

# COLLABORATIVE PROCESS

## I. GOALS

- A. The essence of the “Collaborative Process” is the shared belief by participants that it is in the best interests of Clients and their families in typical family law matters to commit themselves to avoid litigation and to work together to reach a settlement that is acceptable to both Clients.
- B. Therefore we adopt this resolution process, which does not rely on a court-imposed resolution, but relies on an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well-being of those involved in this process.
- C. Our goal is to minimize, if not eliminate, the negative economic, social and emotional consequences of protracted litigation to the participants and their families.
- D. We commit ourselves to the Collaborative Process as described in these principles and guidelines and agree to resolve our differences justly and equitably.

## II. LIMITED REPRESENTATION

- A. Each Client has retained an independent Attorney who represents only that Client in the Collaborative Process. The Collaborative Professionals will assist each Client to identify his or her interests. Even though the Attorneys share a commitment to the Collaborative Process, each of them has a professional duty to represent his or her Client diligently and is not an Attorney for the other Client.
- B. Each Attorney’s representation of the Client is a limited representation. Neither Attorney can represent the Client against the other Client in an adversarial court proceeding. If an adversarial court proceeding is commenced, both Clients’ Attorneys are disqualified from representing either Client in any such proceeding against the other. The disqualification includes but is not limited to actions for modification, enforcement or appeals.**
- C. For purposes of the disqualification provision, the word Attorney includes the Attorney and any attorneys in association with that Attorney. An Attorney shall be considered “in association” if he or she would be considered as having a conflict of interest in representing the other Client to this action under the Missouri Rules of Professional Conduct.
- D. If a full and complete settlement of all issues is achieved, the Attorneys will draft a written document reflecting the Agreement and all necessary related documents. The Attorneys will prepare the necessary pleadings and will submit the matter to the court as an uncontested case.

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

- A. The Clients commit to settle their case without court involvement and agree to meet together with their Attorneys and other Collaborative Professionals to work towards a settlement.
- B. The Clients are aware of their rights to participate in an adversarial court proceeding and each Client is knowingly and voluntarily waiving those rights while participating in the Collaborative Process.
- C. Unless the Collaborative Process is terminated or the Clients specifically agree otherwise, no participant in this process shall file any document related to this matter with any court until the Clients have reached and executed a settlement agreement. All court filings shall be consistent with the settlement agreements of the Clients.

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

- A. We agree to deal with each other in good faith and to promptly provide all necessary and reasonable financial information required. The Clients agree to make full and complete disclosure of all relevant financial information, whether requested or not.
- B. Participation in the Collaborative Process, and any settlement reached, are based upon the assumptions that both Clients have acted in good faith and have provided complete and accurate financial information to the best of their abilities.
- C. We will not conduct formal discovery procedures (such as depositions, interrogatories, requests for admissions and requests for production of documents, motions to enforce, motions for sanctions, subpoenas of witnesses and/or for documents, etc.) unless the Clients agree to do so in advance.
- D. Conduct issues may be raised, discussed and considered during the Collaborative Process and the decision whether or not to do so belongs to the Clients.
- E. The Clients agree to provide authorizations and releases as requested, allowing the Attorneys and other Collaborative Professionals to obtain relevant information. Such authorizations and releases may be directed to professionals such as therapists and teachers and to entities such as employers, schools and health care providers.
- F. We shall maintain a high standard of integrity and shall not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall identify and correct them.
- G. We shall cooperate to correct any clerical errors in any court filings.

## **V. CAUTION**

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

## **VI. COLLABORATIVE PROFESSIONALS**

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

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

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

## **VII. FEES AND COSTS**

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

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

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

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

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

## **VIII. NEGOTIATION PROCESS**

A. The Clients shall negotiate in good faith.

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

C. The Clients will use their best efforts to create proposals that meet the fundamental needs of

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

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

- A. Each Client retains the right to terminate the Collaborative Process unilaterally and without explanation by giving written notice of such election to his or her Attorney, who shall then notify the other Client's Attorney. This election terminates the Collaborative Process under this Agreement.
- B. Each Client has the right to terminate the services of any professional retained by that Client at any time. Terminating the services of a retained professional ends the role of the professional and can, at the election of either Client, terminate the Collaborative Process.
- C. Either Attorney may withdraw from this matter without explanation by giving written notice of withdrawal to his or her Client and the other Client's Attorney. This withdrawal terminates the Collaborative Process under this Agreement.
- D. If a Client's Attorney knows that the Client is withholding relevant information, misrepresenting information or otherwise acting to undermine the Collaborative Process, the Attorney shall withdraw. This withdrawal terminates the Collaborative Process under this Agreement.
- E. Upon termination of the Collaborative Process by a Client or an Attorney, the Attorney for each Client will promptly cooperate to facilitate the transfer of the matter to a successor attorney. The transfer may cause delay and additional fees and costs.

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

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

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

- B. Evidence or information that is otherwise admissible or subject to discovery in a court process does not become inadmissible or protected from discovery solely by reason of its disclosure or use in this Collaborative Process.
- C. The Clients shall not request testimony of any participant in this Collaborative Process with regard to the communications and negotiations in the Collaborative Process in any legal proceeding not associated with the Collaborative Process.
- D. The Clients agree that their Attorneys and their Coaches may share with all retained Collaborative Professionals any information that could be disclosed to the other Client in the Collaborative Process. The Collaborative Professionals may have group discussions from time to time.
- E. No waiver of the Attorney/Client privilege shall occur as a result of participation in the Collaboration Process.
- F. This Participation Agreement shall be admissible in any court proceeding involving the Clients or the Collaborative Professionals.

## **XI. CLIENT SURVEY**

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

**XII. ACKNOWLEDGMENT**

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

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

Client1 \_\_\_\_\_

Client2 \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_