Using Collaborative Practice to Resolve Estate Disputes

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Presented to the
Estate Planning Council of Birmingham, Inc.
April 5, 2012

Birmingham Collaborative Alliance
www.collaborativepractice.com
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How often do you see a carefully crafted estate plan challenged? Maybe not very often, but I bet that when you do, you wish you had an alternative to expensive, contentious litigation to offer your clients. Collaborative Practice can often be the answer for families in conflict during the particularly emotional time surrounding the death of a loved one, accompanied by the re-opening of old wounds. Collaborative Practice also has great potential for application in estate planning.

What is Collaborative Practice?

Collaborative Practice is an extra-judicial, structured, interest based, voluntary, team approach to resolving conflict outside of traditional legal forums. It is a socially responsible way to resolve conflict with its roots in family law. In 1990, a Minnesota domestic relations lawyer named Stu Webb decided that there had to be a better way to resolve family law conflicts. He was disheartened by the level of discord he saw in traditional litigation practice, and vowed to stop going to court. He gathered together like minded lawyers, and they began "collaborating" to resolve those conflicts outside of court. It was their plan that, by agreeing to stay out of court, they would minimize the emotional damages to the parties and to their relationships with their children.

In a very short time, Mr. Webb's vision and method of practice migrated to California. By 1992, a group of San Francisco Bay area lawyers, mental health professionals and financial professionals were practicing this new method of conflict resolution in an interdisciplinary collaborative model. By 2001, the first collaborative law statute was passed (in Texas), and the

International Academy of Collaborative Professionals was founded and by July, 2009, things had progressed in this area of practice to the point that the Uniform Collaborative Law Act was approved by the Uniform Law Commission. Alabama is considering adoption of the Uniform Collaborative Law Act, even as I write this paper.

A basic defining characteristic of the process is the requirement that, should the conflict not be settled within the collaborative process, the collaborative lawyers will withdraw from representation and will not represent a party in any court proceeding which is substantially related to the subject matter of the conflict. At the initiation of a collaborative matter, all the parties and professionals to the dispute sign a disqualification agreement with provides that if, at any time during the course of the matter, the case cannot be resolved using the collaborative approach and that the parties wish to resort to using the courts to resolve the matter, then separate counsel will be engaged to handle the matter in court. In short, if you do not have a signed disqualification agreement, you do not have a collaborative matter.

The hallmarks of Collaborative Practice are:

1) good faith, interest based negotiation (as opposed to position based);
2) utilizes a team approach (often multi-disciplinary);
3) de-escalates conflict and improves communication;
4) empowered clients make decisions; and
5) builds skills and resources for life post-conflict.

Collaborative process is perhaps the only process of conflict resolution which gives parties the emotional due process many are starved for. It helps to resolve conflicts and issues which courts are ill-suited to address, and which are otherwise not justiciable. The vision of collaborative is to provide parties in conflict with the support they need to make healthy and

rational choices, maximizing the long term financial, emotional and legal "health" of the individuals going forward. Its goal is to produce deep resolution, rather than just shallow peace.

You have probably never seen a will contest case or contested guardianship matter in which there were not elements of financial, emotional and legal interests at play. You probably have drafted few estate plans that did not involve each of those interests. Collaborative Practice involves utilizing the appropriate professionals best equipped to most efficiently deal with each of those interests. You can begin to see how, even though Collaborative Practice may have started in the realm of Domestic Relations, it is quite a natural fit for the resolution of estate disputes.

The benefits of Collaborative Practice for clients are manifold. Collaborative gives the clients the opportunity to discuss and resolve the problems that are inherent in both domestic relations and certain probate and estate matters. It provides clients with the education and support necessary to create their own resolution rather than deferring to judges or other professionals to determine the outcome; thus, clients "buy into" and "own" the resolution created. Clients assume responsibility for actively engaging in the process and shaping the outcome. The process focuses the future of the family as well as the personal goals of the clients. It allows and even encourages clients to consider the perspectives and interests of those with whom they have conflict. Finally, clients can learn listening, communication, and problem solving skills from the behaviors modeled and taught by the professional team members. It positively prepares clients for the life and the relationships they will have after the conflict is resolved.

Lawyers often wear many hats. In Collaborative Practice, we truly engage our best counselor and advisor skills. When we engage in the collaborative model, we serve as advisors

for our individual clients, responsible for helping the client to identify and advance their own interests and develop satisfactory settlement options. Lawyers in this process should be thought of as pre-litigation settlement counsel.

The simple truth is this: most cases settle outside of court. If clients and their counsel can acknowledge that reality at the outset, and focus their energies and resources towards achieving that end, the potential to save lots of estate assets and other resources which might otherwise be wasted in contentious litigation can be realized.

Practiced well, Collaborative Practice can be transformative. It encourages clients to be active, informed members of the team. A professional team that works well together gives the process energy and efficiency. The process emphasizes strengths rather than casting blame; it is forward looking, rather than punitively looking towards the past.

The "team" for a collaborative case can vary. However, the ideal model would include each party being separately represented by their own collaboratively trained lawyer. In addition, each party would have a collaboratively trained coach (typically a mental health professional or social worker) who would help them through all the emotional issues presented by the conflict. If children are involved (which is often the case, particularly in domestic relations matters), the team would also include a coach to advocate and help them through the process. As is typical in divorce situation, a financial expert would be engaged to help the parties work through the financial issues presented. Frequently in estate litigation, there are valuation issues which may benefit from scrutiny by a trustworthy financial neutral. This model of a "team" can vary - and often does in civil matters. However, the idea is that each party has both a lawyer/advocate and a coach to help them through the process. It is expected that there will be open communication, voluntary sharing of information and confidentiality between all the team members.

You may have been asking yourself how this model differs from mediation. The "team" approach just discussed is one way, and of course, in mediation, there is an impartial third person who assists the parties in their negotiations. The parties may or may not have their own lawyers in a mediated case. The mediator is a neutral who cannot advocate for either side. He cannot offer advice or brainstorm the ramifications of possible solutions.

In Collaborative Practice, by contrast, the parties are always each separately represented by their own lawyer/advocate. Attorneys for the parties are trained in interest-based negotiation, and the lawyer's role is to advise and empower their clients to do their own negotiation. Collaborative Practice also engages other professionals (mental health professionals, financial experts) to help the clients work through all the issues presented by the conflict, in order to create the best possible resolution.

Both mediation and Collaborative Practice employ voluntary, free exchange of information and assure privacy. However, if the mediation fails, and if the parties wish, their lawyers can represent them in court. By contrast, if the collaboration fails, the collaborative lawyers are precluded from taking the matter to court for their clients. This reality assures that the collaborative lawyers are as committed to settlement as the parties are.

Is Collaborative Practice ethical?

What is the issue here? Is this practice impermissible unbundling of lawyer services? Is in inappropriately taking on a client for limited purpose?

In February, 2007, the American Bar Association issued Formal Opinion 07-447, which provides, in essence, that collaborative practice is a permissible limited scope of representation under Model Rule 1.2, and Rule 1.7 of the Model Rules does not create a conflict of interest prohibiting collaboration. The ABA opinion post-dates the only state (Colorado) which has

issued an unfavorable opinion on collaborative. [The Colorado opinion was based on the view that when a lawyer agrees to withdraw in the event the process is unsuccessful, the lawyer has assumed a duty to the other party which creates a "nonconsentable" conflict of interest in violation of the Colorado Rules of Professional Conduct.]

Alabama Rule of Professional Conduct Rule 1.2 provides that a lawyer may limit the objectives of the client representation if the client consents after consultation. Thus, under Alabama law, Collaborative Practice is permissible after an appropriate informed consent is taken. More about the delicate issues of informed consent is described below.

Nine states ethics committees have issued favorable opinions on the practice of collaborative: Missouri, Washington, Pennsylvania, New Jersey, Maryland, Kentucky, Minnesota, North Carolina and South Carolina. While I am unaware of any formal written opinion issued in Alabama, practiced within the parameters of our Rule 1.2, Collaborative Practice is completely ethical law practice in Alabama.

The International Academy of Collaborative Professionals ("IACP") has in place its own Ethical Standards. These are aspirational standards which are advisory only. Members of IACP agree to follow these standards, and their adoption is a sign of a maturing, proactive practice. These standards serve as organizational guidelines which protect the essentials and encourage excellence in Collaborative Practice. Each interdisciplinary professional is expected to act in a way consistent with his or her own profession's code of ethics and reconcile any differences in favor of their profession's controlling ethical obligations.

In my view, the two most remarkable ethical standards for lawyers espoused by the IACP Standards are Rule 5.5, which prohibits the lawyer from doing anything to increase conflict between the parties, and Rule 5.4, which requires the lawyer to encourage parents to remain

mindful of the best interests of the children in domestic relations matters. A copy of the IACP Ethical Standards are attached hereto as Exhibit A.

What are the steps in Collaborative Practice?

Initial client consultation. The first thing a collaborative lawyer will do is talk to the potential clients about his or her options. Collaborative lawyers are obligated to provide prospective clients with adequate information to allow them to make an informed decision about the risks and benefits of the collaborative process as compared to other reasonably available processes, such as mediation or litigation, or even "coffee table" negotiation. Education of the potential client about the roles of the professionals involved in the process will be important.

Informed consent. What does it look like in this model? The collaborative lawyer will explain the lawyer's disqualification if the matter goes to litigation, and the shift in the lawyer's role. You will explain how the advocacy will look and feel different to the client. It is the difference between standing in front of the client as a shield as in the litigation model, versus standing beside, or even behind, the client (if that is what the client needs) in the collaborative model. You will explain the transparency of the model -- the shift in the expectation of confidentiality. You will fully explain to the client the open disclosure which collaborative requires, and the potential ramifications of failure to comply. You will explain that the negotiations will be interest based, as opposed to positional. You will explain that the steps in the process and the client's personal responsibility. You will explain that the process is not for everyone, and remind the client of his/her other options for resolution. You will educate the client about the law rather than predicting outcomes, and help them evaluate the pros and cons of the use of the model for their particular situation.

After the client has elected to engage in the process, the other party will have to consent to use the process as well. You will provide the client with resources to educate themselves about the benefits of collaborative, such as websites, books, pamphlets, or videos. You might role play with the client what the conversation with their spouse or sibling or parent might sound like. You want to arm them with enough information to make themselves persuasive and invite them to practice with you to find the right words for their conflict. This is the first and perhaps most important step to having the client get "married" to this process. Alternatively, if you know the other party to be un-represented, you can write the potentially adverse party yourself, enclosing resources and providing them with information about the collaborative process and about professionals who are collaboratively trained with whom they might consult. You might refer your client and his family members to a mutually trusted collaborative "neutral" (a mental health professional or financial expert) to jointly discuss the process and its advantages.

Once the clients have both elected to engage collaborative lawyers (each party will have his own counsel) and to use the collaborative process, a Participation Agreement will be drafted. This document should spell out the nature and scope of the conflict, state the parties' intentions to resolve the conflict without resorting to court or threatening to resort to court, and include an agreement to make full and candid disclosures of relevant information without formal discovery. This document will become the anchor or touchstone for the process, one which the professionals may need to refer to again and again to remind clients of their commitment to the ideals of collaborative resolution.

If during the course of the collaboration either party is unable or unwilling to comply with the Participation Agreement, the process fails, and the parties are left to resolve the matter by whatever other means they see fit.

Going forward.

Once the parties and lawyers are on board, coaches (usually mental health professionals) are engaged to support the parties through the process. The parties and their lawyers consult to find the most appropriate coaches for the dispute, and the whole team decides whether or not a child advocate needs to be engaged. The whole team will decide what financial issues the conflict will present, and then engage appropriate financial professionals to deal with those. Again, the parties and the lawyers will collaborate to select the best professional to serve the financial neutral role.

Once the team is in place, negotiations begin. Negotiations are conducted in a series of private, face to face meetings which the parties and the professionals attend. The series of those meetings might look something like this:

COLLABORATIVE PROCESS FOR PROBATE CASES

Commit to process

Identify interests

Develop options

Test options against
the other side's interest

Test options against
legal realities

Refine and rank interests

Develop mutually
acceptable options

Craft proposal and discuss

Reach lasting agreement

Before each meeting, an agenda of issues to be addressed will be created by the professionals (with client direction) and distributed to the team. The word "team" used herein should be read to include the clients. The agenda should be treated as sacrosanct and should not have items added to it at the last minute. The purpose of this is to prevent unwelcome "surprises" which might create issues which the parties are not prepared to deal with, thereby de-railing the process.

Minutes will be kept at each meeting and later distributed to record and preserve progress made, and to memorialize "homework" given to the parties and tasks assigned to the professionals. After each meeting, you will want to debrief with the client to "process" and reflect on what has occurred and what has been accomplished.

Talking about the law with the clients in the model can be tricky. In a will contest, for example, it might be prudent to have some education on the concept of capacity. Do the parties understand how low the threshold for capacity to make a will is? Do they understand about judicial discretion and the uncertainty of litigation? Do they understand what "undue influence" really looks like? It will be important to talk about the substance of the subject matter of the law as it informs the clients of what their legal rights and obligations might be. This conversation generally starts during the initial consult and carries through to ultimate agreement. Clients will need to be reminded that they are crafting their own resolution, so that "what would the judge do" becomes a moot question.

<u>How is Collaborative Practice being used? What types of cases?</u>

While Collaborative Practice is most commonly used in domestic relations matters, increasingly it is used in other areas. Employment disputes, will contests, contested guardianships, claims for breach of fiduciary duty and other probate disputes, medical

malpractice cases, dissolution of closely held corporations, contractor disputes, business law conflicts, and non-profit and religious institution disputes have all be collaboratively resolved.

Collaborative Practice is being used around the country and the world to resolve conflicts which involve ongoing, personal relationships worth preserving. It has even been employed in estate planning. Use your imagination for a few minutes and you can probably think of a few clients who have conflicts which could benefit from the process of Collaborative Practice.

Where is Collaborative Practice available?

Collaborative Practice is a creature of contract. At least twenty four states have active collaborative communities (six with more than 100 practicing professionals) which do not have collaborative practice statutes. Only six jurisdictions have collaborative legislation on the books; only four have adopted the UCLA (TX, NV, UT and DC). The Alabama Law Institute has a Collaborative Practice Committee which is looking at the provisions of the UCLA and will sponsor it for adoption by the legislature (or by Alabama Supreme Court Rule) at some point in the near future.

Collaborative Practice is thriving in Alabama. In March of 2011, Birmingham Collaborative Alliance (www.birminghamcollaborative.com) ("BCA") was formed when five lawyers, one mental health professional and one financial professional, all trained in collaborative, decided to organize. BCA has 39 active members, all of whom are trained in collaborative. To date, all of the collaborated matters in process are in the area of domestic relations, although we have received inquiries from at least two potential estate conflict clients.

When is collaborative not an appropriate means of resolving conflicts?

Collaborative process is not for every client or situation. Experience has shown that Collaborative is not the best model for resolution in the following situations:

1. Where the client is unable or unwilling to negotiate in good faith.
2. Where the client is unable or unwilling to identify and articulate his or her own interests.
3. Where there is a history of physical or severe emotional abuse.
4. Where the client is mentally ill or has a chemical addiction which remains untreated.

How can I learn more?

The International Academy of Collaborative Professionals ("IACP") is a consortium of lawyers, mental health professionals and financial professionals who are committed to resolving matters outside of traditional legal forums. There are more than 4,500 collaborative professionals worldwide who are members of IACP. There are more than 20,000 professionals trained to practice collaboratively, 87% of whom are lawyers. The IACP website has a veritable treasure trove of information about collaborative. See www.collaborativepractice.com.

If you are interested in getting trained, on the IACP website there is a link for "Information for Professionals." Within that link, a "training and events" calendar will show you the dates, locations and costs for basic training. If you are a trained mediator, you are more than half-way trained to be a collaborative lawyer.

An organization devoted specifically to the development of civil collaborative law is the Global Collaborative Law Council ("GCLC"). www.collaborativelaw.us. Last summer, GCLC held the 7th Annual Civil Collaborative Law Training in Dallas, TX, a three day workshop which focused exclusively on the practice of collaborative outside the domestic relations arena. They are an excellent resource for civil collaborative matters.

Birmingham Collaborative Alliance ("BCA") is a newly formed practice group comprised of trained collaborative professionals, the first of its kind and the only such

organization in Alabama. See www.birminghamcollaborative.com. BCA has as its mission facilitating collaboration between professionals and clients, training new professionals, and educating the public about the availability of the process. Contact any member for more information about the practice in Alabama. Members are listed on our website: www.birminghamcollaborative.com.

A group of employment lawyers from New York who are collaboratively trained will soon be releasing a video regarding the use of collaborative in civil matters. If you wish to be linked to that when it is released, if you will contact one of us we will be glad to provide it to you.

An interesting project involving the use of Collaborative Practice in medical malpractice cases is thriving in North Carolina. The Integrated Accountability and Collaborative Transparency Program can be read about at www.iactprogram.com. In this progressive model, North Carolina hospitals offer to collaborate with injured patients to address the emotional trauma associated with medical misadventures. Sometimes, there is compensation for medical injury paid, but the open and honest dialogue about the patient's course of events is often the real focus of the collaboration in those matters.

What follows is our list of recommended reading:

Sherrie Abney, Avoiding Litigation: A Guild to Civil Collaborative Law (2006)

Sherrie Abney, The Evolution of Civil Collaborative Law,15 Tex. Wesleyan L. Rev. 495 (2009).

Sherrie Abney, Civil Collaborative Law: The Road Less Travelled (2011)

Daniel Ariely, Predictably Irrational: The Hidden Forces That Shape our Decisions (2010)

Roger Fisher & Daniel Shapiro, Beyond Reason: Using Emotions as You Negotiate (2006)

Roger Fisher, William L. Ury & Bruce Patton, Getting to Yes: Negotiating Agreement Without Giving In (3d ed. 2011)

Bernard Mayer, The Dynamics of Conflict Resolution: A Practitioner's Guide (2000)

Julie McFarlane, The New Lawyer: How Settlement is Transforming the Practice of Law (2008)

Forrest S. (Woody) Mosten, Collaborative Divorce: Helping Families Without Going to Court (2009)

Glenn M. Parker, Team Players and Teamwork: New Strategies for Developing Successful Collaboration (2d ed. 2008)

Douglas Stone, Bruce Patton & Sheila Heen, Difficult Conversations: How to Discuss What Matters Most (2d ed. 2010)

Pauline Tesler, Collaborative Divorce: Achieving Effective Resolution Without Litigation (ABA Publishing 2d ed. 2008)

Pauline Tesler & Peggy Thompson, Collaborative Divorce: The Revolutionary New Way to Restructure Your Family, Resolve Legal Issues, and Move on With Your Life (2007)

Lynne Twist, The Soul of Money: Relcaiming the Wealth of Our Inner Resources (2003)

Stuart G. Webb & Ronald D. Ousky, The Collaborative Way to Divorce: The Revolutionary Method That Results in Less Stress, Lower Costs, and Happier Kids -- Without Going to Court (2006)

Diana Whitney & Amanda Trosten Bloom, The Power of Appreciative Inquiry: A Practical Guide to Positive Change (2010)

IACP INTERNATIONAL ACADEMY OF COLLABORATIVE PROFESSIONALS

IACP Ethical Standards for Collaborative Practitioners

Preamble Collaborative Practice differs greatly from adversarial dispute resolution practice. It challenges practitioners in ways not necessarily addressed by the ethics of individual disciplines. The standards that follow:

1) Provide a common set of values, principles, and standards to guide the Collaborative practitioner in his or her professional decisions and conduct,

2) Create a framework of basic tenets for ethical and professional conduct by the Collaborative practitioner, and

3) Identify responsibilities of Collaborative practitioners to their clients, to Collaborative colleagues, and to the public.

GENERAL STANDARDS

1. Resolution of Conflicts between ethical standards.

1.1 Any apparent or actual conflict between the Ethical Standards governing the practitioner's discipline and these Standards should be resolved by the practitioner consistent with the Ethical Standards governing the practitioner's profession.

2. Competence.

2.1 A Collaborative practitioner shall maintain the licensure or certification required by the practitioner's profession in good standing and shall adhere to the Ethical Standards governing the practitioner's discipline.

2.2 A Collaborative practitioner shall have completed a minimum of twelve hours of Collaborative Practice/ Collaborative Law training or Interdisciplinary Collaborative training consistent with IACP Minimum Standards for Collaborative practitioners, prior to commencing a Collaborative case or engaging in Interdisciplinary Collaborative Practice.

2.3 A Collaborative practitioner shall practice within the scope of the Collaborative practitioner's training, competency, and professional mandate of practice, as specified by the IACP Minimum Standards for Collaborative practitioners. The practitioner shall be mindful of the client's individual circumstances and the over-all circumstances of the case that may require the involvement of other professionals, both within and outside of the Collaborative process.

Comment

As Collaborative practitioners experience a greater diversity in their client population they become confronted by more complexity in physical, psychological and emotional factors affecting the client. It is important for the practitioner to be able to recognize these factors, as they will necessarily influence the Collaborative process and the client's decision making. It is even more important for the practitioner to recognize the limits of his or her ability to effectively deal with these factors and with the client's response to them. In fully addressing the client's needs, interests and goals, the Collaborative practitioner must be willing to turn to other professionals both within and outside of the Collaborative process, such as mental health professionals, medical professionals, financial professionals, vocational specialists and possibly rehabilitation counselors in the areas of physical disability, substance abuse, and domestic violence.

3. Conflicts of Interest.

3.1. A Collaborative practitioner shall disclose any conflicts of interest as defined by the practitioner's respective professional guidelines and Ethical Standards.

Comment

Upon full disclosure of a conflict of interest, the client(s) affected may waive the conflict in writing consistent with the practitioner's professional guidelines.

4. Confidentiality.

4.1 A Collaborative practitioner shall fully inform the client(s) about confidentiality requirements and practices in the specific Collaborative process that will be offered to the clients.

4.2 A Collaborative practitioner may reveal privileged information only with permission of the client(s), according to guidelines set out clearly in the Collaborative practitioner's Participation Agreement(s) or as required by law.

Comment

The rules of confidentiality are among the most important core values of the legal and mental health professions. Those standards may be modified by the terms of the Collaborative practitioner's fee and/or Participation Agreement with the client(s), so long as the modifications are consistent with the ethical standards of the practitioner's discipline. A competent Collaborative practitioner will be knowledgeable regarding the requirements of his/her professional standards pertaining to the necessity of obtaining a client's informed consent, and shall provide sufficient information to enable the client to give informed consent.

5. Scope of Advocacy.

5.1 A Collaborative lawyer shall inform the client(s) of the full spectrum of process options available for resolving disputed legal issues in their case.

5.2 A Collaborative practitioner shall provide a clear explanation of the Collaborative process, which includes the obligations of the practitioner and of the client(s) in the process, so that the client(s) may make an informed decision about choice of process.

5.3 A Collaborative practitioner shall assist the client(s) in establishing realistic expectations in the Collaborative process and shall respect the clients' self determination; understanding that ultimately the client(s) is/are responsible for making the decisions that resolve their issues.

5.4 A Collaborative practitioner shall encourage parents to remain mindful of the needs and best interests of their child(ren).

5.5 A Collaborative practitioner shall avoid contributing to the conflict of the client(s).

Comment

This section highlights the special obligations undertaken by the Collaborative practitioner that specifically result from the unique nature of Collaborative Practice. Psychologists and social workers are free to recommend outcomes to their client(s) believed to be in the client(s') (or the clients' family's) best interest, provided that they take care to do no harm. The traditional model of lawyering includes advocacy by the lawyer for the client's position so long as that position is legally supportable. Thus, this section has particular impact for lawyers because it reflects the considerations underlying law society and bar association rules in a number of jurisdictions. For example, Rule 2.1 of the American Bar Association's Model Rules of Professional Conduct recognizes that the role of the attorney encompasses more than providing purely technical legal advice. As the Comment to Rule 2.1 explains, the attorney's advice can properly include moral, ethical, and practical considerations, and may indicate that there is more involved in resolving a particular dispute or even the client's entire case than strictly legal considerations. In Collaborative Practice, the practitioner specifically contracts with the client(s) to provide advice that recognizes a full range of options for dispute resolution and takes into consideration relationship and family structures when looking at the possible outcomes for the client(s).

6. Disclosure of Business Practices.

6.1. A Collaborative practitioner shall fully disclose to the client(s) in writing his/her respective fee structure, related costs, and billing practices involved in the case.

6.2 A Collaborative practitioner shall be truthful in advertising his/her Collaborative Practice and in the solicitation of Collaborative clients.

7. Minimum Elements of a Collaborative Participation and/or Fee Agreement.

7.1. A Collaborative Participation Agreement and/or Fee Agreement shall be in writing, signed by the parties and the Collaborative practitioners, and must include provisions containing the following elements:

A. Pertaining to Full Disclosure of Information

1. No participant in a Collaborative case, whether a Collaborative practitioner or a client, may knowingly withhold or misrepresent information material to the Collaborative process or otherwise act or fail to act in a way that knowingly undermines or takes unfair advantage of the Collaborative process;

2. If a client knowingly withholds or misrepresents information material to the Collaborative process, or otherwise acts or fails to act in a way that undermines or takes unfair advantage

of the Collaborative process, and the client continues in such conduct after being duly advised of his or her obligations in the Collaborative process, such continuing conduct will mandate withdrawal of the Collaborative practitioner and if such result was clearly stated in the Participation and/or Fee Agreement, the conduct shall result in termination of the Collaborative process.

3. In the event of a withdrawal from or termination of the Collaborative process, the Collaborative practitioner shall notify the other professionals in the case.

B. Prohibiting Contested Court Procedures

1. Undertaking any contested court procedure automatically terminates the Collaborative process;

2. A Collaborative practitioner shall not threaten to undertake any contested court procedure related to the Collaborative case nor shall a Collaborative practitioner continue to represent a client who makes such a threat in a manner that undermines the Collaborative process.

3. Upon termination of the Collaborative process, the representing Collaborative practitioners and all other professionals working within the Collaborative process are prohibited from participating in any aspect of the contested proceedings between the parties.

PRACTICE PROTOCOLS

8. Consent.

8.1 Each Collaborative practitioner shall obtain written permission from his/her client(s) to share information as appropriate to the process with all other Collaborative professionals working on the case.

9. Withdrawal/Termination.

9.1 If a Collaborative practitioner learns that his or her client is withholding or misrepresenting information material to the Collaborative process, or is otherwise acting or failing to act in a way that knowingly undermines or takes unfair advantage of the Collaborative process, the Collaborative practitioner shall advise and counsel the client that:

A. Such conduct is contrary to the principles of Collaborative Practice; and

B. The client's continuing violation of such principles will mandate the withdrawal of the Collaborative practitioner from the Collaborative process, and, where permitted by the terms of the Collaborative practitioner's contract with the client, the termination of the Collaborative case.

9.2 If, after the advice and counsel described in Section 9.1, above, the client continues in the violation of the Collaborative Practice principles of disclosure and/or good faith, then the Collaborative practitioner shall:

A. Withdraw from the Collaborative case; and

B. Where permitted by the terms of the Collaborative practitioner's contract with the client, give notice to the other participants in the matter that the client has terminated the Collaborative process.

9.3 Nothing in these ethical standards shall be deemed to require a Collaborative practitioner to disclose the underlying reasons for either the professional's withdrawal or the termination of the Collaborative process.

9.4 A Collaborative practitioner must suspend or withdraw from the Collaborative process if the practitioner believes that a Collaborative client is unable to effectively participate in the process.

9.5 Upon termination of the Collaborative process, a Collaborative practitioner shall offer to provide his/her client(s) with a list of professional resources from the Collaborative practitioner's respective discipline from whom the client(s) may choose to receive professional advice or representation unless a client advises that he or she does not want or need such information.

ETHICAL STANDARDS SPECIFIC TO PARTICULAR COLLABORATIVE ROLES

10. Neutral Roles.

10.1 A Collaborative practitioner who serves on a Collaborative case in a neutral role shall adhere to that role, and shall not engage in any continuing client relationship that would compromise the Collaborative practitioner's neutrality. Working with either or both client(s) or with their child(ren) outside of the Collaborative process is inconsistent with that neutral role.

A. A Collaborative practitioner serving as a neutral financial specialist in a Collaborative case shall not have an ongoing business relationship with a Collaborative client during or after the completion of the Collaborative case, but may assist the clients in completing the tasks specifically assigned to them by the clients' written, final agreement. Such assistance may not include the sale of financial products or other services.

B. A Collaborative practitioner serving as a child specialist may assist the family in divorce related matters for the child(ren). Such assistance may not include becoming the child(ren)'s therapist.

C. A Collaborative practitioner serving as a neutral coach may assist the family in divorce related matters. Such assistance may not include acting as a therapist for one or both parties.

11. Coaches/Child Specialists.

11.1 A Collaborative practitioner who serves in the role of coach on a Collaborative case shall not function as a therapist to the Collaborative practitioner's client after the case has ended. Coaches should remain available to continue to help the clients/family address specific divorce issues after the divorce is final. A therapist for a client shall not serve in the role of coach or child specialist on a Collaborative case involving a client with whom the therapist has acted in a therapeutic role.

11.2 A Collaborative practitioner serving as a child specialist shall inform the child about the child specialist's role and the limits of confidentiality as appropriate, taking into account the child's age and level of maturity.