

The Academy of Northern Kentucky Collaborative Professionals

Collaborative Participation Agreement

The undersigned, _____ and _____, (referred to individually as “party”, or collectively as “the parties”) hereby agree it is their intention to resolve their family law matters through the Collaborative Family Law Process.

WHEREAS, the parties desire to attempt to reduce the negative emotional, social and financial consequences of the end of their marriage, and in cases involving children, to promote a caring, loving and involved relationship between both parents and their children, and to keep their children out of their differences; and

WHEREAS, the parties have each retained a collaboratively-trained family lawyer to represent them in the Collaborative Family Law Process; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is hereby agreed by and between the parties as follows:

I. Beginning and Ending the Collaborative Process

The parties agree that the Collaborative Family Law Process under this participation agreement will begin when this agreement is signed, and that it will conclude, (1) upon resolution of their collaborative matter as evidenced by a signed settlement agreement, separation agreement, or other written record of agreements made during the collaborative process, and the entry of a decree of dissolution or final agreed order, or (2) upon termination of the collaborative process as discussed in Article VI.

II. How it Works

1. During this collaborative process, the parties agree to make timely, full, candid, and informal disclosure of information related to their collaborative matter without formal discovery. The parties further agree that they shall promptly and continuously update all information provided.

2. During the Collaborative Family Law Process, the parties promise to conduct themselves in good faith, honestly, in full cooperation, and respectfully towards one another and towards all nonparty participants alike.

3. During the Collaborative Family Law Process, the parties agree to maintain the status quo, by maintaining insurance coverage and beneficiary designations, by preserving assets, by not incurring unnecessary debt, and by not changing any financial or household (parenting) arrangements that may affect the other party or their children; all unless there is an agreement to do so.

4. A party will notify the collaborative family lawyers in advance of making any extraordinary expenditure so there can be discussion and an agreement on the expenditure. If time is of the essence, the parties and the collaborative family lawyers will address the expenditure issue as soon as possible.

5. The parties understand that the effectiveness of the Collaborative Family Law Process and its successful conclusion greatly depends upon the parties, the collaborative family lawyers, and all nonparty participants working together and being prepared for all meetings.

6. Any mistakes made by either party, by any nonparty participant, or by a collaborative family lawyer will be immediately identified and corrected. Neither party,

nor any nonparty participant or collaborative family lawyer will take advantage of any mistake, at any stage of the Collaborative Family Law Process.

7. The parties understand that by choosing the Collaborative Family Law Process they are waiving rights that would be available to them through the litigation process. These rights are: (a) the right to have their spouse respond to formal discovery requests (i.e., interrogatories, requests for production of documents, depositions, or admissions); (b) the right to have a judge decide the value of their marital property; (c) the right to have a judge decide how their marital property is divided between them; (d) the right to have a judge decide all support/cash flow issues; and (e) if there are minor children, the right to have a judge decide where and with whom the children reside.

III. Enforceability

If the parties make either an interim agreement or a final agreement that they wish to be enforceable, the agreement must be in writing and signed by the parties and by their collaborative family lawyers. If either party withdraws from the Collaborative Family Law Process, any written agreements signed and entered into by the parties during the collaborative process may be presented by either party or their new non-collaborative litigation lawyer to a court of competent jurisdiction.

IV. Nonparty Participants

1. The parties may jointly retain nonparty participants, such as family specialists, financial specialists or other professionals whom they determine may be of assistance in resolving their matter. The parties expressly acknowledge and consent that the nonparty participants and the collaborative family lawyers, in their efforts to

coordinate the collaborative process, may or may not, from time to time, conduct private conversations between themselves in order to manage the Collaborative Family Law Process. Further, the parties acknowledge that the advice of nonparty participants is not binding upon the parties.

2. Nonparty participants from the mental health profession (known generally as “family specialists”) do not provide individual therapy or family therapy during the Collaborative Family Law Process. The family specialist’s role is advisory. The family specialist may (1) suggest parenting arrangements and schedules; (2) help parties with the emotional aspects of the ending of their marriage/relationship; (3) facilitate communications during meetings and between meetings; (4) assist the parties in their communications with each other; (5) assist with co-parenting issues; and (6) assist with the organization of the Collaborative Family Law Process.

3. Nonparty participants from the financial services or accounting fields (known generally as “financial specialists”) do not provide individual financial planning, investment strategy, insurance products, or accounting services during the Collaborative Family Law Process. The financial specialist’s role is advisory. The financial specialists may (1) assist with suggested property division options taking into account tax consequences; (2) assist in calculating cash flow options; (3) assist with asset valuation issues, including real estate appraisers and business valuers; and (4) assist with financial forecasts.

4. Nonparty participants hired in this Collaborative Family Law Process will be identified in an addendum to this agreement.

V. The Collaborative Family Lawyer's Role

1. Each party's collaborative family lawyer represents only their own client in the Collaborative Family Law Process, even though both collaborative family lawyers will be working as part of the collaborative team.

2. The parties acknowledge that they have been informed of, are aware of, and fully understand the various process options available to them for resolution of their family law matters (including litigation, mediation, arbitration, and traditional non-collaborative negotiation/settlement processes). With this knowledge, the parties are knowingly and voluntarily selecting to use the Collaborative Family Law Process.

3. Each party acknowledges that their collaborative family lawyer, as well as any nonparty participant, is engaged solely for the limited purpose of assisting the parties in reaching settlement in their family law matters through the Collaborative Family Law Process.

4. Each party acknowledges that each has their own individual fee agreement with their respective collaborative family lawyer. The Collaborative Family Law Process does not modify the party's individual contractual payment obligation to their collaborative family lawyer. Nonetheless, payment of attorney fees may be a part of the final resolution.

VI. Terminating the Collaborative Family Law Process

1. The parties acknowledge that the collaborative family lawyers identified in this agreement (or any lawyer in a law firm with which the collaborative family lawyer is associated or any lawyer in an office share arrangement with the collaborative family

lawyer) shall be disqualified from representing either party in litigation concerning the same or similar issue, which is the subject matter of this collaborative matter.

2. The parties agree that in any court proceeding they will not request, subpoena, or summons a collaborative family lawyer or a nonparty participant that is a member of this collaborative team to make disclosures or to testify as a witness.

3. The parties agree that participation in the Collaborative Family Law Process is voluntary and that either party has the unilateral right to terminate the process, with or without cause, at any time. Termination of the Collaborative Family Law Process occurs, (a) when a party through their collaborative family lawyer gives written notice to the other collaborative family lawyer that the process has been terminated by their client, or (b) when a party discharges their collaborative family lawyer or the collaborative family lawyer withdraws from further representation of a party. On the other hand, if a nonparty participant is discharged or withdraws from the case, the Collaborative Family Law Process does not terminate.

4. The parties may agree that the Collaborative Family Law Process continues, if prior to the expiration of 30 days after a discharge or withdrawal of a collaborative family lawyer, the unrepresented party engages a successor collaborative family lawyer and the parties consent in writing to continue the process. A new participation agreement will be signed with the new collaborative family lawyer.

5. If the Collaborative Family Law Process terminates and there has been a prior filing in court to commence the legal proceeding, the parties acknowledge the necessity of the collaborative family lawyers to file a motion to withdraw from the family law case.

6. Following termination of the Collaborative Family Law Process, neither party may take any action in the court system until 30 days after termination. This means neither party may file any court documents until the expiration of 30 days following the termination of the Collaborative Family Law Process. Notwithstanding the above, if there is an emergency requiring immediate action before the 30 day period expires, then that emergency court proceeding will not be a breach of this contract.

7. Any information gathered or developed during the Collaborative Family Law Process may be transferred to a successor lawyer.

The Academy of Northern Kentucky Collaborative Professionals has approved this Collaborative Participation Agreement, and the provisions of this Agreement have not been modified or altered. If the parties and their collaborative family lawyers wish to agree to additional terms, not inconsistent with the terms set forth herein, they shall set them forth in an amendment to this agreement.

In this Collaborative Family Law Process, _____ will be represented by _____, and _____ will be represented by _____.

Party

Date

Party

Date

I, _____, confirm that I will represent _____ in the collaborative process hereunder.

Attorney

Date

I, _____, confirm that I will represent _____ in the collaborative process hereunder.

Attorney

Date

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.