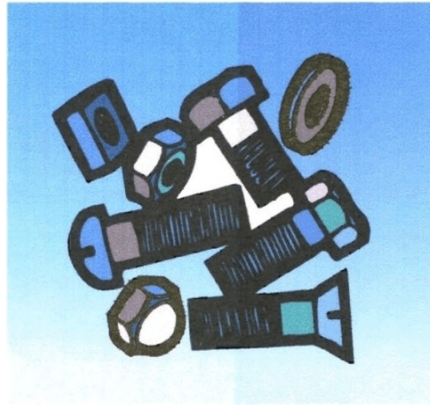


# Collaborative Family Law **PROTOCOLS**



“Protocols” is a term which refers to a collection of specific practices and procedures which are recommended to be followed by collaborative practitioners. In a sense, Protocols provide the “choreography” of how a collaborative case will progress from beginning to end.

These PROTOCOLS for collaborative family law practice have been created to further the following purposes:

1. To record and standardize the practices which are presently viewed as important for the effective practice of collaborative family law.
2. To encourage the uniform adoption of the forms and procedures defined herein by NEW Collab members, and thereby increase the assurance that the collaborative services provided to clients in our area will be effective, both for existing clients and to promote continued growth in use of the process in the future.
3. To provide a common “choreography” and thereby help to coordinate the interaction of collaborative professionals when working on cases, including the inter-disciplinary coordination of professionals serving different collaborative team roles.
4. To use as part of the process of training new collaborative professionals.
5. To serve as a quick and convenient reference for collaborative practitioners.

Use of these PROTOCOLS is voluntary. NEW Collab strongly encourages members to adopt and use them, but such use is not mandatory. Because they are subject to a continuing process of development, review and refinement, and because they aspire to a level of practice above the minimum standards of conduct for attorneys or other collaborative professionals, it would be inappropriate to attempt to use them to define the level of conduct required of lawyers or other professionals for purposes of professional liability, ethical regulation, or any other purpose.

With the foregoing purposes in mind, NEW Collab hereby establishes the following as PROTOCOLS for the practice of collaborative family law.

(Please note: the forms referred to below as **Appendices** are all part of the NEW Collab MANUAL FOR COLLABORATIVE PRACTICE, and are listed according to the number assigned to them in the MANUAL.)

## 1. Client Intake

- a. **Providing information about process options.** It is essential that actual and prospective clients be appropriately informed about the dispute resolution process options that are available, preferably as early as possible, and after advice and discussion allowed to select the option which is best for them.

In addition to your conversations with them, it is strongly suggested that a written outline such as the [Appendix 3 - Family Law Dispute Resolution Options](#) handout should be provided to all persons you are working with who are considering which process to use in their case.

- b. **Providing information about collaborative family law.** If after learning about the range of process options available, a client expresses interest in the possibility of pursuing collaborative family law, additional information specific to the collaborative process should be provided. Since the collaborative process requires the active and effective participation of the parties, collaborative professionals need to educate clients about what is involved in the process and what will be expected of them.

In addition to your personal conversations, [Appendix 5 - The Collaborative Handbook](#) should be provided to every potential collaborative client. The client should further be encouraged to learn as much as possible about the process, by such means as reviewing websites and books including “Getting to Yes” and other information to help them gain a complete appreciation for the process, especially about interest-based negotiation.

## 2. Screening

- a. **General screening considerations.** The client has the right to make the ultimate decision about what dispute resolution process to adopt. Initially, the collaborative professional’s approach should simply be to provide information about the range of process options to allow the client to make that decision in an informed fashion. (see Client Intake above, especially [Appendix 3](#)).

Many clients will also benefit from the collaborative professional’s advice and assistance in evaluating the process options. Generally, the collaborative family law process would be an advisable choice when all of the following are present.

### General Screening Considerations - CFL may be advisable when:

- i. The client expresses a preference to use CFL in an informed fashion after receiving information about the process options available; and
  - ii. The collaborative professional is able to conclude, after reasonable inquiry, that both parties to the case will be both **able** and **willing** to participate in the collaborative process in good faith and in a manner consistent with the principles and guidelines for collaborative family law; and
  - iii. All members of the proposed collaborative team are able to develop a sense of reasonable confidence that the collaborative process can be utilized to a successful conclusion, including the shared agreement to incorporate all collaborative team roles or other resources necessary to achieve that sense of confidence.
- b. **Specific screening procedures.**

- i. **By Attorneys.** Attorney screening procedures will typically be relatively informal, but should be focused on the general screening considerations outlined in the preceding section. Where one or more of those general considerations is not met, the attorney should be prepared to consider declining to proceed collaboratively.

Attorneys are also strongly encouraged to implement the coach evaluation screening procedure described in the following subsection.

- ii. **By Coaches.** However experienced, attorneys do not receive formal training and usually do not have the expertise to assess emotional or psychological conditions or issues. Mental health professionals who serve as coaches in the collaborative process do have that training and expertise, and can assist greatly in identifying and assessing challenges to collaboration early the process, when interventions to deal with the challenges may

still be viable and effective. Therefore, it is suggested that attorneys considering use of the collaborative process consider the emerging practice of referring the parties for a screening evaluation by a coach prior to execution of the collaborative agreements as a routine practice. Coaches in Northeast Wisconsin have agreed to provide this standardized, initial coach screening evaluation for a flat fee.

**Appendix C-2 - Coach Screening Evaluation Report** is a short form which has been created to allow a coach to quickly and efficiently communicate screening evaluation information back to the collaborative attorney. Coaches performing this service should keep the following in mind: 1) attorneys almost by occupational necessity have to “get to the point” - they do not necessarily expect your evaluation to be perfect, but do need you to state your opinions about the case/client clearly and explicitly; 2) for the screening evaluation process to work properly, it is important for usable feedback to be received back by the attorney prior to the next scheduled meeting, most typically the “Orientation Meeting;” and finally 3) part of the screening evaluation process should usually include touching base, even if only briefly, with the other coach involved (if any) to compare your impressions with that of the other coach.

### 3. Orientation Meeting

- a. **Purpose and Preparation.** No family law dispute should ever be referred to as “collaborative” until and unless a formal collaborative agreement incorporating the essential elements are satisfied, namely: 1) a formal agreement for no court with a disqualification provision; 2) a principle-based, non-adversarial approach; and 3) the shared commitment to adopt an interest-based approach which seeks a “win-win” resolution. Accordingly, the initial four-way meeting in a case in which the collaborative family law process may be adopted should not be referred to as a “collaborative” meeting. Instead, the term “Orientation Meeting” is suggested.

At the Orientation Meeting, the collaborative professionals involved can thoroughly confirm the parties' understanding of the collaborative process, take one of the probably final steps in screening the case for collaborative suitability, and provide a formal procedure to ritualize the commitment involved in adopting the process.

It is important that the collaborative professionals involved early in the case prepare the clients for the Orientation Meeting by educating them about the collaborative process and how it works, and particularly about the process of interest-based negotiation. In order to avoid confusion or concern on the part of the clients, it is also important for there to be a reasonably high level of consistency on the part of the collaborative professionals in terms of what the clients are told and given reason to expect.

**Appendix 5 - The Collaborative Handbook** is an informational outline which attempts to summarize the essential information that a client should be provided with prior to an Orientation Meeting. It is strongly suggested that, in addition to whatever other preparation a collaborative professional might do, that all clients be provided with a copy of this outline well in advance of the Orientation Meeting and urged to review it carefully.

- b. **Typical Agenda.** **Appendix 7 - Orientation Meeting Agenda Letter** is a suggested letter including a format to confirm the agenda for a typical Orientation Meeting. The agenda for a typical Orientation Meeting would include the following:
- i. *Review of the collaborative process.* Review and discussion of the specifics of the collaborative family law process, including a description by the collaborative professionals to provide the parties with a “roadmap” or overview of what the collaborative process would look like in their case.
  - ii. *Screening Considerations.* If screening evaluation reports or input has been received, such as that described in Section 2.b. above, this can be reviewed, or such arrangements can be made. In any case, the Orientation Meeting provides an opportunity for final screening factors to be considered.
  - iii. *Commitment to the collaborative process.* Discussion of what additional information (if any) may be needed in order for all four parties to be prepared to formalize the commitment to adopt the collaborative process.
  - iv. *Pleadings and process.* Processing of pleadings and legal issues consistent with collaborative approach (e.g., execution of joint petition or admission of service, etc.)

- v. *Initial discussion of "interests."* Initial discussion of each party's global or general "interests," as that term is used in the context of interest-based negotiation. In order to try to help focus the clients' consideration of this challenging topic, each party should be prepared to discuss the following questions.
- What form of dispute resolution process (i.e., collaborative family law or some other option) do you want to use? Is your choice based upon any personal values or particular objectives? If so, what are they?
  - As regards whatever legal issues may be presented in this case, what are some of the most important needs and/or goals you would need to meet in order to move forward successfully with your life?
  - As regards whatever legal issues may be presented in this case, what are the greatest fears or concerns you have as you consider the future?
  - If you were to imagine a best possible resolution of the legal issues in your case, but without stating any specific outcome, what are the underlying reasons why that outcome would be optimal?
- vi. *Attention to critical temporary issues.* If there are issues of immediate concern which cannot wait to be addressed at a later time, they can be addressed in the Orientation Meeting. Every effort to should be made to keep this to a minimum, but if an issue needs to be addressed to provide as much advance notice to the other collaborative professional(s) involved as possible.

#### 4. Formalizing Commitment to the Collaborative Process

- a. **Screening Pre-requisites.** Collaborative professionals should generally advise clients to avoid committing to the collaborative process until and unless the General Screening Considerations summarized in Section 2 above have been met.
- b. **The Collaborative Agreements.** If and when appropriate, the commitment to proceed with a case using the collaborative family law process is confirmed by execution of the collaborative agreements:

For cases in which attorneys have been retained and an active legal proceeding is or will be commenced, use of the collaborative process should be confirmed by execution of [Appendix 1A - Stipulation and Order to Adopt the Collaborative Family Law Process](#).

For cases in which attorneys have not yet been retained and/or cases in which there may not be any active legal proceeding commenced (e.g., negotiation of pre-marital agreement, break-up of same sex couple, etc.), use of the collaborative process can be confirmed by the parties and other team members simply signing a copy of [Appendix 1B - Principles & Guidelines for the Collaborative Family Law Process](#).

#### 5. Functions and Procedures of COACH

The primary functions of a Coach in the collaborative process are to manage emotion and improve communication. A Coach will typically pursue those and other objectives by use of the following procedures.

- a. **Screening Evaluation.** If the Coach accepts a screening evaluation referral from an attorney or other professional, the Coach should make every effort to complete the evaluation and provide usable feedback to the referring party in time to use the information for the next scheduled event in the process. Screening evaluations should generally involve the following:
1. Review of a completed standard information form from the client summarizing key information.
  2. At least one meeting with the client, either electronically or preferably in person, with the meeting to last approximately one hour.
  3. Conferral with any other coach providing a similar screening evaluation, if applicable.
  4. Communication back to the referring professional of a clear and succinct evaluation of the Coach's opinions regarding the likelihood that proceeding collaboratively can be successful, any challenges which may exist in that regard, and the resources which the Coach believes should be put in place to provide a reasonable assurance of success.

**Appendix C-2 - Coach Screening Evaluation Report** represents a standard coach screening evaluation report form which can be used to provide the information back to the referring professional. Use of the form is completely optional, but whatever form of communication is used, it should include at least the substantive information which is summarized in the form.

**Appendix 4 - Collaborative Process Consent Form** is a standard release of information which the Coach should obtain from the client to confirm that the information discussed with the Coach is intended to be shared with others in the collaborative process.

- b. **Engagement.** If a Coach has the opportunity to provide a screening evaluation for the client in a particular case, the Coach should use a brief part of the screening interview to explain the role the Coach would fill if retained as a member of the collaborative team and the financial arrangements which would be involved. If a decision is then made to include Coaches as formal members of the collaborative team, the Coach(s) providing the evaluation screening would typically be used. This is beneficial to the client since the Coach(s) in question already has familiarity with the legal issues presented, and the client knows the Coach and a relationship has already been established.

As part of being retained as a Coach in the collaborative process, the Coach should make sure to communicate to the client the nature and inherent characteristics of the Coach's role, including the fact that the relationship is not therapy, no privilege will attach to communications and that what is said will be shared with other team members.

**Appendix 2 - Collaborative Services Retainer Agreement** can be used to confirm the client's request for collaborative services, or alternately the Coach specific form included as **Appendix C-1A** can be used. **Appendix 4 - Collaborative Process Consent Form** can be used as a standard release of information.

- c. **Individual Work with Client.** Once formally retained, a Coach's first step should usually be to schedule a private individual meeting with the client as soon as reasonably possible. In divorce/separation cases, the client can also be requested to provide a completed **Appendix C-3 - Marital History Questionnaire** prior to the meeting to gather general and background information. The Coach's goal with the initial meeting should be to try to learn as much as possible about the nature and dynamics of the legal dispute presented, the underlying sources of conflict between the parties and the client's perceptions about that, and the client's overall psychological and emotional state. Coaching is not therapy. Instead, the primary focus is simply to help the client participate effectively in interest-based negotiation about the legal issues presented. In general, that involves being able to answer affirmatively all of the following.

**Coach's "Focus Questions:"**

1. Are the client's emotions managed well enough to address the legal issues presented?
2. Is the client able to identify and articulate his/her interests?
3. Are there any "secrets," "hot button issues," addictions / compulsions, concerns about domestic abuse, or other special issues which need to be taken into consideration in making the collaborative process work?
4. Is the pattern of communication between the parties conducive to effective negotiation?
5. Has the Coach offered all other insights that he/she can that will assist in any significant way in making the negotiation process more successful?

- d. **Joint Coaching Meetings.** If after conferring with the other Coach involved in the case (if any) the Coach cannot safely conclude that all of the "focus questions" listed above can be answered "yes," the next step in the coaching process may involve scheduling a joint coaching meeting (coaching meeting with both parties). A joint meeting provides the opportunity to assess the communication pattern between the parties, which is often not fully apparent without seeing the parties' direct interaction. It also allows the Coach to more fully assess the presence or depth of challenges which may be present, as well as provide a context within which interventions to identified challenges can be practiced and improved upon. If desired, the Coach may elect to use **Appendix 6 - Ground Rules for Collaboration** as a tool to help assess communication patterns and/or form the partial basis for discussion in coaching meetings.

Whether to hold joint coaching meetings, and if so how frequently and for what purpose, is a matter within the discretion of the Coach(es). The Coach should keep in mind, however, that until the clients' emotions are at a point of reasonable containment and the parties are able with assistance to achieve at least a basically effective level of communication, further work with the attorneys or other team members may need to be suspended until those objectives can be met. If

this appears to be true, the Coach should communicate that to the collaborative attorneys as soon as possible.

- e. **Participation in Collaborative Conferences.** In some cases, individual sessions with the client and joint coaching meetings may be insufficient to allow the client to participate effectively in collaborative negotiation, and/or there may be other unique benefits to the Coach participating directly in collaborative conferences. If the Coach believes that is the case, he/she should touch base with the collaborative attorney to discuss the possibility.
- f. **Feedback to Other Team Members.** Perhaps more so than any other role in the collaborative process, effective Coaching requires good and consistent communication with other team members. As the Coach continues his or her work with the Client, the Coach should strive to maintain regular and effective communication with his/her Coach counterpart (if any), as well as the collaborative attorneys and other team members. If Coaches have been retained for both parties, the two Coaches in particular need to work together closely to determine whether joint coaching meetings or other procedures need to be used in order to provide successful intervention.
- g. **The Need for Initiative and Independence by the Coach.** Once retained, a Coach should not passively wait for further directions from the attorney or other referring professional, but should instead be prepared to exercise a full measure of initiative and independence in working with the client. Experience has shown that often there tends to be a limited window of time which is available to effectively address potential collaborative obstacles, and the Coach should proceed as quickly and aggressively as reasonably possible in order to deal with whatever issues may be present while that window remains open. The Coach should take the initiative to continue to have individual meetings with the client, joint coaching meetings with both parties, formal and informal communications with other team members, participation in collaborative conferences or other collaborative meetings, or other steps, as needed in the discretion of the Coach, until all of the "focus questions" listed above can be answered "yes."

## 6. Functions and Procedures of CHILD SPECIALIST

The primary functions of a Child Specialist are to assist the parents in developing the highest quality parenting plan possible by sharing his or her specialized knowledge and by serving as a "voice" for the children, and to provide support to the child or children involved. A Child Specialist will typically pursue those and other objectives by use of the following procedures.

- a. **Engagement.** The Child Specialist will normally be retained following referral from the attorneys or other collaborative professionals. The Child Specialist should use a written retainer agreement (either the general form included as **Appendix 2 - Collaborative Services Retainer Agreement** or the Child Specialist specific form, **Appendix C-1B**) and written release of information (**Appendix 4**) with parents, and by discretion possibly with older children as well. The Child Specialist should confirm with both parents and children that there is no privilege and that information will be shared.
- b. **Gather and Consider Basic Background Information.** In general, Child Specialist should collect basic factual and developmental history information by means of a written questionnaire to be received prior to further work on the case. **Appendix C-4 - Child Information Questionnaire** can be used to collect this information. Another option to obtain developmental information for the child/ren would be the Bass Developmental History Form.
- c. **Joint Meeting with Parents.** After receiving background and developmental information, the Child Specialist should proceed with a joint meeting with both parents. The functions of this joint meeting would include final completion of and answers to any questions about the written material(s) received from the parents, assessment of the status of the parties relationship and level of conflict, and an initial clarification of what aspects of custody, physical placement and co-parenting issues are agreed and which remain unresolved.

This initial joint meeting also provides the first opportunity to assess parenting style and capability including each party's:

1. Capacity to provide adequate supervision, emotional support, and appropriate discipline structure;
2. Ability to manage his or her own emotions;
3. Level of maturity and ability to exercise good parenting judgment;
4. Values concerning parenting including willingness to place the child/ren's interests above his/her own.

- d. **Individual Meetings with Parents.** After meeting with the parents jointly, it may sometimes be helpful to also schedule individual meetings with each parent individually. If used, special care should be taken to set up such meetings openly and transparently to preserve the parties' perception of the Child Specialist as neutral and unbiased.
- e. **Consideration of Supplemental Information.** After meeting with the parents, the Child Specialist may also choose to consider supplemental or collateral sources of information. For example, the Child Specialist may wish to consult with school teachers, counselors and other personnel, past or present medical and/or mental health care providers, child care providers, extended family members, significant others. The Child Specialist may also want to review medical or treatment records, school reports and progress cards, or other written records regarding the welfare of the child/ren.
- f. **Meetings with Children.** The Child Specialist will also want to meet with any child who is old enough for such a meeting to result in meaningful communication. "Child" in this sense would include all offspring of the parents including adult children (who should normally be encouraged to participate in the process for a variety of reasons including the likelihood of their being a productive source of useful information). Children should be notified at the outset that the Child Specialist has met with their parents and that the intent is for the CS is to consult with them as well and share all information learned with their parents to help the parents in making the best decisions for the family. The children should be informed that if they wish for something to be kept private that this should be specified clearly, as well as the limits of the Child Specialist's ability to keep matters confidential such as mandatory reporting requirements.

Differences of opinion exist regarding whether to meet with siblings together or individually. Together allows assessment of relationships and interaction, and potential for sibling support. Individually lacks those advantages but likely increases ability to draw out more information from younger and/or quieter children.

The Child Specialist's meeting with the child/ren is intended to allow the Child Specialist to gain insight into the child/ren's:

- degree of emotional distress
- anti-social or problem behaviors
- control of emotions
- overall academic performance and achievement
- social and emotional adjustment
- ability to function and be independent
- level of self-esteem

Assessment tools designed to yield insight into the foregoing issues can be used if the Child Specialist believes that such tools will provide valuable insight.

- g. **Communication of Insights & Suggestions.** The Child Specialist can communicate his/her information, insight and suggestions in a variety of ways, but strong consideration should be given to reporting that information in a larger meeting including the coaches or attorneys if the Child Specialist believes that the situation is too highly emotionally charged for the parents to be able to process the information accurately and productively.
- h. **Participation in Larger Meetings.** The Child Specialist can also attend and participate in larger meetings, such as collaborative conferences with the attorneys or joint coaching meetings. In particular, the Child Specialist's participation would be potentially very beneficial in collaborative conferences at which it is expected that the parties will address particularly important or difficult custody and/or physical placement issues.
- i. **On-going Source of Support for Child/ren.** The Child Specialist can also serve as resource and source of support for the child/ren for as long as the collaborative case remains on-going.

## 7. Functions and Procedures of FINANCIAL SPECIALIST

The primary function of a Financial Specialist in the collaborative process is to support the process by providing ad hoc assistance, analysis and/or insight regarding specialized financial issues.

- a. **Engagement.** The Financial Specialist will normally be retained through referral from the collaborative attorneys. The collaborative attorneys should make this referral by some form of joint communication to the Financial Specialist requesting such help. Preferably, this would be done by means of a conference call or joint personal meeting at which a brief history and the essential facts of the dispute can be communicated. If the Financial Specialist is able and willing

to accept the referral, the attorneys can then provide additional written information and documentation to the Financial Specialist as needed, and the parties can then make arrangements to retain the Financial Specialist directly. The parties themselves should then formally retain the Financial Specialist directly, in conjunction with a joint meeting as described in the next subsection.

When making the initial referral to the Financial Specialist, the attorneys must define the particular objective(s) which the Financial Specialist has been retained to achieve, and at some point in the process, this specific objective(s) should be confirmed in writing from the attorneys to the Financial Specialist. Then, the parties should ordinarily retain the Financial Specialist directly. It is suggested that at or before the Financial Specialist's first meeting with the parties (as described below), the Financial Specialist should confirm his or her formal engagement by the parties by means of either the general retainer agreement at [Appendix 2](#) or the Financial Specialist example form provided as [Appendix F-1](#).

- b. **Joint Meeting with Parties.** After the accepting the referral from the collaborative attorneys, the Financial Specialist should ensure that a joint meeting with both parties is scheduled promptly. At this initial joint meeting, the Financial Specialist should strive to confirm and uphold the Financial Specialist's unique, neutral role. Every reasonable effort should be made to preserve both client's perception of neutrality, lack of bias or alignment, and objectivity. The ability of both clients to have confidence in the neutrality and objectivity of the Financial Specialist is crucial to the effectiveness of this role. As indicated above, either before or at this initial meeting, it is suggested that the Financial Specialist confirm the engagement with the clients by means of a written retainer agreement.

Great care should be taken to make sure that the information provided by the Financial Specialist in performing his or her role, including any analysis, insights, suggestions or opinions which may be offered in connection therewith, reflect a balanced, neutral and objective perspective. Remember that the Financial Specialist's role is to offer information, insights and suggestions for the parties to use in their negotiation process based on the Financial Specialist's specialized training and expertise. It is not the place of the Financial Specialist to make determinations, form conclusions or present decisions which would substitute for the parties' own decision-making in negotiation. Similarly, the Financial Specialist may in the course of his or her work need to confirm with the parties and/or their attorneys aspects of the issues presented on which the parties have already reached agreement, but it is also not the role of the Financial Specialist to attempt to mediate differences between the parties or attempt to conduct any sort of process to resolve differences they may have on any of the issues presented. If the parties seek to draw the Financial Specialist into that kind of discussion, the Financial Specialist should simply explain that it is his or her role to provide information and insight, not to facilitate negotiation, a task which is best left to the collaborative attorneys.

- c. **Information Gathering and Analysis.** After the initial joint meeting with the parties, the Financial Specialist may well need to collect additional information. Depending on the circumstances, this can be obtained from the collaborative attorneys, from the parties directly or their employees, agents, etc., or from other third parties.
- d. **Individual Meetings with Parties** (to be used very cautiously, if at all). While it is conceivable that private meetings with individual clients might yield more information or offer other advantages in some cases, such individual meetings should be undertaken very cautiously, if at all. If private meetings are scheduled, the Financial Specialist should do so very openly and transparently, and explain carefully the reason and purpose for meeting individually, in order to avoid negative effects regarding either or both client's perception of neutrality, lack of bias or alignment, and objectivity.
- e. **Feedback to Collaborative Team.** Following significant events such as meetings with the parties or receipt of significant information, the Financial Specialist should try to communicate about that event with other members of the collaborative team. This interim, "progress-report" type of communication need not be extensively detailed, and in fact should rather be typically quite short, rarely more than one typewritten page. The point is not to convey every detail of what has occurred, but rather to just provide the "executive summary." Detail can be provided when the Financial Specialist is ultimately able to communicate his or her analysis and insights after the Financial Specialist's investigation and analysis are substantially complete.
- f. **Participation in Collaborative Conferences.** In some cases, it will be most helpful to the parties to arrange to have the Financial Specialist appear and participate in one or more of the collaborative conferences in the case. This might be particularly true, for example, where the Financial Specialist has been retained to assist with a complex issue with substantial impact on the overall resolution of property division like the valuation of a closely held business, the value of which dominates the marital estate. In that kind of circumstance, the Financial Specialist's specialized expertise would be invaluable in helping the parties to recognize, understand and refine possible options for resolution which may exist. If the Financial Specialist's participation in a collaborative conference is expected to involve considerable substantive input on more complex issues, it may be appropriate to schedule the collaborative conference at the Financial Specialist's office. Not only would that allow the Financial Specialist to have access to computer, research and other

resources which may not be available elsewhere, it may also help to convey a more productive, neutral atmosphere would could be more conducive to progress in negotiation.

- g. **Final Report.** When the Financial Specialist reaches a point where all necessary information and preparatory work which is involved in addressing the specific objective(s) for which he or she was retained, and any analysis or further development of the information which the Financial Specialist needs to pursue in connection with that objective(s), is substantially complete, the Financial Specialist should arrange to communicate a summary of his or her analysis, insights and suggestions back to the collaborative attorneys in the form of a Final Report. Depending on the circumstances, the Financial Specialist may submit his or her Final Report by means of a teleconference with the collaborative attorneys, a letter or memorandum, or in person by participation in a collaborative conference as described in the preceding subsection. In any event, the Financial Specialist should make some report which communicates clearly that he or she believes work to be substantially complete, and summarizing what has been done to fulfill the objective(s) for which he or she was engaged including any related opinions, insights or suggestions which have been offered. However communicated, the Final Report should reflect the neutral, balanced and objective perspective of the Financial Specialist, and provide information, analysis and insights for the parties' use in their negotiations as opposed to decisions or determinations imposed upon them. The Final Report can then be used by other collaborative team members including the attorneys and coaches to apply the Financial Specialist's input in the negotiation process in the manner in which it was intended, and to correct any distortions or misunderstandings about that input the parties may otherwise have had.

## 8. Affiliated Experts & Consultants

Although not formally part of the collaborative team, other third party consultants and experts might also be engaged by the parties in a collaborative family law case to provide assistance. Typically, such other experts would be retained to help with specific issues. For example, a real estate or personal property appraiser might be engaged to provide a neutral and objective opinion of the value of property to help the parties in their consideration of property division, or an actuary might be hired to provide an accurate estimate of the net present value of a pension, or a mediator might be engaged to assist in helping the parties overcome impasse on a particularly troublesome issue. If such other third party experts or consultants are desired, the collaborative process contemplates that they will be retained and compensated by the parties jointly.

Most product or service providers who market themselves to the legal system are much more familiar with, and acclimated to, the traditional court system and its approach and procedures. Forensic valuation experts, for example, are well versed in the concept of being what is often described as a "hired gun," needing to develop an opinion and anticipated testimony which is a component of a party's need to advocate for the position most favorable to him or her within an adversarial context.

The collaborative process, of course, involves an entirely different dynamic. Both the philosophical approach and the specific manner in which these experts or consultants provide assistance to parties in a collaborative case can be very important. In a collaborative setting, the need to posture and justify a position within an adversarial construct is by definition not present. The parties in a collaborative case retain experts jointly, and have much greater freedom to request a product or service tailored to their needs and preferences.

For example, a business valuation expert may have a established routine for preparing opinions based as much or more on being able to defend and justify the opinion for purposes of cross-examination than on considerations of objective accuracy. The expert may be accustomed to dealing primarily or even exclusively with litigation counsel, with a focus on the rigors of the litigation process rather than on effective communication with the client. In a collaborative case, by contrast, the need to establish a fixed and definite "number" is typically far less severe, and the parties may well prefer that the expert produce an opinion which is somewhat less "documented" and "defensible," and which instead preserves in a more realistic sense the ranges which could result from differences in the underlying assumptions. Perhaps most importantly, the parties in a collaborative case will almost certainly need a much more extensive opportunity to meet and communicate with the expert about his or her analysis, methodologies, assumptions and variables, and conclusions. The expert's role within the collaborative process is simply much more about educating the parties and their attorneys, and empowering them with useful and understandable information for use in their negotiations, than it is about being able to "defend a number." In other words, the expert is much more a highly specialized teacher than a forensic witness. Although the specific product or service which other experts or consultants may have to offer collaborative participants may be different than the business valuation expert example provided, the same general considerations would still apply.

Because of the importance to the parties in a collaborative case in being able to obtain the right kind of help they need from these other third parties, NEW Collab as an organization has created a separate form of association with the practice group called an "Affiliate Member." Affiliate Members of NEW Collab are persons or firms who offer products or services which are related to the collaborative process, but which fall outside the formal collaborative team roles. Affiliate Members are expected to develop an understanding of the differences in, and unique nature of, the collaborative process, and to sign a formal pledge that if called upon to provide assistance to parties

in a collaborative case, they will provide their products or services in a fashion which is consistent with the process to the best of their ability. The parties to a collaborative case can thus retain Affiliate Members with the confidence that the collaborative approach they have elected to adopt will be honored not only by the formal collaborative team, but by the Affiliate Member as well.

## 9. Functions and Procedures of COLLABORATIVE ATTORNEY

The primary functions of an Attorney in the collaborative process are to advise and educate the client, to guide interest-based negotiation and to manage conflict. A Collaborative Attorney will typically pursue those and other objectives by use of the following procedures.

- a. **Providing Process Options Information.** The first procedural consideration for an attorney is to ensure that the client or prospective client has received sufficient information about the various process options available to him or her to be able to make an informed decision about which one to select as his or her preferred option. In addition to the attorney's conversations and personal communications with the client, it is strongly suggested that a written outline such as the [Appendix 3 - Family Law Dispute Resolution Options](#) outline should be provided to all persons you are working with who are considering which process to use in their case.
- b. **Screening.** Attorney screening procedures will typically be relatively informal, but should be focused on the general screening considerations set forth in [Section 2](#) above. In applying these criteria, attorneys are further encouraged to pay particular attention to any factors which may give rise to heightened concern about either party's ability or willingness to participate effectively in the collaborative process. Where one or more of the General Screening Considerations criteria above is not met, it is suggested that the attorney should be prepared to consider declining to proceed collaboratively.

It is also suggested that attorneys consider referring each potential collaborative client to a coach for a coach screening evaluation. The essence of that procedure is described in [Section 2.b.](#) above.

- c. **Engagement.** Attorneys should ensure that their engagement to provide collaborative representation and the client's understanding of its limited scope and unique nature is confirmed in writing, either by means of a full retainer agreement specific to collaborative representation (such as [Appendix 2](#)), or by means of a paragraph or provision in their standard retainer agreement which invokes the collaborative status upon execution of the collaborative agreements, such as the example provided in [Appendix A-1](#).
- d. **Client Education and Preparation.** If a client makes a tentative decision to pursue use of the collaborative family law process, the attorney's next procedural focus should be to educate the client by providing as much useful information about the collaborative process as reasonably possible. In addition to personal conversations, [Appendix 5 - The Collaborative Handbook](#) should be provided to a client seeking to use collaborative family law. The client should further be encouraged to learn as much as possible about the process, by such means as reviewing websites and books including "Getting to Yes" and other information to help them gain a complete appreciation for the process. In particular, the attorney should focus specifically on educating the client about the process of interest-based negotiation.
- e. **Modification of Pleadings and Procedure.** It is suggested that an attorney in providing collaborative representation to a client strive to pursue such tasks in a manner which can be viewed by the parties as consistent with the collaborative approach (e.g., joint vs. regular petition, admission of service vs. process service, language in pleadings, documents and negotiations which reflects both the spirit and the letter of the collaborative agreements).
- f. **The Orientation Meeting.** The Orientation Meeting allows the attorneys to formally confirm that the parties have sufficient information to make an informed decision to choose the collaborative process, and provides a ritual to create process anchors. A typical agenda is included in [Appendix 7 - Orientation Meeting Agenda Letter](#), but the attorneys should confer at least briefly by phone or otherwise to confirm the specific agenda for the Orientation Meeting.
- g. **Forming the Collaborative Team.** The attorney should educate the client about other collaborative team roles. If the client affirmatively desires to include one or more other roles, the attorney should assist in making referrals. If the attorney is able to develop a reasonable level of confidence in the prospects of success using the collaborative process only if other collaborative team members are included, it is suggested that the attorney confirm a shared agreement to proceed in that fashion prior to signing the collaborative agreements. The decision to include other collaborative team members should be made as early in the process as reasonably possible, at a point where those other team members can be of most benefit to the parties and process.

- h. **Commitment to the Collaborative Process.** For cases in which attorneys have been retained and an active legal proceeding is or will be commenced, use of the collaborative process should be confirmed by execution of a collaborative stipulation which is submitted to the court and entered as an order upon approval. The NEW Collab approved form is included as [Appendix 1A - Stipulation and Order to Adopt the Collaborative Family Law Process](#).

For cases in which attorneys may not yet be retained and/or cases in which there may not be any active legal proceeding commenced (e.g., negotiation of pre-marital agreement, break-up of same sex couple, etc.), use of the collaborative process can be confirmed by the parties and other team members simply signing a copy of the Principles & Guidelines for Collaborative Family Law. The NEW Collab approved form is included as [Appendix 1B - Principles & Guidelines for Collaborative Family Law](#).

- i. **Collaborative Conferences.** Four-way negotiation meetings with both parties and both attorneys after execution of the collaborative stipulation.

1. *Practical suggestions:*

- convenient, private location, can alternate attorney's offices
- physical arrangements ideally allow review of documents, computers, copier
- food should be considered (food can lessen tensions and improve negotiation atmosphere)
- plan on no more than 2 to 2½ hours maximum usually
- objective is to facilitate parties' participation, ensure balance
- attorneys' conduct models collaborative behavior
- before concluding each conference, schedule two or more additional conferences
- try to end on a positive note, if at all possible

2. *Agendas.* There should generally always be a written agenda for the parties prior to a collaborative conference, to allow them to prepare for what will be addressed and avoid being "blind-sided." The attorneys should confer to develop the agenda by mutual consensus. It is customary for the attorney hosting the conference to send a letter to the other attorney confirming the date, time, location and agenda.

3. *Minutes.* Following each collaborative conference, minutes of what was discussed and tentatively agreed to, along with any "homework" assignments made, etc., should be prepared and disseminated to both parties and both attorneys. Different methods exist for preparation of minutes, from making photocopies of handwritten notes, to one of the attorneys sending a letter following the conference, to a memo being dictated by one of the attorneys at the end. A one page form for use as a memorandum of minutes, with spaces provided for "homework," future scheduled collaborative conferences, and an anticipated agenda for the next conference, is included as [Appendix 8 - Collaborative Process Memo](#).

4. *Focus.* Focus on managing conflict and guiding an interest-based approach to negotiation. Clients will commonly need to be frequently reoriented and refocused on interests versus positions.

5. *Suggested Agendas:*

*Orientation Meeting (covered in detail in Section 3.b. above).*

- review of the collaborative process
- consideration of screening evaluation input (see Section 2.b. above)
- commitment to the collaborative process
- pleadings and process
- initial discussion of "interests"
- attention to critical temporary issues (if necessary)

\* Note: in some cases, it may be necessary to meet more than once to accomplish all of the objectives of the Orientation Meeting.

*First Collaborative Conference (after collaborative agreement signed).*

- introduce and review Client Information Binders (see [Appendix 9](#))
- review financial information and begin preparation of FDS
- address temporary issues
- initial discussion of property division issues: what is agreed?
- determine what additional information/documentation is needed

*Second Collaborative Conference.*

- confirm appropriateness of temporary arrangements
- review information / documentation obtained
- review and execute FDS, file with court if complete
- consider input from Child Specialist (if any)
- discuss custody, placement issues

*Subsequent Collaborative Conferences.*

- if custody / placement issues resolved, continue discussion of substantive issues
- consider input from Financial Specialist (if any)
- generally, begin with easier issues to demonstrate the interest-based approach and build foundation of success, then work to harder issues

- j. **Formalizing and Implementing Agreement.** Once a final settlement agreement has been reached, the attorneys will then typically assist the parties in implementing the agreement by preparing a Collaborative Marital Settlement Agreement, representing their clients at a stipulated final hearing or submission of a final stipulation and order, and then taking whatever additional steps may be required to implement the final judgment or order.