

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT

**ADMINISTRATIVE ORDER NO.
14-04 AMENDED
SUPERSEDES 14-04**

**IN RE: DOMESTIC RELATIONS - COLLABORATIVE CONFLICT RESOLUTION IN
DISSOLUTION OF MARRIAGE CASES**

WHEREAS the courts of the Eighteenth Judicial Circuit believe that the collaborative conflict alternative dispute resolution model may be a suitable alternative to full scale adversarial litigation in cases involving dissolution of marriage should the parties so agree and

WHEREAS beginning in the 1990's the collaborative conflict alternative dispute resolution model has been adopted in several states both by common law and by statute, in the United States of America and

WHEREAS by means of example the Chief Judge of the State of New York Judith S. Kaye in her 2007 State of the Judiciary address stated the following concerning collaborative conflict alternative dispute resolution at page 11 of her 27-page address on February 26, 2007:

Collaborative Family Law Center

“Finally in the area of matrimonials, the Miller Commission concluded that, when used appropriately, ADR can reduce the delay expense and trauma of divorce. Following upon that conclusion, this year we will open the first court-based Collaborative Family Law Center in the nation. Parties and their attorneys who participate in this process agree, either before commencing an action or on court referral, to use their best efforts to resolve all issues relating to dissolution of marriage with minimum conflict and without litigation. The end result is a settlement agreement, which can then be used to obtain a divorce.

Our new Center, situated in downtown Manhattan, will serve New York City’s five counties. There we will train attorneys, provide space for participants, and connect families with professional service such as child development specialists, financial services, mental health service and substance abuse treatment. We anticipate the spouses who choose this approach will find that the financial and emotional cost of divorce is reduced for everyone involved, surely a step in the right direction.”

It is noteworthy that this Collaborative Law Center was enacted by the courts in New York without legislative approval and is a pilot project for the state.

NOW THEREFORE pursuant to the statutory authority vested in the Chief Judge by Rule 2.215 of the Florida Rules of Judicial Administration and section 43.26 Florida Statutes it is **ORDERED** that:

1. The collaborative conflict alternative resolution model is authorized to resolve dissolution of marriage, and all attendant issues therein according to the following definitions and specifications herein.
2. The collaborative conflict alternative resolution model is defined as a method of resolving dispute through structured assistance of collaborative professionals including lawyers, mental health professionals and financial planners.
3. If the parties and professionals desire to engage in collaborative conflict resolution they shall enter into a contractual commitment to negotiate a settlement without using the court system to decide any issues of the parties. A representative contractual commitment is attached hereto and made a part hereof as Exhibit 1.
4. The parties may participate in collaborative conflict alternative dispute resolution either before or after a petition for dissolution of marriage is filed. After a petition for dissolution of marriage is filed, if the parties are going to participate in collaborative conflict alternative dispute resolution, they must file the agreement to do so. That will abate court proceedings until either a hearing for an uncontested dissolution of marriage or a motion to withdraw by counsel is heard by the court. If the collaborative conflict alternative dispute resolution process is utilized prior to filing a petition of dissolution, the agreement must be filed when the petition for dissolution of marriage is filed. Thereafter the court proceedings will be abated until a hearing for an uncontested dissolution of marriage or a motion to withdraw is heard by the court.
5. Part of that contractual agreement is that counsel will withdraw from any further representation of the parties if an agreement is not reached.
6. The mental health professionals and financial planners engaged are disqualified from testifying as witnesses, expert or otherwise, regarding the case, and their writings are inadmissible in any judicial proceedings.
7. In order for a proper resolution of the case to occur, the parties agree to make a full and candid exchange of information. This includes full disclosure of the nature and extent of all assets, liabilities, and 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 court order.
8. The parties agree to maintain the confidentiality of any oral or written communication relating to the subject matter of the dispute made by the parties or their lawyers or other participants in the collaborative conflict alternative resolution proceedings.
9. The lawyers and consultants are entitled to be paid for their services. The parties agree to pay them as part of their contract. If necessary, 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 subject to the collaborative agreement process also.
10. The rules of collaborative professionals are as follows:

The mental health professional may afford the child an opportunity to voice his or her concerns. As to the parties, the mental health professional is neutral and available to both parents in coaching them on the described activities:

 - a. Prioritize concerns.
 - b. Help develop conflict resolution skills.

- c. Develop co-parenting skills.
- d. Enhance communication skills.
- e. Reduce misunderstandings.
- f. Assist in working toward resolution.

The financial professional is available to both parties and likewise neutral and will assist in the following activities:

- a. Provide each party with necessary financial planning regarding the division of assets, liabilities and support, both child and spousal.
- b. Provide analysis of the nature and composition of specific marital assets (e.g. retirement, capital gain consideration, tax implication, etc.).
- c. Take responsibility for neutrally gathering all relevant financial information.
- d. Assist development for and understanding of any valuation processes.
- e. Assist with estate planning issues.

The lawyers advise and counsel their respective clients. As they guide their client through the process, they analyze choices and consequences, evaluate costs and benefits of the choices, facilitate negotiation, and create written agreements.

- 11. During the collaborative conflict alternative dispute resolution process, the court will not adjudicate any dispute between the parties. If an agreement is reached, counsel will ask the court to approve the settlement agreement. If a settlement agreement is not reached, all collaborative law counsel will move to withdraw from further representation. During the time the parties are engaging in collaborative conflict alternative dispute resolution procedure, the court will not set a hearing or trial in the case, or impose discovery deadlines, or require compliance with scheduling orders, or dismiss the case. If the collaborative conflict resolution procedures result in a settlement, the case will be scheduled for a hearing on an uncontested dissolution of marriage. The parties will provide status reports to the court every 90 days, beginning from the date the signed collaborative law participation agreement is filed with the clerk.

DONE AND ORDERED this 3rd day of February, 2014.

JOHN M. HARRIS
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CHIEF JUDGE

Distribution:

All Circuit and County Judges (Brevard County)
Court Administration (Brevard & Seminole County)
Clerk of Court (Brevard County)
State Attorney (Brevard County)
Public Defender (Brevard County)
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“EXHIBIT 1”

**COLLABORATIVE LAW
PARTICIPATION AGREEMENT**

PURPOSE

(PARTY 1) and (PARTY 2) (the “parties”) have chosen to use Collaborative Law to resolve their family differences. (PARTY 1) has engaged (LAWYER) and (PARTY 2) has engaged (LAWYER 2) as collaborative lawyers. The parties and their lawyers acknowledge that the essence of collaborative law is the shared belief that it is in the best interests of parties and their families to commit themselves to avoiding litigation.

We adopt this conflict resolution process, which relies on honesty, cooperation, integrity, and professionalism geared toward the future well-being of the restructured family. Our goal is to eliminate the negative economic, social, and emotional consequences of litigation. We commit to the collaborative law process to resolve our differences justly and equitably.

COMMITMENTS

We commit to a collaborative problem-solving process which is based on:

1. Identification of the values, goals and interests of each party;
2. Our empowerment to make decisions;
3. The collaborative lawyers’ assistance to their respective clients in identifying issues, analyzing relevant information, developing options, and understanding their consequences.

COMMUNICATIONS

We agree to effectively and honestly communicate with each other. All written and verbal communications between us will be respectful and constructive. Settlement meetings will be focused on those issues necessary to the constructive resolution of the matter. We agree not to engage in unnecessary discussions of past events.

To maintain an objective and constructive process, we agree to discuss settlement of issues with each other only in the settlement conference setting, unless we agree otherwise. Settlement issues will not be discussed at unannounced times by telephone calls or appearances at the other party’s residence or place of employment. The lawyers will meet together to plan agendas for settlement meetings and to draft or review documents, but no agreements will be made by the lawyers on behalf of the parties.

We shall maintain a high standard of integrity and shall not take advantage of each other or of known mistakes, errors of fact or law, miscalculations or other inconsistencies, but shall identify and correct them. However, a party may choose not to make known an error which disadvantages only that party.

Include the next two paragraphs if a minor child is involved:

We acknowledge that inappropriate communications regarding our dispute can be harmful to our child(ren). Communication with the minor child(ren) regarding disputed issues will occur only as agreed by us and our lawyers.

Our goal is to reach an agreement that promotes the best interests of the child(ren). Neither of us will seek a custody evaluation while the matter is in the collaborative law process. No collaborative lawyer will interview the minor child(ren) unless both of us agree, and the child(ren)’s therapist or neutral child specialist, if any, approves.

ALLIED PROFESSIONALS, EXPERTS AND ADVISORS

If allied professionals, experts or advisors (hereinafter referred to as “consultants”) are needed,

we will engage them jointly. We may engage consultants for purposes of valuation, cash flow analysis, tax issues, parenting issues, and any other issue that requires expert advice and/or recommendations, such as coaching by mental health professionals. We will agree in advance how consultants' fees will be paid. The consultants engaged are disqualified from testifying as witnesses, expert or otherwise, regarding this matter and their writings are inadmissible in any judicial proceeding in this matter. This disqualification does not apply to individuals engaged by the parties to assist them in other matters independent of the collaborative law process, such as preparation of tax returns and estate planning.

Consultants may communicate with each other, the parties, their lawyers, and any lawyers consulted for a second opinion during the collaborative law process.

INFORMATION

We agree to make such full and candid exchange of information as is necessary to make a proper evaluation of the case, including, but not limited to, full disclosure of the nature, extent, value of - and all developments affecting - our income, assets and liabilities, and all relevant matters concerning our child(ren). Any material change in information previously provided must be promptly updated. We authorize our respective lawyers to fully disclose all information which, in the lawyer's judgment, must be provided to other participants in order to fulfill this commitment.

No formal discovery procedures will be used unless specifically agreed to in advance. However, we may be required to sign a sworn statement making full and fair disclosure of our income, assets, and debts (a sworn inventory and appraisal).

We agree to maintain the confidentiality of any oral or written communications relating to the subject matter of the dispute made by us or our lawyers or other participants in the collaborative law process, whether before or after the institution of formal judicial proceedings. The collaborative law process is a form of settlement conference involving compromise negotiations. All communications, whether oral or written, and conduct of any party, lawyer, or consultant in the collaborative process constitute compromise negotiations under section 90.408 Florida Statutes and are, therefore, inadmissible. We agree that any oral communication or written material used in or made a part of the collaborative law process will only be admissible or discoverable if it is admissible or discoverable independent of the process. This paragraph does not apply to reports of abuse or neglect required by law, or to any sworn documents prepared in this matter, or to a fully executed collaborative law settlement agreement.

A party and/or his or her collaborative lawyer is free to disclose all information to either party's successor lawyer or to a lawyer hired to render a second opinion for that party.

AGREEMENTS

We may agree to the entry of temporary orders as in other family law matters. We agree to abide by the terms of the code of conduct set out as Exhibit "A" until it is modified by court order or written agreement. We understand that this agreement shall remain enforceable as a contract between the parties and may be the basis for a claim against the party violating its terms in the event of termination of this process. In such event, the collaborative lawyers shall withdraw as lawyers of record and, if required, shall consent to the substitution of litigation lawyers.

Any written agreement, whether partial or final, which is signed by us and our respective collaborative lawyers, may be filed with the court as a collaborative law settlement agreement. Such an agreement is retroactive to the date of the written agreement and may be made as the basis of a court order. The collaborative lawyers shall cooperate in preparing the documents necessary to effectuate the parties' agreement. Either or both collaborative lawyers shall be permitted to appear in court to have agreed judgment(s) entered.

LEGAL PROCESS

Suspension of Court Intervention. The parties and the lawyers agree that court intervention shall be suspended while the parties are using collaborative law procedures. Seeking court intervention for a judicially-imposed decision regarding a disputed issue automatically terminates the process.

Court Proceedings. The lawyers' representation is limited to the collaborative law process. Once the process is terminated, neither lawyer can participate in the pending matter in any manner, nor can the lawyer subsequently represent either party in a proceeding against the other.

No motion or document will be prepared or filed which would initiate court intervention, other than a Petition for Dissolution of Marriage, an Answer and Counter Petition, and Answer thereto. No hearing shall be set thereafter, other than to enter agreed orders and judgments or to withdraw as counsel.

Termination by Party. A party who has decided to terminate the collaborative law process shall notify his or her lawyer in writing. That party's lawyer shall then give prompt written notice to the other party through his or her lawyer and the court. Upon notice of termination of the process to the other lawyer, there will be a 30-day waiting period (unless there is an emergency) before any court hearing to permit each party to engage another lawyer and make an orderly transition. All written agreements shall remain effective until modified by agreement or court order. Either party may bring this provision to the attention of the court in requesting a postponement of a hearing.

If the process is terminated, whether by a party or a lawyer, both lawyers shall withdraw from the representation. If a party chooses to terminate the collaborative process by seeking court involvement, both lawyers shall withdraw from the representation. Neither collaborative lawyer (including any lawyer associated in the practice of law with the collaborative process) may serve as a litigation lawyer in this case or in any other matters between the parties thereafter. Each lawyer will cooperate in transferring the file to a new lawyer.

Termination by Lawyer. If a party refuses to disclose the existence of information which, in the lawyer's judgment, must be provided to other participants, or proposes to take an action that would compromise the integrity of the process, the collaborative law process must be terminated. If a party refuses to do so, their respective lawyer is authorized to terminate the process.

Withdrawal of Lawyer. Either collaborative lawyer may withdraw unilaterally from the collaborative law process by giving three days' written notice to his or her client and the other collaborative lawyer. Notice of withdrawal of a collaborative lawyer does not necessarily terminate the collaborative law process; however, in order for the process to continue, the party whose lawyer has withdrawn must engage a new collaborative lawyer who will agree in writing to be bound by this Participation Agreement. If the party whose lawyer has withdrawn chooses to represent himself or herself, the collaborative law process terminates and the other lawyer must withdraw.

LAWYER'S FEES AND EXPENSES

We understand that the lawyers and consultants are entitled to be paid for their services. We agree to make funds available to pay these fees. We understand that, if necessary, one party may be asked to pay all fees (including fees of the other party's lawyer) from his or her salary or from separate funds. We agree that, to the extent possible, all lawyers' fees and expenses (including consultant's fees) incurred by both parties shall be paid in full prior to entry of a final judgment.

UNDERSTANDINGS

We understand that each collaborative lawyer is independent from the other and each represents his or her client only in the collaborative law process. We further understand that each collaborative lawyer is an advocate for his or her client only. No legal duty, by contract or otherwise, is owed to a party

by the other party's collaborative lawyer. No lawyer-client relationship exists between one party's collaborative lawyer and the other party by virtue of this Participation Agreement or the collaborative process.

We acknowledge that there is no guarantee that the collaborative process will be successful in resolving the matter. The process cannot eliminate concerns about the differences that have led to the current conflict. We are expected to assert their own interests and their respective collaborative lawyers will help each of them to do so. The process, even with full and honest disclosure, can involve intense good-faith negotiation, but best efforts will be used to create proposals that meet the interests of both parties. Compromise may be needed to reach a settlement of all issues. Although the likely outcome of a litigated result may be discussed, the threat of litigation will not be used.

We understand that by agreeing to this process, we are giving up certain rights, including the right to conduct formal discovery, the right to participate in adversarial court hearings and other procedures provided by the adversarial legal system, unless the process is terminated. The terms of this agreement may be modified only by written agreement signed by all participants. However, the prohibition against either lawyer representing their client in contested matters against the other party may not be modified. Both parties and their respective collaborative lawyers hereby pledge to comply with and to promote the spirit and letter of this agreement. Both parties and their collaborative lawyers acknowledge that they have read this agreement, understand its terms and conditions, and agree to abide by them.

Signed on _____.

(PARTY 1)
Street Address
City, State, Zip code

(PARTY 2)
Street Address
City, State, Zip code

(LAWYER 1)
Lawyer for (PARTY 1)
SBN #
Street Address
City, State, Zip code
Office Phone
Fax Number

(LAWYER 2)
Lawyer for (PARTY 2)
SBN #
Street Address
City, State, Zip code
Office Phone
Fax Number

Exhibit "A"
CODE OF CONDUCT

The parties agree NOT to:

1. Communicate with the other party in an offensive manner.
2. Place telephone calls without a legitimate purpose of communication.
3. Destroy, remove, conceal, encumber, transfer, or otherwise harm or reduce the value of the property of one or both of the parties.
4. Falsify in writing or falsely record information relating to the property of either party.
5. Damage or destroy the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
6. Tamper with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, thereby causing monetary loss to the other party.
7. Sell, transfer, assign, mortgage, encumber, or in any other manner alienate any of the property of either party, whether personally or realty, and whether separate or community, except as specifically agreed to in writing.
8. Incur any indebtedness, including but not limited to borrowing against any credit line or unreasonably using credit cards or cash advances against credit or bank cards, except as specifically agreed to in writing, or as specified in this agreement.
9. Make withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
10. Spend any sum of cash in the possession of or subject to the control of either party for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
11. Withdraw or borrow in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically agreed to in writing.
12. Enter any safe-deposit box in the name of or subject to the control of either party, whether individually or jointly with others, unless the parties accompany each other and jointly enter the box for the sole purpose of inventorying or dividing its contents by mutual agreement.
13. Withdraw or borrow in any manner all or any part of the cash surrender value of life insurance policies on the life of either party, except as specifically agreed to in writing.
14. Change or in any manner alter the beneficiary designation on any pension, retirement plan or insurance policy, except as specifically agreed to in writing.
15. Cancel, alter, fail to renew or pay premium, permit to lapse or in any manner affect or reduce the value of the present level of coverage of any life, disability, casualty, automobile, or health insurance policies insuring the parties' property or persons, except as specifically agreed to in writing.
16. Change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other party.
17. Terminate or in any manner affect the service of water, electricity, gas, telephone, cable, television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at the residence of the other party or in any manner attempt to withdraw any deposits for service in connection with those services, except as specifically agreed to in writing.
18. Exclude the other party from the use and enjoyment of his or her respective residence.
19. Enter or remain on the premises of the residence of the other party without the other's consent.
20. Open or divert mail addressed to the other party, except as specifically agreed to in writing.
21. Sign or endorse the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempt to negotiate any negotiable instrument payable to the parties or the other party without the personal signature of the other party.
22. Take any action to terminate or limit credit or charge cards in the name of the parties or the other party, except as specifically agreed to in writing.
23. Transfer balances between credit cards or open new credit card amounts, except as specifically

- agreed to in advance in writing by the parties.
24. Pay more than the outstanding balance owed on a credit card or charge account, except as specifically agreed to in writing.
 25. Take any actions to freeze or put a hold on any account with any financial institution from which the other party has the right to withdraw funds for purposes consistent with the authorizations contained in this agreement.
 26. Operate or exercise control over the motor vehicles in the possession of the other party, except as specifically agreed to by the parties.
 27. Discontinue or reduce the withholding for federal income taxes on either party's wages or salary, except as specifically agreed to in writing.
 28. Destroy, dispose of, or alter any financial records of the parties, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.
 29. Destroy, dispose of, or alter any relevant e-mail or other electronic data, whether stored on a hard drive or on a diskette or other electronic storage device.
 30. Conduct surveillance of the other party's activities, including the use of an investigator, detective or other individual paid for or engaged by a party or third party, or use of electronic listening or tracking devices until this collaborative law process is terminated.
 31. Engage in services of a stand-by litigation lawyer so long as the collaborative law process continues.
 32. Exercise any stock options and warrants except as specifically authorized in advance by written agreement of the parties.
 33. Exercise any general or limited power of attorney, whether or not recorded, granted by one party to the other.
 34. Pay any indebtedness owed by the parties by either of them prior to the date the indebtedness is due, unless agreed to specifically in writing by the parties.
 35. Create or contribute to, or reduce the value of or withdraw from or terminate, any trust of any kind or nature except as specifically authorized in advance by written agreement of the parties.
 36. Make any gift of any kind or nature, other than usual and customary gifts to family members of either party or mutual friends or their child(ren).
 37. Create or contribute to any Uniform Gifts/Transfers to Minor Act accounts or any trust of any kind or nature, except as specifically agreed to in advance in writing by the parties.
 38. File any extension or form with the Internal Revenue Service with regard to federal tax liability for any years of the marriage that limits the other party's choice of filing status, unless agreed to in advance in writing by the parties.
 39. File any federal income tax return or amendment to any federal income tax return for any year of the marriage during the pendency of the matter without first providing a true and correct copy of such proposed return to the lawyer of record for the other party at least 14 days in advance of the proposed tender to the Internal Revenue Service. This shall apply whether or not such filing is proposed to be by electronic methods or hard copy filing.

Either party may:

1. Make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, entertainment, education and medical care.
2. Make expenditures and incur indebtedness for reasonable lawyer's fees and consultants' fees and expenses in connection with this matter.
3. Make withdrawals from accounts in financial institutions only for the purposes authorized by this agreement.
4. Engage in acts, make expenditures, incur indebtedness, make investments, and acquire, sell and transfer assets, as is reasonable and necessary to the conduct of either party's usual investment activities, business and occupation, subject to all such activities being fully disclosed and accounted for to the other party.