

BEST PRACTICE PROTOCOL RESOURCE
FOR A FULL TEAM MODEL:
COLLABORATIVE DIVORCE

D.C. METRO PROTOCOLS COMMITTEE

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Best Practice Protocol Resource for a Full Team Model: Collaborative Divorce

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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	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 other than an uncontested divorce and/or presenting the parties’ consent agreement to the Court and, if the Uniform Collaborative Law Act is passed in a jurisdiction, 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 by which parties agree to resolve differences directly, without adversarial legal proceedings or reliance on a court-imposed solution, and with a focus on the needs of the entire family.

Collaborative Participation Agreement

Agreement signed by the parties and their attorneys 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. Roles for a full team model are 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.

Confidentiality

The Collaborative Participation Agreement provides that communications exchanged within the collaborative process will not be disclosed 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.

Evaluating Options

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

Financial neutral

Collaboratively trained financial expert team member engaged by both parties to aid 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.

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 and/or may be separate goals specific to their roles as parents and co-parents. 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.

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.

All of this is done within a contextual paradigm shift that requires a commitment to reaching a resolution no matter what without going to Court.

Parallel Process

Simultaneous meetings among coaches and parties on emotional issues and/or parenting plan AND meetings among parties and attorneys and/or financial neutral and/or divorce coaches on financial issues. See below for the Successive Process.

Parenting Plan

Agreement by which the parties define time sharing (including regular schedule, holidays and vacations) and decision-making arrangements for their children as well as establishing protocols to aid in co-parenting.

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; and client-centered decision-making.

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.

Successive Process

Meetings among coaches and parties on emotional issues and/or parenting plan OR meetings among parties and attorneys and/or financial neutral on financial issues. 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, 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 all information related to the collaborative matter is to be disclosed as part of the process. Although this term is not fully defined, 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

¹ Examples would be important information relating to the romantic relationship of a party with another person, all financial information, and parenting information relating to a parent's addiction or diagnosed mental condition. 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 [*sic*]." The Comments indicate that this definition was intended to define the reach of what court matters a lawyer and his/her firm are disqualified from if the collaborative case terminates (Comments p. 24), but the same term is used with respect to what information must be disclosed in the collaborative process (§ 12 Disclosure of Information). 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].

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.

III. ROLES AND DUTIES OF EACH PROFESSIONAL ON THE TEAM²

a. Lawyer

- Assures that the party enters the 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 process
- Provides limited scope representation limited to collaborative negotiation toward settlement and representation in uncontested proceedings
- Maintains competence and diligence in the representation
- Maintains attorney-client privilege except as authorized by the party
- Educates the party about the process options of achieving divorce
- 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 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 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 has adequate information to make 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 options for resolving issues, in interest based negotiating, and in reaching resolutions that meet the needs of both parties and their family
- Assures that the settlement makes sense for the party
- Assures that the settlement meets court requirements
- Assists the party in assessing whether a settlement option meets his/her needs

² See discussion below regarding team decision on which of the roles will be performed in the meeting and which roles will be performed privately.

- Assists the party in generating global resolutions that combine proposed options for multiple issues
- Drafts settlement agreement and orders necessary to effectuate the settlement (*e.g.*, retirement orders)
- Represents party in uncontested divorce proceedings
- 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

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. Some practitioners have concluded that legal advice should only be provided in meetings of both parties and lawyers. Other practitioners have concluded that legal advice should primarily be provided in meetings of both parties and lawyers but 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.g.

The Collaborative Participation Agreement at Appendix G is drafted to cover any of the above choices. The lawyers may want to tailor the language in this Agreement to reflect their agreement as to how to handle their obligation to provide legal advice.

b. Divorce Coach

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

- Helps 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 parties to develop child-focused parenting plan
 - Expertise in child development and psychological impact of divorce on family members facilitates creation of child-focused parenting plan
- When there are children involved, assists 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 divorce 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 parents and child to assess level of child's functioning and adjustment to separation and divorce
- Assists 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 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 and 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

Comment: There is another model in use in which the child specialist assumes a larger role, in addition to the more limited role described above. In this model, the child specialist works with the parties to help them develop the parenting plan and to communicate. The coaches

may help the parties prepare for child specialist meetings, particularly by identifying how the parties' issues and behaviors affect their children and explaining their children's developmental needs. The coaches may participate in the child specialist meetings with the parties. In this model the child specialist may occasionally serve as a coach in the one-coach model.

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

e. Case Manager (one of the team members)

- Keeps the process on track and keeps team communication flowing
- Assists team members in maintaining their collaborative roles
- Arranges and informs team of time and place of team meetings and phone calls
- Facilitates the meetings when all team members and parties are present
- Begins each meeting with announcements, minutes from previous meeting, and agenda for current meeting
- Keeps track of the parties' progress or problematic interactions among team members
- Monitors parties' lack of progress and apprises the other team members

- Facilitates difficult conversations among team members if necessary
- Identifies, raises, and resolves issues in a way that integrates different perspectives
- Enables the team members to give constructive feedback to each other
- Keeps track of key aspects of the case
- Serves as ‘point person’ for the team members
- Obtains, maintains, and reports statistics to IACP and practice groups

IV. COLLABORATIVE PROCESS STRUCTURE

a. What is the collaborative process structure?

The basic collaborative process structure is a fluid process that provides the parties and the team a structure to resolve issues (see Appendix A). After signing the Participation Agreement and developing goals and a mission statement, the process moves to developing questions to be answered (framing the issues). Questions should be framed in a neutral way that will help the parties generate options at the next stage in the process. Framing the issues is followed by gathering information, which involves collecting 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 process moves to generating options. This is a period of brainstorming in which no evaluation of the options is done. 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 stuck on positions. In addition, 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 process moves to evaluating the options. Evaluation of options involves each party sharing their 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?” This question is different from which of these options do you like or prefer. It is also a different question from which of these options meets your own needs. If parties have concerns about an option, the team should encourage the parties to express these concerns using “I” statements. 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 or a minor adjustment to an option previously generated that is more agreeable to the parties. 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 they would consider the option. This technique results in a narrowing of the options to discuss further and allows for identification of any options that both parties can live with and thus a resolution. 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. The agreed upon resolution is an option that both parties can live with and, again,

this should be the standard. The use of already agreed upon mission statements may be a helpful tool in evaluating options since it is something the parties generated and agree upon.

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 are agreeable to both parties, the parties should return to generating more options or gathering more information in an effort to generate further options at a future meeting. In some cases, 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. How do the team and the parties stay within the collaborative process structure?

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 them 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 evaluating them. The brainstorming stage of the collaborative process is a vital step in coming up with creative options that often had not been previously thought of or considered.

Throughout the 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 suggest that the parties move to brainstorming again to generate additional options. In addition, the team could suggest that there is homework

(gathering information) that could be done to assist in either evaluating the options on the table or generating new options not previously considered.

V. HOW TO START THE PROCESS

a. What are the steps in starting the process?

- Explain collaboration to the party and obtain informed consent to the process (see section V. f.)
- Assist the party in enrolling the other party (see section V.j.)
- 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 communicate about their understanding of the process and agree upon how to handle any difficult issues, such as provision of legal advice
- Refer parties to divorce coaches
- Advise parties that future referrals will likely be made to financial neutrals and, if 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
- Parties choose each professional and sign an engagement agreement with each professional
- Lawyers agree on a collaborative participation contract (a model is provided at Appendix G)
- (Optional) Party meets with his/her coach and attorney
- Professional team has organizational meeting (see section VI.a.)
- Select case manager if appropriate
- Schedule meeting(s) to sign the collaborative contract, discuss concerns about the process, any emergency issues, goals for the process, and set or confirm meeting dates

b. 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 collaboration, 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. If the other party does not have an attorney or is undecided about collaboration, the attorney can work with his/her party to enroll the other party (see section V.j.) and make referrals to attorneys and refer to the IACP and local collaborative practice group websites. An

attorney should not refer his/her party to another professional without consulting his/her counterpart attorney.

Once there are two attorneys, the attorneys can jointly select and refer the parties to the coaches with the understanding that the party will meet with the referred professional and determine whether to engage the particular professional. The attorneys can provide names to each party to interview and engage as a divorce coach. 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 then consult each other and then the coaches to discuss referral to financial neutrals. In addition, the coaches will consult with each other and then the attorneys to discuss a referral to child specialists.

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(s) understand the options concerning different divorce processes and the role the mental health professional might play in each process. No detailed information concerning their particular situation should be discussed and it should be made clear that confidentiality applies in that meeting unless the party 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 information meeting.

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 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, it is unlikely that the collaborative process will proceed. 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. If the parties disagree about the use of that mental health professional in any role, the team, as constituted at that time, will consider the issues involved and reach a consensus about how to proceed.

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, an attorney and, then, a coach and for both parties to choose a child specialist.

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 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. All things being equal, it is better to assemble a team that has immediate availability to meet with the party. 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 (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.h.).

c. 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. Usually the Case Manager is a team member who is more available, flexible in his/her time, and more focused on process issues. See section III. e. for discussion of the role of the Case Manager.

d. What collaborative participation agreement should be used?

The D.C. Metro Protocols Committee has prepared a model team collaborative participation agreement 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.

e. 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 team 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.

f. 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. 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 divorce 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. 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, and that if either party seeks court intervention (other than a request to recognize a signed 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 with the 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 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 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. It should be clear that the engagement with the financial neutral is transparent 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 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 process terminates, the financial neutral cannot continue to assist either party or the party's representative outside of the process and cannot participate in litigation. In addition, the engagement agreement needs to state that the financial neutral cannot provide any other services to either party after the 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.

g. 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 practice 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 Agreement, attached at Appendix G, in discussing the provision of legal advice, incorporates 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 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 and client 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 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 new 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.

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

All professionals agree not to share the parties' information outside of the collaborative team and process, except for legally mandated reporting (see specifics in the engagement agreement for each profession), certain exceptions listed in the collaborative participation agreement, and when a party requests that his/her file be transferred by the attorney or financial professional to a successor.

Attorneys should be aware that, before the collaborative engagement agreement or collaborative participation agreement is signed, they must preserve attorney-client privilege. Once these agreements are signed, the agreement's terms govern the attorney's duties of confidentiality to the party. The party's consent in the collaborative participation agreement allows the attorney to share the party's information with the team but not with anyone outside the collaborative process. The party can revoke this consent and assert attorney-client privilege. If the party asserts privilege, the attorney must respect the privilege. If the attorney determines that the information should be disclosed and the party still asserts the privilege, the attorney must advise the party that the collaborative process must be terminated and the attorney must withdraw if the information is not shared. The Uniform Collaborative Law Act requires disclosure of information related to a collaborative matter, but offers little guidance on how "related" is defined. The information required to be disclosed should include, at least, 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 and terminate the process without revealing the reason for the termination.

The attorney-client privilege does not protect certain information: 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, and other exceptions listed in the Collaborative Participation Agreement at Appendix G.

The ABA Formal Opinion 07-447, "Ethical Considerations in Collaborative Law Practice," sets forth the ethical underpinnings of the collaborative process. The attorney should be familiar with and comply with this opinion in explaining the collaborative process to the party.

Even though the statutory privilege does not apply to mental health professionals in the collaborative process (because the party is not seeking diagnosis or treatment), mental health professionals must maintain confidentiality in their meetings with clients unless they obtain an agreement that there will be no confidentiality. Prior to signing the engagement agreement, the mental health professionals have a confidential relationship with the party unless the mental health professional advises the party in advance that there will be no confidentiality. The

National Association of Social Workers, Code of Ethics (1996, 1999) obligates social workers to this confidential relationship. The American Psychological Association, Ethical Principles of Psychologists and Code of Conduct (2003) bind psychologists to this confidential relationship. 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 state clearly that information given by the party may be shared with the team and the other party unless the party invokes confidentiality, thereby revoking the party's prior signed consent to disclose. 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.

Prior to the signing of the financial neutral's collaborative engagement letter, the financial neutral is required to abide by his/her professional ethics put forth by their respective professional organizations. For CPA's and CFP's there is a requirement to maintain confidentiality of all client information. A client would be anyone who has engaged the services of the financial neutral for any reason. If a client specifically authorizes the financial neutral to release information to a third party, such approval should be obtained in writing. The financial neutral cannot withhold information of either client from the other.

Once the party has signed the collaborative engagement letter, the financial neutral continues to be bound to confidentiality outside of the process and is still bound by his/her respective professional ethics. However, the collaborative engagement letter specifically gives the financial neutral authority to share any and all party information with the collaborative team and anyone who is participating in the collaborative process.

Once the collaborative process has ended due to completion of the engagement, the financial neutral should continue to maintain confidentiality as required by his/her respective professional ethics.

If the collaborative process is terminated for any reason, the financial neutral is still bound to confidentiality of party information as required by his/her respective professional ethics and as required under the collaborative engagement letter. The party can give written approval to the financial neutral to transition his/her information to a successor financial neutral.

In addition to the above, financial neutrals that are CPA's have statutory privilege in the State of Maryland, which means that they cannot be compelled to testify to privileged party information in civil litigation. Statutory privilege does not exist for CPA's in Virginia or DC.

Nor is there a statutory privilege for CFP's in any of the three jurisdictions.

Once the collaborative engagement letter is signed, the party is agreeing that the financial neutral will not provide any additional services including assisting with litigation. Also, the party agrees in the engagement agreement and the collaborative participation agreement that any party information, oral communications and work of the financial neutral produced during the process is confidential (that is, cannot be released outside the collaborative process), not admissible in court and the financial neutral cannot be called as a witness in court.

i. 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. Refrain from doing an "information dump" on the party. 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, voluntary 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 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
- No Court or litigation with any member of the collaborative team
- 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 for threat of harm or a crime, or actions for misconduct against a collaborative professional or for professional fees.
- The parties' expectation of confidentiality with respect to each team member (see section V.h.)
- 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 controlled 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 only when all information is gathered, evaluate options only when all options have been generated, reach 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 psychological issues particular to this family
- Process is designed to create durable and sustainable agreement for the family

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.f.).

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.

j. 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 if the other spouse/partner has a therapist
 - 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, 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
 - 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)
- k. 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. The 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.

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 how the team will have on-going communications (*e.g.*, frequency and time of team conference calls), billing practices for team communications and travel, determine if there will be a case manager, seating arrangements for meetings, 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 become 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 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 deescalate emotions. 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 this option, 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 is 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 the coach or lawyer sitting next to the other party. Some parties may do best if he/she sits between his/her coach and his/her attorney for support and coaching throughout the meeting. Some situations will be decided based on party preference.

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 is beneficial 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.
- 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.
- Approve the minutes from the previous meeting at the beginning of each meeting.
- 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 collaborative process structure phases.
- 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 having larger meetings and experience tells us that planning in advance is the best approach.

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 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 openly. 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 positions and proposals 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”. 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
- 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 and full disclosure, not taking advantage of mistakes, listening to the other party and considering his/her needs and the needs of the family, refraining from taking positions, speaking up for his/her needs and 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 the process and supporting the party's efforts to resolve issues, 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 greatest fears about the process and discuss them and how to handle them
- 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 contract, discuss concerns about collaboration, discuss why the parties chose collaboration, sign the contract, 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

As a mental health professional:

- Discuss goals for the process, individual and family
- Discuss why the party chose collaboration
- 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 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)

As a financial neutral:

- 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. Who attends the initial team meetings and what is covered?

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
- 7-way meeting with parties, attorneys, coaches and financial neutral to sign the agreement and discuss goals for the process
- 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 by either of the following:
 - Read the participation agreement fully with parties taking part if they are comfortable. Professionals may share comments from their collaborative experiences that they think would be helpful in explaining the process.
 - Professionals summarize each section provided that each attorney has fully gone over the entire agreement individually with their respective party.
- Discuss the parties' concerns about the collaborative process
- Discuss why the parties chose collaboration
- 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 (see Appendix B)
- 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 deescalate emotions, overall goal of parenting plan
- Describe first steps in meeting with child specialist to gather information on needs of child and give voice to child in process
- Discuss options for how the parties will pay for the collaborative process
- Address pressing issues
- Schedule future meetings

c. How to determine next steps after the initial team meeting(s)

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. Feel free to use this chart with parties at the initial team meetings to illustrate the process in a visual way. In addition, as the process goes forward, it might be helpful to periodically show the parties where they are in the process by using this chart.

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. Again, this is a fluid process and as the process unfolds, the team and the parties can revisit the initial decisions about how to best 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 deescalate 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 meeting to discuss financial information 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. What is the role of the coaches during this phase of the process?

- Individual meetings with party and coach
 - Understand the party's "story", individual and family goals for now and in the future, concerns for the process and the future, 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 1st 4-way meeting
 - Attorneys are generally not present
 - Work on mission statement and principles for co-parenting
 - Mission statement goes at top of parenting plan
 - Discuss children and their needs and interests (using the flip chart to list these)
 - Explain the role of the child specialist and the need 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 Parenting Plan Checklist (see Appendix C) so parents can begin to think about decisions they will be making
 - Set 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
 - Child specialist dialogues with parents and coaches, providing feedback to the parents about their children for their consideration in the creation of the parenting plan and to assist the parents in their co-parenting relationship
 - Create minutes and distribute to 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 child specialist, the coaches and parties have a 4-way meeting
 - Parties and coaches process individually and in the 4-way meeting information presented by child specialist
 - Use 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 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. What is the role of the child specialist during this phase of the process?³

- The Child Specialist process usually occurs 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, 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 dynamic (optional)

³ See Section III.c for another model in which the role of the child specialist is expanded.

- 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 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 individual children and family
- The Child Specialist gathers all 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 dialogues with parents and coaches and provides feedback to the parents about their child for consideration in their creation of the parenting plan and to assist parents in 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

c. What is the role of the attorneys during this phase of the process?

- The attorneys are keeping 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. How does the financial neutral gather the financial information?

- The financial neutral should schedule 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.
- Provide 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.
- It’s very important to be 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. The goal is to be efficient and as prepared as possible at the 7-way meeting

b. How does the financial neutral present the financial information?

- Reports to be presented by the financial neutral
- Statement of assets/liabilities/life insurance/children’s accounts

- Should be listed by title (husband/wife/joint) and each account, etc. should have date of balance listed for clarity. The financial neutral should also include footnotes to guide the reader, identify where there is actual documentation, where there are estimates, and/or comments by each party that are important to note. Remember that there should be full disclosure and reports 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 nonmarital. The facts of how the asset was acquired should be noted in footnotes and in the details. 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 and taxes projected
 - Tax projections for each party with assumptions noted
 - Retirement projections where needed
 - Pension amounts and projections where appropriate and estimates of present values
 - Summaries where needed to explain business ownership, etc.
 - Other financial reports as needed
- c. What is the role of the financial neutral in option development, option evaluation and resolution of the financial issues?
- 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 to be sure they are understood. 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 which question to develop options for with the team facilitating and assisting where 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 during option development. This should be considered a “creative brainstorming” exercise.
 - Option development should include all possible solutions within reason as to the possibilities that are relevant for the parties without critique
 - **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 where it is obvious the parties were not aware an option was available, or where it is obvious they need assistance with development.
 - The professionals have an obligation to encourage the parties to generate as many options (not just one or two) to evaluate where possible. It is not uncommon for the parties to generate limited options.
 - Additional homework or information may be identified during this process in order to generate more options for consideration before proceeding further. (Refer to 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 additional homework or information may be identified and needed during this phase of the process prior to moving to the evaluation of 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 are not “stuck” with an answer to an option and they can always add more options
 - The parties should be assured that no “absolute” decision has to be made about a particular option until all other assets, liabilities, support, etc. have been covered
 - 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 certain options will be focused on.
 - 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 get narrowed down, all of the key questions have been answered, and option development and evaluation is complete, the parties will need to work through a resolution of all issues 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.
- It is not uncommon for the parties to present challenges to a formal resolution that requires increased involvement from the coaches and other team members.
- Once a full resolution has been reached, one of the attorneys will draft an agreement for the parties to review. 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 could the team have done better.
- Decide on who will be responsible for reporting the completed case to the local practice group (if applicable).

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

- 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
- Helps the party generate and evaluate financial options
- Ensures that the party has considered all information necessary, including legal information, to determine if 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 parties manage anxiety and other feelings that may arise during these stages
- Help 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. Party's authorization of team communications

All team members should receive written authorization from the parties to share the party's information with any team member. This authorization is included both in the professional's engagement agreement and in the collaborative participation agreement. 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. Most 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. 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 at the beginning of the process to establish methods of communication (professional team meetings/emails/team calls). Contact information should be shared. It is recommended that a "regular" scheduled call time be established up front (weekly/biweekly). The team can decide each week whether a call is needed.

The team may communicate by e-mail and should mark any "offline communication" (TEAM ONLY) when discussing party information/process that should not be forwarded to the parties. All emails should be written in a professional way and the content appropriate for any professional or party to read, even if "offline". 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 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/send reminder of call and prepare brief minutes of the calls. Minutes would contain "process information" only and not party content information. Many teams use "freeconference.com" for calls and reminders.

c. How to manage the schedules of the team

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 where 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.

d. Transparency among team members

Once the party gives written authorization to the individual team members, all communications among the team members should be open, honest and transparent. There are NO SECRETS. The party needs to understand this fully and be made aware that this is how the team operates. 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

The team will hold all communications confidential from those outside the collaborative process and protect a party's privacy. If the process terminates, it may be necessary to turn over written communications or files to a successor attorney or financial representative at the party's request. It is extremely important to always communicate with this in mind.

In certain unusual but important instances, the attorney-client privilege does not protect certain information from disclosure: 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. The Uniform Collaborative Law Act also allows disclosure in limited circumstances in criminal court or rescission or breach of contract cases involving the collaborative settlement agreement. This exception is further described in Section 9.B of Appendix G.

Also, the mental health professionals have duties to report threat of bodily harm, intent to commit a crime, threat of harm or removal of children, and threats to the party's safety.

Further, in actions against the collaborative professionals, communications may not be protected from disclosure.

f. What does not need to be communicated to parties?

The content of team communications is generally not reported to the parties. The team should advise the parties early in the process of the team's anticipated communications, designed to move the process forward, and that the content of the communications will generally not be shared with the parties.

g. 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" or "getting to know the team members". Also, there can be an overall inefficiency to discussions or personal "chit chat" that should be considered. 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 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 where 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 an essential element 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 should

assign one member to report to the local practice group (if applicable). 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 against the other party which is related to the collaborative matter).

e. What does each professional do with the records once the legal divorce is final?

If the party requests his/her records from his/her attorney, the party has the right to his/her records except notes, team communications, mental impressions, and other work product. The party can direct that the attorney provide the party’s file (except work product) to a successor attorney. 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.

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 they 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 Section 9.B of Appendix G and in the discussion below).

Also, each party has an attorney-client privilege for communications made privately to his or her attorney, but this privilege does not apply to communications made in the presence of the other party and/or any of the team members. The collaborative participation agreement fills this gap and obligates both parties to refrain from introducing these non-privileged collaborative communications into evidence in court. At present, we are not aware of any court cases in which a court has ruled on the validity of this contractual provision in the face of one party trying to breach it by introducing into evidence a collaborative communication. However, the example of mediation agreements would suggest that courts may be persuaded to uphold the validity of the confidentiality provision of the collaborative participation agreement.

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 not been passed by any jurisdiction, provides this statutory privilege only with respect to introduction of evidence in court and in discovery. 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.

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; a statement offered in a

claim of misconduct against a collaborative professional; a signed agreement made in the collaborative process; a publicly available document; 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 outweighs the need for confidentiality.

b. What is the role of the attorney in helping his or her client transition to another process?

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, excluding notes, team communications, mental impressions and other work product, to the party or the party's new attorney.

c. 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 at least three business days 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.

d. 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.

XIII. HOW TO MANAGE CHALLENGES WITH PARTIES

a. How to manage resistance to process

- The coach, lawyer or both meet with party to determine cause of resistance and resolve causes if possible. Refer to 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 parties at the beginning of the process that any information that may impact the collaborative process will be shared with team members.
- The coach will work with the party concerning the “confidential” information and impact on 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 related to the collaborative process may result in withdrawal of team member(s) and/or termination of the collaborative process (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, 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 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 collaborative process.
- May need to have team meeting with the parties to deal with the issues and to provide a “containing” structure for the parties

f. How to manage party 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 parties want to rush through the process and not explore issues sufficiently?

- The coach and/or attorney can explore with the party underlying issues which might make dealing with issues difficult.
- Possible referral to outside resources for help with underlying issues interfering with 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.
- The team may need to accept the inability to deal with issues more than is useful to the process, after exploring with the parties possible ramifications

h. How to manage party 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 process may terminate.⁴ 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 respect the decision of the party who wants to terminate a neutral professional, they should work

⁴ 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.

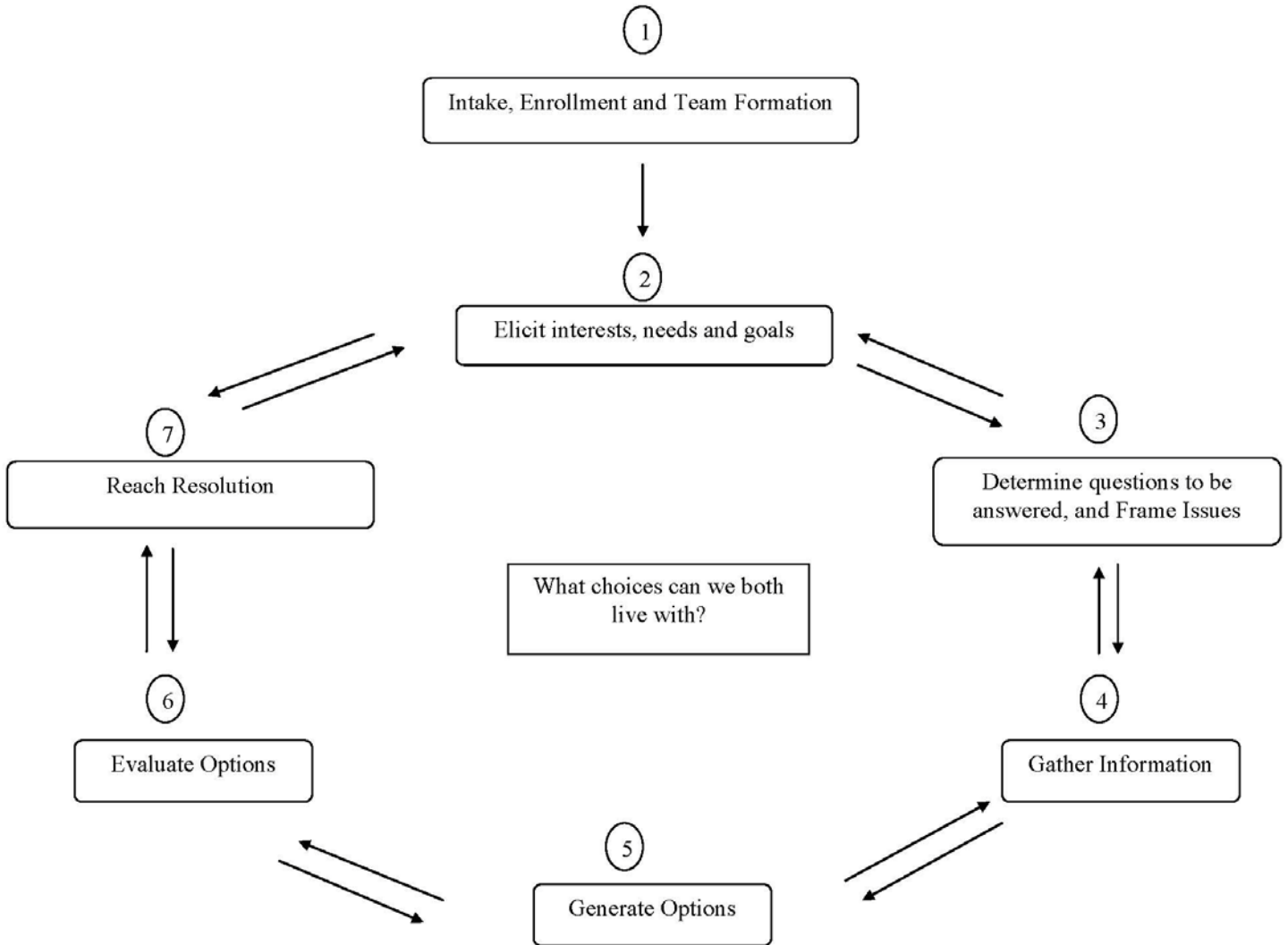
with both parties to see that both parties' needs are respected in the transition. In this case, the team may in extreme cases decide that the case cannot go forward.

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 at which the case is, 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.

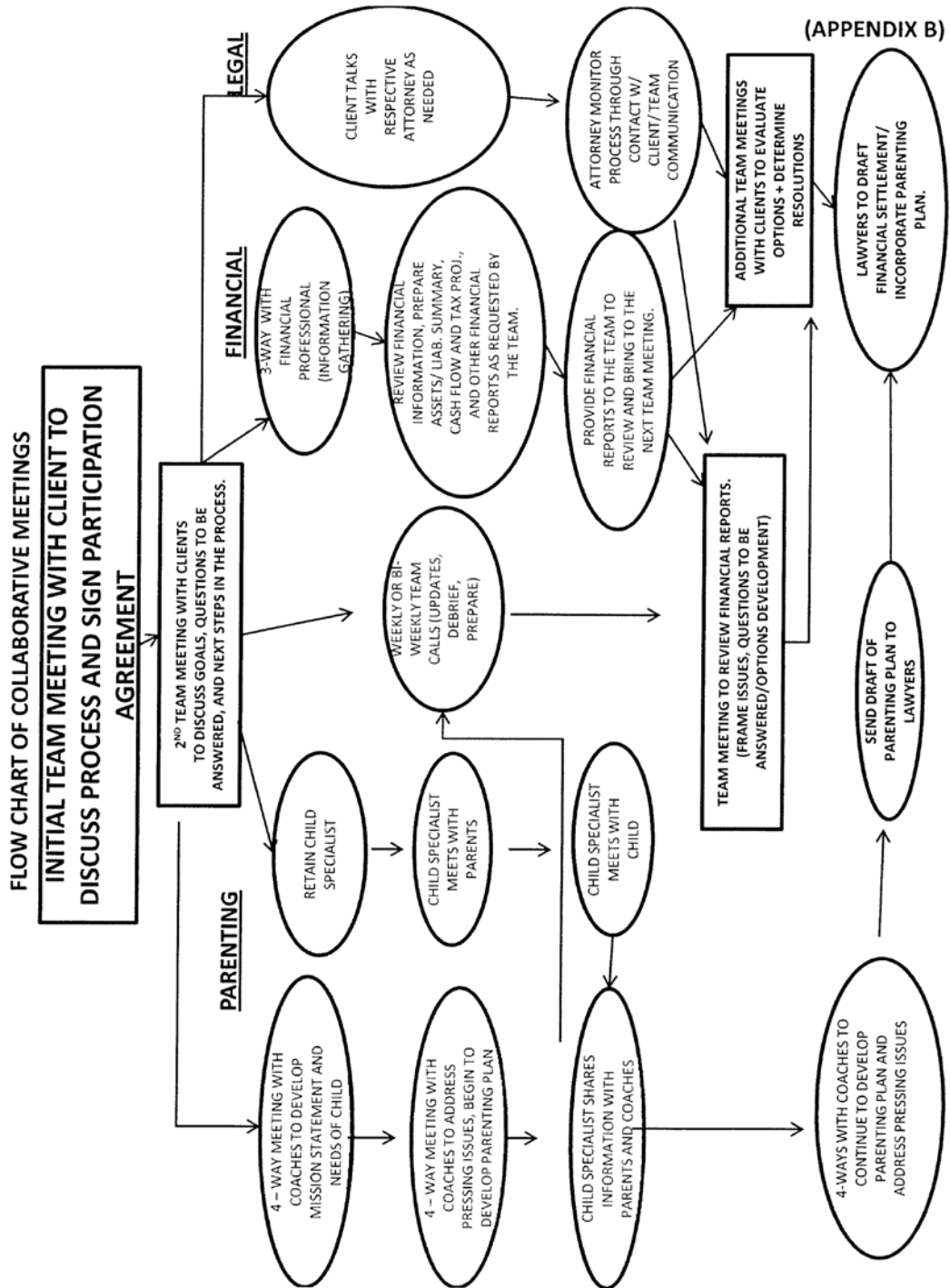
c. How to transition to a new professional

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

- Shared narrative—what to tell the kids, when, how, follow-up conversations
- Access schedule:
 - School year schedule
 - Drop off/pick up time and location
 - Transportation between houses
 - Canceled visits rescheduled/Make-up time
 - Sick days
 - Snow days (late opening, early dismissal)
 - ½ days and professional days at school
 - School days off that are not federal holidays (professional days)
 - Summer (schedule and vacations)
 - Holidays (usually supersede regular access schedule)
 - Consider when these holidays start and end and where the children will be
 - MLK day
 - President’s day
 - Spring break
 - Memorial Day
 - July 4th
 - Labor day
 - Columbus Day
 - Thanksgiving
 - Christmas (Eve and Day)
 - Winter break
 - New years (Eve and Day)
 - Any other religious holidays (e.g. Easter, Passover, Hanukah, etc.)
 - Vacations
 - Birthdays (Children’s and Parent’s)
 - Who will plan the celebration?
 - Will both parents attend celebration?
 - Who will pay for the celebration?

- Mother's Day
 - Father's Day
- Phone calls
 - Child and parent initiated
- Plan for toys and belongings to move back and forth between homes
- Major decision-making/Legal custody (education, religion, health—mental and physical)
- Decision making regarding extracurricular activities
- Changes to the access schedule--How would requests for changes be made—verbal, writing?
- Right of 1st 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 before implemented?
- What to do in a medical emergency for one of the children?
- How to handle regularly scheduled medical and dental appointments for the children. Notify other parent? How far in advance?
- Exchange of medical information (appointments, information from medical professionals, if child is sick, treatment recommendations)
- Exchange of school information (meetings scheduled, event notices, volunteer opportunities, daily and weekly school information, report cards)
- Exchange of information on childcare
- Issues regarding what parenting practices can be consistent between houses and what can be different
- How to introduce significant others to the children—parent dating
 - Letting other parent know prior to introduction? Overnight guests?
- A specific communication protocol between the parents, if needed
- Relocation
- Summer camp
- What to do on parenting issues if impasse is reached
- Travel—informing the other parent, exchange of information, domestic, international, how to reach children when traveling

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. ASSETS & LIABILITIES¹

1. MARITAL HOME & OTHER REAL ESTATE HOLDINGS

___ CURRENT MONTHLY MORTGAGE STATEMENTS/ HOME EQUITY LINE OF CREDIT

___ CURRENT STATEMENT FOR ANY OTHER DEBT ATTACHED TO HOUSE

___ PURCHASE PRICE AND DATE

___ ESTIMATE OF IMPROVEMENTS MADE IN HOME WHILE OWNED

___ CURRENT FAIR MARKET VALUE (ESTIMATE OR TAX ASSESMENT)

___ OWNERSHIP INFORMATION

2. INVESTMENT AND BANK ACCOUNTS (NON-RETIREMENT)

___ CURRENT BANK ACCOUNT AND MONEY MARKET ACCOUNT STATEMENTS

___ CURRENT BROKERAGE ACCOUNT STATEMENTS, INCLUDING COST BASIS (IF KNOWN)

___ OTHER INVESTMENTS

3. BUSINESS INTERESTS

___ K-1 FROM ANY BUSINESS INTERESTS

¹ As discussed in Section IX, the financial neutral should determine, with input from the attorneys and parties, how many months/years of documents, in addition to current documents, should be collected to provide the verification appropriate for each case.

___LAST TWO YEARS OF TAX RETURNS FOR BUSINESS

4. EMPLOYEE BENEFITS

___EMPLOYEE BENEFITS (BOOKLET/DETAIL)

___STOCK OPTION/AWARD PLANS

___457 AND NON-QUALIFIED DEFERRED COMP STATEMENTS AND RELEVANT INFORMATION

___HEALTH SAVINGS PLAN INFORMATION

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

___LIST OF BUSINESS EXPENSES PAID BY EMPLOYER

___OTHER BENEFIT STATEMENTS

5. RETIREMENT ACCOUNTS

___ RETIREMENT INFORMATION (BOOKLETS) ANYTHING REGARDING PENSIONS, ETC

___VETERANS OR MILITARY BENEFITS STATEMENTS

___CURRENT COPIES OF IRA, ROTH IRA, KEOGH, SEP, 401K, 403B, AND ANY OTHER RETIREMENT ASSET STATEMENTS

6. OTHER ASSETS

___CURRENT STATEMENT OR RECORDS OF ANY ASSET/ GIFT FOR WHICH YOU ARE CONSIDERING SEPARATE PROPERTY

___FREQUENT FLIER MILES AND OTHER REWARDS LIKE SEASON TICKETS AND COUNTRY CLUB MEMBERSHIPS

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

___CURRENT STATEMENT OF OTHER ASSETS

___ STATEMENTS 1-2 YEARS PRIOR TO SEPARATION IF, AFTER DISCUSSIONS WITH THE PARTIES IF THERE ARE QUESTIONS AS TO DISPOSITION OF ASSETS

7. LIFE INSURANCE

___ CURRENT POLICY STATEMENTS FOR ALL LIFE INSURANCE POLICIES AND BENEFICIARY DESIGNATIONS

___ INSURANCE COVERAGE AT WORK

8. VEHICLES

___ KELLY BLUE BOOK VALUE FOR EACH VEHICLE

___ ANY DEBT/ STATEMENTS ASSOCIATED WITH VEHICLE

___ COPIES OF VEHICLE TITLES/ LIST DRIVERS

9. 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 LIABILITIES

10. CHILDREN'S ACCOUNT

___ COPIES OF RECENT STATEMENTS FOR ANY COLLEGE PLAN ACCOUNTS

___ COPIES OF RECENT STATEMENTS FOR ANY OTHER ACCOUNTS OF WHICH CHILDREN ARE THE BENEFICIARY/ OWNER

II. CASH FLOW

___ CURRENT PAY STUBS INCLUDING COMMISSIONS, BONUS, ETC. AND PREVIOUS END OF YEAR PAYSTUB (OR ESTIMATE OF CURRENT INCOME IF NOT SALARIED)

___ CURRENT BUDGET (FORMS ENCLOSED)

III. OTHER

___ 2 YEARS OF COMPLETE INCOME TAX RETURNS, BOTH STATE AND FEDERAL INCLUDING ATTACHEMENTS/ W-2'S

___ SOCIAL SECURITY STATEMENT (www.ssa.gov/online/ssa-7004.html)

___ COPY OF RECENT CREDIT REPORT (annualcreditreport.com)

DATES NEEDED:

HUSBAND

WIFE

CHILDREN

DATE OF MARRIAGE

DATE OF BIRTH

APPENDIX F: CHECKLIST FOR FIRST TEAM PROFESSIONALS MEETING

- Assign notetaker
- Obtain contact information, preferred email address, and telephone numbers for each Team member
- 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 AGREEMENT

1. Introduction

A. _____ and _____, ("the parties") have chosen to use the principles of the collaborative process [*ADD, AFTER PASSAGE OF THE UNIFORM COLLABORATIVE LAW ACT IN THE APPLICABLE JURISDICTION*, "under the Collaborative Law Act"]¹ to settle, in a non-adversarial and private manner, the issues arising from the dissolution of their marriage/domestic partnership and the restructuring of their family. They have retained collaborative attorneys to assist them in achieving this goal, namely, _____ who represents _____; and _____ who represents _____. (Both parties' attorneys are hereinafter referred to as "the attorneys").

B. The parties acknowledge that the essence of the collaborative process is the shared belief that it is in the best interests of their family to commit themselves to avoid the use of litigation and litigation-based strategic negotiation techniques.

C. The parties agree to resolve their issues in the best interest of both of them and their children.

D. The parties adopt this form of alternative dispute resolution which does not rely on a court-imposed resolution and which does rely on honesty, cooperation, integrity, civility and full disclosure, and a focus on the future well-being of the whole family.

The parties commit themselves to the collaborative process as a better way to resolve their differences. Specifically, the parties agree as follows:

2. No Litigation

A. The parties commit themselves, and agree to devote all of their efforts, to settling the issues arising from the dissolution of their marriage/domestic partnership and restructuring of their family without adversarial court intervention. The collaborative process is concluded by a collaborative settlement agreement, signed by the parties, with respect to all matters considered in the collaborative process or an agreement, signed by the parties, resolving a portion of such matters and agreeing that the remaining portions will not be resolved in the collaborative process. During the collaborative process, no pleading or motion will be prepared or filed, nor will any request be made in any way which would initiate Court intervention, other than seeking a stay of litigation in order to participate in the collaborative process. If either party initiates contested legal proceedings against the other, the parties recognize that the collaborative process is immediately terminated.

¹ The Uniform Collaborative Law Act requires that the collaborative participation agreement reference the Act passed in the particular jurisdiction in order to take advantage of its provisions, such as the statutory evidentiary privilege for collaborative communications.

B. Each party understands that his or her collaborative attorney's representation is limited to the collaborative process. While each attorney is the advisor of his or her own client and serves as the client's representative, counselor, and advocate, the parties agree that neither of their attorneys nor their firms can ever represent either party in a contested court proceeding against the other, or appear as counsel for them with respect to this or any related matter in any court or on any court filings other than a mutually-agreed submission of documents to obtain an uncontested divorce or other mutually-agreed consent order [*ADD, AFTER PASSAGE OF THE UNIFORM COLLABORATIVE LAW ACT IN THE APPLICABLE JURISDICTION, "or in an emergency action to protect the health, safety, welfare, or interest of the party or party's family member, until a successor attorney is obtained or the protection is achieved."*]

3. Full Disclosure

A. The parties agree to promptly provide full and informal disclosure of all information related to the collaborative matter, whether requested or not. For purposes of this process, this information includes any information, including documents, which either party might need to make an informed decision about each issue in dispute. The parties also agree to provide voluntarily any written authorizations requested which may be required to obtain such information.

B. By entering into this Agreement, the parties will not employ formal discovery procedures and acknowledge that they are giving up certain investigative procedures and methods that would be available to them in the litigation process. The parties give up these measures with the specific understanding that they will both make a full and fair disclosure of all assets, income, debts and other information related to the collaborative matter and will deal with each other in good faith. The parties understand that if either of them knowingly misrepresents or withholds important information, the Collaborative Process will be terminated.

4. Participation with Integrity

A. The parties will work to protect the privacy and dignity of everyone involved in the process.

B. The parties will not take advantage of any mistakes, misunderstandings, inconsistencies or miscalculations of each other or any other participant, and shall disclose them and seek to have them corrected. The parties instruct their attorneys and the team members to assist them in correcting any mistakes.

C. The parties commit to meeting regularly and when they do meet, they will be prepared, having done any homework assigned. If homework cannot be completed prior to a scheduled meeting, they will inform all attendees at least 48 hours before the meeting so that a decision can be made about whether or not to postpone the meeting. A party who needs to cancel a meeting for any reason shall give notice to all participants as soon as possible but not less than 48 hours before the meeting.

5. Communication

A. **Meetings.** The parties agree to work toward the resolution of issues in meetings with their attorneys and any mental health professionals, financial professionals and/or other experts that they and their attorneys agree to include as part of the process.

B. **Tone of Communications.** The parties' written and verbal communications will be respectful and constructive. They will not make accusations or claims which are punitive in nature. They will also try to avoid taking inflexible positions, understanding that accommodation of each other's interests and the ability to compromise are essential to the success of this process. The parties will follow the Expectations of Clients and Professionals, which is attached. Neither party and neither attorney will use the threat to withdraw from the process or go to Court as a means of achieving a desired outcome or forcing settlement.

C. **Focus of Communications.** The parties will try not to focus on the problems that may have contributed to the breakdown of the marital relationship but instead will focus on the issues that need to be resolved for both of them to move forward with their lives.

D. **Communications Without Criticism or Interruption.** To achieve a mutually agreeable settlement, the parties must be able to speak freely and express their respective interests, needs, desires and options without criticism or judgment from the other. Each of them will respectfully listen to, acknowledge and attempt to understand the other's point of view, even if they do not agree with it. They will use their best efforts not to interrupt each other or another participant in meetings.

E. **Communications Outside Collaborative Process.** To maintain as constructive a settlement process as possible, the parties agree not to discuss settlement issues with each other outside of the collaborative meetings. Discussion outside of such meetings must be agreed to by each party, his or her attorney, and any other participating professionals, in advance.

F. **Legal Advice.** The parties understand that each attorney has an ethical obligation to represent only his or her client and a duty to advise his or her client regarding the law and choices in this process. Both of their attorneys may present them with a summary of the law on particular issues in the collaborative meetings and in the presence of both of them.²

The good faith undertaking by the participants set forth in this Agreement does not give rise under any circumstances to any claims, contractual or otherwise, by one party against the attorney for the other party.

G. **Privileged/Confidential Communications.** Each party understands that he or she has an attorney-client privilege and has the right to instruct his or her attorney not to reveal specific privileged information. If either party so instructs his or her attorney to keep a privileged communication confidential, the party understands that the collaborative process may be subject to termination according to Section 11 of this Agreement.

² See the discussion at Section V.g.

6. **Preservation of the Status Quo**

Commencing immediately and for the duration of the collaborative process, the parties agree to the following commitments and understand that if they do not abide by these commitments the process may terminate:

A. They will not sell, transfer, borrow against, encumber, pledge as security, conceal, assign, remove, or in any way dispose of any property, real or personal, whether or not marital, individually or jointly held by them, without the written consent of the other, except in the usual course of business consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with this process.

B. They will not borrow against, cancel, transfer, dispose of or change the beneficiaries or any terms of insurance or other coverage including, but not limited to, life, health, dental, vision, automobile, long term care, and disability insurance held for the benefit of either of them or their minor child(ren), without the written consent of the other.

C. They will not incur any debt or liability for which the other may be held responsible, including, but not limited to, further borrowing against any credit lines secured by the family residence, further encumbering of any assets, or using credit cards or cash advances, other than in the usual course of business consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family, or for reasonable professional fees in connection with the collaborative process.

7. **Children's Issues**

The parties recognize that children frequently suffer during the process of divorce, and they commit themselves to minimizing the trauma to and disruption of their children's lives. To that end, they agree as follows:

A. **No Discussion of Settlement Issues in Presence of Child(ren).** The parties acknowledge that communication regarding their settlement can be harmful to their child(ren). They will not discuss settlement issues in the presence or hearing of their child(ren), unless by prior agreement, or with the advice of a child specialist.

B. **No Interrogation.** The parties will not question the children about the other parent or the events occurring in his or her residence.

C. **Their Child(ren) Will Not Be Placed in the Middle of Their Disagreements.** The parties acknowledge that their child(ren) need both parents in their lives and that they are hurt when one parent criticizes or blames the other parent. They will endeavor not to criticize the other parent to their child(ren) or in their presence. They agree that their child(ren) shall not be forced to choose between them. They will encourage their child(ren) to have affection for both of them. Neither party will use the children as a messenger to deliver information to the other party.

D. **Access Will Not Be Withheld.** The parties will not attempt to impede access of their child(ren) to the other parent. The child(ren) shall have reasonable telephone access to both parents, and each parent will have reasonable telephone access to the child(ren).

E. **Information Will Not Be Withheld.** The parties will promptly inform the other parent of any serious accident, illness or other mishap involving their child(ren). The parties will have equal access to records and information regarding their child(ren)'s education, health, activities and general welfare.

F. **Removal from Area.** The parties will not remove, or threaten to remove, their child(ren) from the area, absent the explicit written consent of the other parent. However, they further agree that consent to such removal for vacations or other legitimate activities will not be unreasonably withheld.

8. **Team Members and Experts**

A. **Team Members.** The parties may decide to use the team approach to the collaborative process in which case they may retain the following team members, with whom they must execute separate engagement agreements and the attached Team Pledge:

- i. Two mental health professionals, each acting as a coach for one party to facilitate communication and management of emotions, facilitate the collaborative process, and assist with resolving parenting issues;

[Or Alternatively, One-Coach Option] One mental health professional to facilitate communication between them, facilitate the Collaborative process, and assist with resolving parenting issues;

- ii. One mental health professional acting as a child specialist to meet with their child(ren), to provide them with child development information, to voice the needs and/or concerns of their child(ren) when needed, and to assist with resolving parenting issues; and/or
- iii. A financial neutral to gather their financial information, to summarize, analyze and/or present it to them as requested, and to assist with resolving financial issues.

The above-listed professionals and the attorneys constitute the Collaborative Team (sometimes referred to as the team).

B. **Communications Among Team Members.** Each party recognizes and agrees that his or her individual communications in this process, including otherwise privileged information, may be shared by and among his or her respective attorney, his or her spouse/partner's attorney, the coach(es), the child specialist and the financial neutral who are serving on their team, and other professionals retained jointly by the parties to assist them in the collaborative process. This will include discussions the substance of which may or may not be shared with the parties. However, a privileged communication that a party specifically instructs

his or her collaborative attorney not to reveal will be kept confidential, but, under the circumstances described in Section 11 below, may result in termination of the collaborative process. Each party instructs his or her attorney and other team members to have whatever discussions among themselves as are necessary to assist the parties to resolve their differences during the collaborative process, including discussions outside of their presence, and including the disclosure of otherwise privileged information. They understand that this may be a partial waiver of the attorney-client privilege. Each party understands that, if the collaborative process terminates, each party has the right to his file from his attorney, except for notes, team emails, and other work product of the attorney, and that a party may direct that his or her file be provided to a successor attorney. Each party also has the right to the financial documents prepared by the financial professional if the case terminates and the party has complied with terms of payment.

C. **Future Roles of Team Members.** The parties understand and agree that their divorce coaches and child specialist are members of the Collaborative Team only and cannot act as therapists for either of them or for their child(ren) or serve in any role inconsistent with their team role, even after the final agreement is signed and the collaborative process has concluded. They understand that their financial neutral is a member of the Collaborative Team only, and cannot act as a financial advisor for either of them, or sell products to them or serve in any role inconsistent with his/her team role, even after the final agreement is signed and the collaborative process has concluded.

D. **Neutral Experts.** When appropriate, the parties may use neutral experts for purposes of valuation, cash flow analysis, mortgage application, appraisal of real or personal property, and for any other issue that requires expert advice and/or recommendations. They will agree in advance as to how the costs of this third-party expert will be paid. When an expert is engaged, they agree that the team members and the expert may engage in whatever discussions are useful for resolution of the case, including discussions outside of their presence. In the event of litigation, a neutral expert (who is not a team member) may be called as a witness but only if the expert and both parties agree.

E. **Subsequent Litigation.** Unless the parties and the professional team member or expert agree otherwise, if they select and retain a team member and/or a joint neutral expert to assist in the collaborative process, neither of them may retain such team member or expert, nor may such team member or expert participate, in any subsequent litigation between them, whether as an expert, a witness, or in any other capacity.

9. **Confidentiality Within Collaborative Process**

A. The parties wish to feel comfortable exchanging information freely and in testing out ideas and proposals within the collaborative process. They instruct their attorneys and other team members that all collaborative communications except as provided in paragraph 8 above (communication among team members) and in this paragraph shall be kept confidential and confined to this process and shall not be subject to discovery or admissible in evidence in any subsequent litigation. 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.

B. Disclosures. The following are exceptions to confidentiality and are not protected by privilege from discovery or introduction into evidence:

- i. If an ethics complaint, or claim of malpractice or misconduct, is filed or made against either of the parties' collaborative attorneys or against any mental health or financial professional involved in this process or if a claim is filed for fees owed to a collaborative professional;
- ii. A threat or statement to inflict bodily injury or commit a crime;
- iii. If a threat is made involving harm to the parties' child(ren) or removal of their child(ren) from the place where they live;
- iv. Communications sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child;
- v. If a collaborative process communication is intentionally used to plan, conceal, attempt to commit or commit a crime;
- vi. Documents otherwise public and obtainable from a source outside of the collaborative process;
- vii. Communications necessary to respond to communications made by a person that discloses a collaborative communication and prejudices another person in a court proceeding;
- viii. A signed agreement made by the parties during the collaborative process, including the Collaborative Participation Agreement, a final agreement, or an Agreement to be Relied Upon;
- ix. Collaborative communications agreed to be disclosed by both parties and, in the case of a collaborative communication by a team member (including the attorneys), agreed to be disclosed by the team member; and
- x. *[AFTER PASSAGE OF THE UNIFORM COLLABORATIVE LAW ACT, ADD "If a Court finds, after a hearing in camera, that the party seeking to obtain or use the collaborative communication in discovery or court has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the proceeding involves a felony or misdemeanor or an action to rescind or reform or defend against liability with respect to a collaborative settlement*

agreement."]

- xi. A communication needed to prove or disprove the validity of a written agreement signed as part of the Collaborative Process.

C. If subsequent litigation occurs, the parties mutually agree as follows:

- i. They will not introduce collaborative communications, including statements, admissions, or offers as evidence in court except as provided in Section 9.B.
- ii. They will not ask or subpoena either attorney, any team member or any joint neutral expert retained for the collaborative process, to court to testify in any court proceedings, nor take the deposition of either attorney, any such team member or any such joint neutral expert with regard to collaborative communications unless the parties and the affected team member or neutral expert all agree.
- iii. They will not require production in discovery or at any court proceedings of any notes, records, or documents in the possession of either attorney, any team member, or any joint neutral expert retained for the Collaborative process.
- iv. They understand that certain communications and materials may be admissible in court as permitted by legal rules with respect to claims against a Collaborative professional or threats to inflict harm or commit a crime and otherwise as set forth in Section 9.B.

D. **Transition of Case.** Notwithstanding the foregoing, if the attorney-client relationship between either of the parties and their current collaborative attorney is terminated, then the collaborative attorney is authorized to disclose communications made during the collaborative process, other than attorney work product, to any successor attorney, if so requested by the party. Each party also has the right to the financial documents prepared by the financial professional if the case terminates and the party has complied with terms of payment.

10. **Withdrawal of Party from Collaborative Process**

A. If either party decides to withdraw from the collaborative process, the party shall give prompt written notice through his or her attorney. Upon withdrawal from the collaborative process, there will be a thirty (30) day period (unless there is an emergency) before either of them files any pleading or motion with, or otherwise makes any request to, a court, to permit the other to retain another attorney and make an orderly transition. All temporary agreements, even if unsigned, set forth in approved Minutes will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other party. It is

therefore mutually agreed that either party may bring this provision to the attention of the Court in requesting a postponement of a hearing or dismissing the case.

B. The parties understand that in the event of the termination of the status of this case as a collaborative case, they must select new attorneys and additional fees will likely be required in retaining new counsel.

11. **Withdrawal of Attorney or Other Team Member from Collaborative Process**

A. **Withdrawal of Attorney.** If either attorney deems it appropriate to withdraw from the case for any reason except those set out in Section 11.C below, he or she agrees to do so by a written Notice of Withdrawal to his or her client, the other attorney, and to all other professionals involved. This may be done without terminating the Collaborative Process. The party whose attorney has withdrawn may elect to continue in the collaborative process and will use his or her best efforts to timely replace his or her attorney. The new attorney will execute a new Collaborative Participation Agreement.

B. **Withdrawal of Other Team Member.** If another team member deems it appropriate to withdraw from the case for any reason except those set out in Section 11.C below, he or she agrees to do so by a written Notice of Withdrawal to his or her client, the attorneys and to all other professionals involved. This may be done without terminating the Collaborative Process. In the case of a party's divorce coach withdrawing, the party, or, in the case of a neutral team member withdrawing, both parties will use their best efforts to timely replace the withdrawing team member with another professional. The new professional shall sign a new Team Pledge.

C. **Termination of Collaborative Process.** The parties understand that each of them has an attorney-client privilege and has the right to instruct his or her attorney not to reveal specific privileged information; however, a collaborative attorney must withdraw from **and terminate** the Collaborative process 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 and 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.** The attorney withdrawing **and terminating** the collaborative process shall advise the other attorney that he or she is **withdrawing and that the collaborative process must end, but shall not reveal the reason for the termination.** The waiting period described in paragraph 10 above does not apply to this paragraph.

12. **Enforceability of Agreements To Be Relied Upon**

A. During the course of the Collaborative Process, the parties will arrive at "temporary" agreements that will not be binding contracts, but will be respected and followed by the parties during the course of the Process. Not respecting and following agreements made during the Process will impede the progress of the Process and may ultimately cause it to terminate.

B. The parties may decide to enter into a written agreement during the collaborative process that they intend shall survive and be binding after the process terminates, even if the process fails. They understand that such a written agreement, referred to as an Agreement To Be Relied Upon, shall be signed by both of them during the collaborative process and shall be legally enforceable and shall survive the termination of the process. It may be presented to the court as a basis for an order, and the court may make it retroactive to the date of the written agreement. Similarly, once a final agreement is signed, it is legally enforceable and may be presented to the court in a subsequent action.

C. When the parties have reached an agreement on all issues, their temporary agreements will be reduced to a written document to be signed by the parties, which will be an enforceable contract, binding the parties to its terms. This contract may be presented to a court in a subsequent action for divorce as a basis for a court order.

13. Fees and Costs

A. Each party has retained his or her own attorney and will pay for that attorney's services, unless otherwise agreed to in the collaborative process.

B. In the event each party retains his or her own coach, each party will retain and pay for that coach's services, unless otherwise agreed to in the collaborative process.

C. In the event that the parties agree to retain a child specialist, financial neutral or other joint neutral expert, they shall decide in the collaborative process how that professional will be paid.

D. The parties will work together to provide the requested retainers and remain current in payments to each collaborative professional and/or joint neutral expert retained to assist either or both of them. If any collaborative professional or neutral expert has an outstanding balance that has remained unpaid for over 60 days, then the unpaid balance shall be the first subject of the next meeting, and shall be resolved before moving on to other issues.

14. Incentive to Work Toward a Successful Resolution

The parties realize that the collaborative process requires a considerable investment of time and effort and that the possibility of having to give up not only their respective attorneys but also the mental health professionals and financial professionals involved in this process is intended to serve as a substantial disincentive to withdraw from the collaborative process.

15. Instructions to Their Attorneys

Each of the parties instructs his or her attorney to help them honor the promises made in this Agreement. Each party also instructs his or her attorney not to act in any way in a manner inconsistent with the promises they have made herein. In order to demonstrate this instruction, each party has also instructed his or her attorney to be signatories to this contract.

Each party and his or her attorney agrees to follow this Collaborative Participation Agreement and to promote both the spirit and written word of this Agreement.

16. *[IF THE UNIFORM COLLABORATIVE LAW ACT IS PASSED, ADD THE FOLLOWING SECTION "EMERGENCY ORDERS*

A. Notwithstanding 2.A above, during a collaborative process, a court may issue emergency orders to protect the health, safety, welfare, or interest of a party, child of a party, or other household member, even though no notice of termination of the collaborative process has been given. The collaborative process terminates if a party seeks such an emergency order.

B. Notwithstanding 2.B above, a collaborative attorney is authorized to seek or defend an application for an emergency order described in 16.A despite the termination of the collaborative process for so long as a successor attorney is not immediately available and reasonable measures have not been taken to protect the health, safety, welfare, or interest of the person at risk."

[Name]

[Name]

Date

Date

Attorney for [Name]

Attorney for [Name]

Date

Date

Comment: In Virginia, many attorneys have chosen to have only the parties sign the Collaborative Participation Agreement. The attorneys commit to their representation in the engagement agreement. The Uniform Collaborative Law Act provides that only the parties sign the Collaborative Participation Agreement. However, it requires that the Collaborative Participation Agreement contain a statement by each collaborative attorney confirming the attorney's representation of a party in the collaborative process.

TEAM PLEDGE TO COLLABORATION PARTICIPATION AGREEMENT

All parties, attorneys, coaches, financial neutral, child specialist, and other neutral experts hereby pledge to comply with and to promote the spirit and written word of the Collaborative Participation Agreement, signed on _____ by the parties and their attorneys.

Parties:

Date: _____
Name of Party _____

Date: _____
Name of Party _____

Collaborative Professionals:

_____ Collaborative Attorney for Party	_____ Collaborative Attorney for Party
_____ Date	_____ Date

_____ Collaborative Coach for Party	_____ Collaborative Coach for Party
_____ Date	_____ Date

_____ Collaborative Financial	_____ Child Specialist
_____ Date	_____ Date

Other Joint Neutral Experts:

_____	_____
_____ Date	_____ Date

Expectations of Clients and Professionals

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 Montgomery County, Maryland

APPENDIX H: COLLABORATIVE ENGAGEMENT AGREEMENT—ATTORNEY

DATE

NAME
ADDRESS
ADDRESS

PRIVATE AND CONFIDENTIAL

Re: COLLABORATIVE ENGAGEMENT AGREEMENT

Dear _____:

This will confirm and constitute a memorandum of our understanding regarding our representation of you in connection with your separation and divorce. I agree to be your attorney in a Collaborative Process. I will not be your spouse's attorney, and nothing in this Agreement should be construed to give me any independent obligations to your spouse. Your spouse must have his/her own attorney in the process.

This Agreement is entered into in contemplation of you, your spouse, your spouse's attorney and my signing a collaborative participation agreement. If the collaborative participation agreement is not signed, this Engagement Agreement will be of no effect and you and I will need to enter into a new Agreement for conventional divorce representation before I can proceed to represent you.

1. Collaborative Process

The collaborative process mostly involves informal meetings and discussions with you, me, your spouse, and your spouse's attorney all present. Additionally, other professionals, including a financial professional and mental health professionals, may be hired to work with everyone collaboratively. The focus of our discussions will be to find an acceptable settlement of all issues between you and your spouse.

When you retain another collaborative professional, you will make financial arrangements and sign an engagement agreement with each additional collaborative professional (such as a mental health professional, a financial professional, or a neutral expert).

If you sign the collaborative participation agreement, I will not be your attorney in court proceedings against your spouse if either of you decides to go to court (other than representing you in uncontested divorce proceedings or entering a consent order). If either you or your spouse initiates court proceedings, my firm will have to terminate our services and withdraw as your attorney and you will need to hire a new attorney.

You acknowledge and agree that for so long as you participate in the Collaborative Process, you are giving up your right to

- file in court (except for an uncontested divorce or entry of a consent order);
- retain your own expert not agreed to by your spouse;
- formally object to producing any documents or providing any information to your spouse and your spouse's attorney that I determine is important to be produced;
- file discovery requests to obtain information from your spouse; and
- subpoena information or documents from financial institutions, employers or other persons.

2. Disclosure

You agree to make full disclosure of all of your assets, debts, income, and expenses and any changes that occur in these while you are in the collaborative process. You understand the importance of giving me all the facts and being totally honest with me. I can only do my best job for you if I have your trust and you fully inform me.

Once the collaborative participation agreement is signed, you authorize me to fully disclose all information which in my discretion must be provided to your spouse and your spouse's attorney and the other collaborative professionals working on your matter. You understand that this is a partial waiver of attorney-client privilege. You understand that you can assert your attorney-client privilege and instruct me not to reveal specific privileged information; however, I would have to withdraw from **and terminate** the collaborative process in the event that you withhold information that should properly be shared as part of the collaborative process, and **continue to withhold and misrepresent such information**, or otherwise act so as to undermine or take unfair advantage of the Collaborative process.

In addition, you authorize me in my discretion to disclose sufficient information to your spouse's attorney so that we can prepare to begin the collaborative process and sign the collaborative participation agreement. You also authorize me in my discretion to disclose sufficient information to other collaborative professionals so that they can be prepared to meet with you and can determine whether they can assist you. You agree that you will not subpoena any of the collaborative professionals you consult about the collaborative process. Moreover, you authorize me to enter into an agreement with your spouse's attorney that, in such circumstances, neither of you will subpoena any collaborative professionals you consult.

You instruct me not to disclose to anyone outside the collaborative process any communication or information generated by the Process by either party, the attorneys, or by the other professionals except for certain exceptions listed in the collaborative participation agreement.

3. Withdrawal/Termination

You have the right to discharge our firm for any reason. We, in turn, reserve the right to terminate our representation of you as permitted by the Rules of Professional Conduct, if you fail

to pay fees, costs or amounts due in a timely manner or fail to replenish your escrow balance, if you violate the terms of the collaborative participation agreement, or if any fact or circumstance arises which would, in our view, render our continuing representation unlawful, unethical or inconsistent with the terms of the collaborative participation agreement, or inadvisable for any other reason.

I agree to give you 15 days notice in writing of my intention to withdraw as your attorney in the collaborative process. You agree to give me reasonable notice in writing if you intend to withdraw from the collaborative process or terminate my representation for any other reason.

If the collaborative process terminates because either you or your spouse decides to go to court, neither I nor my firm will be able to represent you in the litigation process in this or any related matter. I will, however, at your request, refer you to a new attorney and assist in transitioning your case consistent with the terms of the collaborative participation agreement.

4. Fee Advance

We will begin work under this agreement upon receipt of a fee advance of \$____, which we will hold on your behalf in escrow in our firm's trust account. Any unearned portion of the escrowed funds will be refunded at the conclusion of the case, or at such time as you elect to terminate our relationship for any reason prior to settlement or conclusion of your case.

As the case progresses, we may determine that additional fee advances are appropriate or that your trust balance should be adjusted. We reserve the right to require an additional fee advance in the future and to require that you maintain your trust balance at a higher amount.

5. Billing Rates

Since we cannot determine in advance the exact nature and extent of the services to be rendered on your behalf, our fee will be based on the time actually devoted to your case at our regular hourly rates. My hourly rate for collaborative law representation in your matter will be \$___ per hour in 2010. Our hourly rate in 2010 for paralegals is \$___ per hour. Other attorneys who may work on your case will be charged at their applicable rates. Time is billed to the nearest tenth of an hour. The hourly rates apply to all legal services performed on your behalf, including travel time, telephone calls and reviewing voicemail or email. Hourly rates may increase annually effective January 1.

Some of our support staff have both clerical and paralegal duties. We charge for their time only when they perform paralegal functions.

6. Monthly Bills

We will deduct our fees and costs which appear on your monthly bill from your funds held in trust.

We render bills monthly. Payment is due upon receipt. It is important to us that any billing issues are resolved expeditiously and any corrections or adjustments that should be made are made promptly. Please review your bills from our offices and notify us within 20 days if you have any questions or concerns about any of the charges shown. If you do not notify us within 20 days from when a bill is sent of any concerns about the charges reflected on the bill, then we will not consider making any adjustments to the bill.

Because of the nature of legal matters and proceedings, it is difficult to predict what the total fees and costs will be, even in a settlement or collaborative process context. I make no representation or guarantee concerning the outcome on matters for which I have been engaged, nor concerning your total fees, costs or expenses relating to this matter. Payment of attorneys' fees and costs owed to me is in no way dependent upon or contingent upon your spouse.

7. Overdue Accounts

We do not extend credit. We expect you to pay your bill in full and to maintain your funds held in trust at the agreed-upon amount. If we incur attorneys' fees or costs to collect sums due from you, you will be responsible for all reasonable costs of collection including reasonable attorney's fees.

8. Expenses

Our legal fees for services rendered do not include costs such as the fees of other collaborating professionals (such as a mental health professional, a financial professional, or an appraiser), photocopying, mileage, parking, long distance telephone calls, postage, travel, computer research, delivery and courier charges, filing fees, service of process fees, secretarial overtime costs incurred especially for your benefit, records storage and retrieval costs, and the like. These costs may be included on your monthly bill. We may ask you to pay some of these costs directly, or include these costs on our bill if we have paid them on your behalf

Acknowledged and Accepted

Please indicate your agreement with the terms set forth above by signing one original of this letter and returning it to me with a check for your fee advance. The other original is for your records.

We thank you for your confidence in our services and we look forward to working with you.

Very truly yours,

Attorney's Name

I have read and accept the terms of the above Engagement Agreement and I engage your firm to represent me in accordance with the terms set forth in this letter.

Date

Name

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 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 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

- 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, 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; 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, 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 the 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 sign to start the process, including

- to communicate respectfully
- to provide full, honest, and voluntary disclosure of all 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 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, and your spouse'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, your spouse'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, the lawyers, and the financial professional.

Confidentiality

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.

You recognize and agree that otherwise confidential communications to me may be shared with your spouse, 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 subject to limited exceptions involving 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.

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 your spouse 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 and the collaborative process may terminate as a result.

If the collaborative process breaks down and your matter ends up in litigation, no documents held by me can be introduced into evidence. Nor can I be called as a witness.

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 terminate the collaborative process if either party engages in conduct in violation of the collaborative participation agreement. In the event of termination, 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.

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, 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 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 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 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

- 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, 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, 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 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 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.

Confidentiality

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, if hired, they can assist you in the collaborative process.

You recognize and agree that otherwise confidential communications to me may be shared with your spouse, 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 subject to limited exceptions involving 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.

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 your spouse 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 and the collaborative process may terminate as a result.

If the collaborative process breaks down and your matter ends up in litigation, no documents held by me can be introduced into evidence. Nor can I be called as a witness.

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 terminate the collaborative process if either party engages in conduct in violation of the collaborative participation agreement. In the event of termination, all incurred fees are immediately due and payable.

I reserve the right to withdraw as your 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 child specialist.

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 LETTER—FINANCIAL

Date

Mr.

Ms.

Address

Dear Parties:

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.

You acknowledge that you have received our firm privacy notice attached.

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 if appropriate.

2. **Conflict of Interest**

Since each of you is retaining **FIRM NAME**, each of you hereby waives any conflict of interest we may have in representing you jointly.

3. **Full Cooperation of Parties**

Each of the parties agrees to cooperate fully with our firm, to be open and truthful in your 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.

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 nor do we perform a “forensic” review 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. Upon termination of the collaborative process, either party shall have the right to their original financial documents and, upon payment of outstanding fees, the financial reports. 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.
2. Preparing, reviewing, and/or updating a schedule of your assets, liabilities, and net worth.
3. Providing tax planning assistance regarding payment of alimony, child support, and property distributions, as applicable. Tax planning requires that future changes in tax laws and regulations be anticipated; however, the actual future statutory, administrative, or judicial authority may differ from those that will be anticipated. Accordingly, the actual tax consequences of divorce related transactions may differ from those originally planned.

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 nor 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 the other financial experts will be at the client's expense.* The parties 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** (sample language to be adapted to individual firms)

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. *Both of you* must 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 submit bills to you periodically, at least monthly, and charge the invoices against your retainer, until it is depleted. **When a retainer is depleted, we do request it be replenished.** 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. **NAME**, is charged at an hourly rate of \$\$\$\$\$. **NAME**, is charged at an hourly rate of \$\$\$\$. We do bill all travel time associated with the case. Although our services will be in conjunction with the collaborative team, you will be responsible for paying our fees. It is possible that over the course of your engagement our rates will increase nominally.

We do request that, if either party needs to cancel a meeting for any reason that requires my attendance, the party will give notice as soon as possible, but not less than 48 hours prior to a meeting. To cancel a Monday appointment, we request cancellation by Thursday at 5 p.m. If such notice is not given, we reserve the right to bill for the meeting time scheduled. 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.

7. **Termination of Services**

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 within the collaborative process and will be inadmissible as evidence in any court proceeding.

We reserve the right to withdraw. **If we exercise this right to withdraw**, we will 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. After that time, they will be destroyed. Any of your original documents held by **FIRM NAME** will be returned to the client where practical.

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.

9. Financial Services Outside of the Collaborative Engagement

In order to protect the neutrality of the process, we will not perform any services outside of the collaborative engagement during the course of this engagement or thereafter. We will provide services to assist with the completion of the terms of the agreement or tax services for the year of transition if requested and agreed upon by both parties.

You may expect to receive a termination letter at the end of your engagement. However, we can remain available in the future as part of the collaborative team should a need arise. A new collaborative engagement letter would need to be signed.

Regards,

NAME

Read, understood and accepted:

Date:

Read, understood and accepted:

Date:

Additionally, we find we are better able to serve our clients by sending out materials via email. We **password protect** all client materials with the **last four digits of the primary tax payer's SS#**.

Please sign below, if it is acceptable to send out materials via e-mail. Please fill in the password line.

Party: _____

Password (Last four of primary taxpayer SS#): _____
(Please fill in)

**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.collaborativepracticcdc.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)

**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].