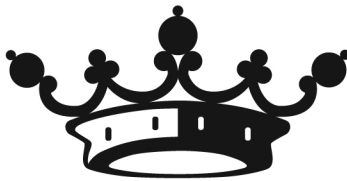


I N S I D E T H E M I N D S

Understanding Collaborative Family Law

*Leading Lawyers on Navigating the Collaborative Process,
Working with Clients, and Analyzing the Latest Trends*



ASPATORE

©2011 Thomson Reuters/Aspatore

All rights reserved. Printed in the United States of America.

No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, except as permitted under Sections 107 or 108 of the U.S. Copyright Act, without prior written permission of the publisher. This book is printed on acid free paper.

Material in this book is for educational purposes only. This book is sold with the understanding that neither any of the authors nor the publisher is engaged in rendering legal, accounting, investment, or any other professional service. Neither the publisher nor the authors assume any liability for any errors or omissions or for how this book or its contents are used or interpreted or for any consequences resulting directly or indirectly from the use of this book. For legal advice or any other, please consult your personal lawyer or the appropriate professional.

The views expressed by the individuals in this book (or the individuals on the cover) do not necessarily reflect the views shared by the companies they are employed by (or the companies mentioned in this book). The employment status and affiliations of authors with the companies referenced are subject to change.

Aspatore books may be purchased for educational, business, or sales promotional use. For information, please email West.customer.service@thomson.com.

For corrections, updates, comments or any other inquiries please email TLR.AspatoreEditorial@thomson.com.

First Printing, 2011

10 9 8 7 6 5 4 3 2 1

If you are interested in purchasing the book this chapter was originally included in, please visit www.west.thomson.com.

Using Collaborative Law
to Create an Individualized
Resolution in
Family Law Cases

Maury White

Founder

Maury White Law Offices



ASPATORE

Introduction

Collaborative family law is an extra-judicial process designed to assist husbands and wives arrive at the necessary agreements needed to end their marital relationship. The process begins once the couple and their two attorneys contractually bind themselves to proceed in the manner proscribed in their collaborative participation agreement or collaboration contract. A collaborative participation agreement requires the couple to confirm, in writing, that their respective attorneys are hired only for the limited purpose of the collaborative negotiation, and that neither will ever participate in any litigation concerning the couples' marital issues. In addition to the disqualification of their legal counsel in the event of future court action, each party to the collaboration promises to make a full and complete disclosure of all material information concerning their income, property, and child-related issues.

I believe collaborative family law offers hope for a better tomorrow to families transitioning out of an unfulfilling or dysfunctional marital relationship as opposed to a win-lose confrontation. The process is designed to end a couple's relationship in the very same manner in which it began, by each saying "Yes." At a time when couples are feeling a loss of control and fear of the unknown, the collaborative process can provide the time and the means to restore order, open lines of communication, and create awareness needed for appropriate problem-solving.

The Unique Nature of Family Law

I was first drawn to collaborative family law out of a sense of frustration from the waste of time and energy involved in traditional family law litigation. I believe the adversarial system is antithetical to the systemic needs of a family in transition. Collaboration is required to uncouple their legal partnership in concert with terms acceptable to two people who thought their lives were their own private business. At times of confusion and mistrust, the last thing a divorcing couple needs is to move their fight from the bedroom to the courtroom. Collaborative family law is a way to stop fighting and start problem-solving. I have long felt there is no need to put off the inevitable and add a layer of hurt and distrust. Those emotions

are usually what a divorcing couple is feeling, but they are exactly what they need to get away from.

Typical Collaborative Family Law Cases

I use the collaborative family law process to help settle pre- and post-decree family law disputes. This means resolution of conflicts arising before and during divorce as well as resolution of conflicts involving the children that may arise after a marriage has been dissolved. I also use the process to help solve custody and support issues for parents who have never been married before they end up in juvenile or children's court.

Most, if not all, financial and mental health professionals who hold themselves out as collaborative family law practitioners conduct their practices under the umbrella of local, regional, or state practice groups. The collaborative practice groups are loosely organized assemblies of professionals who regularly meet and discuss best practices for collaborative cases. Each case can call for a different grouping of trained professionals to meet the specific needs of a transitioning couple. Two lawyers are always required. Some practice groups have found success using mental health professionals as "divorce coaches" for each party. Other groups promote the use of a single mental health professional as a "family relations specialist" to fill the role of an independent neutral to deal with the ever-present emotional issues at the negotiating table. If financial issues are impeding effective communication, a neutral financial specialist can also be involved in a collaborative case. At their core, each collaborative process is the same. Every case requires a participation agreement that contains a disqualification clause for the professional participants, and a full disclosure clause for all material information.

I explain to my clients that the collaborative process will begin just as soon as the two clients (the parties), who have retained two collaborative lawyers, sign a participation agreement or collaboration contract. This contract is separate and distinct from each person's individual retainer contract with his or her lawyer. The collaborative contract identifies the two collaborative lawyers, the coach or family relations specialist, and/or the financial specialist, if needed. The contract goes on to say that all of the professional participants will be disqualified from ever being involved in litigation with

the couple as legal representatives, witnesses, therapists, or financial advisors. This shield is what creates neutrality and makes the process “safe.” While it does not eliminate the need for advocacy, if a client cannot find his or her voice, it does limit the extent to which advocacy can effectively be put to use. There is no other “decider” in the room other than the two parties. The contract goes on to detail each party’s promise to the other, that the status quo will be maintained during the process, and that all negotiations will be conducted with the utmost good faith. The terms of the agreement also emphasize that the process is completely voluntary and that if it is “not working” for either party, the process may be terminated and the dispute can be moved into litigation for resolution by a judge. (A sample collaboration contract is included as Appendix A.)

The Perception of Modern Collaborative Family Law

I believe collaborative law is becoming popular simply because it makes sense. Antiquated social taboos about divorce have been stripped away. In this post-modern age defined by social networks and the World Wide Web, in every aspect of our political, social, and economic environment, people are more willing to be transparent and share their personal experiences with one another. The finitude of our lives in the face of our fast-paced existence leaves little time for expensive and superfluous legal maneuvering, especially when it comes to our families. The horror stories about divorce and its consequences have been documented on television, in the movies, in books, and in academic treatments such as the twenty-five-year landmark study by Judith Wallerstein, Julia Lewis, and Sandra Blakeslee, titled “The Unexpected Legacy of Divorce.” Dr. Wallerstein has documented the common feelings for grown children of divorce: “Why am I so afraid of conflict? Why do I have such a fear of commitment? Why am I always waiting for the other shoe to drop even at moments of success?” The effects of divorce reach far into the future, and handling the unfortunate situations in the “least worse way” should be encouraged by the legal community.

Collaborative law is a natural outgrowth of the wider alternative dispute resolution movement. In all areas of practice, lawyers have long seen the waste of time, energy, and money involved in all types of civil litigation. Even if the lawyers will not admit it, their clients certainly feel it in their

wallets. Arbitration, mediation, and collaboration are all designed to reduce unnecessary loss of time and money. Moreover, marriages are different than virtually any other type of relationship that may be subject to litigation. Business partners or corporations rarely sleep together or bear offspring for whom they each share moral and legal responsibility. The win-lose proposition of litigation for the sake of ego and materiality is antithetical to resolutions required by today's families.

The Goal of Collaborative Family Law

Nearly every client only wants what is "fair." Clients also want the pain of their divorce to be over as soon as possible. Lawyers who wish to meet the expressed goals of the consuming public have found that collaborative law is a process by which they can help clients determine for themselves what is fair. The unfamiliar, uninterested, and overworked judge will have nothing to do with the outcome. Because fairness is so subjective, lawyers and judges who do not know the clients or the dynamics of each particular family or every case coming into litigation will not put in the necessary time to attempt to fully vet all of the relevant facts. What a court believes is relevant may not be what the client believes is relevant. Frustrations over not having a day in court to explain a story often set in, and clients often believe that "so much time has been wasted, and no one even listened to me." Moreover, procedures must be implemented to govern the judges and lawyers to make sure the process itself is fair in addition to the result. This added layer of required, formalized procedure gives litigators and warring clients even more material about which to fight.

All of this can be avoided in an extra-judicial collaborative law process. Meetings are scheduled at the convenience of the parties. Lawyers and clients contractually bind themselves to mutually agreeable procedures and mutual promises of full disclosure. There are no rules of evidence, and everyone's goals and interests are heard and considered. Both time and money are saved by directly meeting the clients' issues and problem-solving around a common goal of settlement. The context is safe because the lawyers have been hired for the sole purpose of settlement. Once a collaborative participation contract is signed, the lawyers are disqualified from ever litigating on behalf of the two clients. This is called "limited

representation,” as the lawyers will use their negotiation and mediation skills in the collaborative setting, but not their litigation skills.

In this age of the Internet, with free access to all sorts of information, transparency is a highly valued commodity. The collaborative process is all about transparency. It resonates with the public. No longer are the legal professionals the exclusive keepers of legal information. I tell my clients, “It does not take a rocket scientist to divide assets by two. What is needed in the case of divorce is experienced family law attorneys who can help clients make reasoned and emotionally sound decisions in a caring setting, with a focus upon what the client deems to be important.” This is what true collaboration is all about.

Collaborative Family Law in Ohio

I am past chair of the Cincinnati Academy of Collaborative Professionals. Our group is a non-profit 501(c) (3) organization created to educate the public about the benefits of collaborative family law. We began as a lawyer-only group with a small number of committed domestic relations attorneys who knew there must surely be a better way to solve the problems couples face when transitioning out of a marital relationship.

The Cincinnati practice group began in the early 1990s. Lawyers active in the alternative dispute resolution movement (mediators and arbitrators) were introduced to the concept of collaborative law developed by an attorney from Minneapolis, Minnesota, named Stu Webb. Mr. Webb’s determination to find “a different way” for divorcing couples quickly spread among members of the alternative dispute resolution community nationwide. A mediator from northern California, named Chip Rose, initially trained the attorneys from Cincinnati in the collaborative methods. It was a new paradigm, using mediation skills in a bilateral setting where adversarial litigation was not involved. The brightest and the best domestic relations attorneys in Cincinnati were invited to become members of the Collaborative Family Lawyers of Cincinnati. Mutual respect and trust among the attorneys facilitated the formation of the group and served as the foundation for building upon a shared vision. The group has written and established requirements for membership as well as protocols for practice. We now have over seventy members.

The Beginnings of the Collaborative Law Trend

When we began, there was already a fair amount of collegiality among the domestic relations bar. The group was handpicked by a well-respected former judge and a pioneering family law mediator. Because effective collaboration, in any field, requires some modicum of trust among those working together, it helped that we all knew one another and that we all had meaningful amounts of experience in the local family court. Regular monthly meetings in which we discuss the successes and failures of our collaborative cases have always been a hallmark of our local group. We understand that a certain amount of vulnerability among the mutually regarded professionals is essential to building trust. Small group settings are conducive to sharing.

Approximately five years into our collaborative experience, collaborative lawyers around the country began to realize that the problems our clients were bringing to the table were not purely legal and that our “process” could go much smoother with the assistance of allied professionals trained in communication skills, personality traits, and financial specialties. We recruited mental health professionals and financial specialists and provided training in our collaborative law methods, including mediation skills, basic family law parameters, and the particularized roles of attorneys, mental health professionals, and financial advisors in the collaborative process as opposed to our traditional litigator, therapist, and financial sales roles. At this time, the allied professionals are full-fledged members of our multi-disciplinary Collaborative Law Academy.

The Importance of an Individual Approach

While recognizing that every case is to be treated on a case-by-case basis, our collaborative protocols in Cincinnati call for use of a single neutral mental health professional, and a single neutral financial specialist when circumstances require involvement of more than just the two collaborative attorneys. The attorneys must recognize the need for additional experts, and the clients must agree to the involvement of additional experts. Convincing the clients of the added value of the allied professionals is often a challenge to the attorneys. Clients get confused and do not believe they need “therapy.” In reality, providing therapy is not the function of the

collaborative mental health professionals known as “family relations specialists” in Cincinnati. For the clients, spending any extra money on additional professionals beyond the legal fees for their lawyers is a hard thing to swallow. Even so, the cases that require these additional neutrals progress much smoother when the correct allied professionals are involved. In other areas of the country, some collaborative practice groups encourage each client to have his or her own divorce coach, a neutral case manager, a financial specialist, and two collaborative lawyers. What we have learned in Cincinnati is that there is no one correct model. It all depends upon who the clients are, what their issues are, who their respective attorneys are, and whether the clients will be amenable to having a family relations specialist involved.

In the typical case, after each attorney has met his or her client, the two lawyers will assess the need and value of having one or more allied professionals involved. This depends upon what issues are presented and what emotional state the clients find themselves in. Usually, a determination will be made prior to the first four-way collaborative meeting with both clients and both lawyers (when the collaboration contract is signed and the process begins). Each attorney will explain the need and value to his or her client and hopefully get buy-in from them. Ideally, any allied professional will be at the first meeting when the collaboration contract is signed, when the process is begun, and when the clients express their goals and interests for their divorce/dissolution. In this fashion, a collaborative team is hatched.

We now have over seventy members of the Cincinnati Academy of Collaborative Professionals, and we are a multi-disciplinary group. We have a website and a point system to qualify for the website’s online roster. Points are garnered by attending meetings and workshop seminars. Every month we gather to debrief and discuss difficult cases, share information, and create a common culture. We also use a single collaborative participation agreement and a formalized set of protocols. The International Academy of Collaborative Professionals, with headquarters in Phoenix, Arizona, provides notice of collaborative seminars and workshops around the country and around the world. The notices are on their website, www.collaborativepractice.com. There are training opportunities and continuing education credits available year in and year out.

Common Areas of Concern

An area of concern for some of our members is who to refer our clients' unrepresented spouses to. Some members make general referrals to the website, while others pick and choose who to refer to, with a very short list, depending upon who they have worked with before and how smoothly the process went. Most collaborative lawyers are beginning to understand that as we gain more experience, confidence and trust in your collaborative co-counsel is crucial to the success of each case. I refer to other lawyers who, in my estimation, will talk to their clients about the collaborative process in the same way I speak to mine. This is what our workshops and protocols are designed to ensure, but some attorneys are simply better suited to the collaborative process than others. Collaborative law is often more intuitive than the traditional legal techniques that can be picked up in law school practicums and continuing legal education programs.

“Good” collaborative lawyers have an innate curiosity about the personal problems their clients are experiencing. They put meaning into the words “paradigm shift.” They ask good questions instead of offering cookie-cutter answers. A good listener, with sincere empathy, will gain a client's trust. Once a client trusts his or her legal advisor, the journey toward a reasonable interest-based settlement can begin. Most divorcing clients have forgotten how to trust. In the collaborative process, however, the power paradigm is shifted from lawyer to client. A client who can trust his or her own decision-making ability has been empowered to be confident in determining the course of his or her own life. A lawyer who can build trust in his or her client has given the client a tool to be used for the rest of the client's life and insight into what it takes to sustain a family system.

Ethical Issues in Collaborative Law

From my point of view, the ethical underpinnings of collaborative law are founded upon the accepted notions of “limited representation” and “informed consent.” Our collaborative participation agreement limits the lawyer's role to one of negotiator as opposed to litigator. When clients agree to resolve their marital disputes by way of the collaborative process, it is my understanding that they are consenting and agreeing to utilize their respective legal counselors for the limited purpose and express intent of

helping them reach a negotiated settlement. How this is done varies from lawyer to lawyer and practice group to practice group. The process requires both couples' consent and commitment. It also requires, at a minimum, the commitment of two lawyers. A joint venture is thus created by contract between husband and wife, and unless both clients' interests are adequately met, the venture will fail. I believe my duty as a lawyer in the collaborative process is to see that the choices my client makes in coming to an agreement are measured and informed. Our training calls for transparency, exchange of information, creation of options, consideration of consequences, and a thorough negotiation.

Helpful Resources

As Bernie Mayer points out in Chapter 7 of *The Dynamics of Conflict Resolution*, "All negotiations have both distributive and integrative aspects. However, at any given time one of these dimensions tends to dominate the spirit of the discussions," thereby reiterating the fact that timing is everything. Mayer explains, "To the extent that a negotiation is about gaining as much as possible of what is available it is distributive; alternatively, people can try to meet their needs through increasing what is available for all and making sure everyone's needs are adequately addressed." This he describes as an integrative approach. Collaborative law is represented to the consuming public as interest-based negotiation; the possibilities of a "win-win" have long been held out as the carrot. It is a process grounded in collaboration, also known as the act of working together. I see its very essence as a patently integrative approach to negotiation. How clients measure and weigh their interests is the grist for their integrative mill. Collaborative law is what our four-way, five-way, and even six-way meetings are all about. Settlement by its very nature requires an integrated resolution that satisfies both parties' interests. There will always be a distribution and give-and-take, but the distribution must be considered fair by each party. The problem I often encounter in collaborative negotiations is that it is relatively easy to measure and weigh distributed sums of cash from a finite "pie," but it is not so easy to measure and weigh a distribution of non-monetary gives and takes from an integrated family system of blended monetary and emotional interests. Lawyers must be aware that it is a slippery slope, and great care is required not to fall into old patterns. To get to the proverbial "yes," each client will

apply his or her own standards of fairness. It is a balancing act, which requires each person to be self-assured in the knowledge that his or her own needs are being met to a sufficient degree to allow a “yes” to an agreement that ostensibly also meets a fair number of the other spouse’s needs. Reassuring my client that we have put in a great amount of effort into understanding needs and interests and creating awareness and confidence for moving on is how we get these things done.

Important Considerations throughout the Collaborative Process

Regarding the question about the need for advocacy in any particular collaboration, we face another question, and perhaps the question that is at the heart of the matter for lawyers: To what extent do the lawyer’s standards of fairness influence the client’s standards? Has our process provided the time and space necessary for our client’s own senses of fairness to develop and evolve after adequate information, options, and consequences have been developed? Is it the client’s paradigm or the lawyer’s paradigm? What are the units of measurements, who is reading the measure, and who is holding the tape? And finally, our clients who understand that they are paying for our “legal” opinions always ask us, “What do you think is fair?” Does it really matter what the lawyer thinks is fair? Is fair what happens in court? How sure can we be? How do I keep expectations in line and yet, for the client who wants a settlement, amenable to compromise?

Words can have different meanings to different people. To Webster, to advocate means “to plead in favor of a cause of another.” So, when considering the role of advocacy, what is a client’s “cause”? What are a client’s interests? What is the hierarchy of those various interests? Then, of course, to whom will we advocate? Is your collaborative counterpart so myopic and unbending that you need to “plead” your client’s case to that lawyer? What about the futility of arguing? Is it your role to plead to the other client? How much do you trust the other lawyer to have imparted your point of view to the other client? Does this happen in front of the clients to satisfy your own client’s (or your own) fantasy about the expected role of attorneys? Are we meeting our personal needs to provide value, to prove our worth, or are we attempting to meet the needs embodied in the commitment to resolve issues by way of negotiation as opposed to

litigation? What promises were made before the collaboration contract was signed? Can or should those promises/expectations be adjusted after the participation agreement has been signed?

I believe the challenge for the collaborative lawyer involves his or her individual ability to differentiate between the advocacy skills required in a judicial court or tribunal and the skills required to work directly with the other collaborative professionals in the case, as well as the set of clients who have hired them, for the particular task of collaboratively completing a settlement in accordance with the process set forth in their collaborative contract. I propose that advocacy is not one of the skills required for such a task. Indeed, rudimentary advocacy often leads to distrust and renewal of deep-seated adversarial lawyering because it is so hard not to react, not to be drawn into attack and counterattack patterns of conversation. Collaborative cases are difficult. In the collaborative arena, we have promised something different. This does not mean the distributive nature of negotiation is not present or should be ignored. In contrast, it simply means that in the commonly understood meaning of the word, the skill needed for accomplishing the distribution does not necessarily require advocacy.

What I have found to be helpful and effective characteristics of collaborative lawyers are good listening skills and taking time to process what you have heard. These skills are necessary in collaboration with collaborative colleagues in order to understand, integrate, and internalize the information that has been developed in meetings and with clients. Ultimately, the members of the collaborative process team are trying to understand what both clients need, including their process needs and substantive needs, in order to settle the case. In addition, lawyers must use their experience to help clients understand that what they originally thought they needed is not always consistent with what they need to reach ultimate settlement. For the negotiation to be successful, communication needs to be effective. When clients speak, and when lawyers speak, and when any other team members speak, I will listen, I will hear, and I will respond. We will collaborate, and we will problem-solve. Only when we are ready to listen to another's problems can collaborative problem-solving take place. Short of that, one person will have to give in to the other's demands. The same old patterns of attack, defense, and counterattack will most likely

unfold, and nothing new will be accomplished. Patterns of victimization, vilification, and intermittent self-serving rescue attempts must be broken for meaningful conflict resolution to blossom. The most common area of overlapping and competing interests involve the children, the house, the retirement savings, the business, and the income it produces for all concerned. All the stakeholders must be heard, and the mutuality of interdependent interests are best recognized for everyone's sake.

Client Strategies

During the initial meeting, I focus on creating rapport with my prospective clients. I attempt to be a calming presence at a time of fear and turmoil. My years of experience, in litigation as well as collaboration, provide a comfortable safety net. I encourage clients to take a deep breath, as well as a moment to consider how he or she wishes to problem-solve. By emphasizing his or her power to choose how he or she wishes to go about ending the marriage, I am helping to provide a sense of control to the client, exactly when the client is feeling most out of control. By offering reassurance at a time of doubt, I am able to provide an anchor. I often ask the client to imagine their worst nightmares, and then we take the time to defuse those fears stemming from what they have heard from others or imagined for themselves. If the problems are real, we create strategies for dealing with them. A timetable of what to expect and a discussion of alternatives go a long way toward calming a client down. If a referral to a divorce coach or family relations specialist is in order, we do that too.

I then launch into the explanation of collaborative law and how it compares to litigation, mediation, and traditional attorney negotiation. Again, I emphasize the power and control the collaborative process provides to clients. I explain how we approach the problems from the clients' perspectives as opposed to a judge's or lawyer's perspective.

I reframe questions about how much and how long, to questions about the client's family, spouse, work, and life. Allowing the client to tell his or her story is essential. General areas of concern can be covered, such as equitable division of marital property, what child support is for, and what determines spousal support. However, I do not get into specifics or establish firm expectations.

We then return to the collaborative process. The client will want to know how long it will take and how much it will cost. “It all depends” is usually the answer. Then we launch into examining whether the spouse is in the same frame of mind as my client in regard to proceeding with the divorce. Who is the “leaver”? Who is the “leavee”? Is there another lawyer? Again, the important piece for most clients is that with the collaborative process, the clients control the pace of the case. The clients have more empowerment and can schedule meetings as quickly or as slowly as suits their needs, without regard to a court’s docket.

The client usually leaves with my fee contract, several brochures about the collaborative process, and a short list of other collaborative lawyers for the spouse to consult with.

I charge an hourly rate for collaborative work. I tell most clients that a case typically takes three to six meetings, and that each meeting is about two hours in length. I usually require a retainer equal to about nine hours’ worth of work. The retainer is symbolic also in that payment requires commitment to the process and me. It is representative of some degree of trust. The brochures I hand out are produced by the International Academy of Collaborative Professionals, and they are a convenient tool for educating the other spouse. I often write the name and contact information of one or two other collaborative lawyers on the back of the brochure and encourage my client to give the recommendation of the collaborative process and the listed collaborative lawyers to their spouse who did not meet with me.

The Development of the Participation Agreement

The cornerstone of our collaborative practice is the participation agreement, and the backbone of the agreement is its disqualification clause. Once clients and their attorneys sign the collaboration contract, their collective ability to seek, or even think about seeking, a unilateral resolution of their issues by court order, the metaphorical use of force, is taken out of the universe of problem-solving alternatives. A virtual “safe harbor” is created by the agreement’s explicit guarantees of full disclosure and commitment to open-minded discussion of all possible options and outcomes, without draconian fears of litigation.

I review the terms of the collaborative participation agreement with my client during our initial meeting when we are discussing their process options. We read it together, as it helps explain exactly what is expected of each participant in the process. The contract has been intentionally written for the layperson, not the lawyer. I have an ethical professional duty to ensure that each of my clients makes an informed decision about the nature of the process and the nature of my representation. Not only does the collaboration contract contain the disqualification clause, but so does my separate retainer agreement by which the client hires me. The review process is then repeated with both clients present at the first collaborative meeting just prior to signing. It is an important anchor for future reference, if candid and frank discussions should ever become emotional. If each client has expressed an understanding of the collaborative approach that is in sync with their spouse's understanding, as well as in sync with the expectations of the collaborative professionals in the case, we have a tool for restoring balance and commitment. The basic tenets of the collaborative process are stated simply in the contract, and they can help provide the needed anchors, along with notes that contain reminders of each person's expressed commitment to that process.

The disqualification clause eliminates the immediate potential for a "War of the Roses" scenario. The traditional divorce paradigm has become so unsatisfactory that the international collaborative divorce movement has evolved to take its place. We have learned that only a signed participation agreement can quiet veiled threats of litigation and the take-it-or-leave-it positioning that is so often present in traditional attorney-negotiated cases. Without the foundation of hopeful trust and cooperation, which the signed collaborative contract symbolizes, the suspicion and fear that so often lead to divorce in the first place will be present throughout any negotiation and long after the decree of dissolution is finalized.

Conclusion

When two participating attorneys sign the collaboration contract, the process of ending the clients' marriage is no longer about "the law," the attorneys' ability to argue a position, or a judge's opinion. A successful resolution can only be reached when clients are mutually satisfied with settlement terms they each understand and believe are fair and equitable.

This is the essence of the collaborative practice. It is about sitting down with our clients at a time in their lives when they are experiencing the harsh failure of a relationship that once held their innermost hopes and dreams, and offering them some sense of control. When we sign the participation agreement, we are saying to our clients, “You have the power to control the outcome. This is not about the lawyers, the judge, or the expert witness. This is about your family and you, and the resolutions you determine to be in your collective best interest. I am here to listen, to advise, and to advocate for your interests. My specialized training and my years of experience in the field of divorce enable me to do this without threatening to inflict further pain with tough litigation practices.”

Fear of losing a client in the event of impasse or hesitancy to learn and implement new skills should not keep a collaborative lawyer from enthusiastically offering his or her clients the option of participating in a signed collaborative case. An attorney or allied professional may be disqualified from litigation, but if he or she is not willing to take that risk, the collaborative professional will never have the opportunity of helping a client reach the best possible divorce resolution.

Key Takeaways

- Use the collaborative process as an alternative to divorce litigation. Explain to your clients that collaborative law is a way for clients to determine what is fair according to their own standards. They can control the important decisions that will ultimately affect their future.
- Approach each collaborative case on its own merits, and determine if and which additional professionals will be most helpful to the process.
- Create rapport with your clients at the initial consultation by being a calming presence in a time of turmoil and fear.
- Do not be fearful of losing clients. As Abraham Lincoln said, “Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has the superior opportunity of being a good man. There will still be business enough.”

- Just because you are hesitant to learn new skills, you should not be afraid to be enthusiastic about offering your clients the option of participating in a collaborative case.

Related Resources

- *Collaborative Divorce*, by Pauline Tesler and Peggy Thompson
- *Difficult Conversations: How to Discuss What Matters Most*, Douglas Stone, Bruce Patton, Sheila Heen, and Roger Fisher
- *The Collaborative Way to Divorce: The Revolutionary Method That Results in Less Stress, Lower Costs, and Happier Kids—Without Going to Court*, Stuart G. Webb and Ronald D. Ousky
- *Conversational Riffs: Creating Meaning Out of Conflict*, Neil Denny

Maury White is the founder of Maury White Law Offices. He served as the chair of the Cincinnati Academy of Collaborative Professionals from 2006 to 2008. In addition to the academy, he is a member of the Southwest Ohio Collaborative Law Association of Warren County, the Collaborative Family Law Association of Butler County, and the International Academy of Collaborative Professionals. Mr. White's practice is limited to Mediation and Collaborative Law.

Mr. White was certified by the Ohio State Bar Association as a family relations specialist in 2004. He has more than thirty years of courtroom experience and is a member of the Cincinnati Bar Association and the Ohio State Bar Association. He currently serves as chair of the Ohio Supreme Court's Advisory Subcommittee on Collaborative Law. He has also been periodically appointed guardian ad litem for children and incompetents by the domestic relations judges in Hamilton County, Ohio.

Mr. White earned his BS in finance from the University of Virginia and his JD from the University of Cincinnati College of Law. He has an AV rating from Martindale-Hubbell.

APPENDIX A

COLLABORATION CONTRACT

THE PARTICIPANTS IN THIS COLLABORATION ARE:

_____ (Participant 1) _____ (Participant 2).

THE LAWYERS IN THIS COLLABORATION ARE:

_____ (Lawyer 1) _____ (Lawyer 2).

I. GOALS

1. The Participants wish to resolve their differences in Collaboration instead of going to Court.
2. The Participants and both Lawyers agree to efficiently:
 - a. Focus on the future wellbeing of the Participants and their children;
 - b. Resolve all of the Participants' parenting issues in the best interests of their children;
 - c. Promote a caring, loving and involved relationship between parents and children;
 - d. Keep the children out of their differences;
 - e. To resolve differences related to the children and their welfare;
 - f. Find solutions acceptable to the Participants; and
 - g. Try to reduce the negative emotional, social and financial consequences of process.

II. WHAT WE WILL DO

1. The Lawyers will work with the Participants to help them:
 - a. Discover what is important to each of them;
 - b. Identify the questions they need to answer;

- c. Gather information;
 - d. Create the maximum number of options to help them meet their goals; and
 - e. Reach agreement.
2. The Participants shall provide complete, honest and open disclosure of all information in an informal exchange of discovery in this Collaboration. This duty of full disclosure is an essential element of the Collaboration. The parties acknowledge by using informal discovery, they are giving up certain procedures available in the litigation process. On request of either Participant, the other party will provide a sworn statement making full disclosure of their income, assets and debts.
 3. Each of us may discuss the likely outcome of going to Court. None of us will use threats of Court to force settlement.
 4. We will utilize four-way meetings in this Collaboration whenever possible.

III. PARTICIPATION WITH INTEGRITY

1. We will act with Good Faith, Respect, Honesty, and Cooperation.
2. We will work to protect our privacy and dignity.
3. We understand the success of Collaboration depends on all of us working hard together.
4. We will immediately identify and correct any mistakes. We will not take advantage of any mistakes anyone makes in Collaboration.

IV. ENFORCEABILITY OF AGREEMENTS

1. If the Participants make an agreement they want to be enforceable, either interim or final, the agreement will be put in writing and signed by the Participants and Lawyers.

2. If either Participant withdraws from Collaboration, the written agreement may be presented to the Court as a basis for an Order.
3. Except as provided herein in this Section IV, or if otherwise agreed in writing by the parties, all conduct and statements made in compromise negotiations during the Collaborative process by anyone who signs this agreement, or by anyone who enters into this process by virtue of any other Collaboration Contract with an allied professional, shall be inadmissible as evidence, and shall not be considered by any court to prove the existence or nonexistence of any agreements, offers of compromise, bias, prejudice or undue delay.

V. RIGHTS AND OBLIGATIONS PENDING SETTLEMENT

Although the parties have agreed to work outside the judicial system, the parties agree that:

1. Neither party may dispose of any assets except (i) for the necessities of life or for the necessary generation of income or preservation of assets, (ii) by an agreement in writing, or (iii) to retain counsel to carry on or contest this proceeding.
2. Neither party may harass the other party.
3. All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.
4. Neither party shall permanently remove the children from the County in which they currently reside without the consent of the other.
5. Neither party shall incur debts for which the other is liable, except for necessities or in the ordinary course of business.
6. Each party will notify the other in advance of any extraordinary expenditure required to maintain the necessities of life or generate income.

7. Violation of any of these provisions may result in sanctions by the Court.

VI. NEUTRAL CONSULTANTS

1. The Participants may jointly retain Neutral Consultants when needed. A Neutral Consultant may be a business valuator, real estate appraiser, financial analyst, health care professional, or child specialist, among others.
2. We shall ask Neutral Consultants to assist the Participants to resolve their differences collaboratively. We acknowledge the advice and recommendations of Neutral Consultants are not binding upon the Participants, unless the Participants specifically agree in advance to be so bound.
3. We may ask a Neutral Consultant for assistance with issues concerning their children. Regardless, the Participants will make the decisions about their children. Thus, the advice and recommendations of Neutral Consultants concerning children's issues are not binding upon the Participants, unless the Participants specifically agree in advance to be so bound.
4. When the Participants retain Neutral Consultants, the Lawyers and Neutral Consultants may have discussions among themselves to assist the Participants to resolve their differences.
5. The Neutral Consultants retained in this Collaboration shall be identified in Exhibit A to the Collaboration Contract.

VII. GUIDELINES

1. There is no guarantee Collaboration will be successful.
2. Each Lawyer represents only her/his own client in Collaboration, even though we will all work together.
3. Collaboration has the greatest chance of success if:

- a. The Lawyers and the Participants are prepared for Collaboration and for each four-way meeting;
 - b. The Lawyers or the Participants follow the Expectations of Clients and Professionals (attached as Exhibit B to this Contract) IN Collaboration meetings and OUTSIDE of Collaboration;
 - c. The Participants follow temporary agreements;
 - d. The Participants timely accomplish tasks they have agreed to do; or
 - e. The Participants avoid one-sided actions.
4. We understand Lawyers may withdraw from Collaboration if either learns either Participant has taken unfair advantage of Collaboration. Some examples of this are:
- a. Taking serious, one-sided actions;
 - b. Withholding or misrepresenting information;
 - c. Failing to follow agreements; or
 - d. Failing in any other way to participate in the spirit of Collaboration.
5. If either Lawyer withdraws from Collaboration, that Lawyer will give written notice of withdrawal to his or her own client, the other Lawyer, and any Neutral Consultants.

VIII. LEGAL FEES AND COSTS

1. Both Participants agree the Lawyers shall be paid for their services.
2. If there is an issue concerning payment of legal fees, this matter may be presented and resolved in Collaboration.

IX. FEES AND COSTS FOR NEUTRAL CONSULTANTS

1. Neutral Consultants shall be paid for their services.

2. When the Participants retain a Neutral Consultant they will decide in Collaboration how they will pay the Neutral Consultant.

X. WHAT HAPPENS IF A PARTICIPANT CHOOSES TO GO TO COURT

1. If this Collaboration fails or at any time the parties choose to enter litigation either pre- or post-Decree, even after a successful collaboration, neither Lawyer may represent either Participant in litigation concerning the same or a similar issue to that which was the subject matter of the prior collaboration. For the purpose of this provision, the term "Lawyer" means that attorney and any attorney in the Lawyer's law firm.
2. If Collaboration ends and the Participants go to Court, all Neutral Consultants will be disqualified as witnesses, and any work product prepared by the Neutral Consultants will be inadmissible as evidence, unless the Participants and Neutral Consultant agree otherwise in writing.
3. If Collaboration ends and the Participants go to Court, the Lawyers will be disqualified as witnesses, and any work product prepared by the Lawyers will be inadmissible as evidence, unless the Participants and Lawyer agree otherwise in writing.
4. If either Participant terminates the Collaboration, he or she must give the other Participant and both Lawyers written notice of the termination. Neither Participant may take any action in the Court system until 30 days after they have delivered this notice. This means neither Participant may file any Court documents within 30 days of delivering written notice of his/her withdrawal from Collaboration.
5. If, however, either Participant satisfies a Court there is an emergency requiring immediate action before the 30 day period expires, then that Court proceeding will not be a breach of this Contract.

6. Any information gathered or developed during Collaboration may be transferred to the successor Lawyers, and may be used in a Court proceeding. After each Collaboration Lawyer has transferred the information gathered or developed during Collaboration to the successor lawyer that Collaborative Lawyer shall not participate in the litigation process.

PROMISE TO FOLLOW CONTRACT

7. The Participants agree to be bound by the terms of this Contract and to promote the spirit of Collaboration.
8. It is specifically understood each Lawyer represents only the Participant who retained that attorney as her/his legal counsel. This Collaboration Contract does not alter or change the attorney-client relationship between that Lawyer and that Participant. Likewise, this Collaboration Contract does not create any legal rights or privity of contract between the non-client Participant and the other attorney.
9. The Collaborative Family Lawyers of Cincinnati have approved this Collaboration Contract, and the provisions of this Collaboration Contract have not been modified or altered. If the Participants and Lawyers wish to agree to additional terms, they shall set them forth in amendment(s) to this Contract.

Participant (1)

Lawyer (1)

Participant (2)

Lawyer (2)

Dated _____ at Mason, Ohio.

EXHIBIT A

Schedule of Jointly Retained Neutral Consultants

When each Neutral Consultant is jointly retained, the following information will be recorded on this Exhibit to the Collaboration Contract:

- Name of the Neutral Consultant
- Purpose for the Consultation
- Date Jointly Retained
- Details of Compensation for the Consultant

EXHIBIT B

Expectations of Participants, Lawyers, and Neutral Consultants

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 Lawyers. Avoid “he” or “she”.
6. Express what is important to you, what your concerns are, and what you want to talk about. Avoid positions.
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.
9. If you have a complaint, raise it as your concern and follow it up with a constructive suggestion for resolution.
10. If something is not working for you, please tell your Lawyer so your concern can be addressed. Talk with your Lawyer about anything you do not understand. Your Lawyer 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 Lawyers. Delays in Collaboration can happen, even with everyone acting in good faith.

APPENDIX B

ORGANIZATIONAL AND PRACTICE PROTOCOLS FOR THE CINCINNATI ACADEMY OF COLLABORATIVE PROFESSIONALS

Introduction

These Organizational and Practice Protocols are separate and distinct from the Professional Standards required for membership in the Cincinnati Academy of Collaborative Professionals (hereinafter referred to as “CACP”). They are also separate and distinct from the CACP Suggested procedures for members of the CACP for explaining the Collaborative Process to your clients.

These Organizational and Practice Protocols will provide you with a conceptual description, or order of precedence (as opposed to a fixed model), about how to conduct a Collaborative case from beginning to end. The Protocols are intended to serve as a framework only. It is expected, and anticipated, that each case will evolve differently. It is anticipated that each case will be conducted in a unique fashion, although always providing progressive opportunities for collaboration when striving to resolve the problems each set of clients is or will be facing. Creativity is welcomed. Indeed, it is necessary!

From the CACP website, clients understand the following about Collaborative Practice:

When they separate, or divorce, couples must find a way to resolve their differences on all relevant issues. Collaborative Practice is designed to minimize conflict while working toward that resolution. Parties to divorce, their attorneys and any other professional involved, agree to make a good faith attempt to reach a mutually acceptable settlement without going to court. Working together, they strive to dissolve the marriage in a way that addresses everyone’s legal, financial, and emotional needs.

Meet clients where they are. Collaborative conflict resolution is a client-centered approach.

At all times during the case, one of the most important things you can do is to keep your focus on the clients. Do not ignore the fact that a goal for you (as opposed to them) is to generate a shared parenting plan and/or a separation agreement.

The Collaborative process belongs to the clients and their family. Be aware of what your clients need and what they want. Seek to address the core of their problems. There is no viable, fixed structural design for Collaborative work. There is no “cookie-cutter” way to meet each couple’s needs. Moreover, there is no requirement to use any one particular team approach. Each case is unique and must be approached with attention to the particular circumstances and desires of the parties.

It is crucial for Collaborative professionals to remain flexible, open, and responsive to the needs of his/her clients as they emerge and change during the progress of the case.

I. Phases of the Collaborative Case

A. Assessment

1. If a Collaborative professional encounters a couple who will be divorcing, the Collaborative professional will discuss the process of and the options for divorcing, including Collaborative practice. If a Collaborative divorce is a viable option, a list of Collaborative attorneys will be offered. Preference will be given to attorneys who are members of the CACP.
2. If it is determined that the couple’s situation will benefit from involvement of Collaborative professionals from other disciplines, the first attorney consulted by the couple or by one member of the couple should explain the benefits and value of multi-disciplinary practice and obtain

the clients' consent to pursue a multi-disciplinary approach. The attorney should be able to evaluate the needs which are presented by the couple and match them to the credentials, areas of practice and unique skills of other available Collaborative professionals. Credentials of mental health professionals and financial specialists can be reviewed on the CACP website, www.collaborativelaw.com. All members of the CACP should gain familiarity with the unique skills of other CACP members from the small practice group experiences and from actual case experience.

Caution: When addressing the comparative costs of a Collaborative case versus a non-collaborative case, Collaborative professionals should explain that the actual cost of a Collaborative case will depend upon the services required by the parties, the skill of the Collaborative professionals, and the complexity of the case. Although Collaboration may save money over litigation, there is no guarantee of this and, as such, Collaborative conflict resolution should not be represented as saving costs. Rather, the quality of the end result is a key reason for choosing Collaborative dispute resolution.

B. Organization

1. After an assessment is completed by the attorneys, contact may be made with other Collaborative professionals, individually or by conference call, to determine the optimum method of entry of additional Collaborative professionals into the case. Discuss fee arrangements. Decide on the process for arranging and scheduling an initial group meeting.

2. Convene the first group meeting where participation agreements and retainer agreements can be signed. Discuss the fee arrangements, if necessary, and create a “to-do” list and agenda.
3. Check in with the clients about the process in the group setting. Find out how they feel and what their perceptions are. This will help you meet their concerns, which may be completely different from yours.
4. Debrief with other Collaborative professionals. Provide candid feedback. Discuss what worked and what did not work and how best to keep the Collaborative process going. Consider what, if any, special needs have been presented, e.g. how to tell children about the divorce, parenting problems, financial questions, financial planning, high emotions, the need for individual therapy, and appraisals.
5. Develop a plan for the implementation of new ideas and the management of new issues, which may arise between meetings.

C. The On-going Process

1. Attorneys should check with their clients individually. Candidly explore the feelings of your clients. Discuss with them any recommendations for more in-depth work between meetings on issues that may have been identified during the debriefing.
2. Relay any new information obtained from your client(s) that is perceived to be pertinent to the success of the Collaborative process to the other Collaborative professionals by e-mail or phone.
3. Hold a brief conference call or consultation preceding the next group meeting with the other Collaborative professionals who will be at the next meeting or those who need to know what will take

place in the next meeting, whether or not they are to be involved in that meeting.

4. Managing impasse: Every case has its difficult moments. Allow space and time for your clients to process and internalize what they experience in the Collaborative process. Beware of the temptation to abandon the Collaborative process for the more familiar exchange of positions. Keep at it! Utilize the entire arsenal of alternative dispute resolution options. Alternative dispute resolution is what the clients signed on for, not simple-minded attorney negotiations, which they quickly realize is not collaborative!

D. Finish the Collaborative Case and be Accountable

1. Complete all dissolution pleadings in a timely fashion. Create a schedule and a process for having all documents signed and filed.
2. Urge the clients to complete and submit the CACP Anonymous Client Evaluation Form.
3. It is suggested that a final debriefing occur with all of the involved Collaborative professionals at no cost to the clients.

II. Use of Collaborative Professionals Outside of the CACP

- A. The Collaborative process is designed to meet the specific needs of each client. Once you have identified those needs and you have decided that bringing in another professional will help you to meet those needs, the professional duty of the attorneys is to engage only those professionals whom you have identified as being the best suited to help you resolve the problems presented in the case. Therefore, nothing in these protocols prohibits an agreement between the attorneys and their clients to use a neutral professional who is not a member of the CACP. This is so, notwithstanding the fact that a professional cannot be a

member of the CACP or cannot be listed on the CACP website and does not meet the applicable professional standards for CACP membership.

Usually, the professionals most appropriately used in the Collaborative process are those with Collaborative training and who are members of the CACP. Preference should be given to using CACP members because of their training, experience, and their commitment to follow the rules governing their conduct within Collaborative Practice. Also, each discipline represented within the CACP has determined the minimum qualifications of those within their respective professions for membership in the CACP.

- B. When an additional professional is brought into the Collaborative case, whether or not he or she is a member of the CACP, that person's name should be included on Exhibit A to the Participation Agreement.

III. Compliance with the Organizational and Practice Protocols and Rules of Conduct

- A. The Organizational Protocols and Suggested Procedures are designed to be used by Collaborative professionals, including attorneys, on a voluntary basis. The CACP strongly recommends that its members and other lawyers follow these Protocols and Suggested Procedures in good faith. The ultimate sanction against a lawyer or other Collaborative professional who abuses or evades the CACP standards of Collaborative Practice or who condones or encourages such abuse by a client is the diminution of that Collaborative professional's reputation.
- B. Because these protocols aspire to a level of practice above the minimum established by state law and by the respective professional associations of the participating professionals, such as the Attorney Ohio Code of Professional Responsibility, it is inappropriate to use these protocols or rules of conduct to define the level of conduct required of

lawyers, financial professionals, and mental health practitioners for the purpose of professional liability or discipline.

IV. Application of Professional Rules

These practice protocols are subordinate to the rules of professional conduct governing attorneys, mental health professionals and financial specialists. Attorneys, financial specialists and mental health professionals must adhere to relevant state laws governing their conduct. They must also follow the relevant ethical guidelines for professional associations that they are members of. For example, a member of the Ohio State Bar Association is subject to the Ohio Disciplinary Rules of Professional Conduct; a member of the American Psychological Association is subject to The Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association; a member of the National Association of Social Workers is subject to the NASW Code of Ethics; a member of the American Counseling Association is subject to the ACA Code of Ethics; a member of the American Association for Marriage and Family Therapy is subject to the AAMFT Code of Ethics; a CFP practitioner is subject to the Certified Financial Planner Code of Ethics and Professional Responsibility; a CPA is subject to the Ohio Revised Code Certified Public Accountants' Professional Ethics and Professional Standards, Laws and Rules. These protocols must be interpreted in a manner consistent with such laws and rules as they apply to Collaborative Practice.

V. Problems with Another Collaborative Professional

- A. Direct communication is strongly recommended to be the primary means for Collaborative professionals to resolve problems between or among them. The underlying spirit of Collaborative Practice is openness, honesty, and trust. The values and skills used in Collaborative Practice should serve to assist with problems that may arise among Collaborative professionals.

- B. Consider a consultation with a senior Collaborative professional if direct communication does not resolve the problems among Collaborative professionals.
- C. Complaint Process:
 - 1. If other attempts to resolve problems between or among Collaborative professionals fail, the complainant should contact the CACP chairperson to discuss the situation.
 - 2. The CACP chairperson shall decide how to address the the complaint within the context of the CACP Case Facilitation Process.

APPENDIX C

OHIO BILL TO ESTABLISH A STATUTORY COLLABORATIVE FAMILY LAW PROCESS

As Introduced
128th General Assembly
Regular Session
2009-2010
H. B. No. 467

Representatives Harwood, Blessing

Cosponsors: Representatives Murray, Wagner, Pillich, McGregor,
Book, Mecklenborg, Phillips, Bolon, Letson, Hollington, Grossman,
Bacon, Belcher, Williams, B.

A BILL

To enact sections 3117.11, 3117.12, 3117.13, 3117.14, 3117.15, 3117.16, 3117.17, 3117.18, 3117.19, 3117.20, 3117.21, 3117.22, 3117.23, 3117.24, 3117.25, 3117.26, and 3117.27 of the Revised Code to establish a statutory collaborative family law process to aid in the resolution of family law disputes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3117.11, 3117.12, 3117.13, 3117.14, 3117.15, 3117.16, 3117.17, 3117.18, 3117.19, 3117.20, 3117.21, 3117.22, 3117.23, 3117.24, 3117.25, 3117.26, and 3117.27 be enacted to read as follows:

Sec. 3117.11. As used in sections 3117.11 to 3117.27 of the Revised Code:

- A. “Collaborative family law communication” means any statement that occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded and that is made for the purpose of

- conducting, participating in, continuing, or reconvening a collaborative law process.
- B. “Collaborative family law participation agreement” means an agreement by persons to participate in a collaborative family law process.
 - C. “Collaborative family law process” means a procedure intended to resolve a matter without intervention by a court in which parties sign a collaborative family law participation agreement and are represented by collaborative family lawyers.
 - D. “Collaborative family lawyer” means a lawyer who represents a party in a collaborative family law process.
 - E. “Collaborative matter” or “matter” means a dispute, transaction, claim, problem, or issue for resolution that arises under Title XXXI of the Revised Code and is described in a collaborative family law participation agreement. The term includes a dispute, claim, or issue in a proceeding.
 - F. “Family or household member” has the same meaning as in section 3113.31 of the Revised Code.
 - G. “Law firm” means an association of lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, lawyers employed in a legal services organization, the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.
 - H. “Nonparty participant” means a person, other than a party and the party’s collaborative family lawyer, that participates in a collaborative family law process.
 - I. “Party” means a person that signs a collaborative family law participation agreement and whose consent is necessary to resolve a matter.
 - J. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

- K. “Proceeding” means a judicial, administrative, arbitral, or other adjudicative process before a court, including related prehearing and post-hearing motions, conferences, and discovery.
- L. “Prospective party” means a person that discusses the possibility of signing a collaborative family law participation agreement with a prospective collaborative family lawyer.
- M. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- N. “Related to a collaborative family law 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.
- O. “Sign” means, with present intent to authenticate or adopt a record in order, to do either of the following:
 - 1. Execute or adopt a tangible symbol;
 - 2. Attach to or logically associate with the record an electronic symbol, sound, or process.

Sec. 3117.12.

- A. Sections 3117.11 to 3117.27 of the Revised Code apply to a collaborative family law participation agreement that meets the requirements of section 3117.13 of the Revised Code and is signed on or after the effective date of this section.
- B. A court may not order a party to participate in a collaborative family law process over that party’s objection.

Sec. 3117.13.

- A. A collaborative family law participation agreement must be in a record, be signed by the parties, and include all of the following:
 - 1. A statement of the parties’ intent to resolve a matter through a collaborative family law process under sections 3117.11 to 3117.27 of the Revised Code;

2. A description of the nature and scope of the matter;
 3. The identity of the collaborative family lawyer who represents each party in the collaborative family law process;
 4. A statement by each collaborative family lawyer confirming the lawyer's representation of a party in the collaborative family law process.
- B. Parties to a collaborative family law participation agreement may agree to include additional provisions not inconsistent with sections 3117.11 to 3117.27 of the Revised Code.

Sec. 3117.14.

- A. A collaborative family law process begins when the parties sign a collaborative family law participation agreement.
- B. A collaborative family law process is concluded by any of the following:
1. A negotiated resolution of the matter as evidenced by a signed record;
 2. A negotiated resolution of a portion of the matter as evidenced by a signed record in which the parties agree that the remaining portions of the matter will not be resolved in the collaborative family law process;
 3. Termination of the process under division (C) of this section.
- C. A collaborative family law process terminates when any of the following occurs:
1. A party gives notice in a record that the collaborative family law process is ended.
 2. A party does either of the following:
 - a. Begins a proceeding related to the collaborative family law matter without the agreement of all parties;

- b. In a pending proceeding related to the collaborative family law matter, does any of the following:
 - i. Initiates a pleading, motion, order to show cause, or request for a conference with the court;
 - ii. Requests that the proceeding be put on the court's docket;
 - iii. Takes similar action requiring notice to be sent to the parties;
 - iv. Except as otherwise provided by division (E)(2) of this section, discharges a collaborative family lawyer.
 3. A collaborative family lawyer withdraws from further representation of a party.
 4. Termination occurs in any other way provided for in the collaborative family law participation agreement.
- D. A party may terminate a collaborative family law process with or without cause. A notice of termination need not specify a reason for terminating the process.
- E.
1. A collaborative family lawyer who is discharged or who withdraws shall give prompt notice in a record of the discharge or withdrawal to all other parties.
 2. Notwithstanding the discharge or withdrawal of a collaborative family lawyer, a collaborative family law process continues if the unrepresented party engages a successor collaborative family lawyer, and, in a signed record, all parties consent to continue the process by reaffirming the collaborative family law participation agreement, the collaborative family law participation agreement is amended to identify the successor collaborative family lawyer, and the successor collaborative

family lawyer confirms the lawyer's representation of a party in the collaborative family law process.

- F. A collaborative family law process does not terminate if, with the consent of all parties, a party requests a court to approve a negotiated resolution of the matter or any portion of the matter as evidenced by a signed record.

Sec. 3117.15.

- A. Parties to a proceeding pending before a court may sign a collaborative family law participation agreement to seek to resolve a matter related to the proceeding. Parties shall promptly file a notice of the agreement with the court after the collaborative family law participation agreement is signed. Subject to division (C) of this section, the filing operates as a stay of the proceeding.
- B. Parties shall promptly file a notice of termination in a record with the court when a collaborative family law process terminates. The stay of the proceeding under division (A) of this section is lifted when the notice is filed with the court. The notice may not specify any reason for the termination.
- C. A court may require parties and collaborative family lawyers to provide status reports on the proceeding. A status report may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative family law process, except that a court may require parties and lawyers to disclose in a status report whether the process is ongoing or concluded.

A communication made in violation of this division may not be considered by a court.

Sec. 3117.16.

- A. Except as otherwise provided in division (C) of this section, a collaborative family lawyer may not appear before a court to represent a party in a proceeding related to the collaborative family law matter.

- B. Except as otherwise provided in division (C) of this section and in sections 3117.17 and 3117.18 of the Revised Code, a lawyer in a law firm with which the collaborative family lawyer is associated may not appear before a court to represent a party in a proceeding related to the collaborative family law matter if the collaborative family lawyer is disqualified from doing so under division (A) of this section.
- C. A collaborative family lawyer or a lawyer in a law firm with which the collaborative family lawyer is associated may represent a party for the following purposes:
 - 1. To ask a court to approve an agreement resulting from the collaborative family law process;
 - 2. To seek or defend an emergency order to protect the health, safety, welfare, or interests of a party or of a family or household member of a party if a successor lawyer is not immediately available to represent the party or family or household member of the party. If a successor lawyer is not immediately available to represent the party or family or household member of the party, divisions (A) and (B) of this section do not apply until a successor lawyer assumes representation of the party or family or household member of the party or reasonable measures are taken to protect the health, safety, welfare, or interests of the party or family or household member of the party.

Sec. 3117.17.

- A. The disqualification of a collaborative family lawyer under division (A) of section 3117.16 of the Revised Code applies to a collaborative family lawyer representing a party without fee.
- B. After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative family lawyer is associated may represent the party without fee in the collaborative matter or a matter related to the collaborative matter if all of the following apply:

1. The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation.
2. The collaborative family law participation agreement so provides.
3. The collaborative family lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative family lawyer from participation in the collaborative matter or a matter related to the collaborative matter.

Sec. 3117.18.

- A. The disqualification of a collaborative family lawyer under division (A) of section 3117.16 of the Revised Code applies to a collaborative family lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.
- B. After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative family lawyer is associated may represent the government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if both of the following apply:
 1. The collaborative family law participation agreement so provides.
 2. The collaborative family lawyer is isolated from any participation in the collaborative matter or matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative family lawyer from participation in the collaborative matter or matter related to the collaborative matter.

Sec. 3117.19. During the collaborative family law process, at the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery and shall update promptly information that has materially changed. Parties may define the scope of disclosure, except as otherwise provided by law.

Sec. 3117.20. Sections 3117.11 to 3117.27 of the Revised Code do not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional or the statutory obligation of a person to report abuse or neglect of a child or adult.

Sec. 3117.21. A collaborative family law communication is confidential to the extent agreed by the parties in a signed record or as provided by the law of this state.

Sec. 3117.22.

- A. Subject to sections 3117.23 and 3117.24 of the Revised Code, a collaborative family law communication is privileged under division (B) of this section, is not subject to discovery, and is not admissible in evidence.
- B. In a proceeding, the following privileges apply:
 - 1. A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative family law communication.
 - 2. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative family law communication of the nonparty participant.
- C. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a collaborative family law process.

Sec. 3117.23.

- A. A privilege under section 3117.22 of the Revised Code may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.
- B. A person that discloses or makes a representation about a collaborative family law communication that prejudices another person in a proceeding may not assert a privilege under section 3117.22 of the Revised Code relating to that communication.

Sec. 3117.24.

- A. There is no privilege under section 3117.22 of the Revised Code for a collaborative family law communication that is any of the following:
 - 1. Available to the public under section 149.43 of the Revised Code or made during a session of a collaborative family law process that is open, or is required by law to be open, to the public;
 - 2. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
 - 3. Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;
 - 4. In an agreement resulting from the collaborative family law process, evidenced by a record signed by all parties to the agreement.
- B. The privileges under section 3117.22 of the Revised Code for a collaborative family law communication do not apply to the extent that a communication is either of the following:
 - 1. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative family law process;

2. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child, unless a children's or protective service agency or an adult protective services agency is a party to or otherwise participates in the collaborative family law process.
- C. There is no privilege under section 3117.22 of the Revised Code if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative family law communication is sought or offered in a criminal action or in a proceeding seeking rescission or reformation of a contract arising out of the collaborative family law process or in which a defense to avoid liability on the contract is asserted.
 - D. If a collaborative family law communication is subject to an exception under division (B) or (C) of this section, only the portion of the communication necessary for the application of the exception may be disclosed or admitted.
 - E. Disclosure or admission of evidence excepted from the privilege under division (B) or (C) of this section does not render the evidence or any other collaborative family law communication discoverable or admissible for any other purpose.
 - F. The privileges under section 3117.22 of the Revised Code do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative family law process is not privileged. This division does not apply to a collaborative family law communication made by a person that did not receive actual notice of the agreement before the communication was made.

Sec. 3117.25. Even though a collaborative family law participation agreement fails to meet the requirements of section 3117.13 of the Revised Code, a court may find that the parties intended to enter into a collaborative family law participation agreement if the parties signed a record indicating an intention to enter into a collaborative family law participation agreement and the parties reasonably believed they were participating in a collaborative

family law process. If a court makes such a finding, sections 3117.11 to 3117.27 of the Revised Code apply to the same extent as if the parties had entered into a valid collaborative family law participation agreement.

Sec. 3117.26. Sections 3117.11 to 3117.27 of the Revised Code modify, limit, and supersede the “Electronic Signatures in Global and National Commerce Act,” 114 Stat. 464, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Sec. 3117.27. Sections 3117.11 to 3117.27 of the Revised Code may be cited as the “Ohio collaborative family law act.”



ASPATORE

www.Aspatore.com

Aspature Books, a Thomson Reuters business, exclusively publishes C-Level executives (CEO, CFO, CTO, CMO, Partner) from the world's most respected companies and law firms. C-Level Business Intelligence™, as conceptualized and developed by Aspature Books, provides professionals of all levels with proven business intelligence from industry insiders—direct and unfiltered insight from those who know it best—as opposed to third-party accounts offered by unknown authors and analysts. Aspature Books is committed to publishing an innovative line of business and legal books, those which lay forth principles and offer insights that when employed, can have a direct financial impact on the reader's business objectives, whatever they may be. In essence, Aspature publishes critical tools for all business professionals.

Inside the Minds

The *Inside the Minds* series provides readers of all levels with proven legal and business intelligence from C-Level executives and lawyers (CEO, CFO, CTO, CMO, Partner) from the world's most respected companies and law firms. Each chapter is comparable to a white paper or essay and is a future-oriented look at where an industry, profession, or topic is heading and the most important issues for future success. Each author has been selected based upon their experience and C-Level standing within the professional community. *Inside the Minds* was conceived in order to give readers actual insights into the leading minds of top lawyers and business executives worldwide, presenting an unprecedented look at various industries and professions.



ASPATORE