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**PROTOCOLS OF PRACTICE FOR  
COLLABORATIVE FAMILY LAWYERS**

COLLABORATIVE FAMILY LAW INSTITUTE, INC.

1                   **Protocols of Practice for Collaborative Family Lawyers**

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13 appreciated.

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3 **Protocols of Practice for Collaborative Family Lawyers**  
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5 **Introduction**

6 Since 2000, South Florida lawyers have been resolving family law disputes utilizing  
7 collaborative law. Professional trainers from around the nation have conducted numerous  
8 training sessions in the state to teach Florida lawyers and other professionals how to handle  
9 family matters collaboratively. The Collaborative Family Law Institute, Inc., a not-for-profit  
10 organization, helps train lawyers in collaborative law and promotes its acceptance as the  
11 prevailing method of resolving family law matters in Miami-Dade County. The Institute's  
12 horizons have expanded to include other collaborative professionals and to serve their needs,  
13 while its vision remains the same: to create a culture in which the collaborative process is the  
14 prevailing process for the resolution of family law matters.  
15

16 The Institute believes that it is advisable to have protocols of practice to assist lawyers  
17 and other collaborative professionals in handling collaborative matters. In drafting these  
18 protocols, the Institute relied primarily on books and articles by acknowledged leaders in the  
19 field of collaborative law in the United States and Canada, the protocols of practice of the  
20 Collaborative Law Institute of Texas, Inc. and the experiences of the members of the Institute.  
21 These Protocols apply only to lawyers and address the following: the relationship between the  
22 lawyer and the client; the relationship between the collaborative lawyers; the relationship  
23 between the collaborative lawyer and other collaborative professionals; protecting the process;  
24 fundamentals of the process; the use of neutral experts and other outside advisors; drafting  
25 considerations; withdrawal; termination of the process and transition to a litigation lawyer.  
26

27 Membership in the Collaborative Family Law Institute, Inc. is open not only to lawyers,  
28 but also to mental health professionals and financial professionals. Each profession makes its  
29 own unique contribution to the collaborative process, has its own special relationship to the  
30 collaborative law process, and is guided by unique professional protocols.  
31

32 These Protocols are to be adopted and used by lawyers on a voluntary basis. Some of the  
33 protocols are designed to deal with issues commonly encountered in collaborative matters and  
34 should be viewed as strong admonitions, e.g., the prohibition against serving as a collaborative  
35 lawyer when the client has already engaged a litigation lawyer. Other protocols and  
36 commentaries are merely descriptions of good practices, e.g., the meeting room arrangements.  
37 The Institute hopes that the collaborative lawyer finds these Protocols useful and that the  
38 practicing Bar embraces these Protocols as the norm for handling collaborative matters.  
39

40 These Protocols of Practice for Collaborative Family Lawyers were approved by the  
41 Board of Directors of the Collaborative Family Law Institute, Inc.  
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3 **CHAPTER 1**  
4 **GENERAL PROVISIONS**  
5

6 **SECTION 1.01. SHORT TITLE.** These Protocols may be cited as the “Protocols of  
7 Practice for Collaborative Family Lawyers.”  
8

9 **SECTION 1.02. DEFINITIONS.** In these Protocols:  
10

11 (1) “Child specialist” means an individual engaged to assist the parties in resolving child-  
12 related matters. The term includes a mental health professional, educational specialist or other  
13 similar individual.  
14

15 (2) “Collaborative process” means a process wherein the parties and their lawyers sign a  
16 Participation Agreement to negotiate in good faith to settle a legal matter without resort to a  
17 court until the matter has been resolved to the satisfaction of both parties, to provide all relevant  
18 information and to engage other collaborative professionals and only neutral experts to assist in  
19 resolving issues. The written Participation Agreement must provide that the lawyers shall  
20 withdraw if the matter requires litigation. The Participation Agreement may contain other  
21 provisions not inconsistent with the foregoing requirements.  
22

23 (3) “Collaborative lawyer” means a lawyer who represents a client in a collaborative  
24 matter who has been specially trained in the collaborative process.  
25

26 (4) “Collaborative matter” means a particular dispute or negotiation that is handled in the  
27 collaborative process.  
28

29 (5) “Collaborative professional” means an individual engaged by the parties as a neutral  
30 professional to participate in and assist in the collaborative process. The term includes a financial  
31 professional, mental health professional, communication specialist or any other professional  
32 engaged by the parties.  
33

34 (6) “Expert or advisor” means an individual, qualified by knowledge, skill, experience,  
35 training or education who is jointly engaged by the parties to provide neutral and unbiased  
36 information, guidance, research, opinions or inferences on a subject relevant to the collaborative  
37 matter.  
38

39 (7) “Institute” means the Collaborative Family Law Institute, Inc. a not-for-profit Florida  
40 corporation dedicated to the promotion of the collaborative process in South Florida.  
41

42 (8) “Joint meeting” means a meeting generally held among the clients, lawyers,  
43 collaborative professionals and other participants in a collaborative matter.  
44







1  
2 (a) The collaborative lawyer should commit the time and resources necessary to gain a  
3 clear understanding of the client's values, assist the client in identifying and articulating the  
4 client's interests and goals in a manner consistent with the client's values, and explore with the  
5 client the means by which the collaborative process can satisfy the client's interests and achieve  
6 the stated goals in a constructive manner.  
7

8 (b) The collaborative lawyer should inform the client, as soon as feasible, about interest-  
9 based negotiation and the priority that collaborative law gives to preserving an ongoing  
10 relationship between the parties through the non-judicial resolution of the client's matter.  
11

12 (c) The collaborative lawyer should at all times be faithful in the representation of the  
13 client and zealously represent the client in pursuit of the client's stated goals. This faithful  
14 representation includes informing the client about the law and its application to the client's  
15 matter on an ongoing basis, preserving confidential communications, and assisting the client to  
16 develop approaches, collaboratively with the other participants, to resolve the matter without  
17 judicial intervention.  
18

19 (d) The collaborative lawyer should explain to the client that the process allows  
20 settlement of the matter outside the limits of a judicially imposed solution, subject to public  
21 policy and laws in the State of Florida and nationally and securing court approval of the  
22 settlement.  
23

24 **CHAPTER 3**  
25 **RELATIONSHIP BETWEEN COLLABORATIVE LAWYER AND OTHER LAWYER**  
26

27 **SECTION 3.01. RESPECT FOR THE OTHER LAWYER AND CLIENT.** The  
28 collaborative lawyer recognizes a heightened requirement to be respectful at all times. Violation  
29 of this expectation jeopardizes the prospects of a successful collaboration and causes distrust  
30 among the participants. A collaborative lawyer should not engage in conduct to embarrass or  
31 disparage the other lawyer, the other party or any of the collaborative professionals. The  
32 collaborative lawyer should advise the client to avoid disparaging or negative remarks about the  
33 other party, lawyer or the other collaborative professionals.  
34

35 *Comment*

36 *When emotions are high, respectful communications are often extremely difficult for*  
37 *clients. Engaging the services of a mental health professional is strongly urged to assist clients*  
38 *in being effective in their interactions in the collaborative meetings.*  
39

40 **SECTION 3.02. MUTUAL RELIANCE.** Representation of a client in a collaborative  
41 matter means the lawyer, in good faith, believes the client is acting in a manner consistent with  
42 the objectives of the collaborative process. The collaborative lawyer knows that other  
43 participants in the collaborative matter are relying upon this presumption.  
44

45 *Comment*

















1 When a client refuses to attend joint meetings, a collaborative lawyer should seek to  
2 involve a mental health professional to assist the client in overcoming the resistance. If that fails  
3 or if a client is unable to attend meetings but desires to continue in the process, a collaborative  
4 lawyer should explore all viable alternatives to attendance at the meetings including, without  
5 limitation, conference calls, video- or internet-conferencing, joint meetings without the resistant  
6 client, joint meetings with collaborative professionals, the client's participation by speaker  
7 phone or by proxy, face-to-face meetings between the lawyers only, caucus style meetings where  
8 the lawyers or one of them shuttle back and forth between separate meeting rooms, or meetings  
9 facilitated by a mediator.

10  
11 **SECTION 7.02. SCHEDULING AND ARRANGEMENTS.** The collaborative lawyer  
12 acknowledges the need to meet regularly with the clients and the other collaborative lawyer at  
13 mutually convenient times and locations. A joint meeting should not be adjourned without  
14 scheduling at least one subsequent meeting.

15  
16 **Comment**

17 *The meeting arrangements should include provisions for:*

- 18 1. *Rotation of meeting sites unless the parties desire otherwise.*
- 19 2. *Seating arrangements that avoid a confrontational atmosphere with*  
20 *consideration being given to having the parties sit on the same side of the*  
21 *table or using a round table.*
- 22 3. *Private space for the guest lawyer and client to meet before, during and after*  
23 *the joint meeting.*
- 24 4. *Preparation in advance and distribution of multiple hole-punched copies of*  
25 *relevant documents to use at meetings to avoid time-consuming duplication*  
26 *during the meeting.*
- 27 5. *A hospitable venue for the guest lawyer and client (providing, as appropriate,*  
28 *food, beverages, and access to phone, fax, duplication, internet, pens, paper,*  
29 *and calculators).*
- 30 6. *Availability of the client and lawyer notebooks and calendars at every joint*  
31 *meeting.*

32  
33 **CHAPTER 8**  
34 **AGENDAS AND MINUTES**

35  
36 **SECTION 8.01. AGENDA FOR MEETINGS.**

37  
38 (a) A written agenda prepared in advance by the collaborative lawyers or other  
39 collaborative professionals in consultation with the clients should govern each joint meeting.  
40 Matters that arise during a joint meeting that are not on the agenda should be deferred until the  
41 end of the meeting or placed on the next meeting's agenda, as the participants agree. The parties  
42 should be encouraged to schedule agenda items in advance through their lawyers. The  
43 collaborative lawyer should discourage raising issues not on the agenda to avoid the element of  
44 surprise.

1 (b) The agenda of the first joint meeting ordinarily should include the reading aloud of  
2 the Participation Agreement by the parties and the lawyers and the signing of the Agreement.  
3

4 **Comment**

5 *Subsection (a) urges that the meeting agenda be specific to the matter, not generic. The*  
6 *agenda for the first joint meeting should include the ascertainment of the parties' goals and*  
7 *interests. The restatement of goals and interests as the first agenda item in all subsequent joint*  
8 *meetings may serve to focus the parties. It is recommended that parties receive a copy of the*  
9 *agenda before going to each meeting. A report on long-term homework assignments not expected*  
10 *to be completed between any two meetings should be an agenda item to encourage*  
11 *accountability.*

12 *Subsection (b) provides for reading the Participation Agreement. This makes clear to the*  
13 *parties the seriousness of the proceeding. However, some collaborative lawyers believe that*  
14 *where there is adequate assurance that legally sophisticated clients have read the Agreement in*  
15 *advance, a reading of a summary document should suffice and the parties should sign both the*  
16 *Agreement itself and the summary version.*

17  
18 **SECTION 8.02. MINUTES.** Minutes should be prepared and distributed in a timely  
19 manner after each meeting by a designated collaborative lawyer or by another mutually chosen  
20 collaborative professional.  
21

22 **Comment**

23 *The minutes should be comprehensive and document the items that were discussed and*  
24 *any agreements reached. Editorial bias should be avoided. They should serve as a running*  
25 *record of unfinished assignments and issues still needed to be resolved. Approval of the minutes*  
26 *should be an agenda item at each meeting. The collaborative lawyers, the parties and the other*  
27 *collaborative professionals should sign the minutes of each meeting acknowledging that they*  
28 *read the minutes, that the minutes accurately reflect what took place during the prior meeting*  
29 *and that they acknowledge any agreements contained in the minutes.*

30  
31 **CHAPTER 9**  
32 **EXPERTS AND ADVISORS**  
33

34 **SECTION 9.01. JOINT ENGAGEMENT.** Unless the parties agree otherwise, in a  
35 collaborative matter, a neutral expert or advisor is to be retained jointly and in writing. Except as  
36 provided in Section 9.02, any report and related work papers of the expert or advisor, including  
37 all documents submitted to the expert or advisor, should be made equally available to the parties  
38 and the lawyers, whether the assistance was rendered for one or both parties.  
39

40 **SECTION 9.02. NEUTRALITY.** The collaborative lawyer should inform the neutral  
41 expert or advisor that he or she is being engaged jointly and should use care to avoid the  
42 appearance of bias. The neutral expert or advisor should be instructed to disclose any reason that  
43 may exist that could cause someone to question his or her impartiality. The scope and terms of  
44 the engagement of the expert or advisor should be in writing, signed by the parties and the  
45 neutral expert or advisor. The neutral expert or advisor should be instructed to be available for  
46 discussions with one or both parties.



1 (a) A collaborative lawyer should in good faith draft settlement documents and  
2 subsequent pleadings and court orders in a manner that honestly and completely reflects the  
3 parties' intentions.  
4

5 (b) A collaborative lawyer should not take advantage of a drafting mistake and should  
6 promptly notify the other lawyer of the mistake.  
7

8 **SECTION 10.03. CLOSING.** All of the settlement documents must be signed by all of  
9 the parties to the collaborative process. If feasible, the signing of the settlement documents  
10 should be done in a joint meeting. Any remaining issues between the parties should be resolved  
11 at that time. The parties should be encouraged to plan a concluding meeting that meets their  
12 needs.  
13

14 **CHAPTER 11**  
15 **LEGAL DOCUMENTS AND PROCEEDINGS**  
16

17 **SECTION 11.01. FILING OF PETITION.** The collaborative lawyers shall file a joint  
18 Petition for Dissolution of Marriage and Answer once the parties have entered into a settlement  
19 agreement.  
20

21 **SECTION 11.02. NOTICE TO COURT.** Upon signing the Participation Agreement, if  
22 a court proceeding is pending, notice shall be sent to the court that the matter is being handled as  
23 a collaborative matter. The collaborative lawyers should cooperate to ensure that any required  
24 status reports are timely filed.  
25

26 **SECTION 11.03. TEMPORARY AGREEMENTS.** The collaborative lawyers  
27 recognize that there may be a need for temporary agreements in certain matters. Such agreements  
28 should be written and signed by the parties. If the collaborative process is terminated and  
29 litigation ensues, the temporary agreements shall be adopted by the court.  
30

31 **CHAPTER 12**  
32 **WITHDRAWAL AND TERMINATION**  
33

34 **SECTION 12.01. WITHDRAWAL.** A collaborative lawyer, subject to the terms of  
35 engagement, may withdraw from a collaborative matter as in any other matter. The collaborative  
36 lawyer should assist the successor collaborative lawyer in becoming familiar with the matter.  
37

38 **SECTION 12.02. SUCCEEDING ANOTHER COLLABORATIVE LAWYER.** A  
39 collaborative lawyer who is succeeding another collaborative lawyer must sign the Participation  
40 Agreement. If this is not promptly done, the other party may terminate the collaborative matter.  
41

42 **SECTION 12.03. TERMINATION OF THE PROCESS.**  
43

44 (a) A collaborative lawyer should explain to the client that the collaborative process is  
45 voluntary and may be terminated by the client at any time and for any reason.  
46

1 (b) A collaborative lawyer should seek to obtain authority in the retainer agreement to  
2 terminate the collaborative process on behalf of the client, without giving a reason, if the lawyer  
3 discovers that the client has violated or proposes to violate the Participation Agreement in a  
4 manner that would compromise the integrity of the process.

5  
6 (c) The collaborative lawyers should seek to incorporate in the Participation Agreement  
7 authority to terminate the collaborative process on behalf of their respective clients, without  
8 giving a reason, if the lawyer discovers that the client has violated or proposes to violate the  
9 Participation Agreement in a manner that would compromise the integrity of the process.

10  
11 (d) The collaborative process must terminate if one of the attorneys withdraws or is  
12 discharged by a party and the party does not retain a successor collaborative lawyer.

13  
14 **Comment**

15 *During the course of the collaborative process, a circumstance can occur in which the*  
16 *client refuses to honor commitments previously made, yet invokes the attorney-client privilege to*  
17 *prohibit the collaborative lawyer from disclosing the violation. Under these circumstances,*  
18 *withdrawal by the lawyer would be ineffective to protect the other participants, as well as the*  
19 *integrity of the process, because the client could retain a new collaborative lawyer who is*  
20 *unaware of the violation, and thereby take unfair advantage of the other party. Absent*  
21 *contractual authorization to take this action, the collaborative lawyer may be ethically*  
22 *constrained from this guardianship role. As a practical matter, one should rarely, if ever, be*  
23 *required to make such declaration of termination, because the recalcitrant client, given the*  
24 *choice of declaring termination or having it done by counsel, would almost assuredly elect*  
25 *personally to make that declaration.*

26 *The collaborative process cannot proceed without both parties being represented by a*  
27 *collaborative lawyer. If a party chooses not to be represented by a collaborative lawyer, the*  
28 *process cannot proceed consistent with the basic philosophies of the collaborative process and*  
29 *the process must terminate completely.*

30  
31 **SECTION 12.04. TRANSITION TO LITIGATION LAWYER.** The collaborative  
32 lawyer should assist the litigation lawyer in becoming familiar with the matter. The litigation  
33 lawyer may not be a lawyer in the same firm as the collaborative lawyer. The collaborative  
34 lawyer should cease further work on the matter once the litigation lawyer has accepted the  
35 matter. A collaborative lawyer approached to give an opinion in a collaborative matter in which  
36 he or she is not involved should do so only after confirming that the other party has been given  
37 notice that the opinion has been sought. Unless the parties agree in writing to the contrary, any  
38 lawyer who has been jointly engaged to give an opinion to both parties may not serve as the  
39 litigation lawyer for either party.

40  
41 **CHAPTER 13**  
42 **MISCELLANEOUS PROVISIONS**

43  
44 **SECTION 13.01. INTERPRETATION.** The advancement of the highest and noblest  
45 goals of furthering the collaborative process as a preferred process of resolving family law  
46 matters should guide the interpretation of these Protocols.

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**SECTION 13.02. EFFECTIVE DATE.** These Protocols took effect upon adoption by the Board of Directors of the Collaborative Family Law Institute, Inc. on \_\_\_\_\_.