

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 07-1
(Court Administration)**

**ADMINISTRATIVE ORDER
NO. 07-08**

**IN RE: AUTHORIZING THE
COLLABORATIVE PROCESS
DISPUTE RESOLUTION MODEL IN
THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA**

WHEREAS, the courts of the Eleventh Judicial Circuit in and for Miami-Dade County believe that the collaborative process dispute resolution model is a suitable alternative to full scale adversarial litigation in cases involving family law cases should the parties so agree; and

WHEREAS, beginning in the 1990's the Collaborative Process Dispute Resolution Model has been adopted in several states both by common law and by statute; and

WHEREAS, in Florida, the creation of family law divisions and necessary support services in the 1990's and the adoption of the Model Family Court in 2001 reflected the recognition by the Supreme Court and legislature that families in conflict needed a forum that does not wreak havoc or prohibit the restructuring of family relationships; and

WHEREAS, the Supreme Court recognized that family cases needed "a system that provided non-adversarial alternatives and flexibility of alternatives; a system that preserved rather than destroyed family relationships; . . . and a system that facilitated the process chosen by parties." In re Report of Family Court Steering Committee, 794 So.2d 518, 523 (Fla. 2001); and

WHEREAS, the Supreme Court's acceptance of recommendations for a model family court was consistent with the principles of collaborative practice because the collaborative process empowers parties to make their own decisions guided and assisted by counsel in a setting outside of the court;

NOW THEREFORE, pursuant to the authority vested in the Chief Judge by Rule 2.050 of the Florida Rules of Judicial Administration and Section 43.26 Florida Statutes, it is **ORDERED** that:

1. The Collaborative Process Dispute Resolution Model (hereinafter “Collaborative Process”), is authorized in the Eleventh Judicial Circuit of Florida to resolve dissolution of marriage and other family matters and all attendant issues therein according to the following definitions and specifications herein.
2. The Collaborative Process is confidential and utilizes interest based negotiation to resolve disputes through structured assistance of collaboratively trained professionals, including, but not limited to lawyers, mental health and financial professionals.
3. If the parties and professionals desire to engage the Collaborative Process, they shall enter into a contractual commitment to negotiate a settlement without using the court system to decide any issues of the parties. A copy of the contractual commitment, “the Participation Agreement”, which incorporates the “Declaration of Principles”, is attached hereto and made a part hereof as a Composite Attachment.
4. The Collaborative Process commences before any pleading is filed with the court. Upon the Collaborative Process concluding successfully in dissolution of marriage, an executed Agreement is filed with a Joint Petition for Dissolution of Marriage and Answer signed by both parties and counsel. In other family law matters, the resulting executed agreement is filed with an appropriate document. Thereafter, the matter is set with the court, if necessary.
5. The parties will agree to make a full and candid exchange of information so that a proper resolution of the case can occur, which will include a full disclosure of the nature and extent of all assets and liabilities, income of the parties and all relevant information concerning the parties’ children. Any material change in the information provided must be promptly updated. No formal discovery procedures will be used requiring a court order.
6. The parties agree to maintain the confidentiality of any oral or written communications relating to the subject matter of the Collaborative Process, their counsel or other participants in the Collaborative Process, unless the parties otherwise mutually agree in writing.
7. Fees and expenses: Counsel and other retained professionals are entitled to be paid for their services. The parties agree to pay them as part of their contract. If appropriate, one party may be asked to pay all or a disproportionate share of the fees when the assets, liabilities and income of the parties are compared. The determination of fees is also subject to the Collaborative Process

8. If the Collaborative Process breaks down due to bad faith demonstrated by either party or either party seeking to litigate, counsel for the parties must withdraw.
9. Upon a breakdown of the Collaborative Process, all engaged professionals are disqualified from testifying as witnesses, expert or otherwise, regarding the case and their writings are inadmissible in any judicial proceedings unless the parties otherwise mutually agree in writing.
10. The responsibility of collaborative professionals are as follows:
 - A. The neutral mental health professional may:
 - 1) Afford the children a voice in the process.
 - 2) Work with the parties to do the following:
 - i. Prioritize parties' concerns.
 - ii. Help develop conflict resolution skills.
 - iii. Develop co-parenting skills.
 - iv. Enhance communication skills.
 - v. Reduce misunderstandings.
 - vi. Assist in focusing on working toward resolution.
 - B. The neutral financial professional is available to both parties and will assist in the following activities.
 - 1) Provide each party with necessary financial planning regarding the division of the assets, liabilities and support, both child and spousal.
 - 2) Provide analysis of the nature and composition of specific marital assets (e.g. retirement, capital gain consideration, tax implication, etc.).
 - 3) Take responsibility for neutrally gathering all relevant financial information.
 - 4) Assist development for and understanding of any valuation processes.
 - 5) Assist with estate planning issues.
 - C. The lawyers advise, counsel and guide their respective clients through the process. They analyze choices and consequences,

considering the costs and benefits of the negotiation choices, facilitate negotiation and create written agreements.

11. During the Collaborative Process the court will not adjudicate any dispute between the parties. If an executed Marital Settlement Agreement is reached, counsel will ask the court to approve the Settlement Agreement.
12. During the Collaborative Process, the parties may, from time to time, resolve temporary issues in an executed writing. In the event the Collaborative Process breaks down, the parties agree to abide by the terms of the temporary written agreements and these agreements shall be ratified by court order once litigation ensues.

This Order shall become effective immediately upon execution and shall remain in effect until further order of the court.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this _____ day of October, 2007.

**JOSEPH P. FARINA, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**

COLLABORATIVE LAW PARTICIPATION AGREEMENT
DISSOLUTION OF MARRIAGE WITH CHILDREN

PURPOSE

The WIFE/HUSBAND, _____,
and her/his attorney, _____,
and the HUSBAND/WIFE, _____,
and his/her attorney, _____,
have chosen to use the principles of Collaborative Law to settle the issues arising from the dissolution of their marriage. The primary goal of Collaborative Law is to settle in a non-adversarial manner, the issues of the parties' separation and dissolution of their marriage. The parties have retained Collaborative Lawyers to assist them in reaching this goal.

COMMUNICATION

The parties intend to effectively communicate with each other to efficiently and economically settle the dissolution of their marriage. Written and verbal communications will be respectful and constructive and will not make accusations or claims not based in fact.

It is agreed that communication during settlement meetings will be focused on the economic and parenting issues in the dissolution and the constructive resolution of those issues. The parties and their lawyers understand that the costs for settlement meetings are substantial and require everyone's cooperation to make the best possible use of available resources. To achieve this goal, the parties agree not to engage in unnecessary discussions of past events.

To maintain an objective and constructive settlement process, the parties agree to discuss settlement of their dissolution issues only in the settlement conference setting. All discussions in the conferences are confidential between the parties and their counsel. Discussions outside of the conference setting must be agreed to by the parties **and** their lawyers. Settlement issues will not be discussed in the presence of the parties' children, nor at unannounced times by telephone calls or appearances at the other party's residence.

The parties acknowledge that inappropriate communications regarding their dissolution can be harmful to their children. Communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement or with the advice of a child specialist. The parties specifically agree that their child/children will not be included in any discussion regarding the dissolution except as described in this agreement.

EXPERTS

When appropriate and needed, the parties will use neutral experts for purposes of valuation, cash flow analysis, parenting issues and any other issue which requires expert advice and/or recommendations. The parties will agree in advance as to how the costs of the third party expert will be paid. Any experts used in the collaborative process shall not be used in any litigation that may occur if the process terminates unless the parties otherwise mutually agree in writing. New consultants will be permitted to review the work product and reports of prior consultants to facilitate the transition for the parties, and shall be inadmissible as evidence unless the parties otherwise mutually agree in writing.

INFORMATION

The parties and their lawyers agree to deal with each other in good faith to promptly provide all necessary and reasonable information requested. No formal discovery procedures will be used unless specifically agreed to in advance by the parties.

The parties acknowledge that by using informal discovery, they are giving up certain investigative procedures and methods that would be available to them in the litigation process. They give up these measures with the specific understanding that both parties make full financial disclosure of all assets, income, liabilities and other information necessary for an equitable settlement. Participation in the collaborative process, and the settlement reached, is based upon the assumption that both parties have acted in good faith and have provided complete and accurate information to the best of their ability. The parties shall be required to sign a sworn statement making full and fair disclosure of their income, assets and liabilities in accordance with Florida Law. Additionally, both parties have a continuing duty to supplement the disclosure made, including, but not limited to an amended sworn financial statement.

ENFORCEABILITY OF AGREEMENTS

In the event that either party requires a temporary agreement for any purpose, the agreement will be put in writing and signed by the parties and their lawyers. If either party withdraws from the collaborative process, the written agreement shall be presented to the Court as a basis for an Order, which the Court shall make retroactive to the date of the written agreement. Similarly, once a final agreement is signed, if a party should refuse to honor it, the final agreement may be presented to the Court in any subsequent action.

LEGAL PROCESS

Court Proceedings: Unless otherwise agreed, prior to reaching final agreement on all issues, no Summons and Petition will be served or filed, nor will any other motion or document be prepared or filed which would initiate court intervention. When the parties have reached a final agreement, a Joint Petition for Dissolution of Marriage will be filed by the parties with both parties executing a Joint Answer. Both parties may appear with counsel at the uncontested final hearing at which time they will request that the Court enter the Final Judgment of Dissolution of Marriage. This is the only time an appearance in Court is required.

Withdrawal from Collaborative Law Process: If a party decides to withdraw from the collaborative process, prompt written notice will be given to the other party through his or her lawyer which terminates the process and both attorneys' representation. Abuse of the collaborative process as set forth in the Declaration of Principles of Collaborative Law, incorporated herein, shall also terminate the process and both attorneys' representation. Upon withdrawal from the collaborative process there will be a thirty (30) day waiting period (unless there is an emergency) before any court hearing, to permit both parties to retain lawyers and make an orderly transition as it is mandatory that both collaborative lawyers withdraw upon the breakdown of the collaborative process. All temporary agreements will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other party. It is therefore mutually agreed that either party may bring this provision to the attention of the Court in requesting a postponement of a hearing.

RIGHTS AND OBLIGATIONS PENDING SETTLEMENT

Although the parties have agreed to work outside the judicial system, consistent with Florida Law, the parties agree that:

- (1) NEITHER PARTY WILL DISPOSE OF ANY ASSETS EXCEPT
 - (i) FOR THE NECESSARY, CUSTOMARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, OR
 - (ii) OTHERWISE AGREED TO IN WRITING BY THE PARTIES; AND
- (2) NEITHER PARTY MAY HARASS THE OTHER PARTY; AND

- (3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED AND CONTINUED. NEITHER PARTY SHALL BORROW AGAINST, CANCEL, TRANSFER, DISPOSE OF OR CHANGE BENEFICIARIES OF ANY INSURANCE OR OTHER COVERAGE INCLUDING LIFE, HEALTH, AUTOMOBILE AND DISABILITY HELD FOR THE BENEFIT OF THE PARTIES; AND
- (4) NEITHER PARTY WILL, WITHOUT WRITTEN PERMISSION OF THE OTHER PARTY, INCUR ANY DEBTS OR LIABILITIES FOR WHICH THE OTHER PARTY MAY BE HELD RESPONSIBLE; AND
- (5) VIOLATION OF ANY OF THESE PROVISIONS MAY TERMINATE THE COLLABORATIVE PROCESS.

ACKNOWLEDGMENT

Both parties and their lawyers acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by them. The parties understand that by agreeing to this alternative method of resolving their dissolution issues, they are giving up certain rights, including the right to formal discovery, formal court hearings, and other procedures provided by the adversarial legal system. The parties have chosen the collaborative process to reduce emotional and financial costs, and to generate a final agreement that addresses their concerns. They agree to work in good faith to achieve these goals and further acknowledge the incorporation of the Declaration of Principles of Collaborative Law attached hereto.

Wife

Husband

Attorney for Wife

Attorney for Husband

Florida Bar No.

Florida Bar No.

Date

Date

COMPOSITE ATTACHMENT

COLLABORATIVE LAW PARTICIPATION AGREEMENT
DISSOLUTION WITHOUT CHILDREN

PURPOSE

The WIFE/HUSBAND, _____,
and her/his attorney, _____,
and the HUSBAND/WIFE, _____,
and his/her attorney, _____,
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Wife

Husband

Attorney for Wife

Attorney for Husband

Florida Bar No.

Florida Bar No.

Date

Date

**DECLARATION OF PRINCIPLES OF COLLABORATIVE LAW
WITH CHILDREN**

I. THE COLLABORATIVE LAW PROCESS

Collaborative Law is a cooperative, confidential voluntary conflict resolution vehicle for parties going through a separation, dissolution or other family law matter.

The participants, which include both the attorneys and the parties, acknowledge that the essence of “Collaborative Law” is the shared belief that it is in the best interest of parties and their families in Family Law matters to commit themselves to avoiding adversarial proceedings, particularly litigation, and instead to work together to create shared solutions to the issues presented by the parties.

The goal of Collaborative Law is to minimize, if not eliminate, the negative economic, social and emotional consequences of litigation to families.

Choosing Collaborative Law requires a commitment to resolving differences justly and equitably.

II. NO COURT OR OTHER INTERVENTION

Collaborative Law requires a commitment to settling the issues involved without court intervention.

Participants must agree to give full, honest and open disclosure of all information, whether requested or not. Participants must agree to engage in informal discussions and conferences to settle all issues.

III. CAUTIONS

There is no guarantee that the process will be successful in resolving a dispute.

The Collaborative process cannot eliminate concerns about the disharmony, distrust and irreconcilable differences which have led to the current conflict.

Although the participants are committed to reaching a shared solution, each party is still expected to identify and assert his or her respective interest and the parties’ respective attorneys will help each of them do so.

IV. PARTICIPATION WITH INTEGRITY

Participants must commit to protecting the privacy, respect and dignity of all involved, including parties, attorneys and consultants.

Each participant must commit to maintaining a high standard of integrity, specifically; participants shall not take advantage of the other participants, or of the miscalculations or inadvertent mistakes of others, but shall identify and correct them.

V. EXPERTS AND CONSULTANTS

Sometimes the input of outside experts such as accountants, appraisers, therapists and mediators might be needed to assist the participants in reaching creative and informed solutions. If any such experts are needed, they will be retained jointly. All such experts and other consultants retained in the Collaborative process shall be directed to work in a cooperative effort to resolve issues.

In the event that the Collaborative Law process terminates, all consultants will be disqualified as witnesses and their work product will be inadmissible as evidence unless the parties otherwise mutually agree in writing, the parties mutually agree otherwise in writing. However, new consultants will be permitted to review the work product and reports of prior consultants to facilitate the transition for the parties.

VI. CHILDREN'S ISSUES

In resolving issues about sharing the enjoyment of and responsibility for children, the parents, attorneys and therapists shall make every effort to reach amicable solutions that promote the children's best interests.

Parents will act quickly to resolve differences related to the children and to promote a caring, loving and involved relationship between the children and both parents.

Every effort will be made to insulate children from involvement in the parents' disputes.

Parents will attend "Children of Divorcing Parents" and the children will attend "Kids In Divorce Succeeding". In a county where said programs are not available, a similar parent-child divorce education program shall be attended by the parties.

VII. NEGOTIATION IN GOOD FAITH

The process, even with full and honest disclosure, will involve vigorous good faith negotiation.

Each participant will be expected to take a reasoned position in all disputes. Where such positions differ, each participant will use his or her best efforts to create proposals that meet the fundamental needs of both parties and if necessary to compromise to reach a settlement of all issues.

Although participants may discuss the likely outcome of a litigated result, none will use threats of abandoning the collaborative process or of litigation as a way of forcing settlement.

VIII. ATTORNEYS' ROLE-ATTORNEYS' FEES AND COSTS

The attorneys' role is to provide an organized framework that will make it easier for the parties to reach an agreement on each issue. The attorneys will help the parties communicate with each other, identify issues, ask questions, make observations, suggest options, help them express needs, goals and feelings, check the workability of proposed solutions and prepare and file all written paperwork for the court. The attorneys and the parties shall work together to reach a solution which serves the needs of both parties.

The Collaborative process requires payment to each attorney. The parties will make funds available for this purpose.

Each attorney is independent from the other attorneys in the Collaborative Family Lawyers Institute, and has been retained by only one party in the collaborative process.

IX. ABUSE OF THE COLLABORATIVE PROCESS

A Collaborative Law attorney will withdraw from a case as soon as possible upon learning that his or her client has withheld or misrepresented information or otherwise acted so as to undermine or take unfair advantage of the Collaborative Law process. Examples of such violations of the process are: the secret disposition of marital, quasi-marital or separate property, failing to disclose the existence or the true nature of assets and/or obligations, failure to participate in the spirit of the Collaborative process, abusing the minor children of the parties or planning to flee the jurisdiction of the court with the children.

X. DISQUALIFICATION BY COURT INTERVENTION

An attorney's representation in the Collaborative process is limited to that process. No attorney representing a party in the Collaborative process can ever represent that party in court in a proceeding against the other spouse. In the event a court filing is unavoidable, both attorneys are disqualified from representing either client and will assist their respective clients in the transition process.

**DECLARATION OF PRINCIPLES OF COLLABORATIVE LAW
WITHOUT CHILDREN**

I. THE COLLABORATIVE LAW PROCESS

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