

# **PRINCIPLES AND GUIDELINES FOR COLLABORATIVE PRACTICE**

## **I. INTRODUCTION**

1.01 The essence of "Collaborative Practice" is the shared belief of the participants that it is in the best interests of parties and their family to commit themselves to avoiding adversary legal proceedings, and to adopt a dispute resolution process that does not rely on a Court or other third party imposed solution. The success of this approach requires an atmosphere of honesty, cooperation, integrity and professionalism geared toward the future well being of the parties and their children.

1.02 The Collaborative process attempts to minimize, if not eliminate, the negative economic, social and emotional consequences of the traditional adversary legal process. The parties agree to fully participate in the Collaborative process and to seek a better way to resolve their differences justly and equitably. This participation includes signing these Principles and Guidelines and a Stipulation and Order Re: Collaborative Practice.

## **II. NO COURT OR OTHER INTERVENTION**

2.01 By electing to treat their Family Law matter as a Collaborative case, the parties are committing themselves to settling the case without Court or other third party intervention. The parties agree to give complete, full, honest and open disclosure of all information having a material bearing on the case, whether requested or not, and to engage in informal discussions and conferences for the purpose of reaching a settlement of all matters. All legal, financial, and mental health professionals involved in the Collaborative process, and any specialists or consultants engaged by the parties, will likewise agree to work in a collaborative manner to resolve disputes without resort to litigation or any other externally imposed decision making process.

## **III. LIMITATIONS OF COLLABORATIVE PRACTICE**

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

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

#### **IV. PARTICIPATION WITH INTEGRITY**

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

#### **V. COLLABORATIVE TEAM AND CONSULTING PROFESSIONALS**

5.01 As is appropriate to their case and their circumstances, in addition to engaging Collaborative Lawyers, the parties shall also engage Collaborative Coaches, a Financial Specialist, and, if there is/are a child or children, a Child Specialist. These professionals will constitute the core Collaborative professional team. They will assist the parties to reach the optimum settlement that the parties are willing and able to attain.

5.02 When selecting additional professionals to assist them, the parties are encouraged to retain joint experts and consultants. In the event separate experts or consultants are retained, each of them shall follow the spirit and direction of these Principles and Guidelines, and, if agreed to by the parties, shall collaborate with each other, meet and confer, and render joint statements on the matters in question.

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

#### **VI. NEGOTIATION IN GOOD FAITH**

6.01 The parties understand that even with full and honest disclosure, the Collaborative process will involve vigorous, good faith negotiation. Each party will be expected to take a reasoned approach on all disputed matters and, where their approaches differ, each party will be encouraged to modify their approach when necessary to reach resolution. Although the parties will be informed about the litigation process by their lawyers and any other Collaborative professional involved in the case

that has expertise on the topic, a party, lawyer, or other Collaborative professional may not use threats of going to court as a way of inducing or forcing settlement.

## **VII. ROLES OF THE COLLABORATIVE PROFESSIONALS**

7.01 **COLLABORATIVE LAWYER.** The role of the Collaborative lawyers is to provide an organized framework and a safe environment that will optimize the party's ability to reach agreement on all matters germane to their case. The lawyers will assist the parties to communicate with each other and express needs, goals and concerns; the lawyers will also identify and clarify areas of disagreement, ask questions, make observations, suggest options, and explore the practicality and feasibility of proposed solutions. The lawyers will jointly prepare a Settlement Agreement and other required documents, and will file all necessary paperwork on behalf of the parties to obtain a Judgment or other Court Order related to their case.

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

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

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

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

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

7.03 **FINANCIAL SPECIALIST.** The role of the Financial Specialist is to help both parties clearly understand their current financial circumstances by collecting and organizing their financial information in a way that is meaningful to each of them. The Financial Specialist is a neutral professional who does not represent the separate interests of either party and is equally available to both parties as a source of information and

options. The Financial Specialist supports good decision-making by assisting the parties to understand their financial choices and the impact of those choices both for now and in the future.

### **VIII. ABUSE OF COLLABORATIVE PROCESS**

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

### **IX. DISQUALIFICATION BY COURT INTERVENTION**

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

### **X. WITHDRAWAL OF COLLABORATIVE PROFESSIONAL**

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

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

## **XI. ELECTION TO TERMINATE COLLABORATIVE PROCESS**

11.01 If a party decides to terminate the status of the matter as a Collaborative Practice case, he or she agrees to do so by sending a written Termination Election to all other parties, their lawyers, and all other Collaborative professionals and other participants in the case. If a Stipulation and Order has been filed, such Termination Election shall also be filed with the court.

## **XII. SELECTION OF NEW LAWYER; ADDITIONAL FEES**

12.01 Once a Collaborative case is terminated, the Collaborative lawyers shall reasonably assist their respective clients in the selection of a new lawyer unless requested by their client not to do so.

12.02 The parties understand that by retaining new lawyers in the event the Collaborative case is terminated, each party will incur additional fees and costs which may equal or exceed the amounts already paid.

## **XIII. COLLABORATIVE COMMITMENTS**

13.01 Whether or not a proceeding affecting the marital status of the parties has been or will be filed, commencing with the signing of these Principles and Guidelines and continuing throughout the Collaborative process each party agrees to adhere to and be bound by the following:

A. Neither party nor anyone on his or her behalf may:

1. Remove a minor child or children of the parties from the state of California without the prior written consent of the other party or a court order;

2. Cash out, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or other coverage, including, but not limited to, life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom there is a duty of support;

3. Transfer, encumber, hypothecate, conceal, or in any way dispose of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or a court order, except in the usual course of business or for the necessities of life; and

4. Create a nonprobate transfer or modify a nonprobate transfer in a manner that affects the disposition of property subject to transfer, without the written consent of the other party or a court order. Before revocation of a nonprobate transfer can take effect or a right of survivorship to property can be eliminated, reasonable advance notice of the change must be provided to the other party.

B. Each party shall notify the other of any proposed extraordinary expenditure at least 5 business days prior to incurring the same, and thereafter account to the other party for all such extraordinary expenditures made. Either party may, however, with or without such prior notice, use community or quasi-community property, or their own separate property, to pay a lawyer to advise or assist him or her or to pay

court costs, and in such event, shall thereafter account to the other party for such expenditure.

**14. PLEDGE**

14.01 All parties, lawyers, and Collaborative and consulting professionals signing these Principles and Guidelines pledge to comply with and to promote the spirit and written word of this document.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Wife

\_\_\_\_\_  
Husband

**COLLABORATIVE TEAM MEMBERS**

\_\_\_\_\_  
Collaborative Lawyer for Wife

\_\_\_\_\_  
Collaborative Lawyer for Husband

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Divorce Coach for Wife

\_\_\_\_\_  
Divorce Coach for Husband

\_\_\_\_\_  
Financial Professional

\_\_\_\_\_  
Child Specialist

\_\_\_\_\_  
Career Consultant

\_\_\_\_\_  
Appraiser