view of the legal issues in the case and agree on what advice each will give his or her client and how the law will be presented. Other practitioners have used a combination of the choices above. In any event, it is critical that the two collaborative lawyers discuss and agree at the beginning of the case how they will handle their obligation to give legal advice. See further discussion at Section V.h.

The Collaborative Participation Agreements at Appendix G are sufficiently general to encompass any of the above choices. The lawyers may want to tailor the language in the Participation Agreement to reflect their agreement as to how to handle their obligation to provide legal advice.

b. Divorce Coach

- Helps the party present his/her "best self" in the Collaborative Process
- Assists the party to identify and prioritize concerns and goals for him/herself and his/her family now and in the future
- Works to reduce the party's level of stress and manage emotions related to divorce
- Helps the party develop effective communication and, when there are children, co-parenting skills
- Supports the party in dealing with different levels of acceptance/feeling about the divorce
- Assists the party to develop a shared narrative for extended family, friends, and the children, if any
- Works collaboratively with the couple, their attorneys, and other involved professionals to anticipate problems and resolve problems as they arise
- Helps the Collaborative attorneys understand their parties' emotional "hot spots", fears, and concerns
- Helps the attorneys understand the impact of marital dynamics on the Collaborative Process in creating impasse, stalling, or positional behavior

- Helps the attorneys and other team members resist being drawn into the couple's dynamic or positions
- Makes real time interventions during meetings to identify psychological roadblocks
- Facilitates focused and efficient pacing of meetings and process
- Assists parties to stay focused on the present and future
- Facilitates option development in meetings with the parties
- Normalizes parties' intense emotions so they can remain active and able to think creatively and without taking a position
- Assists parties in generating and evaluating options in parenting and sometimes financial meetings
- Guides and enforces the structure of the Collaborative Process with parties and assists the professional team in promoting the Collaborative Process
- Does not serve as therapist for the party or anyone in the party's family before, during, or after the process
- When there are children involved, works with the parties to develop child-focused parenting plan
    - Coaches' expertise in child development and psychological impact of divorce on family members facilitates creation of a child-focused parenting plan
- When there are children involved, assists the parties in making the transition from an emotionally engaged couple to a business, problem-solving co-parenting relationship

c. Child Specialist

- Serves in a short-term, focused capacity during the Collaborative Process
- Focuses on the needs and interests of the child
- Allows for the child to have a "voice" in the process and the development of the parenting plan without the child experiencing feelings of divided loyalty
- Meets with the parents and the child to assess the level of the child's functioning and adjustment to separation and divorce
- Assists the child in voicing feelings, thoughts, and concerns
- Ensures that the child has a safe, private place in which to ask questions, share feelings, express needs and address problems related to the divorce
- Advocates for the child's needs by providing direct information on the "child's eye view" to the parents and team as a foundation on which the parenting plan is built
- Has a private but not confidential relationship with the child
    - Child specialist will discuss this with the child to ensure that the child is comfortable with sharing the information and will work to find ways to address any concerns the child has about sharing the information
- Does not make recommendations
- Does not participate in the development of the parenting plan
- Does not serve as a child therapist before, during or after the Collaborative Process
- Does not switch from child therapist to child specialist and vice versa

d. Financial Neutral

- Gathers and analyzes financial information provided by both parties as to assets,

liabilities, business interests, retirement, employee benefits, insurance, tax returns, income, expenses, cash flow, budgets, children's accounts, trusts, and any other financial information that may be relevant

- Educates the parties and the team as to financial facts
- Presents financial information in a way to assist parties in generating and evaluating financial options
- Determines, with the attorneys, if the parties need or want financial information on how assets have been spent and what documentation is needed from past years
- With the attorneys obtains sufficient documentation to provide information on nonmarital property
- Provides financial information to the attorneys, if requested
- Assigns homework to the parties
- Develops reports for the parties and team to assist in evaluating options. Reports may consist of budgets, cash flow projections, tax projections, asset/liability listings, etc.
- Presents scenarios for the development of options as guided by the parties and team.
- Does not generate options on own unless parties and team request that the financial neutral present options at a team Collaborative meeting.
- Coordinates and facilitates the selection of other financial professionals based on issues and expertise needed to assist the financial neutral, parties and team (*e.g.,* business valuation experts, actuaries, estate planners, mortgage brokers, insurance specialists, etc).
- Meets initially with both parties jointly by phone, email, or face-to-face and then separately as needed and agreed to by both parties and with consensus of the team
- When global options are prepared, assists each client and the client's attorney in preparing the global options
- Guides and enforces the structure of the Collaborative Process and assists the professional team in promoting the Collaborative Process

IV. COLLABORATIVE PROCESS STRUCTURE

a. What is the Collaborative Process structure?

The Collaborative Process provides the parties and the team a step-by-step structure to resolve issues (see Appendix A). After signing the participation agreement and developing goals and a mission statement, the parties determine what questions must be answered in order to reach resolution and sign a settlement agreement. Questions should be framed in a neutral way that will help the parties generate options at the next stage in the process. The next step is to collect all needed and relevant financial and legal information, information on the child's needs and interests, and information on any particular issues facing the individual family.

Once the information is gathered, the parties generate options by brainstorming. They refrain from evaluation of the options during brainstorming. Often, parties are able to generate one option each (their preferred option) and the team must encourage and support the parties to generate more options than those two. The team may need to ask questions to provoke a different way of thinking in an effort to assist the parties in generating more options. Brainstorming may also help keep the focus on problem solving rather than becoming entrenched in positions. Once the parties have generated all the options they are able to, the

team can suggest options. A note of caution to the team that suggesting options by the team should ONLY occur when the parties have exhausted all possible options on their own.

Once all the options have been generated, the parties can then evaluate the options. Each party shares his or her thoughts on the options generated. The team should frame the evaluation of the options to the parties as, "which of the options are you willing to consider?" as opposed to "which of these options do you like or prefer?" If parties have concerns about an option, the team should encourage the parties to express these concerns. Once the concerns are expressed, the team can then attempt to generate options to address the concerns. This discussion may lead to generation of additional options, an adjustment to an option previously generated, or asking "what would have to change to allow you to consider this option?" Another technique used in the evaluation phase is to ask each party to look at each of the options and say "yes, no or maybe" to whether he/she would consider the option. This technique results in a reduction of the number of options under consideration and allows for identification of any options that both parties can live with. Even if a party says he/she will agree to an option, it is important to emphasize that the party is not stuck with that position later. The parties' commitments are not binding unless they sign a final agreement or an Agreement to be Relied Upon. Through the evaluation of options, the parties are able to reach a mutual resolution. When both parties identify an option they can live with, this option provides their agreed upon resolution. Note that the standard is whether the parties can live with the option. The use of already agreed upon mission statements or goals of the parties may be a helpful tool in evaluating options.

It is imperative that each case remains in each stage of the process as long as necessary and does not move to the next stage in the process until the previous stage has been completed. The process is fluid in that the team and the parties can always move back to any previous stage in the process if it is agreed that would be helpful. For example, after the parties determine questions to be answered, as they gather more information, they may refine these questions to be more specific. Also, if the parties generate a number of options and then, through evaluating them, see that none of the options currently generated is agreeable to both parties, the parties could return to generating more options or gathering more information in an effort to generate further options at a future meeting. Often, the team may recommend and the clients may agree that each will work with his/her attorney and the financial neutral to develop global options *that meet the needs of both parties* on multiple issues. The parties then evaluate the global options in a meeting with the team.

At each stage of the process, each party's attorney and coach need to communicate with the party to determine if there are any pressing issues or matters that cannot be delayed and must be put on the agenda at the next meeting (including the first Collaborative meeting). Such pressing issues need to be included in the agenda that is circulated to the parties in advance of the meeting, or, if there is not sufficient time, the other party's attorney and/or coach should alert the other party so that he/she is not surprised by the agenda item.

b. <u>How do the team and the parties stay within the Collaborative Process structure?</u>

The initial stages (gathering information and framing options) can be lengthy and parties often express impatience and frustration during this period of time. It is important to encourage the parties to stay in that stage and advise them that should they move to the next stage without

fully completing the previous stage, they will be making decisions without being fully informed. In addition, parties often want to move to evaluating options prior to generating all possible options. Again, we recommend that the team encourage the parties to fully brainstorm options before moving to evaluation. The brainstorming stage of the Collaborative Process is a vital step in coming up with creative options.

Throughout the Collaborative Process, it is expected that the team will need to remind the parties of where they are in the process, how important it is to stay in that stage until the team feels the parties are ready to move to the next stage, and the advantages of following the process structure as it has been outlined.

c. How can the team use the Collaborative Process structure at times of impasse?

It is common to reach impasse on issues throughout the Collaborative Process. One way to manage an impasse is to use the Collaborative Process structure and move the parties to a previous stage in the process. For example, if the parties are evaluating options and cannot find an option that both can live with, the team could also suggest that the parties move to brainstorming again to generate additional options. The team could also suggest that there is homework (gathering information) that could assist in either evaluating the options on the table or generating new options not previously considered. The team can also help the parties determine what modifications might make the option acceptable to the client.

V. HOW TO START THE COLLABORATIVE PROCESS

a. What are the steps in starting the process?

- Explain the Collaborative Process to the party and obtain informed consent to the Collaborative Process (see section V.g.)
- Screen for domestic violence, substance abuse, or mental health issues (see section V.b) (Note that the UCLA requires screening for domestic violence in D.C., Maryland, and Virginia.)
- Assist the party in enrolling the other party (see section V.k.)
- If the case starts with an attorney, determine if the other party has a collaboratively trained attorney or refer the other party to collaboratively trained attorneys
- If the case starts with a mental health professional, determine the proper role, and refer the party to a collaboratively trained attorney
- If the case starts with a financial professional, determine the proper role, and refer the party to a collaboratively trained attorney
- Retained lawyers refer the parties to divorce coaches
- Retained lawyers communicate about their understanding of the process and agree upon how to handle any difficult issues, such as provision of legal advice
- Advise the parties that future referrals will likely be made to financial neutrals and, if there are children, to child specialists
    - Attorneys (with consultation with the team) make the referral to financial neutrals
    - Coaches (with consultation with the team) make the referral to the child specialists

- The parties choose each professional and sign an engagement agreement with each professional
- The lawyers agree on a Collaborative Participation Agreement (models are provided at Appendix G)
- (Optional) The party meets with his/her coach and attorney to prepare for the first meeting
- The professional team has its organizational meeting (see section VI.a.)
- Select a case manager if appropriate
- Schedule meeting(s) to review and sign the Collaborative Participation Agreement, discuss concerns about the process, any emergency issues, goals for the process, and set or confirm meeting dates

b. Screening for domestic violence

The UCLA, enacted in the District of Columbia in 2012, in Maryland in 2014, and in Virginia in 2021 requires an attorney, prior to entering into a Collaborative Case, to "make reasonable inquiry whether the prospective Party has a history of a coercive or violent relationship [or (in Virginia) a "history of family abuse")] with another prospective party" and, if so, to commence a Collaborative Process only if the attorney reasonably believes that the safety of the client can be adequately protected during the process and that the Collaborative Process is appropriate. D.C. CODE §16-4015; MD Rule §17-503(a)(5). VA CODE §20-180. In D.C. and Virginia, the attorney must continue to screen throughout the representation and can commence a Collaborative Process only if the client so requests. D.C. CODE §16-4015; VA CODE §20-180. The Relationship Questionnaire Screening Tool, which is attached at Appendix P, is designed to be used in the attorney's initial interview with a new client and is one option for meeting the screening requirement of the UCLA.

Cases which present with issues of coercive control and/or violence are difficult cases to handle in any process. It is important for attorneys who lack experience with such issues to obtain training and education. Practice groups can serve an important function for their members by putting on programs about coercive control and/or violence and about safety planning. Resources are available from domestic violence organizations and other sources. The Relationship Screening Tool, referred to above, and "Guidelines for Handling a Collaborative Case with Coercive Control and/or Violence Issues" can be found at Appendices P and Q.

When the screening uncovers issues of coercive control or violence, the attorney who does not have training and experience in handling such cases must consider what options will protect the client who is at risk. One option is to associate with an attorney who has such experience. Another option is to seek assistance from mental health practitioners or others trained in domestic violence. Alternatively, the attorney may choose to refer the case to another attorney with such expertise.

The attorney must obtain enough assistance from experienced sources that he or she can make a competent decision as to whether the Collaborative case is appropriate for the client. The goal must be to do everything possible to ensure the client's safety in beginning and continuing the Collaborative Process.

Special attention must be given to protecting the client's confidences during the "interim" period when decisions are being made about the appropriateness of the Collaborative process but no Collaborative engagement agreement or participation agreement has been executed. The attorneys and other professionals must avoid disclosing any information about the client, even when such information would be otherwise disclosed, until the client's safety can be assured.

When the client is in a coercive or violent relationship, her or his ability to give informed consent may be compromised, and the attorney needs to take special care in ensuring that the client understands and can consent to the unique elements of the Collaborative Process.

If the party first consults a mental health professional, that professional should screen for a history of coercive or violent relationship, a history of mental health issues, and a history of substance abuse that might compromise a party's ability to actively participate in the Collaborative Process and make informed decisions. These issues need to be considered when discussing the appropriateness of the Collaborative Process.

c. Which professional starts the process and how is the team assembled?

Any of the three team professionals can start the process: attorneys, mental health professionals, or financial professionals. The professional with whom the party first consults can recommend the Collaborative Process, if appropriate; discuss enrolling the other party; and make referrals to other professionals.

If the party first consults an attorney, we recommend that the attorney first determine if the other party has an attorney and contact that attorney so that the next professionals can be jointly selected. The attorney should ask whether the client has previously consulted with a mental health professional and ask the mental health professional if the prior mental health role allows the mental health professional to participate as a coach or child specialist in the Collaborative case. If the spouse/partner does not have an attorney or is undecided about the Collaborative Process, the attorney can work with his/her client to enroll the other party (see section V.k.) and offer referrals to attorneys, including by referrals to the IACP and local collaborative practice group websites. An attorney should not refer his/her client to another team professional without consulting his/her counterpart attorney.

Once there are two attorneys, the attorneys can jointly select and refer the parties to coaches with the understanding that the party will meet with the referred professional and determine whether to engage the particular professional. If the attorneys are not sure what role a mental health professional prefers, they should consult the mental health professional before giving that professional's name to the party. The attorneys will consult each other and then with the coaches to discuss referral to financial neutrals. In addition, the coaches will consult with each other and then with the attorneys prior to referral to a child specialist.

If the party or parties first consult a mental health professional, that professional should make clear that this meeting is purely for information purposes and that the mental health professional is not serving in any capacity other than to help the party understand the options concerning different divorce processes and the role the mental health professional might play in each process. This approach allows the mental health professional to defer choosing his or her

role until the party has selected a process and can ask the mental health professional to assume the appropriate role.

The mental health professional can offer the party options as to whether the mental health professional is to serve as a therapist (in which case the mental health professional cannot be a member of the Collaborative team), a coach to one of the parties, a child specialist, or another role. If the party chooses the Collaborative Process and the parties would like the mental health professional to serve in the role of a coach or child specialist, the mental health professional should advise the parties that if the team and the party agree, or if both have attended the informational meeting, both parties agree, he/she can serve in that role. The mental health professional should then refer the party to collaboratively trained attorneys or to the IACP and local collaborative practice group websites. We recommend that the first referral be to collaboratively trained attorneys because if either party retains an attorney who is not collaboratively trained, the Collaborative Process cannot proceed for so long as one or both attorneys are not Collaboratively trained. It is important for the attorneys to ask the referring mental health professional whether the mental health professional has an existing role with either or both clients that conflicts the mental health practitioner from serving as the coach or child specialist. If the parties agree to use the Collaborative Process and agree that the mental health professional will serve as a coach to one of the parties, the mental health professional can provide referrals for coaches to the other party.

The mental health professional should make clear that confidentiality applies in the initial meeting unless the client specifically waives confidentiality. This should be stated at the initial contact with the party calling for the appointment as well as again at the beginning of the informational meeting. If the meeting is for the purpose of gathering information and choosing a process, no detailed information concerning the party's particular situation should be discussed.

If the party or parties first consult a financial professional, the financial professional should quickly determine whether the party wants the financial professional to remain neutral and work with both parties as part of the Collaborative Process or, alternatively, serve as a financial advisor only to the party in a process other than the Collaborative Process. If the party chooses Collaboration, we recommend that the financial professional first refer to collaboratively trained attorneys by providing names of attorneys and/or referring the party to the IACP and the local collaborative practice group websites. Once the party chooses a collaboratively trained attorney, the financial professional and the attorney should consult about further referrals for the other party to choose, first, a Collaboratively trained attorney and, then, a coach.

The professional or professionals who start the process need to quickly form a team with the goals of 1) a first professional team only organizational meeting or phone call and 2) a meeting with the parties to sign the Collaborative Participation Agreement. It is important that once a team is partially formed, team members should avoid referring to additional professionals without first consulting with the rest of the team. Because of the busy professional schedules, it is important when assembling a team to check with the professionals about their availability, times during the week when they can generally schedule meetings, and conflicting vacation and work schedules before recommending the professional to the party. It is important for the team to begin the process as soon as possible while at the same time matching the professionals carefully

with the needs and personalities of the parties. Also, the party should be encouraged to promptly contact the professionals recommended and choose one to engage.

The professional team should all sign engagement agreements with the party (or parties, in the case of the financial and child specialist) and have an organizational meeting or phone call (see section VI.a.) as soon as possible. The goal is to avoid a prolonged period during which the team tries to become organized. This delay demoralizes the parties and leaves them with no forum to discuss and resolve pressing issues which may arise.

The team must be cognizant both before the engagement agreements are signed and before the Collaborative Participation Agreement is signed what confidentiality obligations bind each profession. The obligation of each profession as to confidentiality will change at the time each of the agreements is signed, according to the terms of the agreement (see section V.i.).

d. Is there a case manager?

There has been no experience in the D.C. Metropolitan area with using Case Managers. Other jurisdictions have appointed one of the professional team members to be the Case Manager to coordinate the Collaborative Process and to assist with issues among team members.

e. What Collaborative Participation Agreement should be used?

The D.C. Metro Protocols Committee has prepared model team Collaborative Participation Agreements for each of the three neighboring D.C. metro jurisdictions to facilitate ease and uniformity in beginning a case. See Appendix G. Attorneys may want to discuss this as a resource and agree on either using it or revising it as appropriate for their case. If the attorneys prefer, they can use their own contract, taking care that they discuss and agree on all key principles required for the Collaborative Process.

f. What engagement agreements should be used?

Many of the obligations and conditions of the Collaborative Process are contained in the engagement agreement used by each team member. It is important that the engagement agreement be consistent with the Collaborative Participation Agreement. The D.C. Metro Protocols Committee has prepared a model engagement agreement for each professional. See Appendices H, I, J and K.

g. How does each professional obtain informed consent from the parties?

Mental health professionals must gain informed consent of the party through the engagement agreement. The engagement agreement should do the following: 1) clearly define the role of the mental health professional as coach or child specialist, 2) state that the mental health professional cannot serve in any role other than the role defined in the engagement agreement and cannot participate in litigation, and 3) state that the mental health professional can continue in the role defined in the engagement agreement after the successful completion of the Collaborative Process if agreed as part of the parenting plan or Collaborative settlement agreement. The engagement agreement should also specify that the party has read the entire document, understands the risks involved in Collaborative divorce, has been given the

opportunity to ask questions and is voluntarily agreeing to retain the mental health professional in the Collaborative Process. The engagement agreement should also clearly explain the mental health professional's mandate to report certain circumstances to the appropriate authorities and the specifics on confidentiality for the mental health professional.

The attorney must obtain the party's informed consent to the choice of the Collaborative Process after explaining alternative processes and the risks and benefits of Collaboration and the other processes. DC CODE §16-4014; MD RULE 17-503; VA CODE §20-179. The attorney must explain that the representation is limited to Collaborative negotiation toward settlement and does not include litigation, that either party can terminate the Collaborative Process without cause, that the attorney may be obligated to withdraw if the client withholds or misrepresents important information or otherwise undermines the Collaborative Process, and that, if either party seeks court intervention (other than a request to recognize a signed agreement or obtain an uncontested divorce based on such agreement), the Collaborative Process must terminate. The attorney must explain the party's other process choices, including the "kitchen table" negotiation with the other party without attorneys, mediation, negotiation by attorneys, and litigation. The attorney must explain the risks and benefits of the Collaborative Process compared to the risks and benefits of other processes, such as 1) the risk that the other party could use facts disclosed in the Collaborative Process in later litigation if Collaboration breaks down and 2) the risk that Collaboration could fail, the Collaborative attorney and his/her firm would be disqualified from continuing representation (barring a limited exception for emergencies and, in Virginia, a limited exception for firm members if the party is eligible for free representation due to low income and the prior collaborative attorney is isolated), and the party would have to hire a new litigation attorney. The attorney must also elicit sufficient information from the party to determine if the party is in a coercive or violent relationship which would negate the party's ability to provide informed consent or would imperil the safety of the party or the child(ren) in the Collaborative Process, and the attorney must make a determination if the safety of the party can be protected adequately during the Collaborative Process. If the client and his or her spouse/partner have the option of proceeding in different jurisdictions, the attorney should discuss the choice of substantive law to be applied as well as what jurisdiction's law will govern the Collaborative Process.

Financial professionals must gain informed consent of the party through the engagement agreement. The engagement agreement should clearly define the role of a financial neutral. The party needs to understand that the financial neutral is representing both parties and cannot advocate for either party individually. The financial neutral must explain that he/she cannot keep information confidential from the other spouse and that all team members as well as both parties will be entitled to all of the information and documents provided to the financial neutral. In addition, the financial neutral must inform the parties that he/she cannot perform any other services for either of the parties unless it is part of the Collaborative Process and is with the full knowledge and consent of both parties. The engagement agreement should clearly state that if the Collaborative Process terminates, the financial neutral cannot continue to assist either party or the party's representative outside of the Collaborative Process; cannot participate in litigation; and cannot provide any other services to either party after the Collaborative Process has ended. If the parties agree that the financial neutral should prepare their joint tax return at the end of the process, the financial neutral may do so.

h. How should attorneys provide legal advice?

Collaborative attorneys vary in how they give legal advice, depending on the jurisdiction, practice group, familiarity of the attorneys with each other, and other factors. Although there continues to be widespread debate among attorneys about this issue, they generally agree on three concepts. First, they agree that the Collaborative attorney has an obligation to provide legal advice to his/her client about the legal processes available to the client and the substantive law affecting the client's case. This obligation is an underpinning of the informed consent necessary for a client to choose the Collaborative Process and to enter into a signed settlement agreement. Second, Collaborative attorneys agree that the Collaborative Process allows attorneys to provide legal advice in the presence of the other attorney and client, even when the legal advice is adverse to his/her client. In this way, provision of legal advice in the Collaborative Process differs from traditional legal practice. This difference has been implicitly recognized by ABA Formal Opinion 07-447, which states that the Collaborative Process and the provisions of the participation agreement for "open communication and information sharing" "represent a permissible limited scope representation under Model Rule 1.2." Third, Collaborative attorneys agree that, at the outset of a Collaborative case, the Collaborative attorneys should discuss and agree upon how they intend to discuss and present the law to their clients in the Collaborative Process.

The Collaborative Participation Agreements, attached at Appendix G, in discussing the provision of legal advice, incorporate points 1) and 2) of the prior paragraph. Appendix G intentionally does not go into further detail but rather leaves it to the individual attorneys to work out together how best to meet their obligations in each case to provide legal advice. Local practices, the attorneys' Collaborative experience, particularities of each case, and, most of all, the trust and familiarity between the two attorneys will likely guide the attorneys' decisions on the details of providing legal advice. The spectrum of practices ranges from requiring that all legal advice be provided in joint meetings to recognizing that each attorney will meet privately with his/her client to provide legal advice. The middle of the spectrum is for each attorney to meet privately with his/her client as needed to provide legal advice, followed up by a report to the other attorney as to the substance of the discussion. Attorneys in each individual case may want to add to the Collaborative Participation Agreement greater detail about how they will provide legal advice.

In any discussion of the law, the Collaborative attorneys are to keep in mind the spirit of the Collaborative Process and refrain from positional advice and strategy. Attorneys must also recognize their obligation to make sure that their clients are fully informed about the law, as well as about financial information and other factors, prior to entering into a settlement agreement. In discussing the law, attorneys should put the law into context, discussing other reference points for decision-making, including financial implications, the needs of both clients and the family, the clients' relationship, and practical and economic realities. See Appendix M for Reference Points for Decision-Making. In discussing the law in a Collaborative context, attorneys may need to utilize skills such as open-ended questions and genuine curiosity about the client's interest in the law and assumptions about the law. In other words, the attorney should refrain from assuming that the client will follow the law blindly (or in any other stereotypical way) and should also try to elicit the client's assumptions about the underlying problem the client hopes the

law will solve. In this way, the attorney and client may have a broader, more far-ranging discussion of the use of the law.

i. What are the confidentiality rules for each profession at each stage of the process?

Attorney:

In jurisdictions which have enacted the UCLA, the statute creates a privilege for all collaborative law communications. The UCLA provides that "[a] collaborative law communication is privileged . . ., is not subject to discovery, and is not admissible in evidence." D.C. CODE §16-4017 *et seq.*; MD CJP § 3-2009; VA CODE §§20-168, 20-182. A collaborative law communication means a "statement, whether oral or in a record, verbal or nonverbal, that (A) [i]s made to conduct, participate in, continue, or reconvene a collaborative law process, and (B) [o]ccurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded*."* D.C. CODE §16-4002(1) *et seq.;* MD CJP § 3-2001(b); VA CODE §20-168. The UCLA provides for exceptions when the privilege does not apply, including public information, a threat to inflict bodily injury or commit a crime, signed agreements by the parties, reports of suspected domestic violence, claims of professional misconduct, child abuse or neglect, as well as information developed when the parties, in advance, agree in writing that they do not intend for the privilege to apply. D.C. CODE §16-4019; MD CJP §§ 3-2010, 3-2011; VA CODE §20-184. The exceptions are fully listed in the Collaborative Participation Agreements attached at Appendix G.

According to the UCLA, the parties can refuse to testify and can bar others from testifying in discovery or court as to any communication made in the Collaborative Process. D.C. CODE §16-4017; MD CJP § 3-2009(b); VA CODE §20-182. Moreover, team members other than attorneys can assert a statutory privilege with respect to their collaborative law communications. Note that the UCLA provides that if both parties agree, an attorney in the Collaborative Case can be compelled to testify over the attorney's objection in a court or discovery proceeding involving the same or related matter between the two parties. UCLA §17(b); D.C. CODE §16-4017(b); MD CJP § 3-2009(b); VA CODE 20-182 The drafters of the UCLA stated that Collaborative attorneys "are not nonparty participants under the act, as they maintain a traditional attorney-client relationship with parties, which allocated to clients the right to waive the attorney-client privilege, even over their lawyer's objection." Comment to Section 17. The D.C., Maryland, and Virginia Collaborative participation agreements have been revised to conform to this UCLA provision.. See Appendix G, Collaborative Participation Agreements.

The UCLA also addresses the professional's broader obligation to keep the client's information confidential from anyone outside the Collaborative Process. It provides that the parties can contract as to the degree of confidentiality to be accorded to their collaborative law communications. D.C. CODE §16-4016; MD CJP §3-2008; VA CODE §20-181. The parties, in the Collaborative Participation Agreement, can decide to what extent they want confidentiality. The participation agreements at Appendix G provide that the clients authorize the team to share their communication with other team members, experts engaged for the Collaborative Process, and the other party – but not with anyone outside the Collaborative Process. The UCLA provides statutory authority for enforcing their agreement. D.C. CODE §§16-4004(b), 16-4016; MD CJP §§ 3-2002, 3-2008; VA CODE §20-181. The professionals are bound by the parties'

decision as to how much confidentiality they desire, as well as by any other law in the jurisdiction as to confidentiality. *Id.*

Once the UCLA is passed in a jurisdiction, it provides a statutory basis for enforcement of these non-admissibility and confidentiality provisions contained in a Collaborative Participation Agreement in addition to each jurisdiction's law on privilege and the attorney's obligation to maintain the client's confidence under the Model of Rules of Professional Conduct. The attorney has an obligation under the Rules of Professional Conduct to maintain confidentiality of the client's information according to the specific instructions of the client, as expressed in the Collaborative engagement agreement and the Collaborative Participation Agreement. The attorney must comply with the provisions in the Collaborative Participation Agreement that bar testimony of professionals and introduction of evidence and require confidentiality. *See* Ethics Guidelines for Collaborative Practice - District of Columbia, Maryland and Virginia ("Ethics Guidelines"), Sections 2 and 3.

The Collaborative professional is obliged to fully inform the client about confidentiality practices in the Collaborative Process. A full discussion of the obligations of each professional to maintain confidentiality can be found at Ethics Guidelines, Sections 2 and 3.

Attorneys should be aware that, before a client signs the Collaborative engagement agreement or Collaborative Participation Agreement (both of which permit sharing of the client's information within the Collaborative Process), the attorney must preserve attorney-client privilege.

During the process, a party has the right to revoke his/her consent to share information and assert attorney-client privilege. If the party asserts privilege, the attorney must respect the privilege but, depending on the importance of the information withheld, if the client continues to withhold consent to share the information, the attorney may have to withdraw from the process. The attorney should advise the client that the client has an obligation as part of the Collaborative Process to disclose important information and, if the client chooses not to do so, the attorney may need to withdraw from the representation. Important information that is required to be disclosed should include information which either party might need to make an informed decision about each issue in dispute. The attorney should work with the party to anticipate short-term and long-term consequences of both alternatives: keeping the information secret or sharing the information. If the party chooses to continue to assert the privilege with respect to information the attorney deems important to share, the attorney must withdraw without revealing the reason.

There are exceptions to confidentiality stated in the participation agreements at Appendix G, including a threat to inflict bodily injury or commit a violent crime, a statement to plan or commit a crime or conceal an ongoing crime, or a statement to prove or disprove abuse, neglect, abandonment, or exploitation of a child. See the Collaborative Participation Agreements attached at Appendix G. These exceptions, which reflect existing law and practice, are consistent with the UCLA.

Mental Health Professional:

Once the client consents to share information in the Collaborative Process, there is no mental health privilege apart from the D.C. and Maryland UCLA privilege for Collaborative

Communications. As discussed below, D.C. and Virginia (for clinical psychologists only) have a statutory privilege broad enough to encompass mental health professionals in their Collaborative roles. However, no privilege arises under these D.C. and Virginia statutes once the client consents to share his or her information by signing the engagement agreement or participation agreement. In D.C. and Maryland, the client's Collaborative communications are protected against admission into evidence by the D.C. and Maryland UCLA. See the discussion at Ethics Guidelines, Section 3.B.

Although the Maryland statute provides that a patient of a psychiatrist or psychologist may assert privilege to prevent testimony about statements as to the therapist's diagnosis or treatment, this privilege does not apply to mental health practitioners in the Collaborative Process, because they do not provide diagnosis or treatment in their Collaborative roles. Md. CJP §9-109. Similarly, the Maryland statute for social workers, which provides that clients receiving counseling about their mental or emotional conditions have a privilege to prevent disclosure in court, does not by its terms apply to social workers serving as coaches or child specialists in the Collaborative context. *Id.* §9-121.

Ethics codes for mental health professionals require mental health professionals to keep the client's communications confidential unless otherwise specifically agreed to by the client or covered by an exception. See the discussion at Ethics Guidelines, Section 3.E. Mental health professionals, similarly to attorneys, must follow the client's instructions in the participation agreement that the team members may disclose the client's communications to Collaborative team members, experts retained for the Collaborative Process and the other party but must keep the information confidential from those outside the Collaborative Process.

Before the client signs the Collaborative engagement agreement (which permits sharing information as part of the Collaborative process), the mental health professionals must maintain confidentiality unless the mental health professional advises the party in advance that there will be no confidentiality. See Ethics Guidelines, Section 3.E for citations to the National Association of Social Workers, Code of Ethics and the American Psychological Association, Ethical Principles Code of Conduct. Other licensed mental health professionals are subject to their specific professional state and national guidelines regarding ethics.

Once the engagement agreement with the mental health professional is signed, the rules of confidentiality are governed by the engagement agreement. The engagement agreement should indicate that the party agrees that the mental health professional may share the client's communications with potential team members in order to begin the Collaborative Process and also with team members, experts retained for the Collaborative Process, and the other party during the Process – but not with those outside the Process.

Should a party revoke his/her consent to disclose, the mental health professional must determine if the information is important to the process. If the mental health professional deems the information important, the mental health professional must advise the party of this determination and inform the party that, as part of the Collaborative Process, the information must be shared with the team and the other party. The mental health professional should work with the party to anticipate short-term and long-term consequences of both alternatives (keeping the information secret or sharing the information), reassure the party of the support of the team,

generate options to address any concerns the party has regarding sharing the information, and discuss the disadvantages for both the process and long-term of keeping the information secret. Should the party refuse to share the information, the mental health professional must withdraw from the case and cannot reveal the reasons for withdrawal.

When the Collaborative Process is concluded, the mental health professional should continue to maintain confidentiality as required by his/her respective professional ethics and the participation agreement.

Financial Neutral:

Prior to the signing of the financial neutral's Collaborative engagement letter, the financial neutral is required to abide by his/her professional ethics rules. For CPA's and CFP's there is a requirement to maintain confidentiality of all client information. Therefore, the financial neutral must obtain the client's informed consent to sharing the information with both parties and the team. The financial neutral cannot withhold information of either client from the other. The client's consent for the financial neutral to release information should be in writing. The Collaborative engagement letter specifically gives the financial neutral authority to share any and all party information with the Collaborative team, the other party, and anyone who is participating in the Collaborative Process.

Once the party has signed the Collaborative engagement letter and Collaborative Participation Agreement, the financial neutral is bound by the terms of those agreements and by his/her respective professional ethics rules not to share confidential information outside of the process. In the participation agreement, the party agrees that any party information, oral communications and work of the financial neutral produced during the process cannot be released outside the Collaborative Process or admitted in court. Moreover, the party agrees that the financial neutral cannot be called as a witness in court.

Once the Collaborative Process is concluded, the financial neutral should continue to maintain confidentiality as required by his/her respective professional ethics rules and the participation agreement.The parties can give written approval to the financial neutral to transition their information to a successor financial neutral.

j. How do the team members explain the process to the party?

All team members should listen to what is important to the party. Discuss with the party how the party's goals (for example, protecting the children as much as possible) might play out in each process. Ask the party to talk about what is important to him/her and help the party figure out how to choose the best process for his/her divorce. Explain all the obligations of the party in the Collaborative Process, for example, full disclosure, and discuss with the party whether the party is willing and able to comply.

To explain the Collaborative Process to the party, all team members should cover the following:

- Explain the interdisciplinary team and the role of each team member
- Review the Collaborative Participation Agreement, explain its principles and that it must be signed to begin process

- Explain that the parties must be willing to disclose all important information related to the collaborative matter, which would include at least the information that either party might need to make an informed decision about each issue in dispute
- The process requires that the parties authorize the team to share the party's information among the team members and the other party
- Neither party will file in court or threaten court
- No documents created in the Collaborative Process can be used in litigation other than final agreements, Agreements to be Relied Upon, documents otherwise obtainable from outside the Collaborative Process, and certain exceptions listed in the participation agreement
- No team members may be subpoenaed in any subsequent litigation except that, if both parties agree, they may subpoena the attorneys
- The parties' expectation of confidentiality with respect to each team member (see section V.i.)
- Regular and on-going communication among team members is needed, including preparation for and debriefing after each collaborative meeting
- Billing practices (to include team calls, team communications, in person meetings, writing up minutes, preparation and debriefing, consultations among team members, drafting agreements)
- Process managed by the team
- Decisions made by parties
- Structure and configurations for meetings (3-4-5-6-7 way meetings) including agenda, 2 hour meetings, debriefing, minutes, etc… (see Appendix B)
- Process for resolution of issues begins with gathering information, moves to generating options when all information is gathered, evaluating options when all options have been generated, and reaching resolution that is agreeable to all (see Appendix A)
- Process takes time and is not quick—realistic expectations
- The parties discuss substantive issues in team meetings and not outside of the process unless agreed to in advance
- Process requires compromise and a willingness to be open to a variety of options
- Process focuses on the present and future instead of the past
- Resolution of issues only when **both** can live with option and agree
- Process focuses on best hopes instead of worst fears
- Process is designed to comprehensively address the legal, financial and emotional issues particular to this family
- Process is designed to create durable and sustainable agreement for the family
- The attorneys will screen for domestic violence and no Collaborative Process will be initiated unless the attorneys reasonably believe that the client's safety can be protected and that the Collaborative Process is appropriate (in Maryland and D.C., as required by the UCLA).

The attorneys should pay close attention to the following hallmarks of the Collaborative Process: 1) the commitment not to litigate or to threaten litigation; 2) voluntary full disclosure of all information related to the Collaborative matter; 3) commitment to negotiating a mutually

acceptable settlement which meets the needs of both parties and their family; 4) commitment not to take advantage of mistakes made by the other party; and 5) withdrawal by all the collaborative professionals if Collaboration fails. Attorneys must comply with the requirements of ABA Formal Opinion 07-447 "Ethical Considerations in Collaborative Law Practice" to obtain informed consent by advising the party of alternative processes and the risks and benefits inherent in collaborative practice and alternative processes (see section V.g.).

The mental health professionals should take care to explain that the mental health professional is not serving as a therapist to the party or any member of the family. In addition, the mental health professional must notify the party that the mental health professional has a duty to warn the authorities should the party present a danger to himself or others. Finally, the mental health professional should advise the party that the mental health professional is a mandated reporter if the mental health professional suspects abuse of a child.

The financial neutral should explain the requirements of the neutral role and that he/she cannot serve in another role such as investment advisor or providing any services other than joint services approved by both parties.

k. How does a team member assess the other spouse/partner and assist the client in enrolling his or her spouse/partner?

- Ask the party about his/her spouse's or partner's wishes for the separation/divorce process
- Discuss with the party whether (in the party's opinion) the other spouse/partner can comply with the obligations of the Collaborative Process for, *e.g.*, full disclosure, listening to the needs of the party, and identifying long range best-self goals.
- Ask about the preferences of the other spouse/partner for obtaining information and receiving advice
- Find out how the other spouse/partner feels about attorneys, mental health professionals, and financial experts
- Find out about the preferences of the other spouse/partner about spending or saving money on litigation
- Find out about the preferences of the other spouse/partner about protecting the children and preserving the co-parenting relationship
- Find out about issues such as domestic violence, substance abuse, mental health, or anger management problems which might make the other spouse/partner unable to participate in the Collaborative Process
- Assist the party in developing a plan that will best appeal to the other party, for example, recommending *Collaborative Divorce* by Pauline Tesler and Peggy Thompson or *The Collaborative Way to Divorce*, by Stu Webb and Ron Ousky; meeting with a neutral financial professional; visiting the IACP (www.collaborativepractice.com) or other collaborative websites; talking to a mental health professional; talking to a friend who has experienced Collaboration; viewing *The Collaborative Way to Divorce* DVD or other DVDs
- Role play with the party how to talk to the other spouse/partner about Collaboration with the party playing first the role of the other spouse/partner (to hear what objections the party anticipates) and then the role of the party

- Suggest that the party pay for the other party to have one meeting with a Collaborative attorney
- Brainstorm options for how to approach the other spouse/partner so as to encourage him/her to meet with a collaboratively trained attorney to discuss the process
- Send a letter to the other spouse/partner suggesting that he/she consider Collaboration (a sample letter is attached at APPENDIX L)

l. What are the options if the other party chooses an attorney who is not collaboratively trained?

The Collaborative attorney has limited options when the other party has already chosen an attorney who is not collaboratively trained. The Collaborative Process cannot be conducted without a collaboratively trained attorney for each party. The Collaborative attorney can call or preferably meet with the other attorney to discuss the Collaborative Process and explain why it is in the parties' interest. The Collaborative attorney can suggest that the other attorney become collaboratively trained, but there may not be time or interest for this. If there is an attorney in the same firm who is collaboratively trained, suggest a referral to the collaboratively trained attorney in the same firm. Some Collaborative attorneys have had success with conducting interest-based negotiation with non-collaboratively trained attorneys. The collaboratively trained attorney should exercise caution in doing this and remember the risks of prejudicing the party if the two attorneys see their obligations differently. The collaboratively trained attorney should do this only with an attorney whom he/she knows and trusts and should communicate often with the other attorney to make sure they are approaching their obligations in the same way. If the other attorney is willing to train collaboratively, the case could start in cooperative negotiation and then convert to Collaborative when the other attorney is trained. One danger of "cooperative divorce" rather than Collaborative divorce is often that the mind set of the parties or attorneys may not be fully committed to no litigation.

m. What if there is pending litigation?

Maryland Rule 17-504 provides that parties to a pending court action may file a joint motion to stay court proceedings during a Collaborative Law proceeding. The motion shall include a certification that a Collaborative Law participation agreement has been signed by all parties and their attorneys. A provision in the Maryland participation agreement at Appendix G provides as follows:

> If the parties to this Collaborative Participation Agreement are currently parties to pending litigation with each other, they agree to file a consent motion to seek a stay of such litigation pursuant to MD Rule 17-504. If either party opposes the stay, this Collaborative Participation Agreement shall be null and void and the provisions barring the attorneys from continuing to represent the parties in contested litigation shall not apply. If the pending litigation is stayed and the parties participate in the Collaborative Process, and if either party thereafter seeks to have the stay lifted, this Participation Agreement continues in full force and validity and the provisions of Paragraph 2.C disqualifying the attorneys from representing the parties in contested litigation shall apply.

If parties sign a participation agreement during pending litigation, it is recommended that, at the same time, they sign a consent motion to the court seeking the stay. In other jurisdictions, parties to litigation can seek a stay of the litigation in order to begin a Collaborative case *before* signing the participation agreement. The Maryland Rules require that the participation agreement be signed prior to filing the consent motion for a stay.

Virginia provides that litigating parties may sign a Collaborative participation agreement with respect to their litigated matter, provided that they promptly file with the court a notice of the signed Collaborative participation agreement. The filing operates to stay the litigation. VA CODE §20-172. If the stay is not granted, the statute requires the parties to nonsuit the litigation prior to continuing the Collaborative process. If the stay is granted, the parties must file with the court notice when the Collaborative process concludes. *Id.* The court may require the parties to report that the process is ongoing (without disclosing details of the Collaborative process. *Id.*

VI. PROFESSIONAL TEAM ORGANIZATION, CONDUCT AND PROCESS

a. How does the professional team organize itself?

Each team will form in a unique way. Some teams will begin with lawyers while others will begin with a mental health professional or a financial neutral. It is important that, as the team forms and members are retained, the professional team members are communicating as a team. The team should either set up a team conference call or meet in person. Prior to the first team call or meeting, each professional should have an engagement agreement that authorizes the team members to disclose the party's information to other team members. Meeting in person may be more desirable in situations when the professionals have not worked together previously. In this meeting or phone call, the team must clarify a number of issues including how each team member sees his/her role, discuss impressions of the parties, share concerns, develop a team strategy for addressing these concerns, determine if any existing relationships between team members have been or should be disclosed to the parties, determine how the team will have on-going communications (*e.g.,* frequency and time of team conference calls), billing practices for team communications and travel, etc. For further information, see Appendix F (Checklist for First Team Professionals Meeting). If the full team is formed early in the process, all team members should be on this initial team call or attend the initial team meeting.

Another option to consider is to begin organizing the team with only lawyers and coaches. These four professionals can have a team call (once each is retained and has met with their respective parties) to discuss the above information. As new members are added to the team (*e.g.,* child specialist and/or financial neutral), the team can have a follow-up meeting or team phone call to discuss any needed issues, including roles, communication, impressions of the parties, etc.

b. Who attends each meeting and how is this decided?

The team makes the decision as to who attends each meeting. Usually, the financial neutral meets with the parties in 3-way meetings to begin to gather information. Thereafter, financial meetings should include parties, the financial neutral and the lawyers. In addition, the

coaches often attend the financial meetings as they are able to manage the emotions that are evoked by the financial issues, can help the parties communicate with each other in an effective and respectful manner, and can assist the team and the parties to maintain the Collaborative Process. Normally, lawyers do not attend the parenting planning meetings with the parties and the coaches and do not attend the meeting with the parties, coaches and child specialist. However, the team may choose to include the attorneys in these meetings.

c. How are the minutes completed and distributed?

After each meeting, whether a meeting among parties and attorneys, parties and coaches or any other configuration, a neutral and brief summary should be generated including a list of attendees, issues discussed, Agreements To Be Relied Upon, homework, future meeting dates and outstanding issues that the professionals and parties have determined need to be discussed at the next meeting. It is important that all team members be current about what is happening as the financial, parenting and emotional issues tend to be interrelated. Giving all team members a copy of the minutes of all meetings enables this to happen.

In the full Collaborative meetings, the team should discuss who will be taking minutes at the beginning of each meeting. The responsibility often rotates among team members. If the coaches are attending the financial meetings, the attorneys should consider being responsible for the minutes, as the coaches are responsible for the minutes from their 4-way meetings with the parties. In addition, attorneys may be more familiar with financial details being discussed and thus may more accurately describe these in the minutes.

Once the minutes are completed, they should be distributed to all team members within 48 hours. The minutes should be sent to the professionals first for review and then sent to the parties so that the professionals can address any errors or statements that might be inflammatory to parties. If the coaches e-mail minutes of the coaches only meeting, they should ask for the parties' approval or correction by e-mail so that there is a record of whether the minutes are approved.

The team should use a flip chart or a projector to list the meeting agenda and keep track of what happens in the Collaborative meeting. This keeps the parties and team literally on the same page and allows the parties to ask questions or make corrections if what is written down is confusing or incorrect. One option to prepare the minutes is to write on the flip chart or computer (using a projector) in a sufficiently clear and thorough way that the flip chart can be transcribed directly into minutes. Another option is for one professional to write on the flip chart and another professional to take detailed notes to be transcribed into minutes. Usually each agreement is labelled "Agreement" and homework is labelled "Homework." It is helpful to put the next meeting date and time at the end of the minutes and also to include an ongoing list of agreements that parties have made so far in the Collaborative Process.

d. How do professionals prepare for meetings?

The team must prepare for each meeting. For financial meetings, the team must discuss the agenda in advance and, once agreed to, distribute the agenda to the parties in advance. For the coaching 4-way meetings, the coaches should discuss the meeting in advance as needed. The coach and/or the attorney should contact their party in advance of each meeting (especially in the

beginning of the process) to advise the party of the agenda, allow the party to ask any questions about the meeting structure, discuss any concerns the party might have about the upcoming meeting, and assist the party in framing the issues and concerns. It is important that all Collaborative professionals avoid positional and strategy discussions in the pre- and post-meeting briefings with the client. The substance of the issues should be brought up for the parties' mutual discussion at the Collaborative meetings, rather than in these private conversations. These preparatory meetings with the party and other team members can be done via phone or in person as is determined by the individual team members.

e. How do professionals debrief after meetings?

The team should debrief after each meeting to discuss how the process is going and plan the next steps. These debriefing sessions can be done by phone or in person following the meeting. The coach and/or lawyer should also debrief with the party after each meeting. These debriefing sessions are especially important at the beginning of the process. This debriefing should include a discussion of the marital dynamics, whether any team members are being drawn into this dynamic, alignments of any team members, positional behavior on the part of either party or team member, what was successful in the meeting, trigger points for either party, agenda for the next meeting, potential contact with either party prior to the next meeting, suggestions for better service delivery to the parties, and requests by team members for support and problem-solving advice from the team.

f. How do pressing issues get handled throughout the Collaborative Process?

Pressing issues may need to be addressed during and throughout the process. If a coach and/or lawyer becomes aware of a pressing issue in advance of a meeting, he/she should share it with the team. If either party is unaware of the issue, his or her coach or attorney should inform him or her. The coaches and attorneys should check-in with their parties shortly before each meeting to see if there are pressing issues, to alert the party to pressing issues raised by the other party, and to advise the party of the meeting agenda. If pressing issues do need to be addressed at a meeting, the issue should be listed at the beginning of the meeting and then time should be reserved at the end of the meeting to discuss the issue. If the team feels that the parties cannot hold the pressing issue until the end of the meeting, the team may determine it would be best to address the issue at the beginning of the meeting, taking care to balance the need to resolve the pressing issue with the need to address on-going issues.

g. How does the team manage the pacing of the Collaborative Process?

At the initial team meetings, the parties should be asked their thoughts on frequency of meetings as well as their ability to focus on both financial and parenting issues. Some parties will want to meet more frequently (*e.g.*, weekly) while others will want more time between meetings. In addition, some parties will want to pursue both financial and parenting issues simultaneously while others will want to focus on one area at a time. If willing, parties can work with the financial neutral to gather all the financial information necessary while at the same time working with the coaches to improve communication, manage pressing issues, begin working on the parenting plan and de-escalate emotions (this approach is referred to as the "parallel process"). In addition, during this time, the child specialist can be performing his/her role in gathering information to be shared with the coaches and parties. When following the parallel process, when the parties are ready for the first financial meeting, they are in a more communicative place and are able to process information with less emotion. In addition, the parties will be better educated about and more comfortable with the Collaborative Process.

The professionals should try to be available to meet at the pace chosen by the parties to minimize delays due to vacations and competing work schedules of the team members. A team member should anticipate delays and discuss this with the team before accepting a new case. To help the parties tolerate the sometimes seemingly slow pace, it may be a good idea to add to the agenda of each meeting a summary of "where we are in the process."

h. How does the team determine seating arrangements for meetings?

The team may need to discuss this prior to each meeting as seating arrangements may have symbolic, emotional and practical meanings that need to be considered. Some teams may consider either the coach or lawyer sitting next to his/her party or across from the party for better visual access. Some parties may do best if they sit between their coach and their attorney for support and coaching throughout the meeting. It may be important for the parties to sit next to the financial professional in financial meetings. Some situations will be decided based on the parties' preferences. Occasionally, the parties do not tolerate well sitting directly across from each other.

i. How does the team determine who will write on the flip chart in meetings?

The team should discuss who should write on the flip chart prior to each meeting. This is determined on a case-by-case basis and should be someone who is experienced, has handwriting that is easy to read, and is comfortable writing in front of the team and parties. It is likely beneficial for the person who is writing on the flip chart not to be responsible for taking the minutes in the meeting, unless the team has decided that the flip chart pages will be transcribed into minutes. In the financial meetings, it may be helpful to provide a high level of detail on the flip chart so that the minutes can be typed directly from the flip chart sheets.

j. What are some tips for making the meetings productive and efficient?

- Prepare an agenda in advance for each meeting and send this agenda to clients prior to the meeting, allowing enough time for review.

- Start and end the meeting on time.
- Bring the parties into the room together when the meeting starts.
- Briefly tell the parties "where we are in the process" at the start of each meeting.
- Be careful about sharing personal information in meetings (e.g. talking about a great family vacation you had) as these stories may be upsetting for clients who are in pain.
- Approve the minutes from the previous meeting at the beginning of each meeting.
- Review homework assignments from previous minutes.
- The team MUST ensure that the parties and the team stay in framing issues before moving to gathering information.
- The team MUST ensure that the parties and the team stay in information gathering before moving into generating options.
- The team MUST ensure that the parties and the team stay in generating options before moving into evaluating options.
- The team should hold back and first let the parties start each of the above-mentioned Collaborative Process stages.
- The team should not add questions or options until the parties have exhausted all of their own ideas.
- The team should limit any back and forth conversations between professionals in the meetings with parties.
- The team should check in with both parties throughout the meeting to ensure that both parties feel an opportunity for "equal" speaking time.
- Be sure there is at least one meeting scheduled for a future meeting before each meeting ends.
- Meetings should be scheduled two to three months in advance as this is one of the major challenges when scheduling larg groups..

k. What is the role of the team in assisting parties to complete homework?

Completion of homework is an essential part of this process and is required to move the process along. The lawyer, financial neutral and/or coach should remind parties as is necessary to complete homework and help parties to complete the necessary homework (*e.g.,* the lawyer can reinforce the party's duty to disclose important information, the financial neutral can go through the budget line items with the party to explain the items, answer questions and assess values). The coach can help a party deal with emotional roadblocks that may influence homework completion.

l. Who is responsible for food during meetings?

Each individual team should determine this decision. Some teams have done this on a rotating basis. In many of the larger meetings (6-ways, 7-ways), food is available. Having snacks at Collaborative meetings can sometimes increase comfort for the parties.

m. How is it determined where meetings will take place?

Each individual team should determine this decision. The team should factor in location of offices and convenience for the parties as the number one priority. In addition, the team can

consider travel requirements for other team members. Some teams have rotated locations while others have met at the same location each time due to convenience.

n. Is there a role for caucusing within the Collaborative Process?

The Collaborative Process is one in which the gathering information, generation of options, and evaluation of options is done as a group. If it would benefit parties to meet during a meeting with their coach and/or attorney, this is appropriate. The content of this meeting should be focused on managing emotions and expressing concerns appropriately. Caucusing should be used sparingly as this can lead to positional or strategic bargaining as well as a perception of parties that there are "sides". The professionals should discuss together the possibility of caucusing and how it will be handled if deemed necessary by the team, *i.e.*, who will be part of the caucus, what information will be discussed during the caucus, and what information will be shared with the parties and professionals not involved in the caucus.

o. When and how are agreements made during the process binding?

Generally, the parties make temporary agreements during the process on both financial and parenting issues. Although the parties are expected to abide by these agreements during the process, the parties can decide to change them prior to final resolution. On occasion, the parties will want to commit to a binding agreement that will outlast the process. To do so, the parties should sign the agreement and label it "An Agreement To Be Relied Upon". The attorneys must make sure that the parties understand the binding obligation created by an Agreement to Be Relied Upon. These agreements can be incorporated into the final settlement agreement or, in the event of termination of the process, into court consent orders.

VII. THE INITIAL TEAM MEETINGS

a. How do the team and its members prepare the party for the initial team meetings?

As an attorney:

- Meet with the party in person at least once after the party has chosen Collaboration to prepare for the initial team meetings
- Make efforts to ensure that the party is committed to the Collaborative Process (see below)
- Make sure the party is fully informed of choices of procedures (kitchen table negotiation, mediation, traditional negotiation, litigation)
- Make sure the party understands the risks and consequences if Collaboration fails, particularly, the attorney's disqualification from representing the client in contested litigation on the same or similar matter
- Determine if there is domestic violence or coercive control in the parties' relationship and, if so, whether the attorney reasonably believes that the party's safety can be protected in the Process and that the Collaborative Process is appropriate (in Maryland and D.C. as required by the UCLA)
- Find out if there is anything that the party does not want to reveal in Collaboration and play out step by step with the party how each process would or would not impose

disclosure requirements and address the consequences of ultimate disclosure or discovery of the "secret". Also, discuss with the party the consequences of maintaining the "secret" from the other party and the children

- Confirm that the party is willing to commit to the principles of Collaboration, including but not limited to transparency, full disclosure, not taking advantage of mistakes, listening to the other party, considering the other party's needs and the needs of the family, refraining from taking positions, speaking up for his/her needs, refraining from "going along to get along," giving up litigation and court-based negotiations such as posturing and hidden agendas
- Prepare the party for the meeting structure: a "container" or safe place to discuss issues with the other party in the presence of professionals committed to resolve issues in the interests of both parties, use of an agenda and flip chart, minutes and debriefing after each meeting
- Find out if there are any pressing issues and help the party determine if bringing these issues up at this juncture is beneficial to the party and the process
- Review the Collaborative Participation Agreement with the party (provide the contract to the party in advance of the meeting)
- Go over the ground rules for communication (see Appendix D): listening, treating the other with respect, not interrupting, etc.
- Prepare the party for the procedure for each meeting: quick phone call before each meeting to update, follow up phone call after each meeting to debrief, circulation of an agenda before each meeting, sticking to the agenda, discussion of issues only in the meetings, use of flip chart, and minutes, etc.
- Prepare the party for behavior that may be surprising, *e.g.,* you will be nice to the other party and his/her attorney, you will not "fight" for the party, you will support resolution that meets the needs of both parties
- Discuss the attorney's different role as an advocate in Collaboration: to support the party in a resolution that meets the needs of both parties, to make sure the party has the information to make informed choices, and to assist the party in expressing his/her needs
- Assist the party in preparing long range goals and explain the difference between future goals and specific proposals
- Ask for tips about the other party: how to appeal to his/her better nature, how to tell if he/she is upset
- Give the party permission to correct you during the meeting
- SLOW the party down. Explain the process and the frustrations of the early process stages. Explain the stages of signing the contract, identifying goals, listing questions to be resolved (framing issues), gathering information, generating options, evaluating, and resolution.
- Develop "process anchors" by telling the party the essentials of the process so that later when impasse or difficulties occur, the team can refer back to the process anchors
- Ask your party about his/her greatest fears about the process and discuss them and how to handle them
- Advise the client that you may have to withdraw if the client refuses to disclose important information or otherwise undermines or takes unfair advantage of the process
- Ask the party what will be hard for him/her in the process

- Explain emotional flooding and develop strategies to handle difficult emotions (attorney may want to enlist help of coach)
- Review the expected agenda: introduce the team, review the Collaborative Participation Agreement, discuss questions about the Participation Agreement or the process, sign the Participation Agreement, discuss goals, discuss any pressing issues, confirm all team members are in place, set future meeting dates
- Discuss the expense with the party
- Review *Collaborative Law, Achieving Effective Resolution in Divorce Without Litigation*, 2d ed. by Pauline Tesler, pp. 97-117

<u>As a mental health professional:</u>

- Discuss goals for the process, individual and family
- Identify triggers for both parties
- Identify concerns about the process
- Elicit any pressing issue and discuss when it would be beneficial to the parties to discuss it
- Advise that you will place a check-in call following the meeting
- Develop ways to cope when emotions are triggered
- Advise the party of the option to take a break during the meeting if needed
- Explain the meeting structure and agenda
- Prepare the party for behavior that may be surprising (*e.g.,* you will be trying to establish rapport with the other party)
- Discuss ground rules for communication (*e.g,.* listening to other party, not interrupting other party when speaking, using "I" statements, expressing issues in terms of concerns)

<u>As a financial neutral:</u>

- Discuss process for gathering information
- Discuss working together
- Review the financial goals that the parties have identified
- Explain the neutral role
- Explain transparency in the financial process
- Answer questions the parties may have, *e.g.,* timelines, homework and scheduling.
- Distribute checklists and forms for the parties to complete (Appendix E) as appropriate.

b. <u>Who attends the initial team meetings and what is covered?</u>

These meetings, and the first meeting in particular, set the framework for the entire process. The meeting for the parties to sign the Collaborative Participation Agreement should take place as soon as possible after the parties have decided to engage in the Collaborative Process. Schedules, resources, dynamics and experience of the team should be considered in determining how best to accomplish this. Options for ways to accomplish this are as follows:

- 4-way meeting with parties and attorneys to sign the agreement only and a separate 6-way meeting with parties, attorneys and coaches to discuss goals for the process OR

- 6-way meeting with parties, attorneys and coaches to sign the agreement and discuss goals for the process OR
- 7-way meeting with parties, attorneys, coaches and financial neutral to sign the agreement and discuss goals for the process OR
- 4-way meeting with parties and lawyers to sign the agreement and discuss goals for the process

The following information needs to be covered in the initial meetings. This information often will require more than one meeting to cover and complete.

- Review Collaborative Participation Agreement:
    - Professionals summarize each section provided that each attorney has fully gone over the entire agreement individually with their respective party. A summary of the participation agreement provisions is attached at Appendix R.
- Discuss the parties' questions about the Collaborative Participation Agreement or the Collaborative Process
- Sign the Collaborative Participation Agreement
- Discuss the overall goals for process, family and individual
- Confirm that all team members are in place
- Explain the successive stages of the Collaborative Process (See Flowchart of Stages of Collaborative Process at Appendix A)
- Explain the structure of the two hour meetings, debriefings, check-in phone calls to the party before and after each meeting, flip chart, minutes
- Explain the parallel or successive processes of meeting with financial professional and with coaches and child specialist (see Appendix B)
- Describe first steps in process with financial neutral to gather information
- Describe first steps in process with coaches to discuss communication, attend to pressing issues regarding parenting, help de-escalate emotions, overall goal of parenting plan
- Describe first steps in meeting with child specialist to gather information on needs of child and give the child a voice in the process
- Discuss options for how the parties will pay for the Collaborative Process (if needed)
- Address pressing issues
- Schedule future meetings

c. <u>How to determine next steps after the initial team meeting(s)</u>

At this point in the process, the parties and the team need to determine whether the financial and parenting processes will be successive or parallel. This decision depends on the needs of the parties but should not be solely driven by the parties. The team should make this decision after consultation with the parties. Appendix B illustrates the processes and interplay between the processes and the team members.

Some parties want to resolve their issues and can manage dealing with both financial and parenting issues at the same time. For those parties, the process would be parallel. Other parties prefer to focus on one area (either parenting or financial) at a time. For those parties, the process would be successive. In addition, some parties may want to resolve issues in both areas at the

same time but are unable to manage both processes simultaneously. The team's role is to help the parties become aware of this and guide the parties through the process in a way that is manageable. In addition, it is possible that at different points in the process, parties are focusing on one area or another or working on both areas at once. The team and the parties can adapt the Process to the needs of the parties as they manage the financial and parenting issues.

One option that some cases have elected and used successfully is for the parties to gather the financial information by working with the financial neutral while, at the same time, working with the coaches to develop an improved level of communication and de-escalate the intensity of emotions from both parties. During this period, the child specialist can also be retained and gather information on the needs of the child. One advantage of this approach is, for parties who are highly emotional, working with the coaches prior to the 7-way financial meeting can make the financial meetings more productive and efficient.

VIII. PARENTING ISSUES: GATHERING INFORMATION, OPTION DEVELOPMENT, EVALUATION, AND RESOLUTION

This phase begins with a focus on gathering information. Once the questions to be answered are identified, information is gathered. The process then moves to generating options. Once all the options are generated, the process moves to evaluating the options and coming to mutual agreement.

a. <u>What is the role of the coaches during this phase of the process?</u>

- Individual meetings with party and coach
  - Understand the party's "story", the individual's and family's goals for now and in the future, their concerns for the process and the future, the party's "triggers"
  - Develop individual coping strategies for the joint meetings with parties

- Coaches and attorneys consult on 1) what legal information clients may need as they participate in parenting meetings, including the effect of changing or preserving the "status quo", and how to best provide this information and 2) how and when to implement attorney review of the parenting plan

- Coaches/parties' first 4-way meeting
  - Attorneys are generally not present
  - Work on mission statement and principles for co-parenting
    - Mission statement goes at the top of parenting plan
  - Discuss the children and their needs and interests (using the flip chart to list these)
  - Explain the role of the child specialist and the option to bring that person on the team early in the process
  - Work on communication skills ("I" statements, listen to the other party fully before responding, etc.)
  - Review the process—gather information, generate options, evaluate options, mutual resolution
  - Identify, frame, and address pressing issues

    - Review the Parenting Plan Checklist (see Appendix C) so parents can begin to think about decisions they will be making
    - Set the agenda and dates for future meetings
    - Create minutes and distribute to the parties and team within 48 hours

- Additional coaches/parties 4-way meetings (as needed)
    - Work on co-parent communication
    - Begin to develop the parenting plan (interim schedule, decision-making, etc.)
    - During this phase, the parties may develop schedules or other parenting plans that are seen as interim or the parties want to "try out" to see the implications of the decisions
    - Coaches need to make it clear to parties that these are temporary decisions and can be revisited as needed
    - The parties can make parenting decisions that will survive the Collaborative Process by signing an Agreement to be Relied Upon. The coaches and the attorneys need to be in consultation to be sure that the parties are fully informed, including on the law, prior to entering into such an Agreement to be Relied Upon and that the parties understand the extent to which the law makes these agreements binding. The attorneys should review any drafts of Agreements to be Relied Upon prior to signature.
    - As agreements are reached, discuss developing a shared narrative to explain the divorce, the schedule and any other needed aspects of the parenting plan to the children
    - Address pressing issues
    - Refrain from addressing long-term parenting plan issues until information from the child specialist has been received
    - Create minutes (including updated parenting plan) and distribute to the parties and team within 48 hours

- Additional individual meetings between party and coach (as needed)
    - Prepare for future meetings
    - Debrief previous meetings
    - Regulate emotions and reactions in meetings
    - Develop communication and coping strategies for the process and future co-parenting relationship

- Coaches/parties/child specialist 5-way meeting
    - The child specialist gives information to the parents and coaches about the children and provides feedback to the parents about their children for their consideration in the creation of the parenting plan and in their co-parenting relationship
    - Create minutes and distribute to the parties and team within 48 hours.

- 4-way meetings to focus on option development, evaluation and decision making
    - Immediately following the delivery of information/feedback by the child specialist, the coaches and parties have a 4-way meeting
    - The parties and the coaches consider individually and in the 4-way meeting information presented by child specialist
    - Use the Parenting Plan Checklist (Appendix C) as a guide to ensure that the parenting plan is comprehensive and all areas have been thoroughly discussed
    - Parties begin brainstorming and evaluating options to be able to make parenting decisions to be included in parenting plan
    - Create minutes (including updated parenting plan) and distribute to the parties and team within 48 hours
    - Additional coaching 4-way meetings as needed to finish the parenting plan

- The coaches prepare the first draft of the parenting plan (if not already given to the parties as the parenting plan was being created) and provide it to the parties for comments and/or changes
- The coaches circulate the draft parenting plan to the attorneys for review and comment before it is finalized for inclusion in the Collaborative settlement agreement
- Additional meetings as needed for the remainder of the Collaborative Process to address any outstanding parenting issues

b. <u>What is the role of the child specialist during this phase of the process?</u>

- The child specialist usually participates at the same time as the coaching process – as a parallel process
- The child specialist meets with the parents individually or jointly to describe his/her role, discuss the retainer agreement, and inform the parents of how to present the child specialist's involvement to the child
- The child specialist meets with each parent individually to discuss the parent's concerns, perspective, hopes, and goals regarding his/her child
    - Can provide questionnaires to parents to complete
- The child specialist can meet with the parents jointly to observe their dynamic (optional)
- The child specialist meets with the child at least two times
    - Home visits are optional
    - Consider meeting the child at each home or having each parent bring the child to the office
    - The child specialist determines the configuration of meetings—siblings together, child alone, child with parent, etc.
- Child specialist meetings with child
    - To assess the level of functioning and adjustment to separation and divorce
    - To help the child voice feelings, thoughts and concerns
    - To support the child through the divorce process
    - To talk about how the child's views will be conveyed to parents
    - The child specialist does not have a therapeutic role with the child or with either of the parents
    - Private but not confidential meeting

        - The child's views may be conveyed to the parents and the team
        - After speaking to the child, the child specialist should ask the child if he/she is concerned about sharing any of the information with his/her parents—if so, the child specialist needs to work with the child to develop a way to share the information with the parents that is comfortable for the child
- The child specialist may have collateral contact with others involved with the child, such as therapist, teacher, nanny (optional)
- The child specialist gathers information in a way that is age appropriate to the children and family
- The child specialist gathers all the above information and formulates impressions
- The child specialist shares information with the coaches in a 3-way communication to prepare for a 5-way meeting with coaches and parents
    - Determine what information should be shared
    - Strategize on how best to present feedback to parents
- 5-way meeting to share information with coaches and parents
    - Child specialist gives information to the parents and coaches about the children and provides feedback to the parents about their child for consideration in their creation of the parenting plan and their co-parenting relationship
    - The attorneys may occasionally attend this meeting, as determined by the team
    - Child Specialist can identify unmet needs and possible appropriate resources
- Minutes are drafted from the 5-way meeting and shared with the parents and team within 48 hours
- The child specialist does not provide a written report or formal recommendations

c. <u>What is the role of the attorneys during this phase of the process?</u>

- The attorneys are kept apprised by regular team communication.
- The attorneys, in consultation with the team, decide how and when legal information is provided to the parties and are responsible for providing it
- The attorneys also support the parties and the other team members as needed.
- They monitor the progress of the parallel or successive processes and the commitment and participation level of their respective clients.
- The attorneys exchange information with the other team members as to how best to facilitate the process and meet the needs of the parties.
- The attorneys review the draft parenting plans and Agreements to be Relied Upon before they are signed.
- The attorneys may, if the team so decides, attend the meeting of the parents and coaches with the child specialist.

IX. FINANCIAL ISSUES: GATHERING INFORMATION, OPTION DEVELOPMENT, EVALUATION, AND RESOLUTION

a. <u>How does the financial neutral gather the financial information?</u>

- Schedules a joint phone call with the parties to discuss:

    - the working relationship as a neutral, role as "gatherer of the documents", transparency, etc.
    - the financial goals that the parties have identified, concerns and basic overview of assets, liabilities, income, expenses, etc.
- Provides guidance as to what information to gather, forms, budgets, checklists
- Gathers all of the documentation to support the financial information listed in Appendix E
- Schedules a 3-way meeting with the parties to review the information
- Determines, with the attorneys and the parties, if the parties need or want verification of how assets have been spent and, if so, collects necessary financial information and shares it with the attorneys
- Develops draft reports
- Provides draft reports to the parties for review and additional homework
- Reports back to the team after each relevant communication with the parties to keep everyone informed of time lines and issues (via email or team calls)
- Obtains permission of both parties to have separate phone calls and/or meetings with one party in order to facilitate information gathering and to answer questions.
- Makes clear that all information and communications are available to both parties
- Schedules a meeting (phone or in person) with both parties to review all of the information gathered and the first draft report documenting this information
- Identifies issues and questions to consider and discusses any other reports that may be helpful
- Provides all reports to the team at least several business days (a week if possible) prior to the 7-way meeting for review and questions in order to be efficient and as prepared as possible at the 7-way meeting

b. <u>How does the financial neutral present the financial information?</u>

- Presents financial reports, including asset/liability statements and cash flow
- Assets should be listed by title (husband/wife/joint) and each account, etc. should have a value and the date of balance listed for clarity. The financial neutral should also include footnotes to identify the documentation or missing documentation, indicate estimates, and/or include comments by each party.
- Financial information should be presented in as neutral a way as possible. Any premarital/non marital/gifted assets should be listed by title but not identified as non-marital. The party's report of how the asset was acquired should be noted in footnotes and attributed to the party. These facts and treatment of these assets need to be discussed in the meetings.
- Budgets - one for each party and separate one for children, detailed and footnoted to highlight estimates, etc.
- Cash flow reports - current income, payroll deductions in detail, taxes projected, and tax assumptions stated
- Retirement projections when needed
- Pension amounts and projections when appropriate and estimates of present values
- Summaries when needed to explain business ownership, etc.

- Other financial reports as needed

c. <u>What is the role of the financial neutral in option development, option evaluation and resolution of the financial issues?</u>

- Format of Meeting:
  - The financial neutral is expected to conduct and guide the meeting
  - Identify a team member to prepare minutes and/or someone to write on the flip chart.
  - The financial neutral should review, summarize, highlight and explain carefully each report to the parties in the 5-way or 7-way meeting. The financial neutral needs to use judgment as to what is important to cover in any particular meeting, consult other team members in advance for guidance, be conscious of the time constraints and what stage the process is in as well as normal progression. Do not "read" the reports, but walk through highlighting the overall picture, note changes from prior meeting, etc.
  - The reports should be distributed several days in advance of the meeting so that everyone has a chance to look at them prior to the meeting. Stop after each segment to see if there are questions (*e.g.*, after covering the estimates of the home value, tax considerations, improvements, etc., stop to see if there are concerns about how this was developed).
  - Identify homework needed throughout.
  - All assumptions (*e.g.,* inflation, interest rates, appreciation rates, future income, tax filing status, and tax deductions) made by the financial neutral should be stated clearly on the reports and discussed in the meeting.
  - It is not uncommon for the parties to note corrections to the reports. If the financial neutral makes mistakes in the early stages of the report, do not panic. Tell the parties that the work is still valuable and continue with the reports concentrating on what can be accomplished in the meeting. Identify corrections to be made.
  - Identify the possible need for input from specialized professionals (*e.g.,* mortgage specialist, realtor, business appraiser, estate planner, insurance advisor, etc.)
  - List and identify issues raised by the parties and the team. Identify any additional questions to be answered.

- Option Development
  - Overview:
    - Identify a team member to prepare minutes and someone to write on the flip chart.
    - The team should be conscious of being open minded, creative, fair and diligent regarding this process.
    - The parties should choose each question for generation of options with the team facilitating and assisting when needed.
    - Options need to be generated for living arrangements, assets, liabilities, pensions, spousal support, payment of children's expenses, life insurance, etc.

        - Reiterate to the parties that there is no commitment to a particular option during option development. This should be considered a "creative brainstorming" exercise.
        - **Options should be developed without evaluation or comment by either party or the team.**
        - The team should refrain from offering suggestions or options until the parties have exhausted all of their own option generating**.**

    - Process
        - The team, especially the financial neutral should be sure that other options are included when it is obvious the parties were not aware an option was available, or when it is obvious they need assistance with development.
        - The professionals have an obligation to encourage the parties to generate as many options as possible (not just one or two) to evaluate where possible. It is not uncommon for the parties to generate limited options.
        - The parties should be assured that they are not "stuck" with an answer to an option and they can always add more options
        - Additional homework or information may be identified during this process in order to generate more options for consideration before proceeding further. (See Appendix A Flow Chart of Collaborative Process).
        - The team should decide whether it is possible to proceed with evaluation of the options.
        - It is not uncommon that the parties are anxious to move into evaluating the options. The team's role is to encourage the parties to stay with generating options until the team feels that this phase is complete.
        - The team should debrief after each meeting to discuss how the meeting went, issues, etc. (Discuss team dynamics, alignment issues, what was working and not working, identify trigger points with the parties, etc.)

- Evaluation of options
    - Overview:
        - The parties and the team should decide when to proceed with evaluation of options.
        - The parties and team members should be encouraged to be open- minded and resist simply negotiating proposals.
        - The parties should be assured that they can revisit a decision about a particular option later in the process after discussing all other assets, liabilities, support, etc.
    - Process
        - Identify a team member to prepare minutes and someone to write on the flip chart.
        - All options presented should be displayed on the walls for easy reference
        - Write on the flip chart at the top of each option being considered a column for "yes, no, maybe" and each party's name so that they can see the responses.

        - The parties should be asked the question, "Are you willing to consider this option?"
        - Each party should have an opportunity to say "yes, no or maybe" to an option without comment. As a result the options can be narrowed for evaluation.
        - The parties will then have an opportunity to express any concerns they have about each option remaining. Based on the party's concerns, the team should elicit specific concerns about the party's reservations and make suggestions. This process may generate alternatives or variations of the option. The team can also help provide information and answer questions about each option (*e.g.,* tax issues, future considerations, pros and cons).
        - The team should provide the parties with a summary of options agreed upon as well as a summary of remaining issues to discuss.
        - As the options become narrowed, all of the key questions have been answered, and option development and evaluation is complete, the parties will need to work through a resolution that they can "live with".
        - It is possible that the parties may want to develop "global" options that "package" various aspects of their financial issues. The team should discuss this with the parties and assess whether this is recommended. This is normally considered toward the end of the process or after evaluation of various individual options.

- Financial Resolutions
    - Return to evaluation of options as needed until all issues are resolved.
    - Once all issues are resolved, one of the attorneys will draft an agreement to be reviewed by the other attorney and the Financial Neutral, then by the parties. The Financial Neutral should review the draft agreement to ensure all financial and tax issues are addressed.
    - The team should debrief a few weeks after the process is complete to reflect on the case. The team should discuss what worked, impressions of the case, team dynamics and what the team could have done better.
    - Decide on who will be responsible for reporting the completed case to the local practice group (if applicable).

d. <u>What is the role of the attorney in option development, option evaluation and resolution of the financial issues?</u>

- Reviews the questions to be answered to be sure that they lead to resolution of all financial and other issues
- Reviews the party's financial statements to be sure the income is correctly calculated and all expenses are included
- Reviews cash flow calculations for both parties for accuracy
- Reviews retirement calculations for both parties for accuracy
- Reviews the asset and liability statements for accuracy
- Reviews the underlying documentation collected by the Financial Neutral as needed

- Helps the party generate and evaluate financial options
- Ensures that the party has considered all information necessary, including legal information, to determine if the options meet his/her needs
- Assists the party to reach a resolution that meets the party's needs, the needs of the other party, and the children's needs.
- Along with the financial neutral, assists the client in preparing global options on multiple issues, if applicable
- Drafts the settlement agreement or reviews the settlement agreement if it is drafted by the other attorney

e. What is the role of the divorce coaches in option development, option evaluation and resolution of the financial issues?

- Help the parties manage anxiety and other feelings that may arise during these stages
- Help the parties voice any concerns or questions
- Provide emotional support both in meetings with individual parties and during team meetings
- Help attorneys in their awareness of emotional triggers that may serve as roadblocks to financial resolutions
- Provide appropriate interventions during meetings to deal with emotional roadblocks
- Provide communication strategies that can aid in the forward movement of the process
- Help maintain the focus in each stage so that a stage is not left prematurely before completion

X. COMMUNICATION AMONG THE TEAM MEMBERS

a. The party's authorization of team communications

At the time of initial engagements, all team members should receive written authorization from the party to share the party's information with team members, including potential team members, and the other party. This authorization is included both in the professional's engagement agreement and in the Collaborative Participation Agreements at Appendices G-K. Parties need to understand that team members will talk about any issues related to the process or the party/family issues as the team deems appropriate and the content of the communications may or may not be communicated to the parties. Many of the team communications, including impressions of the parties, dynamics between the family members, emotional issues of each person in the family, individual perspectives, understandings of why a party behaves in a certain way and other sensitive information should NOT be shared with the parties because to do so may impede, rather than promote, the process. The team can decide to provide the substance of their communications to the parties if the team concludes that the process and the parties could benefit from being informed.

b. The type and frequency of team communication

Regular communication is recommended to keep everyone on the team informed as to progress and to set time lines for the process. The overall purpose of all communications should

be to help the parties move through the process, with the support and assistance from all of the team members, to achieve the best result.

The team should meet or have a conference call at the beginning of the process to establish methods of communication (professional team meetings/emails/team phone calls). Contact information should be shared. One way to assure communication is to establish a standing regularly scheduled call at a certain time each week or biweekly. The team can decide each week whether the regularly scheduled call is needed.

The team may communicate by e-mail. The team should keep in mind that team emails will become part of an attorney's file. Under their ethical rules attorneys have an obligation, upon the client's request, to turn over the client's file to him or her. No jurisdiction provides an exception for personal notes or mental impressions for attorneys, and the District of Columbia and Virginia specifically require the release of such information to the client. MD RPC 1.16(d) , D.C. RPC; 1.16(d); VA RPC 1.16(d), (e). Upon the client's request, the attorney is authorized to provide the client's file to a successor attorney in either a continuation of the Collaborative case or in litigation, if the Collaborative Case fails. *Id.* The team should mark any emails not intended for the clients as "off line communication" (TEAM ONLY). All emails should be written in a professional way and the content appropriate for any professional or party to read, even if "off line". The subject line should also include a brief subject of the email's contents, and the content should be as brief as possible to save time.

Possible email topics are agendas, minutes of meetings, scheduling issues, pressing issues and reporting to team members regarding interactions /meetings/calls with parties. It is not necessary to email all team members every communication if it clearly does not involve that team member.

Team phone calls generally include all team members. Phone calls are generally scheduled for 30-60 minutes and best handled with an agenda to direct the conversation. The purpose is to discuss any issues that need to be discussed, bring other team members "up to date" with status, and to prepare for full team meetings with the parties as to organization, proposed agendas, etc. Ideally, one of the team members would prepare a brief agenda, and send a reminder of the call. Many teams use "freeconference.com" for calls.

c. <u>How to manage the schedules of the team</u>

Scheduling is one of the BIG CHALLENGES with the process. Many teams have five to six professionals and it's imperative that scheduling be done as early in the process as possible. It is recommended that meetings/calls among the team members (as well as with the parties when appropriate) be set two to three months ahead. If meetings/calls are not needed when a particular scheduled date arrives, they can be canceled as agreed by the team. Also, try to avoid "big gaps" between meetings, which can stall momentum.

If a team member must miss a scheduled team call, it is up to the team member to fill in other team members in advance and also check in with the team after the missed call. Also, someone on the team call may volunteer to "report back" to the missing team member so that he/she can be current. Team members need to make every effort to be on the calls on time.

d. Transparency among team members

Once the party gives written authorization to the individual team members to share the party's communications, all communications among the team members should be open, honest and transparent. There are NO SECRETS, unless a party withdraws his prior authorization of disclosure and asserts his or her privilege and right to confidentiality (in which case the professional must make a determination as to whether to withdraw). The party needs to understand that the team communicates based on full disclosure. Any communication issues should be discussed openly among the team members and the team as a whole should decide how best to communicate and deal with difficult issues.

e. Confidentiality outside of the team

According to the clients' instruction in the participation agreement, the team will hold all communications confidential from those outside the Collaborative Process and protect a party's privacy. The Protocols participation agreements, at Appendix G, provide that the clients instruct the team to keep their communications confidential from those outside the Collaborative Process. The UCLA provides that the clients may make any provision they wish as to confidentiality provided that it is in writing. D.C. Code § 16-4016; MD CJP § 3-2008.

Professionals should be aware, however, that, if the process terminates, attorneys in all three jurisdictions are obligated to provide the full file to the client and, if requested by the client, to a successor attorney. MD RPC 1.16(d); D.C. RPC 1.16(d); VA RPC 1.16(d),(e). Although there are prohibitions against introducing collaborative communications into evidence (in the UCLA and the participation agreement), it should be assumed that the entire contents of the attorney's file, including team emails, minutes, flip chart pages, notes, etc. will be available to the client and any successor attorney.

f. Billing for team communication

Team members should agree before completing any meeting or call as to the time to be charged to the party. It is important that the team members be consistent to prevent party confusion or questions. It is often appropriate to discount time when "learning the process," "getting to know the team members," or for overall inefficiency or personal "chit chat." The team communications should be billed and recognized as an important part of the process and productive to serving the parties. Even scheduling is part of the Collaborative Process.

XI. STEPS TO TAKE ONCE THE FINANCIAL AND PARENTING ISSUES ARE RESOLVED

a. How does the parenting plan get integrated into the agreement?

Attorneys review the parenting plan and incorporate it into the agreement with any revisions as discussed with the team. Incorporation can be either physically attaching the plan to

the settlement agreement, which references it as incorporated, or reviewing and revising the terms of the plan into the settlement agreement. The Collaborative settlement agreement may be incorporated into a court order.

b. How does the team manage the signing of the documents?

Each team determines how to acknowledge the work and efforts made to get to resolution. Some teams elect to all meet, sign the documents, toast the family and celebrate the end of the process, while being sensitive that celebrations may be painful or inappropriate for some parties. Other teams elect to sign only with the parties and lawyers and have a more low-key acknowledgement. Some coaches, at the end of the meeting at which the parenting plan is completed, may elect to toast the family and provide positive feedback to the parties. This should be discussed as a team with input from the parties. Regardless of how the team decides to handle the signing of the documents, **all team members should be informed when the documents have in fact been signed**. In addition, **all team members should be informed when the divorce has been legally entered.**

c. Does the team debrief after the documents have been signed?

Yes. This is important for each case. The team should meet as a team to discuss the case, reflect on what worked well, discuss what could have been done to improve the service, examine any lessons learned to be applied to future cases, and exchange any other information that would help the team members raise their standards for practice of Collaborative divorce. We recommend that there should be no charge for this meeting. The team may consider checking with the parties or providing them a simple survey form to determine their satisfaction with the Collaborative Process. See Appendix N.

d. What is the role of the team and its members once the legal divorce is final?

The Collaborative divorce team remains available to the parties "in perpetuity". The team can be called on at any point in the future should the parties feel the team could be helpful in resolving their issues related to the divorce. No team member can serve in another role with the family (*e.g.,* a coach or child specialist cannot become a therapist for any member of the family, the attorney cannot represent the party in a contested court case that is related to the Collaborative matter, and the financial neutral cannot serve in a different role, such as financial advisor, for either party).

e. What does each professional do with the records at the conclusion of a case?

Attorneys have an obligation, upon the client's request, whether during the case, at the successful conclusion of the case, or in assisting the client to transition to litigation, to turn over the client's file to him or her. No jurisdiction provides an exception for this obligation for personal notes or mental impressions, and the District of Columbia and Virginia specifically require the release of such information to the client. MD RPC 1.16(d) , D.C. RPC; 1.16(d); VA RPC 1.16(d), (e). Note that the attorney's file would almost surely contain team emails sent by other team members to the team. The party can direct that the attorney provide the party's file to a successor attorney. *Id.* The financial neutral, upon request of a party, returns the party's

original documents. If a party requests copies of reports and work done by the financial neutral, the financial must provide that work to the party or, as directed by the party, to the party's representative, provided that outstanding fees have been paid. Social workers, according to their ethical rules, and mental health professionals in the District of Columbia, by statute, have an ethical obligation to provide the client's file to the client at his/her request. In Maryland and Virginia, there are no ethical rules or statutes that require psychologists to provide the file to the client. For mental health professionals with an obligation to provide the file to the client, there is no exception for personal notes. For a full discussion of the professional's obligation with respect to the client's file, see Section 5 of Ethics Guidelines.

f. What provisions need to be in a Collaborative Separation and Property Settlement Agreement?

Since a successfully resolved Collaborative case will come before the Court for an uncontested divorce hearing, titling the Agreement "Collaborative Separation and Property Settlement Agreement" or "Collaborative Settlement Agreement" will educate the judiciary that the Collaborative Process was used to achieve the settlement.

The attorneys should make sure that specific provisions are included in the Collaborative Settlement Agreement. Examples of these provisions are set forth at Appendix O: a provision that both parties will work to correct any mistakes made in the Agreement; an integration clause that makes clear that the obligations of the Collaborative participation agreement survive the execution of the Collaborative Settlement Agreement; and a provision that requires the parties to return to an alternative dispute resolution process prior to litigating.

g. What information do the attorneys need to provide to the team at conclusion?

At the end of the case, the attorneys should provide a copy of the final signed agreement to all team members who do not have it and should advise the team when the uncontested divorce is filed and when it is granted. If there is any modification to the signed agreement with respect to the parenting plan provisions, these modifications should be discussed with the coaches.

XII. ISSUES REGARDING TERMINATION AND WITHDRAWAL FROM THE COLLABORATIVE PROCESS

a. What collaborative communications are admissible in court if the Collaborative Process ends?

Signed agreements, both final agreements and Agreements to be Relied Upon (signed by the parties), are admissible in a court action. If the Collaborative Process breaks down and the parties engage in contested litigation, the Collaborative participation agreement provides that the parties will not introduce in court information disclosed or statements made during the Collaborative Process (with certain exceptions for documents otherwise obtainable from a source outside the Collaborative Process, claims of misconduct against a Collaborative professional, and

threats to inflict harm or commit a crime, and other exceptions listed in the participation agreements at Appendix G).

The Uniform Collaborative Law Act, as one of its major purposes, creates a statutory privilege for collaborative communications, defined as "a statement, whether oral or in a record . . ., that is made to conduct, participate in, continue, or reconvene a collaborative law process" and prohibits their introduction into evidence or production in discovery absent agreement by both parties and, if the statement was from a team member other than the attorney, the agreement of the team member. The Uniform Collaborative Law Act, which at this time has been enacted by the District of Columbia and Maryland, but not Virginia, provides this statutory privilege with respect to introduction of evidence in court and in discovery. D.C. CODE. §16-4017 ; MD CJP § 3-2009. It does not provide for confidentiality in situations outside of court, but encourages parties to provide for additional confidentiality in the participation agreement and provides that such contractual provisions must be upheld. D.C. CODE. §16-4016; MD CJP § 3-2008.

The Uniform Collaborative Law Act lists the following exceptions to the statutory privilege for collaborative communications: a threat to inflict bodily injury or commit a violent crime; a statement to plan or commit a crime or conceal an ongoing crime; a statement to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult; a statement offered in a claim of misconduct against a Collaborative professional; a signed agreement made in the Collaborative Process; a publicly available document; report of domestic abuse (in D.C.); waiver of the privilege by the parties and, in the case of a communication by a non-attorney professional, by the professional; in a criminal proceeding or an action to enforce a contract arising out of the Collaborative Process, if the court concludes after an *in camera* hearing that the need for the evidence substantially outweighs the need for confidentiality and the evidence is not otherwise available; and communications necessary to respond to communications made by a person who discloses a Collaborative communication and prejudices another person in a court proceeding. The Collaborative Participation Agreements at Appendix G adoptthese same exceptions to confidentiality.

b. Who can terminate a Collaborative Process?

Only the parties can terminate a Collaborative case under the UCLA, and either may do so with or without cause, either by giving written notice or by proceeding in a contested court action on a matter related to the Collaborative matter. D.C. CODE §16-4005(f); MD CJP § 3-2003. Each professional is bound by his or her rules of professional conduct as to when he or she may withdraw from representing a client.

MD RPC 1.16(a), DC RPC 1.16(a), and VA 1.16(a) provide for mandatory withdrawal by the attorney if the representation will result in violation of the Rules of Professional Conduct, for example, if the client knowingly misrepresents material information, if the attorney's mental or physical condition is materially impaired, or if the client discharges the attorney. MD RPC 1.16(b), DC RPC 1.16(b), and VA RPC 1.16(b) provide guidance to attorneys as to when they *may* withdraw from a client's representation. In summary, withdrawal is permitted if "withdrawal can be accomplished without material adverse effect on the interests of the client" or based on other good cause for withdrawal, including using the attorney's services for a course of action the attorney reasonably believes is criminal or fraudulent, or to perpetuate a crime or

fraud, or for an action with which the attorney has fundamental disagreement or finds repugnant, or which fails to fulfull an obligation to the attorney. Note that the Collaborative Participation Agreement incorporates these concepts by specifically *requiring* an attorney to withdraw in the event he or she learns that his or her client has withheld or misrepresented information that should properly be shared as part of the Collaborative Process, and **continues to withhold or misrepresent such information, or otherwise acts so as to undermine or take unfair advantage of the Collaborative Process, or in the event that either party initiates contested litigation.** This requirement is consistent with and permitted by Rule 1.16. Note that the UCLA does not require withdrawal from a Collaborative case by the attorney. This obligation is imposed by the Collaborative participation agreement

If a basis for withdrawal exists, the attorney must nevertheless comply with his or her ethical obligations under Rule 1.16 in the course of withdrawal, including taking steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. MD RPC 1.16(d); D.C. RPC 1.16(d); VA RPC 1.16(d).

The Protocols Committee concludes that, given the ethical requirement that the attorney take steps to protect the client's interest during withdrawal, it is highly unlikely that an attorney could ethically terminate a Collaborative case over the client's objection. As a result the Collaborative participation agreement, at Appendix G, is consistent with the UCLA in stating that only the parties can terminate a Collaborative case. Consistent with the UCLA, if a Collaborative attorney withdraws, the unrepresented party must timely find a successor attorney in order to continue the Collaborative Process. D .C. CODE §16-4005(g); MD CJP § 3-2003(g).

The attorney, if he or she withdraws, must also comply with his or her obligation to keep the client's information confidential unless the client has given informed consent to disclosure. MD RPC 1.6; DC RPC 1.6.; VA RPC 1.6. In the context of withdrawing from representation, even if the client has previously given informed consent to the sharing of his or her information with the team, it must be presumed that such consent does not extend to the reasons for withdrawal. IACP Ethical Standard 9.3 makes clear that "[n]othing in these ethical standards shall be deemed to require a Collaborative practitioner to disclose the underlying reasons for either the professional's withdrawal or the termination of the Collaborative case." See Section 1 of Ethics Guidelines, for further discussion of the issue of an attorney's obligations as to withdrawal from representation.

c. <u>What is the role of the attorney in helping his or her client transition to another process?</u>

The attorney's obligation is to assist the party in transitioning to a new attorney by making a referral and, if the party requests, providing the party's file. As discussed above, the attorney has an obligation to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice and time for the client to hire new counsel, and providing the file and any advance payment. MD RPC 1.16(d), D.C. RPC 1.16(d); VA RPC 1.16(d).,

d. What is the role of the financial neutral in helping his/her clients transition to another process?

If the financial neutral withdraws from the process while the process is ongoing, the financial neutral should inform all team members of the decision and give both of the parties written notice of such decision prior to withdrawal. In this event or if the process has successfully concluded without litigation, either party shall have the right to their original financial documents and, upon payment of outstanding fees, the financial reports. At the party's request, the financial neutral will turn over these reports to the party's future financial neutral or other representative within a reasonable time frame, and the financial neutral should acquaint any successor Collaborative financial neutral with the financial facts of the case.

If the parties are unable to reach a settlement during the Collaborative Process and the process is terminated, the financial neutral will not be able to represent or assist either one of the parties, or their respective attorneys. Either party will have the right to their original financial documents and, upon payment of outstanding fees, the financial reports and may direct the financial neutral to transfer such documents to a third party representative. The financial neutral cannot be called to be a witness in court in any areas involving litigation of the divorce. The financial neutral's work, including all content (written and oral), will be inadmissible as evidence in any court proceeding as set forth in the engagement agreement and Collaborative participation agreement.

e. What is the role of the mental health professional in helping his/her party transition to another process?

- If the Collaborative Process is terminated, the role of the mental health professional as coach or child specialist is terminated. The mental health professional can no longer advise or support the party in the divorce process.
- The mental health professional should assist with referrals for mental health needs as is appropriate.
- If fees are owed to the mental health professional, the mental health professional can request payment prior to provision of additional services. If the party needs further mental health treatment, the mental health professional must make a referral even if payment is in arrears.
- Mental health professionals should keep the records on the case indefinitely.
- See Section XI.e. for a discussion of the mental health professional's obligation to provide the file to the client.

XIII. HOW TO MANAGE CHALLENGES WITH PARTIES

a. How to manage resistance to process

- The coach, lawyer or both meet with the party to determine the cause of resistance and resolve the causes if possible. Refer the party to an appropriate outside resource if needed.
- Discuss with the team causes of resistance and develop appropriate team strategies to deal with resistance

b. How to manage "confidential" information shared with one coach or attorney

- Inform the parties at the beginning of the process that any information important to the Collaborative Process will be shared with team members.
- The coach will work with the party concerning the "confidential" information and its importance to the Process, and to develop strategies to reveal information to the team and the other party and for possible discussion among team members and/or coaches and parties in a 4-way meeting
- Refusal to reveal "confidential" information that is deemed by the coach and/or team to be information important to the Collaborative Process may result in the withdrawal of team member(s) (without revealing the content of "confidential" information). This disclosure requirement applies to any information, including documents, which either party might need to make an informed decision about any issue in dispute. See Section 3.A of Appendix G (Collaborative Participation Agreement).

c. How to manage mental health issues or substance abuse issues

- The coach and/or attorney discuss with the party the nature of the issues.
- The team discusses the nature of the issues.
- In a 4-way meeting with coaches or in the full team meeting, develop options for dealing with the issues.
- Untreated mental illness and/or active substance abuse are reasons for suspension of the Collaborative Process until treatment can be undertaken and substance abuse stopped.

d. How to manage anger expressed outside sessions that can undermine the Collaborative Process

- The coach works with the individual party to deal with anger issues and develop communication and anger management skills of the party.
- The coach possibly refers the party for further services outside process.
- The coaches meet with the parties to develop communication protocols and establish boundaries for the parties to decrease the possibility of angry interactions.

e. How to manage attempts at splitting professionals by parties

- Professional team members communicate frequently with each other about interactions with the parties and develop united team strategies to deal with the parties.
- Coaches work with individual parties to deal with underlying issues.
- May need to refer to appropriate mental health professional outside the Collaborative Process.
- May need to have a team meeting with the parties to deal with the issues and to provide a "containing" structure for the parties.

f. How to manage the parties' resources without compromising the process

- Establish at the beginning of the process and continue to discuss during meetings how the process will be paid for and what choices the parties want to make

g. What to do if the parties want to rush through the process and not explore issues sufficiently?

- The coach and/or attorney can explore with the party (underlying) beliefs, goals, or concerns (issues) which might make dealing with issues difficult.
- Possible referral to outside resources for help with underlying issues interfering with the process.
- Coaches in a 4-way meeting explore with the parties underlying issues undermining the Collaborative Process and ramifications. Develop options to deal with issues.
- After exploring with the parties possible ramifications, the team may need to accept the parties' limited ability to deal with the issues,

h. How to manage the party's needs that go beyond team member expertise

- Invite adjunct professionals to attend some meetings to provide information/help to the team and/or parties, *e.g.*,
    - Mediator
    - Estate planner
    - Realtor
    - Refer to appropriate professional, *e.g.,*
        - Appraisers
        - Insurance experts
        - Mortgage Broker

i. How to handle payment if there is resistance by a party to pay a team member

The team should discuss the issue with the particular team member and assess whether the fees were appropriate or excessive. The team can then determine how to provide this information to the party. If the team determines that the fees were excessive, the team may elect to advise the party not to pay the fees and may request a reimbursement from the team member to the party. If the team determines that the fees were appropriate, the team may elect to advise the party that the fees must be paid before any future meetings can occur.

j. How to manage when one party does not "speak up" in meetings

That party's attorney and coach should work with the party outside the meetings to help the client speak up. The entire team should be mindful and try to draw the client into discussion. The team can model communication. For some parties, at times it may be appropriate for the attorney and/or coach to speak for a client, but the better practice is to help the party speak for himself or herself if possible.

XIV. HOW TO MANAGE CHALLENGES WITH OTHER TEAM MEMBERS

a. What to do if there are concerns about a specific team member's level of competence or Collaborative perspective

A party's request to replace his/her coach or attorney will be honored, but there will be times that the team concludes that this decision is so harmful to the process that the party should be dissuaded and, if the party persists, the team may recommend that the Collaborative Process terminate. Only a party has the right to terminate a case, both under the UCLA and under the Collaborative Participation Agreement attached at Appendix G.[2] Also, a party has the right to continue to retain his coach and attorney over the objection of the other party, but any disagreement such as this should be dealt with openly with the parties and the team.

Should any team member or party feel concerned about another team member's level of competence or failure to act collaboratively, this issue needs to be discussed openly and immediately. This issue can be discussed individually between the two team members or discussed among the entire team. The team should focus on the level of service being provided to the party and attempt to problem-solve the issue. The team should practice non-defensive communication with one another in the hopes that the issue can be explored thoroughly and the parties will receive the best possible service.

Should the team or any team members feel it would be beneficial, the team or team member(s) can also ask a well-regarded, experienced collaboratively trained professional to assist the team in discussing and resolving the issue. The techniques that have been used successfully include mentoring an individual team member and/or bringing in a team consultant on a one-time or regular basis.

b. How to decide when to replace a neutral professional

With respect to the financial neutral or child specialist, the team cannot replace them if both parties want to continue to retain them. However, if one party does not want to continue with either the financial neutral or the child specialist, who are retained by both parties, the team should make the efforts described above to deal with any problems which can be corrected. If this is unsuccessful, the team must consider whether the case can proceed if one party lacks confidence in the financial neutral or child specialist. If the team concludes that they should

[2] The Collaborative participation agreement recognizes that a party has the right to replace his or her attorney. The party's right to choose and replace his or her coach (in the two coach model) is implied in the Agreement.

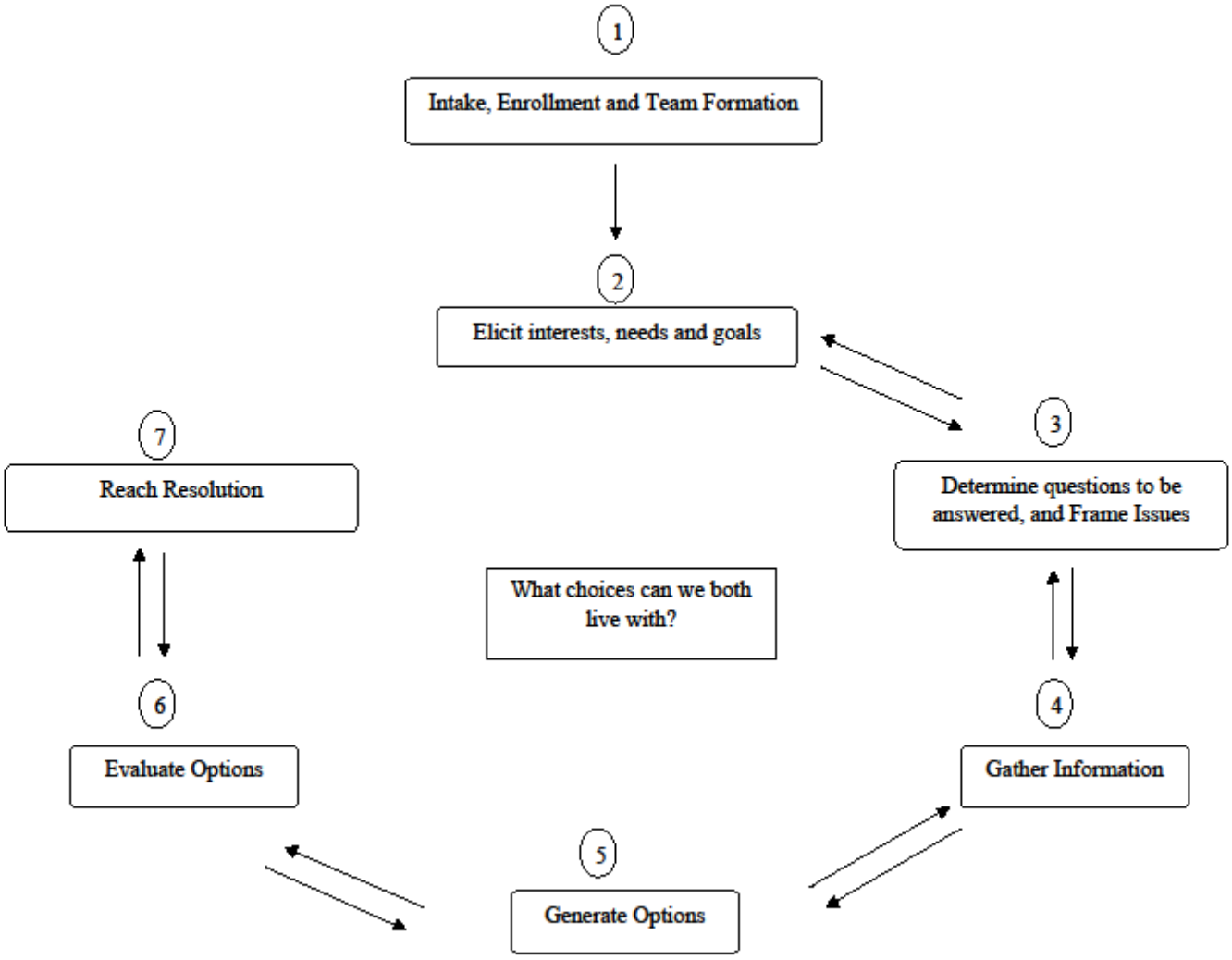
respect the decision of the party who wants to terminate a neutral professional, they should work with both parties to see that both parties' needs are respected in the transition. In this case, the team may in extreme cases decide that the case cannot go forward.

This is a hard decision to make and one that the team should discuss and thoroughly explore. Factors to consider are the level of service the professional has provided and/or will provide to the parties, the level of connection felt by the parties to the team member, the level of satisfaction and comfort felt by the parties to the team member, the stage of the case, the level of involvement of the team member, and the level of disruption which may be experienced by the parties and the team should the member be replaced.

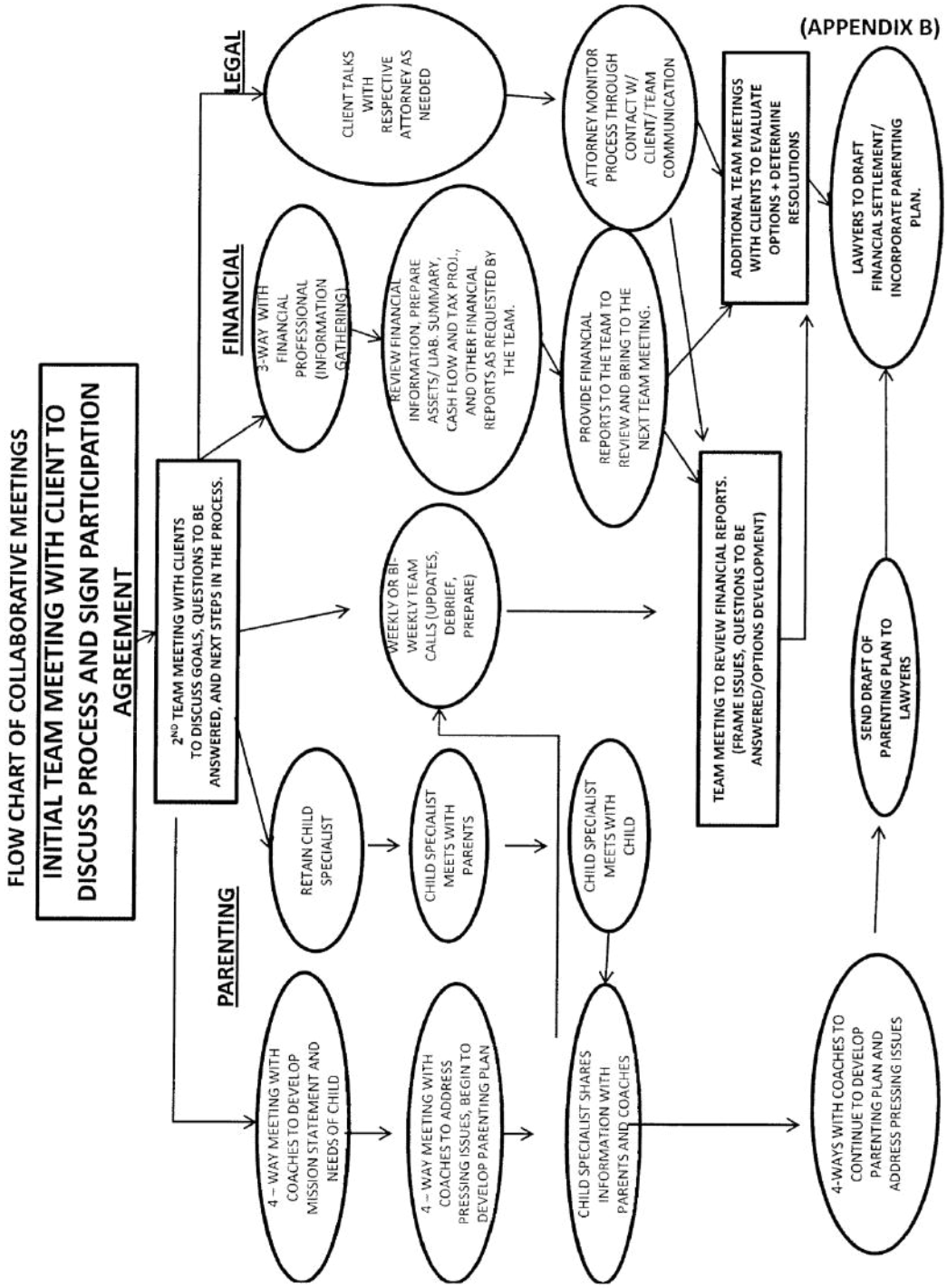
c. How to transition to a new professional

If the team decides, consistent with a. and b. above, that a team member must be replaced, the team should discuss a referral to replace the team member. The contact information for the potential new team member should be given to the party and adequate time should be given for the party to retain the new team member. Once the new team member has been retained, the team should have a team meeting or phone call to advise the new team member of any and all relevant information.

APPENDIX A: FLOW CHART OF COLLABORATIVE PROCESS



APPENDIX B: FLOW CHART OF COLLABORATIVE MEETINGS



APPENDIX C: PARENTING AGREEMENT CHECKLIST

A parenting plan is a written document that is usually made part of the parties' settlement agreement and the court order of divorce. It defines and clarifies expectations and responsibilities of co-parents and provides a roadmap for a strong co-parenting relationship. In addition, a parenting plan helps parents to avoid conflict and confusion and provides children with clarity.

- Shared narrative—what to tell the kids, when, how, follow-up conversations
- Decision-making
    - Major decision-making (education, religion, health—mental and physical)
    - Emergency medical decision-making
    - Decision making on extracurricular activities
    - Child care decision-making (on-going/regular and babysitting)
    - Day to day decision-making
- Schedule:
    - School year schedule
        - Drop off/pick up time and location
        - When do responsibilities transition
        - Who will transport
    - Responsibilities of the "off parent"
    - Cancelled visits rescheduled/Make-up time
    - Unplanned days off
        - Sick days
        - Snow days OR OTHER WEATHER RELATED OCCURRENCES (late opening, early dismissal)
    - Planned days off
        - ½ days and professional days at school
        - School days off that are not federal holidays
    - Right of first refusal
        - Does one parent have the first option to be with the children if the other parent cannot (prior to getting a sitter)?
        - How much time away triggers the right of first refusal
        - Does awake or asleep time matter?
    - Summer schedule
        - Same or different from regular schedule
        - Vacations
        - Camp
- Holidays (supersede regular access schedule)
    - Consider when these holidays start and end
    - Three weekends in a row
    - 3-day weekends
        - MLK day
        - President's day
        - Memorial Day
        - Labor Day
    - One-day holidays
        - Mother's Day
        - Father's Day

        - July 4th
        - Columbus Day
        - Halloween
        - Veteran's Day
    - Spring break
    - Thanksgiving
    - Winter break
        - Christmas (Eve and Day)
        - New Years (Eve and Day)
    - Any other religious holidays (e.g. Easter, Passover, Hanukah, etc.)
    - Birthdays (Children's and Parent's)
        - Will the "off parent" see the child on the child's birthday
        - How to manage peer/family celebrations
            - Who will plan
            - Will both parents attend
        - Will the birthday parent see the children on the parent's birthday
- Changes to the access schedule
    - How would requests for changes be made—verbal, writing?
    - How much notice will be given
    - Response time needed
    - Confirm changes in writing
- Parent attendance at open child events
- Communication between parents and children
- Communication protocol between parents
    - Frequency
    - Method
    - What topics do the parents communicate about
    - What to do if the conversation gets uncomfortable for one or both parents
- Plan for toys, belongings and sports equipment to move between homes
- Routine medical and dental appointments
    - Who will be responsible for scheduling and transporting to routine medical and dental appointments?
    - Notify other parent? How far in advance?
    - DO BOTH PARENTS ATTEND?
- Sick appointments
    - Who will be responsible for deciding if a sick appointment is needed?
- Exchange of information
    - Medical information (appointments, information from medical professionals, if child is sick, treatment recommendations)
    - School information (meetings scheduled, event notices, volunteer opportunities, daily and weekly school information, report cards, attendance at parent-teacher conferences)
    - Travel information (informing the other parent, exchange of itinerary information, domestic, international, how to reach children when traveling)
        - When traveling with a child
        - When traveling without a child
        - International travel and passport
- What parenting practices will be consistent between houses and what will be different?
- Parent dating and how to introduce significant others to the children

    - Steps and factors to consider in introduction
    - Letting other parent know prior to introduction
    - Overnight guests
    - Bringing a significant other to a child event
- Relocation
- What to do if reach impasse on parenting issue?
- Reviews of the parenting plan

APPENDIX D: EXPECTATIONS OF PARTIES AND PROFESSIONALS FOR COMMUNICATION

1. Be respectful of everyone in the meeting.
2. Attack the problems and concerns at hand. Do not blame each other. No insults.
3. Speak for yourself. Make "I" statements.
4. Listen carefully and try to understand what the other person is saying, without judging the person or the message.
5. Use first names for each other and both Attorneys. Avoid "he" or "she."
6. Express yourself in terms of what is important to you, what your concerns are and what you want to talk about. Avoid positions, black-and-white thinking, and rigidity.
7. Be ready to work for what you believe is the most constructive and acceptable agreement for both of you and your family.
8. Do not interrupt when another person is speaking. You will have a full and equal opportunity to speak about everything that you want to talk about.
9. If you have a complaint, raise it as your concern and follow it up with a constructive suggestion about how it might be resolved.
10. If something is not working for you, please tell your Attorney so that your concern can be addressed. Talk with your Attorney about anything you do not understand. Your Attorney can clarify matters for you.
11. Be willing to commit time to meet regularly.
12. Be prepared for each meeting.
13. Be patient with each other and your Attorneys. Delays in Collaboration can happen, even with everyone acting in good faith.

Prepared by Palliser Conflict Resolution
With Thanks to Stuart Webb
and adapted for use in Washington, D.C.
Metropolitan Area

APPENDIX E: FINANCIAL DOCUMENT REQUEST CHECKLIST

DIVORCE FINANCIAL ENGAGEMENT

DOCUMENT REQUEST CHECKLIST

*** PLEASE PUT A "√" OR "NA" BY EACH CATEGORY, AS APPROPRIATE**

I. CASH FLOW

_____ PRIOR YEAR W-2'S

_____ CURRENT PAY STUBS (OR ESTIMATE OF CURRENT INCOME IF NOT SALARIED)

_____ CURRENT BUDGET (FORMS ENCLOSED - WE ALSO CAN SEND IN EXCEL)

_____ ACCRUED VACATION OR ACCRUED SICK LEAVE, OTHER ACCRUED TIME AT WORK

_____ LIST OF BUSINESS EXPENSES PAID BY EMPLOYER

II. ASSETS & LIABILITIES

1. MARITAL HOME & OTHER REAL ESTATE HOLDINGS

_____ CURRENT MONTHLY MORTGAGE STATEMENTS/ HOME EQUITY LINE OF CREDIT STATEMENT

_____ CURRENT STATEMENT FOR ANY OTHER DEBT ATTACHED TO THE HOUSE

_____ PURCHASE PRICE AND DATE

_____ ESTIMATE OF IMPROVEMENTS MADE IN HOME WHILE OWNED

_____ CURRENT FAIR MARKET VALUE (ESTIMATE OR TAX ASSESMENT)

_____ HOW TITLED

_____ CAPITAL GAIN FROM PRIOR HOME ROLLED INTO CURRENT HOME, IF KNOWN

2. INVESTMENT AND BANK ACCOUNTS (NON-RETIREMENT)

_____ CURRENT BANK ACCOUNT AND MONEY MARKET ACCOUNT STATEMENTS
(LIST BELOW)

_____ CURRENT BROKERAGE ACCOUNT STATEMENTS, INCLUDING COST BASIS (IF KNOWN)
(LIST BELOW)

_____ EMPLOYEE STOCK PURCHASE/ OPTIONS PLANS AND ESOP STATEMENTS

_____ HEALTH SAVINGS ACCOUNT STATEMENT

_____ ANNUITIES

_____ OTHER INVESTMENTS

3. BUSINESS INTERESTS

_____ PRIOR YEAR K-1 FROM ANY BUSINESS INTERESTES

_____ LAST TWO YEARS OF TAX RETURNS FOR BUSINESS

4. RETIREMENT ACCOUNTS / BENEFITS

_____ CURRENT EMPLOYEE BENEFIT/ RETIREMENT INFORMATION (BOOKLETS)
ANYTHING REGARDING PENSIONS, COMMISSIONS, BONUS,

_____ VETERANS OR MILITARY BENEFITS STATEMENTS

_____ CURRENT COPIES OF IRA, ROTH IRA, KEOGH, SEP, 401K, 403B AND ANY
OTHER RETIREMENT ASSET STATEMENTS (LIST ACCTS BELOW)

_____ 457 AND NON-QUALIFIED DEFERRED COMP STATEMENTS
AND RELEVANT INFORMATION

_____ INFORMATION ABOUT EMPLOYER CONTRIBUTIONS / VESTING SCHEDULE

5. OTHER ASSETS

_____ FREQUENT FLIER MILES AND OTHER REWARD PROGRAMS, SEASON TICKETS,
COUNTRY CLUB MEMBERSHIPS

_____ LIST OF ANY VALUABLES TO CONSIDER (ANTIQUES/ ARTWORK/ COLLECTIONS/ JEWELRY)

_____ CURRENT STATEMENTS OF OTHER ASSETS (LIST BELOW)

6. LIFE INSURANCE

_____ CURRENT POLICY STATEMENTS FOR ALL LIFE INSURANCE POLICIES
BENEFICIARY DESIGNATIONS (LIST BELOW)

_____ INSURANCE COVERAGE AT WORK

7. VEHICLES

_____ KELLY BLUE BOOK VALUE FOR EACH VEHICLE (WWW.KBB.COM)

_____ ANY DEBT/ STATEMENTS ASSOCIATED WITH VEHICLE LOANS

_____ COPIES OF VEHICLE TITLES/ LIST DRIVERS

8. LIABILITIES/ DEBT (NOT ASSOCIATED WITH HOME OR CAR)

_____ CURRENT CREDIT CARD STATEMENTS FOR WHICH THERE ARE BALANCES DUE (LIST)

_____ CURRENT STATEMENTS FOR ANY OTHER LOANS (LIST BELOW)

_____ INCOME TAXES OWED OR TO BE REFUNDED

_____ CURRENT STATEMENT FOR ANY OTHER LIABILITY

9. CHILDREN'S ACCOUNT

_____ COPIES OF RECENT STATEMENTS FOR ANY COLLEGE PLAN ACCOUNTS (529 PLAN) OR UGMA ACCOUNTS

_____ COPIES OF RECENT STATEMENTS FOR ANY OTHER ACCOUNTS OF WHICH CHILDREN ARE THE BENEFICIARY

V. OTHER

_____ 2 YEARS OF COMPLETE INCOME TAX RETURNS, BOTH STATE AND FEDERAL

_____ CREDIT REPORT (available at www.annualcreditreport.com) - FREE ANNUALLY

_____ CURRENT SOCIAL SECURITY STATEMENT (http://www.ssa.gov/online/ssa-7004.html)

_____ EMPLOYEE BENEFITS (BOOKLETS)

_____ LIST OF CONTENTS OF SAFETY DEPOSIT BOXES OR STORAGE UNITS

DATES NEEDED:

	HUSBAND	**WIFE**	**CHILDREN**
RETIREMENT	_____	_____	
MARRIAGE	_____	_____	
BIRTH	_____	_____	_____
			_____
DATE BEGAN WORKING IN CURRENT JOB	_____	_____	

_____ _____

NAME/SIGNATURE **DATE**

_____ _____

NAME/SIGNATURE **DATE**

The information presented above is a starting point for discussions. Not all issues apply in each situation and other issues that apply may not be presented.
[AWW-0003] - [Collaborative - D.C. Metro Protocols] 1073883

APPENDIX F: CHECKLIST FOR FIRST TEAM PROFESSIONALS MEETING

- ☐ Assign notetaker
- ☐ Obtain contact information, preferred email address, and telephone numbers for each Team member
- ☐ Discuss whether any relationships among team members need to be disclosed to and discussed with clients.
- ☐ Discuss how each professional views his/her role
- ☐ Discuss how each professional views working as a Team
- ☐ Discuss team members' views of who drives process decisions: team or parties?
- ☐ Specific to coaches' role:
  - ➢ How do Team members view coaches' role in meetings
  - ➢ How do Team members view coaches role vis-à-vis other team members
  - ➢ How does each coach view her/his role with the party, in the process
- ☐ Discuss Meetings:
  - ➢ Location
  - ➢ Length
  - ➢ Scheduling--consider scheduling full team/party meetings in advance
  - ➢ Who should attend
  - ➢ Breaks during meeting
  - ➢ Check-ins before meeting: team members with parties and among team
  - ➢ Debriefing after meeting: coaches and attorneys debrief with each party and team members debrief together
- ☐ Discuss and agree on plan for on-going team communications
  - ➢ Weekly or bi-weekly conference calls and what mechanism will be used for the conference calls, who will facilitate the calls
  - ➢ Emails--frequency, subject line (name case and be specific), billing, say TEAM ONLY if it is only for the team
  - ➢ Team meetings (team only)
  - ➢ Communications with team after professionals' meetings with parties
  - ➢ Billing team time for team communications
  - ➢ What will be communicated to the parties about team communications?
- ☐ Discuss what each team member's first conversation with party looks like
- ☐ Discuss in what order parties shall meet with professionals
- ☐ Discuss what professionals' attendance at Collaborative meetings would assist parties
- ☐ Discuss confidentiality and ability to communicate with Team (including privilege of attorney/party and lack of privilege for coach/party)
- ☐ Discuss how legal information and possible outcomes will be presented to parties
- ☐ Discuss understanding of what information must be disclosed, *i.e.,* interpretation of "information related to the collaborative matter"
- ☐ Discuss how deeply team wants to explore what each party wants and why
- ☐ Discuss whether there are any issues that need to be addressed immediately, *e.g.,* cash flow, parenting schedule

- ☐ Set dates for potential Team meetings with parties
- ☐ Discuss seating arrangements for Team meetings with parties
- ☐ Discuss who will facilitate Team meetings with parties
- ☐ Discuss who will write on flip chart for Team meetings with parties
- ☐ Discuss whether any Team members or parties will caucus separately during Team meetings with parties and whether Team members will break to meet
- ☐ Share information about what is difficult for parties and how to assist them
- ☐ Share engagement agreements and Collaborative contracts
- ☐ Discuss rates, each professional's expectation re prompt payment of accounts receivable, any billing rate variances that might create difficulties in Collaborative Process.
- ☐ Discuss what each person charges for: how much to charge for team meetings and phone calls, whether to charge for travel, emails, etc.
- ☐ Discuss how each person likes to receive feedback

APPENDIX G: COLLABORATIVE PARTICIPATION AGREEMENTS

G1	MARYLAND PARTICIPATION AGREEMENT WITH CHILDREN	G1.DOCX
G2	MARYLAND PARTICIPATION AGREEMENT NO CHILDREN	G2.DOCX
G3	DISTRICT OF COLUMBIA PARTICIPATION AGREEMENT WITH CHILDREN	G3.DOCX
G4	DISTRICT OF COLUMBIA PARTICIPATION AGREEMENT NO CHILDREN	G4.DOCX
G5	VIRGINIA PARTICIPATION AGREEMENT WITH CHILDREN	G5.DOCX

APPENDIX H: COLLABORATIVE ENGAGEMENT AGREEMENTS—ATTORNEY

H1	MARYLAND ENGAGEMENT AGREEMENT	 H1.docx
H2	DISTRICT OF COLUMBIA ENGAGEMENT AGREEMENT	 H2.docx
H3	VIRGINIA ENGAGEMENT AGREEMENT	 H3.docx

APPENDIX I: COLLABORATIVE ENGAGEMENT AGREEMENT—

DIVORCE COACH

Name, address, and phone number of mental health provider

Date

Name of party:

Dear Party:

This letter constitutes an agreement between you and [name of mental health provider] for me to provide services to you as your divorce coach in the Collaborative Process. Also, it provides your informed consent to the information provided in this letter.

Goal of the Collaborative Process

The goal of the Collaborative Process is to help you and your spouse/partner resolve issues in the divorce process by developing shared solutions that meet the needs of the family without going to court. I will assist you and your spouse/partner with communication and self-management skills for more efficient, respectful, open, and emotionally healthy dispute resolution.

Explanation of the role of the divorce coach

You have retained me as your divorce coach in the Collaborative Process. As needed, in that role I will

- work for a resolution that meets the needs of you, your spouse/partner, and the family;
- assist you to determine what is most important to you in the divorce process;
- assist you to create goals for what you want for you and your family;
- identify and prioritize your concerns;
- assist you in managing the emotions that are part of the divorce process and in reducing stress;
- assist you to strengthen your communication skills and to communicate your needs;
- make effective use of conflict resolution skills;
- collaboratively work with you, your spouse/partner, and the other members of the collaborative team to improve communication, reduce misunderstandings, resolve problems, and facilitate the Collaborative Process;
- assist you in developing co-parenting skills;
- assist you in developing a parenting plan with your spouse/partner; and

- facilitate process and communication at meetings with the goal of making each meeting as effective, productive, and efficient as possible.

[Note: If this agreement is adapted for use with one divorce coach, a section should be added describing the divorce coach's need to remain neutral.]

The divorce coach does not provide therapy to you, your spouse/partner, or your children. If you need assistance on issues that fall outside of the Collaborative Process or that require more support than I can provide, I will discuss this with you and, at your request, provide you with referrals.

As your divorce coach, I cannot serve in any other role with you or any member of your family either during or after the Collaborative Process.

Your responsibility

Collaborative divorce coaching is a joint effort between party and coach. While a successful outcome cannot be guaranteed, your commitment to the process is essential for a positive outcome.

You agree to comply with the collaborative participation agreement that you and your spouse/partner sign to start the process, including

- to communicate respectfully
- to provide full, honest, and voluntary disclosure of all important information related to the collaborative matter, including information which either party might need to make an informed decision about each issue in dispute
- to commit to regular meetings with your coach and with other members of the collaborative team
- to complete homework assignments to obtain important information as requested
- to express your needs
- to be flexible and open in considering options for dispute resolution
- to take into account not only your needs, but also the needs of your spouse/partner and other family members in considering resolution of issues.

If at any time in the Collaborative Process you have questions, please ask for clarification. Your initial impressions about the Collaborative divorce process, suggested procedures and goals, and your feelings about whether you are comfortable working with me are important to the process and to a successful party-coach relationship.

Meetings

I will meet with you individually initially and, as needed, throughout the Collaborative Process to clarify your goals and develop strategies for reaching your goals. Also, I will meet with you,

your spouse/partner, and your spouse's/partner's divorce coach to work on communication skills and other issues and, when appropriate, your co-parenting relationship, parenting issues, and a co-parenting plan. If a child specialist is involved, I will meet with you, your spouse/partner, your spouse's/partner's coach, and the child specialist.

When we meet without the collaborative lawyers, the coaches will update the lawyers. We will communicate any co-parenting understanding or plan to the lawyers as a draft. You and your spouse will not sign any agreement without review by your collaborative lawyers.

Your coaches will participate in regular communication with your other team members, including by phone, to facilitate the Collaborative Process.

The coach will be paid for any time spent in these communications or drafting.

As your divorce coach, I may also attend collaborative meetings with you, your spouse/partner, the lawyers, and the financial professional.

Collaborative Communications:

Collaborative Communication shall be defined as an oral, written, or recorded statement that is made to conduct, participate in, continue, or reconvene a Collaborative Process after the Collaborative Participation Agreement is signed and before the Collaborative Process is concluded. Recorded statement is defined as information which is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Collaborative Communications cannot be introduced in evidence or compelled to be produced as part of the court discovery process, absent consent of the parties and, in the case of a Collaborative Communication by a non-attorney team member or joint expert, the consent of such Team member or expert.

Confidentiality

In signing this agreement, you agree that information you provide to me is with the understanding that I am permitted to share it with all the professional team members, your spouse/partner, and other professionals retained to assist in your Collaborative process. You recognize and agree that otherwise confidential communications to me may be shared with your spouse/partner, your collaborative team, and any experts brought in as part of the Collaborative Process. Your communications will not be shared with anyone outside the Collaborative Process without your consent subject to limited exceptions set forth in the collaborative participation agreement, including threat of bodily harm, intent to commit a crime, threat of harm or removal of children, threats to your safety (more fully discussed below), or complaints made against a collaborative professional.

You authorize me in my discretion to disclose sufficient information to other Collaborative professionals so that they can be prepared to meet with you to determine whether they can assist you, if hired, in the Collaborative Process.

If you specifically instruct me not to reveal something you want held in confidence, we will need to discuss an agreeable resolution of your request. If I determine that this information is important to the Collaborative process, including that your spouse/partner might need this information to make an informed decision about an issue in dispute, I will advise you that you need to disclose the information or I will withdraw.

In order to more effectively provide service, I may ask to communicate with any of your treating professionals. If so, I will ask you to sign a confidentiality waiver to allow this communication.

Termination

If you decide that the Collaborative Process is no longer viable and elect to terminate the Collaborative Process, you agree immediately to inform, in writing, your coach and your attorney. Your collaborative team reserves the right to withdraw from the Collaborative Process if either party engages in conduct in violation of the collaborative participation agreement. In the event of termination or withdrawal, all incurred fees are immediately due and payable. I will offer you appropriate referrals to assist your transition out of the Collaborative Process.

I reserve the right to withdraw as your divorce coach if we have a material disagreement about the management of your case, or if you fail to meet your responsibilities under this Agreement, including, but not limited to, your obligation to timely pay statements and comply with requests for additional advances. Should I determine that I need to withdraw, I will make every reasonable effort to protect your interests such as giving you sufficient advance notice so that you can arrange for a new coach.

If the Collaborative process terminates or I withdraw, my role as your divorce coach will end and I cannot meet with you in any capacity.

Should either party elect to terminate the Collaborative process and initiate a litigation process, all materials in possession of the divorce coach, including all content (written and oral) of sessions with the divorce coach, may not be used in any Court proceeding. If the Collaborative process terminates and you decide to enter into a litigation process, I cannot be called as a witness.

Fees

My collaborative divorce coach fee is $_____ per hour. I charge for attendance at meetings, travel portal to portal, emails, report writing, document review, phone calls, drafting of the co-parenting plan and _____.

I request an engagement fee of $_____ by [deadline]. When the engagement fee is depleted, [arrangements]. Should there be a balance left after all services are charged and paid for, the balance will be returned to you.

I will provide you monthly statements for fees and any costs. Any outstanding balance on your statement is to be paid immediately upon receipt of the bill.

My fees as a divorce coach are not reimbursable by health insurance.

Cancellation policy: I request 48 business hours notice of cancellation or postponement of an appointment. Otherwise, the full fee will be charged. To cancel a Monday appointment, I request cancellation by Thursday at 5 p.m. When an appointment is scheduled for two parties to meet with me together, and one party cancels without 48 business hours notice, the cancelling party is asked to pay the fee for the missed session.

Party safety

As a licensed mental health professional, I have the following legally mandated duties:

- if I have a reasonable suspicion of child abuse or neglect or abuse of a dependent, disabled, or elder adult (age 65 or older), to report any suspected physical or sexual abuse to the appropriate authorities;
- if a party communicates to me a threat of physical harm to an identifiable person or his/her property, to warn the intended victim and notify the police;
- if I believe that a party is in a mental or emotional condition where he/she poses a danger to him/herself or others, I may breach confidentiality or contact others for the party's safety;
- if I have a reasonable suspicion that a party may be unable to care for him/herself, or may be unable to provide for his/her basic personal needs for clothing and shelter, I may breach confidentiality for the party's safety.

I HAVE READ THE ABOVE STATEMENT IN ITS ENTIRETY, UNDERSTAND THE CONTENT, AND AGREE TO ITS TERMS.

_____ _____

Divorce Coach Date

_____ _____

[Party's name] Date

APPENDIX J: COLLABORATIVE ENGAGEMENT AGREEMENT—

CHILD SPECIALIST

Name, address, and phone number of mental health provider

Date

Name of party:

Dear Party:

This letter constitutes an agreement between you and [name of mental health provider] for me to provide services to you and your spouse/partner as a child specialist in the Collaborative Process. Also, it provides your informed consent to the information provided in this letter.

Goal of the Collaborative Process

The goal of the Collaborative Process is to help you and your spouse/partner resolve issues in the divorce process by developing shared solutions that meet the needs of the family without going to court.

Explanation of the role of the child specialist

You and your spouse/partner have retained me as your child specialist in the Collaborative Process. The child specialist's role is to advocate for your child or children. This role gives your child or children an opportunity to voice his/her/their concerns and ask questions about the divorce process. As a child specialist, I will remain neutral and will not take the side of either party. As needed, I will

- work for a resolution that meets the needs of you, your spouse/partner, and the family;
- meet with your child or children and hear their concerns
- assess your child's or children's needs and communicate them to you
- discuss with your child or children the adjustment as a result of divorce
- answer questions posed by your child or children about the collaborative divorce process and my purpose in meeting with them
- assist your divorce coaches to assist you in making your parenting plan by providing information about your child or children

As the child specialist, I do not make recommendations regarding custody, evaluate for mental illness, develop the parenting plan, or determine the appropriateness of parents' actions. Nor will I provide a written report. My role is limited and focused on gathering information on your child or children. I will meet with you, your spouse/partner, and your coaches to have a full, detailed discussion in which I provide you my observations and ideas so that you can best meet the needs of your children.

As a child specialist, I do not provide therapy to you, your spouse/partner, or your children. If you need assistance on issues that fall outside of the Collaborative Process or that require more support than I can provide from other professionals outside the collaborative team, such as other mental health professionals, I will discuss this with you and, at your request, provide you with referrals.

As the child specialist, I cannot serve in any other role with you or any member of your family either during or after the Collaborative Process.

Your responsibility

While a successful collaborative outcome cannot be guaranteed, your commitment to the process is essential for a positive outcome.

You agree to comply with the collaborative participation agreement that you and your spouse sign to start the process, including

- to communicate respectfully
- to provide full, honest, and voluntary disclosure of all important information related to the Collaborative Process, including information which either party might need to make an informed decision about each issue in dispute
- to commit to regular meetings with your coach and with other members of the collaborative team
- to complete homework assignments to obtain important information as requested
- to express your needs
- to be flexible and open in considering options for dispute resolution
- to take into account not only your needs, but also the needs of your spouse/partner and other family members in considering resolution of issues

If at any time in the Collaborative Process you have questions, please ask for clarification. Your initial impressions about the collaborative divorce process, suggested procedures and goals, and your feelings about whether you are comfortable working with me are important to the process and to our relationship.

Meetings

I will meet with both parents individually to discuss your concerns, goals, and hopes for your child or children. I will then meet with your child or children. These meetings may be individual or with siblings. I will discuss with your child or children the adjustment involved when parents divorce. I will elicit their concerns, needs, and wants. These meetings may be in my office, the child's home, or a public place. In addition, if I determine it is appropriate, I may speak to your child's or children's teachers and/or therapist. Prior to these contacts, I will advise you and have you sign a release allowing me to have contact with these professionals. Once all the needed information has been gathered, I will consult with other members of your

collaborative team and meet with you and your coaches to discuss your child or children's individual needs.

Collaborative Communications:

Collaborative Communication shall be defined as an oral, written, or recorded statement that is made to conduct, participate in, continue, or reconvene a Collaborative Process after the Collaborative Participation Agreement is signed and before the Collaborative Process is concluded. Recorded statement is defined as information which is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Collaborative Communications cannot be introduced in evidence or compelled to be produced as part of the court discovery process, absent consent of the parties and, in the case of a Collaborative Communication by a non-attorney team member or joint expert, the consent of such Team member or expert.

Confidentiality

In signing this agreement, you agree that information you provide to me is with the understanding that I am permitted to share it with all the professional team members, your spouse/partner, and other professionals retained to assist in your Collaborative process. You recognize and agree that otherwise confidential communications to me may be shared with your spouse/partner, your collaborative team, and any experts brought in as part of the Collaborative Process. Your communications will not be shared with anyone outside the Collaborative Process without your consent subject to limited exceptions set forth in the collaborative participation agreement, including threat of bodily harm, intent to commit a crime, threat of harm or removal of children, threats to your safety (more fully discussed below), or complaints made against a collaborative professional.

You authorize me in my discretion to disclose sufficient information to other Collaborative professionals so that they can be prepared to meet with you to determine whether they can assist you, if hired, in the Collaborative Process.

If you specifically instruct me not to reveal something you want held in confidence, we will need to discuss an agreeable resolution of your request. If I determine that the information is important to the process, that is, that this information is important to the Collaborative process, including that your spouse/partner might need this information to make an informed decision about an issue in dispute, I will advise you that you need to disclose the information or I will withdraw.

In order to more effectively provide service, I may ask to communicate with any of your treating professionals. If so, I will ask you to sign a confidentiality waiver to allow this communication.

Termination

If you decide that the Collaborative Process is no longer viable and elect to terminate the Collaborative Process, you agree immediately to inform, in writing, your coach and your attorney. Your collaborative team reserves the right to withdraw from the Collaborative Process if either party engages in conduct in violation of the collaborative participation agreement. In the event of termination or withdrawal, all incurred fees are immediately due and payable. I will offer you appropriate referrals to assist your transition out of the Collaborative Process.

I reserve the right to withdraw as the child specialist if we have a material disagreement about the management of your case, or if you fail to meet your responsibilities under this Agreement, including, but not limited to, your obligation to timely pay statements and comply with requests for additional advances. Should I determine that I need to withdraw, I will make every reasonable effort to protect your interests such as giving you sufficient advance notice so that you can arrange for a new coach.

If the Collaborative process terminates or I withdraw, my role as the child specialist will end and I cannot meet with you in any capacity.

Should either party elect to terminate the Collaborative process and initiate a litigation process, all materials in possession of the divorce coach, including all content (written and oral) of sessions with the child specialist, may not be used in any Court proceeding. If the Collaborative process terminates and you decide to enter into a litigation process, I cannot be called as a witness.

Fees

My collaborative child specialist fee is $_____ per hour. I charge for attendance at meetings, travel portal to portal, emails, report writing, document review, phone calls, and _____.

I request an engagement fee of $_____ by [deadline]. When the engagement fee is depleted, [arrangements]. Should there be a balance left after all services are charged and paid for, the balance will be returned to you.

I will provide you monthly statements for fees and any costs. Any outstanding balance on your statement is to be paid immediately upon receipt of the bill.

My fees as a child specialist are not reimbursable by health insurance.

Cancellation policy: I request 48 business hours notice of cancellation or postponement of an appointment. Otherwise, the full fee will be charged. To cancel a Monday appointment, I request cancellation by Thursday at 5 p.m. When an appointment is scheduled for two parties to meet with me together, and one party cancels without 48 hours notice, the canceling party is responsible to pay the fee for the missed session.

Party safety

As a licensed mental health professional, I have the following legally mandated duties:

- if I have a reasonable suspicion of child abuse or neglect or abuse of a dependent, disabled, or elder adult (age 65 or older), to report any suspected physical or sexual abuse to the appropriate authorities;
- if a party communicates to me a threat of physical harm to an identifiable person or his/her property, to warn the intended victim and notify the police;
- if I believe that a party is in a mental or emotional condition where he/she poses a danger to him/herself or others, I may breach confidentiality or contact others for the party's safety;
- if I have a reasonable suspicion that a party may be unable to care for him/herself, or may be unable to provide for his/her basic personal needs for clothing and shelter, I may breach confidentiality for the party's safety.

I HAVE READ THE ABOVE STATEMENT IN ITS ENTIRETY, UNDERSTAND THE CONTENT, AND AGREE TO ITS TERMS.

_____	_____
Child Specialist	Date
_____	_____
[Party's name]	Date
_____	_____
[Party's name]	Date

APPENDIX K: COLLABORATIVE ENGAGEMENT AGREEMENT - FINANCIAL

[Date]

Client: _____

Client: _____

Email address: _____

Email address: _____

Dear Clients:

1. Overall

You have both chosen the collaborative divorce process and have signed a collaborative participation agreement. Thank you for choosing our firm to assist you with the tax, financial planning and other financial issues related to your divorce. This letter constitutes an agreement between both of you and [Firm Name], under which we will provide divorce consulting services as a financial neutral to both of you in conjunction with the collaborative process. Our services will be directed by you and/or your attorneys.

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

2. Conflict of Interest

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

3. Full Cooperation of Parties

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

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

The parties further agree to provide information requested in a timely manner and to be available for meetings and phone calls as needed within a reasonable time frame in an effort to facilitate the process.

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

I would have to withdraw from the Collaborative Process with you in the event that you withhold or misrepresent information that should properly be shared as part of the

Collaborative Process and **continue to withhold or misrepresent such information, or otherwise act so as to undermine or take unfair advantage of the Collaborative Process.** You agree that, if litigation later occurs, you will not subpoena any of the Collaborative Professionals participating in the Collaborative Process, unless agreed by both you and your spouse and the professional subpoenaed.

4. Scope of Engagement/Disclosure

Our role as a financial neutral professional is to be an educator/facilitator in all matters relating to finance. In addition, we will gather any financial information we deem necessary to help the team work together to achieve a mutually agreeable settlement for the family. As discussed above, we require full disclosure and that information requested be provided in a timely manner. Our work does not include an "audit" of the financial information. Our work is limited to the collaborative process only. All information provided will be made available to both parties and to the collaborative team upon request. The professional consulting services we may provide, in consultation with you and/or your counsel may include:

1. Preparing, reviewing, and/or updating a schedule of your disposable income and personal living expenses and those of your spouse.

2. Preparing, reviewing, and/or updating a schedule of your assets, liabilities, and net worth and those of your spouse.

3. Preparing a proposed property settlement schedule for use during the process.

4. Providing tax planning assistance regarding payment of alimony, child support, and property distributions, as applicable.

During the course of our engagement, it may be necessary for us to prepare schedules and other written reports that support our conclusions. These reports will only be used in connection with your collaborative process and may not be published or used in any other manner without the written consent of this firm. None of the schedules, outlines, or other

documents produced, or discussions that we may have with you or your attorney, constitute legal advice or representation in any form.

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

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

5. Tax Issues

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

6. Professional Fees

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

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

We will submit bills to you periodically, at least monthly. Payment is due upon receipt. Please review your bills from our office and notify us in writing within thirty (30) days from the date of the invoice if you have any objections to the charges shown. Otherwise, the invoice will be deemed proper and accepted by you and we will not consider making any adjustments. We do not extend credit.

Our standard hourly rate for this type of consulting is $_____, plus out-of-pocket expenses. At the discretion of the undersigned, some of our services may be undertaken by other staff members, under my direct supervision and control, and will be charged at a lower rate.

If your balance is not kept current, we reserve the right to suspend our services until the balance has been brought current.

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

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

7. Termination of Services

After you have reached a settlement using this collaborative engagement, we will not provide any future services for either of you, other than assistance with completion of the

terms of the agreement reached in the collaborative process and, if requested and agreed by both of you, tax services for the year of transition.

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

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

Finally, in the event we do not feel that we are contributing productively to your collaborative process, we reserve the right to withdraw. If we exercised this right to withdraw, we would inform your attorneys of our decision and give both of you three business days written notice of such decision prior to withdrawal. In addition, if either of you decides to terminate our services all fees incurred to date will be due and payable immediately. Any financial information that we have gathered and work products developed will be turned over to any future financial neutral within a reasonable time frame, and **we** will acquaint any successor collaborative financial professional with the financial facts of the case.

8. Retention of Records

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

We enclose duplicate originals of this agreement. Please execute one copy and return it to us, together with the appropriate retainer fee. This agreement will enter into effect upon

receipt of the executed original and fee. If the need for additional services arises, we will revise the terms hereof. Again, thank you for the confidence you have placed in our firm.

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

9. Client Communications

We routinely use non-encrypted e-mail to communicate with our clients. E-mail communications may not always be secure due to many factors. Additionally, many people use e-mail addresses at their place of employment, where their employer has a workplace policy that e-mails are not private and can be accessed by company representatives. Accordingly, some of our clients who authorize us to communicate with them by e-mail choose to set up a separate e-mail account for us to use. We cannot evaluate or advise about the security of an e-mail provider, system or communication.

Please indicate below your instructions as to e-mail communications:

☐ I authorize communications with me via e-mail.

Communications with me by e-mail should be sent to the following e-mail address:
_____ .

☐ I prefer that all communications with me be sent by U.S. mail.

Communications with me should be sent to the following address:
_____ .

☐ I prefer that all communications mailed to me by U.S. mail be marked "PERSONAL & CONFIDENTIAL."

Please indicate below your instructions as to delivery of your monthly bills:

☐ I authorize delivery of my bills by e-mail.

My bills should be sent to the following e-mail address:
_____ .

☐ I prefer that my bills be mailed to me by U.S. mail.

My bills should be sent to the following address:
_____ .

Regards,

[Name of Financial Professional]

APPENDIX L: SAMPLE LETTER TO ENROLL THE SPOUSE IN THE COLLABORATIVE PROCESS

Date

Spouse of Client

Address

Dear [Spouse]:

Your husband, Joe Spouse, has retained me to assist him in connection with obtaining a marital dissolution. I understand he provided to you the IACP Brochure describing the Collaborative Process. This process has been highly regarded by clients, lawyers, and judges, and is an effective and civilized method for resolving the issues involved in a divorce. Your husband would like to proceed this way, and I urge you to consider selecting the Collaborative Process yourself.

The attorneys who are listed on the following websites share a commitment to helping clients reach settlements: www.collaborativepractice.com, www.marylandcollaborativepractice.com, www.collablawmaryland.org, www.collaborativedivorcemd.com, www.hococollaborativeprofessionals.com, www.carrollcollaborativelaw.com, www.fairdivorcemaryland.com, www.collaborativepracticedc.com, www.vacollaborativepractice.com, and www.cpnova.com. These attorneys, who are knowledgeable about both the collaborative and conventional divorce process, are not affiliated with one another. You are, of course, free to select your own attorney from this or any other source.

Whether or not you agree that it would be appropriate to use the Collaborative Process in your divorce, I ask that you contact my office or let my office know who you will be retaining as your attorney, or alternatively, that your attorney contact us within ten (10) days of the date of this letter, so the attorneys can begin assisting you and your husband through the divorce process.

I wish to thank you for your cooperation and look forward to working this matter out in an amicable fashion.

Very truly yours,

NAME

APPENDIX M: REFERENCE POINTS FOR DECISION-MAKING

1) Sense of fairness

2) Interests and needs (of parties and children)

3) Your relationship (how decisions will affect it)

4) Law and underlying principles

5) Practical and economic realities

6) Prior agreement

7) Other (cultural issues, emotional issues)

8) Goals of the parties

APPENDIX N: SURVEY/DEBRIEF QUESTIONNAIRE FOR END OF COLLABORATION

Were you generally satisfied/dissatisfied with the Collaborative Process?

What parts of the Collaborative Process worked well for you?

What parts of the Collaborative Process could be improved?

Would you choose Collaboration if you had a chance to begin over again?

Would you recommend Collaboration to your friends?

APPENDIX O: MODEL PROVISIONS FOR COLLABORATIVE SETTLEMENT AGREEMENT

TITLE: Collaborative Separation and Property Settlement Agreement or Collaborative Settlement Agreement

PARAGRAPH TO CORRECT MISTAKES:

The parties have arrived at this Agreement through the Collaborative Process and have committed not to take advantage of mistakes anyone makes in the process. If the parties learn of a mistake that is incorporated into this Agreement, they agree to bring it to the attention of the other party and the professional collaborative team and to work together to resolve and correct the mistake.

INTEGRATION PARAGRAPH:

On _____, the parties executed a Collaborative Participation Agreement. [IF THE PARTIES EXECUTED A SEPARATE PARENTING AGREEMENT ADD: On _____, the parties executed a Custody and Parenting Agreement, which shall remain in effect and is incorporated into this Agreement.] They intend that their obligations set forth in the Collaborative Participation Agreement shall survive after their execution of this Agreement. Apart from the provisions of the Collaborative Participation Agreement, which survive, this Agreement contains the entire understanding of the parties, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. This Agreement supersedes all other prior or contemporaneous agreements between the parties other than the Collaborative Participation Agreement.

DISPUTES PARAGRAPH:

In the event that the parties are unable to resolve a dispute arising out of this Agreement, or any of the issues addressed in this Agreement, they agree to return to mediation, the Collaborative Process, or another alternative dispute process to try to reach resolution. They agree to pay the expenses of the process in [equal shares/shares in proportion to the income of each].

APPENDIX P: RELATIONSHIP QUESTIONNAIRE

Final Draft March 2012

Relationship Questionnaire

So that we can better advise you concerning the legal dissolution process, we would like some information about your relationship with your spouse or partner. I am going to ask you some questions about the dynamics of your relationship. We will use this information to guide you to the best dispute resolution process for your situation.

XV.

RELATIONSHIP QUESTIONNAIRE
PART ONE

INSTRUCTIONS: This questionnaire should be administered orally prior to signing the Participation Agreement.

	YES	NO
1. In thinking about your partner, would you say he/she is jealous or possessive?		
Would you say you are jealous or possessive?		
2. Does your partner call you names or put you down?		
Would you say that you call your partner names, or put him/her down?		
3. Does your partner frighten you?		
Would you say that you ever act in a way that frightens your partner?		
4. Does your partner try to provoke arguments?		
Would you say that you try to provoke arguments?		
5. Does your partner try to limit your contact with family and friends?		
Do you try to limit the contact of your partner with family and friends?		
6. Does your partner insist on knowing who you are with at all times?		
Is it important to you to know who your partner is with at all times?		
7. Does your partner make you feel inadequate?		
Do you think you make your partner feel inadequate?		
8. Does your partner shout or swear at you?		
Do you ever shout or swear at your partner?		
9. Does your partner prevent you from knowing about or having access to the family income even when you ask?		
Do you control or limit your partner's access to the family income even when he or she asks?		

A "yes" response to 5 questions indicates a possible coercive relationship, and risk of a first incident of physical violence. Regardless of the number of "Yes" answers, proceed to Part Two.

Part One prepared by Michael P. Johnson (Penn State) with items from the Tjaden & Thoennes, Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey, National Institute of Justice (1998).

PART TWO

	YES	NO
1a. Has there been any pushing, shoving, slapping, or physical violence between you and your partner?		
1b. Has the physical violence increased in severity or frequency over the past year?		
2a. Does your partner own a gun?		
2b. Is there a gun in the home?		
3a. Have you left the relationship during the past year?		
3b. If you and your partner have never lived together check here. _____		
4. Is your partner unemployed?		
5. Has your partner ever used a weapon against you or threatened you with a lethal weapon? *If yes*, was the weapon a gun? or *If yes*, what was the weapon?		
6. Does your partner threaten to kill you?		
7. Has your partner avoided being arrested for domestic violence?		
8. Do either you or your partner have a child whom is not biological to both of you?		
9. Has your partner ever forced you to have sex when you did not wish to do so?		
10. Does your partner ever try to choke you?		
11. Does your partner use illegal drugs? By drugs, I mean "uppers" or amphetamines, meth, speed, angel dust, cocaine, "crack", street drugs or mixtures.		
12. Is your partner an alcoholic or problem drinker?		
13. Does your partner control most or all of your daily activities? (For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car?) If your partner tries, but you do not allow the behavior, check here: _____		
14. Is your partner violently and constantly jealous of you? (Does your partner say "If I can't have you, no one can.")		
15. Have you ever been beaten by your partner while you were pregnant? If never pregnant by him, check here: _____		
16. Has your partner ever threatened or tried to commit suicide?		
17. Does your partner threaten to harm your children?		
18. Do you believe your partner is capable of killing you?		
19. Does your partner follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don't want him to?		
20. Have you ever threatened or tried to commit suicide?		

PART THREE
Scoring[1]

Add total number of "Yes" responses, 1b through 19	
Add 4 points for a "Yes" to question 2a	
Add 3 points for a "Yes" to question 3a	
Add 3 points for a "Yes" to question 4	
Add 2 points for a "Yes" to question 5	
Add 2 points for a "Yes" to question 6	
Add 2 points for a "Yes" to question 7	
Add 1 point for a "Yes" to question 8	
Add 1 point for a "Yes" to question 9	
Subtract 3 points if question 3b is checked	
Note: Response from question 1a, 2b, and 20, not to be included in overall scoring. **TOTAL**	

Levels of Danger

◯	**Less than 8**	**VARIABLE** Danger	Variable Danger—Routine safety planning and monitoring. Inform client that the level of risk can change quickly and to trust their instincts and to watch for additional signs of danger.
◯	**8 to 13**	**INCREASED** Danger	Increased Danger—Safety planning and monitoring are important. Advise client of increased risk and to watch for other signs of danger.
◯	**14 to 17**	**SEVERE** Danger	Severe Danger—Advise client that danger is severe. Be assertive with safety planning: consider pursuing a protective order and/or filing criminal charges.
◯	**18 or more**	**EXTREME** Danger	Extreme Danger—Advise client of serious danger. Take assertive actions to protect client including protective order, criminal charges; victim's advocate.

[1] This weighted scoring is more accurate for male abusers than for female abusers.

APPENDIX Q: GUIDELINES FOR HANDLING A COLLABORATIVE CASE WITH COERCIVE CONTROL AND/OR VIOLENCE ISSUES

GUIDELINES FOR HANDLING A COLLABORATIVE CASE WITH COERCIVE CONTROL AND/OR VIOLENCE ISSUES

Uniform Collaborative Law Act ("UCLA"): The UCLA provisions require a "reasonable inquiry whether the [party or] prospective party has a history of a coercive or violent relationship with another [party or] prospective party." If the lawyer 'reasonably believes that the party the lawyer represents has such a history, the lawyer may not begin or continue a Collaborative law process unless the party so requests and the lawyer "reasonably believes" the party's safety "can be protected adequately during the collaborative law process." [Emphasis added] See UCLA Sections 15(a)-(c).

A. Screening at Time of Initial Interview:

1. Screening:

a) A reasonable inquiry into the presence of coercive control and/or violence as mandated by the UCLA requires a collaborative attorney to perform some type of screening for the presence of these issues prior to the case entering the Collaborative process, and throughout the course of the case. Screening may include an interview by the attorney where he/she asks the prospective client questions that are intended to elicit information about coercive control and/or violence. Attorneys may also consider using a standardized questionnaire developed for the express purpose of screening for coercive control and/or violence issues. In addition to seeking verbal information, the client's tone of voice, body language and affect may provide information regarding coercive control and/or violence. [1]

b) As part of the screening process, consider having the mental health professionals on the collaborative team (or, if there is no team, an independent mental health professional) perform a separate screening for coercive control and/or violence issues prior to assisting the client in making a process choice.

c) Screening by a mental health professional should be done under circumstances that will provide the attorney with necessary information, but which will not invade the privacy of the client or lead to the unauthorized disclosure of privileged information. The client must authorize in writing the sharing of information between the client's attorney and the screening mental health professional. No disclosure of privileged screening information should be made to other Collaborative team members without the express written

[1] Practitioners who are unfamiliar with the signs of coercive control and/or violence should attend training in identifying coercive control and/or violence prior to accepting a case where coercive control and/or violence is present

consent of the client. A separate, specific, time-limited[2] written consent to share information with prospective Collaborative team members will usually be required as there will most likely be no Collaborative participation agreement or stipulation in place at the time of screening.

d) It is advisable for mental health professionals to use a standardized questionnaire developed for the express purpose of screening for coercive control and/or violence issues. The mental health professionals may also want to consider using a standardized questionnaire that has been clinically validated with a population that is relevant to the client (if such a questionnaire is available), as well as a clinical interview. If the attorney has used a standardized questionnaire, it would be helpful for the mental health person to review it prior to interviewing the client. Links to screening tools, [including a tool developed by the IACP,] are listed in Attachment A.

2. Safety Planning: Research shows that there is an increased risk of violence associated with the time of separation.[3] If a professional suspects that coercive control and/or violence is present, then the client needs to be aware of the increased risk. Where appropriate, the UCLA expects the professional to assist the client to take steps to protect the safety of the client and others, including but not limited to connection to appropriate victim service providers. Safety planning information is listed in **ATTACHMENT B.**

3. Informed Consent: Rules of Professional Conduct require an attorney to discuss all of the relevant process options with the client, as a part of obtaining "informed consent." Keep in mind that the informed consent of a client who is subjected to coercive control and/or violence may be compromised by many emotional and cognitive states including, for example, confusion, difficulty concentrating, fear, shame, guilt and anxiety. The client would benefit from information about the impact of coercive control and/or violence, and the inherent power imbalance between the parties where coercive control and/or violence is present.

If the client continues to be interested in the Collaborative process despite the presence of coercive control and/or violence, discuss whether the safety of the client can be adequately protected in the Collaborative process. If the client has not previously met with a mental health professional for purposes of screening, inform the client that he/she may benefit from postponing the final decision to proceed in the Collaborative process until she/he has met with a coach or other mental health professional (with the qualifications set forth in paragraph D below) to assess the client's ability to participate effectively in the Collaborative process.

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[2] VAWA indicates that when getting consent from a victim of domestic violence, all waivers should be time-limited to prevent disclosure much later than is appropriate.

[3] Campbell, Webster, et al., Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," American Journal of Public Health 93(7): 1089-97 (2003).

A Collaborative attorney has the obligation under the UCLA to make his or her own judgment as to whether the client's safety can be adequately protected in the Collaborative process.

An attorney also has an ethical obligation to make his/her own judgment as to whether the attorney can provide "competent representation" to the client in a relationship with coercive control and/or violence issues. If the attorney has a concern, he/she may wish to refer the case to, or associate with, an attorney who does have such competence.[4]

B. Mental Health Professional's Evaluation of the Client:

1. If the case didn't originate with an attorney, or if, for some reason, the attorney did not administer a questionnaire to the client, then the mental health professional may be the first (or only) team professional to administer a questionnaire for coercive control and/or violence. A release from the client will be required to share the client information with other Collaborative team members. An additional release will be needed from the client if the mental health professional wants to ask for permission to speak to the client's therapist. If the mental health professional does speak with the client's therapist he/she will use his/her discretion to disclose to other team members only relevant and appropriate information in order to protect the welfare of the client. See **ATTACHMENT C. Note: the mental health professional and the therapist may require additional releases between them.**

2. The mental health professional assesses the appropriateness of case for the Collaborative model, the need for safety planning, and considers interventions/referrals and other steps given the nature, severity and duration of the coercive control and/or violence. The mental health professional then meets with the client's attorney and/or other team members to discuss appropriateness, safety planning, interventions/referrals and other steps before commencing or continuing a Collaborative process.

C. Communication with Collaborative Counsel:

1. Discuss whether both parties have made an informed choice to use the Collaborative process. Discuss next steps with respect to team formation, i.e., neutral facilitator or two coach model, etc. Inquire whether other counsel makes it a standard practice to administer a screening tool for coercive control and/or violence.

2. Plan for a full team meeting. Obtain client's consent to conversations with other professionals. See **ATTACHMENT D.** Where there are serious issues of coercive control and/or violence, discuss the possibility of bringing a domestic violence victim's advocate[5] into the process to function as a member of the affected client's team. Arrange for the coaches to speak to each other, if it is a two coach case. Note: it is extremely

[4] See, for example, ABA Model Rules of Professional Conduct, Rule 1.1
[5] A domestic violence victim's advocate may be available to the client from a local provider of domestic violence support services.

unwise to proceed in the Collaborative process in a case with coercive control and/or violence issues without the assistance and expertise of mental health professionals.

D. Optimal Composition of the Collaborative Team:

- two attorneys, each with training in coercive control and violence, each with a minimum of 5 years' experience and 10 Collaborative cases successfully completed, and ideally with a solid record of mutual trust and working together in the Collaborative model.

- one neutral, or two mental health professionals each allied with a party, each with significant training in family counseling and in coercive control and violence, each with a minimum of 5 years' clinical experience and 10 Collaborative cases successfully completed, and a solid record of mutual trust and working in the Collaborative model.

- child specialist (if there are children) with significant training in family counseling, training in coercive control and violence and with a minimum of 5 years' clinical experience and 10 Collaborative cases successfully completed

(Note: the tendency of the clients to have different views of the children and their needs is likely to be even more exaggerated in cases where coercive control and/or violence is present. The ability of the child specialist to gather and present neutral information about the children may be critical to creating a parenting plan that is in the best interest of the children.)

- financial neutral with training in coercive control and violence, with a minimum of 5 years' experience and 10 Collaborative cases successfully completed.

(Note: the skills of the financial professional in gathering and analyzing the financial information, and presenting options in a neutral way, can be invaluable in helping the clients in a case with coercive control and/or violence issues reach a fair and voluntary agreement. In some cases, the financial neutral may observe the coercive controlling behavior and may be able to provide insights to the rest of the team.)

- victim's advocate for an affected party from a local domestic violence services organization where there is severe coercive control and/or violence

E. Execution of the Participation Agreement:

Execution of the Participation Agreement should be delayed until a level of confidence has been established that the case has a good chance of being successful. Loss of her/his attorney would be another loss for the party subjected to coercive control and/or violence, and reasonable steps should be taken to avoid that outcome.

F. Team Meetings:

1. First team meeting: It is critical that the team develop cohesion and trust in each other in a case with coercive control and/or violence issues. In discussions, seek to describe behaviors and effects rather than using labels (i.e., abuse, abuser, perpetrator, victim). Process recommendations need to be agreed upon and implemented by the entire team. Careful planning for the first clients/professionals meeting, even to the level of detail of which attorney will read and elaborate on certain provisions of the Participation Agreement, will help the team create the container for a successful process. (For example, the language relating to respectful communications at the table would best be read and explained by the attorney for the client who is most likely to have difficulty being respectful.)

2. Ongoing team meetings:

a. Be thoughtful about monitoring interactions between the clients between meetings. Assess the clients' ability to recognize and adhere to appropriate boundaries.

b. Be vigilant about paying attention to the dynamics at the table (i.e. signs of domination and control, difficulty expressing needs, etc.), and planning what interventions to utilize. Consider developing written "ground rules" for meetings that will be carefully and consistently monitored and enforced by the professional team.

c. Monitor the progress of the parties' agreement as it evolves, to ensure that it is "fair" and "voluntary" as to both parties.

d. Carefully plan an agenda for each meeting.

G. Meetings with the Clients:

1. Each client should be well-prepared in advance for each meeting. In cases of coercion and/or violence, the affected party may need assistance in speaking up and advocating for her/his interests without being blaming towards her/his spouse or partner; the coercive or violent party may need assistance in gaining insight into his/her behaviors and the impact on his/her spouse or partner. It may be useful to have the client's coach and attorney (and DV advocate if applicable) meet with him or her together prior to each clients/professionals meeting, to bring their combined skill sets to bear in preparing the client.

2. Be thoughtful about meeting and seating arrangements. Should the clients be in the same room? If yes, how should they be seated vis-à-vis each other and their attorney and coach?

3. Use breaks to provide "space" for the parties when the dynamics in the room become difficult. Breaks are also useful for further preparation of a client for the rest of the meeting.

4. Agree in advance on a "signal" the client can use to indicate the need for a break or other accommodations. Be aware that the mere fact that she/he has her attorney and coach with her at the table will be empowering to the victim.

5. Decide with the client the timing of arrival and departure – the client may prefer to arrive early or delay leaving after the meeting.

6. Assess the parties' body language, tone and mannerisms, watching for indications that the victim may be experiencing control or trauma during the meetings.

H. Assessment as to Appropriateness for Collaborative Practice as Case Goes Forward:

1. "Triggers" for termination:

   - Inability of one or both of the parties to abide by process recommendations of the team

   - Incident of violence or coercion or the threat of physical or psychological violence or coercion

2. Planning for possible termination.

   Introduce client to a litigation attorney who could provide representation in obtaining a Protective Order (although UCLA allows attorney to represent in the event of violence until another attorney can be retained.)

   Introduce affected client to domestic violence victim's advocate who can develop/maintain contact with the client over a period of time, since many will not immediately seek a Protective Order.

I: Follow Up/Assessment after Case Ends:

Schedule a debriefing with all professionals at the end of the case, regardless of whether it is successfully completed or not. Share and solidify insights from the case.

Please send a brief report on the effectiveness of these Guidelines and any insights fromyour experience to: Mary S. Pence, mpence@FTLF.com. Comments and questions about these Guidelines and about the Relationship Questionnaire may also be sent to Mary S. Pence, mpence@FTLF.com.

ATTACHMENT A

SAMPLE LIST OF SCREENING QUESTIONNAIRES FOR COERCIVE CONTROL AND/OR VIOLENCE

[insert list of screening tools on IACP website]

ATTACHMENT B:

SAFETY PLANNING

Let your client know that your conversation about coercive control and/or violence is subject to the rules of **confidentiality**.

Assist the client in identifying how she/he will know if a situation is getting dangerous and what specific steps she/he will take in response.

Provide information about resources in your community such as a hotline, shelter, or domestic violence legal services. Offer to assist the client in making a call to one of these services before she/he leaves your office.

For advocacy, counseling and referrals 24 hours a day, assist the client in contacting the **National Domestic Violence Hotline: 1-800-799-SAFE (7233) or 1-800-787-3224.**

The client may deny that there is a real risk that the partner/spouse will hurt her/him. Although this denial of risk should not be determinative, the attorney must also be careful not to undermine the client's right to self-determination. The client or coach should take a "just in case" stance, such as "I hope you're exactly right, but I have a concern so let's talk this through."

ATTACHMENT C:

(This version permits the client's attorney, coach and therapist to be in communication with each other.)

CONSENT

I, _____, have provided responses to a questionnaire. I understand that this questionnaire is a screening tool to assess significant coercive control and/or violence in my relationship.

To adequately assess safety issues, my attorney is referring me to a Collaborative coach. After an interview with my coach, I understand that my coach and my attorney will conference. My attorney will discuss with me any important issues which I need to consider before proceeding in the Collaborative Process.

I consent to the release by my attorney to my coach of my responses to the questionnaire . I consent to a conversation between my coach and my attorney regarding the responses of the questionnaire.

I consent to my coach speaking directly to my therapist, _____, regarding issues relevant to the assessment of coercive control and violence, and issues which may impact my ability to be safe in the collaborative process.

I understand that the disclosure of a controlling and/or violent relationship may put me at risk of threat or harm. I have been advised about the need for safety planning as a consequence of the disclosure.

I understand that this consent will expire on _____ or in one year from the date written below, whichever comes first, if not previously revoked by me in writing.

I have read this consent. I have had an opportunity to discuss the consent with my attorney.

_____ _____

Date Name

ATTACHMENT D:

(This consent allows coaches and attorneys for both parties to talk)

CONSENT

I, _____, have provided responses to a questionnaire. I understand that this questionnaire is a screening tool to assess significant coercive control and/or violence in my relationship.

To adequately assess safety issues, the attorneys and coaches for both parties must review the responses to the questionnaire completed by both parties and then confer with each other. After this conference, my attorney will discuss with me any important issues which I need to consider before proceeding in the Collaborative Process.

I consent to the release of my responses to the questionnaire to my coach and to the coach selected by my spouse/partner. I consent to a conversation among the attorneys and coaches regarding the responses of the questionnaire, safety planning and the appropriateness of the Collaborative process for my situation.

I understand that the disclosure of a controlling and/or violent relationship may put me at risk of threat or harm. I have been advised about the need for safety planning as a consequence of the disclosure.

I understand that this consent will expire on _____ or in one year from the date written below, whichever comes first, if not previously revoked by me in writing.

I have read this consent. I have had an opportunity to discuss the consent with my attorney.

_____ _____

Date Name

APPENDIX R: SUMMARY OF PARTICIPATION AGREEMENT PROVISIONS (Note the paragraph numbers conform to the Maryland participation agreement with children)

Suggested introductory points:

- In this process, we will be working through the issues in your case and also tend to the emotions that come along with doing that. We want to tailor this process to meet the individual needs of each of you and your family.
    - We will share an agenda in advance of each meeting and there will be minutes after each meeting to summarize work done.
    - To start the process, we will now review and sign the Participation Agreement.

Commitments parties make to each other (1-6):

Focus on settlement (1 and 2):

- You have decided to use this non-adversarial process to settle all issues without going to Court.
- You understand and agree that neither attorney can continue to represent you if you decide to litigate.

Disclosure (3):

- You will voluntarily provide all important information so you can both make informed choices.

Privacy and dignity (4):

- You will participate with integrity.
- You will not take advantage of mistakes.
- You will meet regularly and complete homework.

Communication (5):

- You agree to communicate with each other respectfully and to listen to each other.
- You agree not to discuss settlement issues outside of process. Does not mean you cannot speak to each other.

Status quo (6):

- Keep all financial arrangements the same. If you are not sure whether something complies, please bring it up with the professionals so we can discuss it in a meeting.
- Don't dispose of any assets.
- Don't change any insurance.
- Don't incur debt on behalf of the other.

Commitments you make to each other regarding your Children (7):

- Agree to protect your children by not placing them in the middle of your discussions and disagreements.
- Keep each other informed about the children in terms of travel, injuries or other major events.

Team configuration and roles (8):

- Each lawyer represents only his/her client.
- Mental Health Professionals may be involved as coaches
- Mental health Professional may be involved as a Child Specialist
- Financial Neutral to gather, organize and develop financial information
- Attorneys may present information on the law in team meetings.
- Team cannot change roles after Process ends—coach cannot be therapist, financial neutral cannot be financial advisor
- Team cannot be involved in any future litigation
- Can hire additional experts as needed

Confidentiality (9):

- Communications made in process are protected and cannot be introduced into evidence
- Parties agree that the professionals can share information with the other party and all team members in the process as part of our work to resolve your case.
- Professionals cannot share information outside of the process.
- Some exceptions like threat of injury or a crime.
- Either party has the right to assert his or her right to confidentiality. To do so, he or she must specifically instruct his or her attorney or coach to keep specific information confidential and not reveal it to the Team or the other spouse. Coach/attorney will evaluate whether other party would need to know information and this request could result in withdrawal of the professional.

Termination and withdrawal (10):

- The Process is concluded by agreement provided that the parties can ask a court to enter a consent order and the Process continues for this purpose
- The Process is terminated if:
    - Party terminates
    - Party files contested case in court
    - Attorney withdraws or is dismissed and is not replaced within 30 days
- If the Process is terminated, there is a 30 day period in which financial arrangements and agreements made would continue. Also, neither party can file in court during this 30 day period.
- If Process is terminated, must hire a new attorney.
- Attorney must withdraw if party withholds important information or otherwise acts to undermine process.
- If Collaborative attorney withdraws and is replaced within 30 days by a new Collaborative attorney and a new participation agreement is signed, Process can continue

Emergency orders (11):

- In event of domestic violence if no other attorney is available, attorneys can represent you until another attorney can be found. In that situation, the Collaborative Process would terminate.

Particular agreements that can be made in the Process (12):

- In this Process you two can make an agreement that would survive the Process even if the Process ends prematurely. If a situation arises when this would be appropriate, we will be very clear about what is required to make such an agreement.

Fees (13):

- Agree in the process how fees will be paid
- If don't agree otherwise, agreement provides that you each pay your own attorney and coach

Stay provisions (14) (Applicable in Maryland only):

- Explains the requirements if you are in litigation and file for a stay

- If you sign the participation agreement agreeing to a stay and then oppose the stay, this agreement is no longer valid and the attorneys can represent you in litigation

Choice of law (15):

- If you have a choice of jurisdiction, states which jurisdiction's law governs the process

Informed consent (16):

- Explains that you have fully discussed the provisions in this agreement and the Collaborative Process with your attorney and understand that you are voluntarily agreeing to enter into the Collaborative Process

Instructions to attorneys (17):

- Instructs the attorneys themselves to act consistently with the provisions of the participation agreement