

# The North Carolina Guide to Collaborative Divorce Proceedings

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A STATUTORY ALTERNATIVE TO COURT PROCEEDINGS  
FOR COUPLES AND FAMILIES FACING DIVORCE

## Contributing Authors

### Springfield Collaborative Divorce

**Mark A. Springfield, J.D.** An attorney for more than 28 years, Mark began focusing his law practice on the Collaborative Divorce method more than a decade ago. As a pioneer in adopting this healthier legal approach to divorce, Mark is among the most experienced Collaborative Divorce attorneys in the country.

**Kerry Burleigh, J.D.** With an undergraduate degree in psychology, Kerry went to law school to become an expert at helping resolve disputes in a peaceful manner. Since graduating in the top 10% of her law school class at UNC, Kerry has guided hundreds of individuals through the difficult legal and emotional process of divorce and currently devotes her law practice to helping individuals in Collaborative Divorce Proceedings.

### WolfBridge Financial

**Michael Kothakota, CFA, CDFP.** Having worked for the last fifteen years in many areas of finance and accounting, Michael is one of the most experienced Collaborative Divorce Financial Specialists in the country. With numerous

financial certifications and a desire to help divorcing couples preserve their marital estate for their family's benefit as they work through their divorce, he has limited his divorce practice to Collaborative Divorce by supporting clients and their attorneys with expert financial knowledge.

### 3-C Family Services—Families In Transition

**Brian Mackey, Ph.D.** Having spent over ten years working with children as a therapist, often working to repair the trauma of divorce and separation, Brian came to the Collaborative Divorce process to help children and their families navigate the divorce process with less trauma to the children. Brian has a unique ability to quickly build a trusting bond with children and adolescents that allows him to provide parents with critical information necessary to move forward as they structure their custody arrangements using Collaborative Divorce Procedures. His ability to relate puts children at ease and reassures them that, through Brian, they have a voice in the divorce process. As one of the pioneers of the Child Specialist role in North Carolina, Dr. Mackey's has extensive experience in providing this critical support to families.

**Springfield**  
COLLABORATIVE DIVORCE

## North Carolina Guide to Collaborative Divorce Proceedings

In 2003, Chapter 50 of the North Carolina General Statutes was amended to add Article 4 to the domestic laws of North Carolina. Article 4, titled Collaborative Law Proceedings, provides for a legal alternative to court proceedings for couples facing divorce. In Collaborative Law Proceedings, couples reach legally binding decisions about how marital property will be divided, whether and to what extent support payments will be paid, and, if there are children, what the child custody arrangements will be, but they do this without a filing in court. This Guide is intended to aid in understanding this legal alternative to divorce proceedings in court, and will offer guidance as to when this legal alternative makes sense for couples in North Carolina who are facing divorce.

## The Core Elements of Collaborative Divorce Proceedings

In Collaborative Law Proceedings the parties, their attorneys, and consulting financial and psychology specialists all agree that they will attempt to resolve any differences and conflicts arising from the dissolution of the marriage without resorting to court proceedings. Instead of filing in court, the parties, their attorneys, and other professionals in the Collaborative Divorce Proceedings meet in

a series of structured conferences to reach decisions and agreements. Instead of the costly custody evaluations necessary in court and the duplication of competing financial expert witnesses at trial, a neutral Child Specialist and a single, neutral Financial Specialist are engaged to help with informed decision-making. Instead of adversarial



court hearings, Collaborative Divorce attorneys help the parties engage in win-win negotiations. When agreements are reached, they are captured in a legal document called a Collaborative Law Settlement Agreement prepared by the attorneys. The Collaborative Law Settlement Agreement replaces the need for a judgment issued by the family court. Collaborative Law Proceedings are defined in North Carolina by the following legal requirement: husband and wife

and their attorneys all must sign a written document stating that they will proceed in accordance with the North Carolina statutes governing Collaborative Law Procedures. These procedures include the principal requirement that both attorneys must contractually agree to withdraw from their representation if either spouse decides to go to court. Thus, if either spouse decides to file litigation or pursue a claim in court in connection with the dissolution of the marriage, then that spouse must engage a different attorney to file the litigation, and the other spouse must also engage a new attorney in order to respond to the litigation. The collaborative attorneys themselves are disqualified.

In addition to the attorney-withdrawal requirement in Collaborative Law Proceedings, the core elements of a Collaborative Divorce Proceeding include the following:

- The voluntary and full exchange of relevant information between the two spouses with the help of their attorneys.
- The goal of creating a shared financial plan that takes into account the needs and interests of both spouses.
- The goal of creating a parenting plan that takes into account the needs of the children, if the parties have children.
- The use of neutral consultants, jointly retained by both husband and wife, when non-legal, expert advice is needed or required to help reach agreements.

These elements are included in the written commitment to proceed in accordance with Collaborative Divorce procedures.

### **The Role of Attorneys in Collaborative Divorce Proceedings**

Attorneys in Collaborative Law Proceedings restrict their representation to working toward a legal settlement of the marital issues. The resulting Collaborative Law Settlement Agreement takes the place of the need to get court orders. Since attorneys in Collaborative Law Proceedings are focusing on a Collaborative Law Settlement Agreement instead of court proceedings, they are able to approach conflict resolution differently than when they are representing clients outside of Collaborative Law Proceedings. Experienced collaborative attorneys make the following shared commitments in the Collaborative Law Proceedings:

- To competently and actively ensure that the spouse with whom they have an attorney-client relationship understands and is able to effectively assert his or her interests, needs, concerns, and objectives throughout the Collaborative Law Proceedings.
- To proceed with honesty, respect, and good faith toward the other attorney and toward the spouse represented by the other attorney.

- To actively involve both spouses in all settlement conferences that take place and to seek to empower them to find optimal solutions.
- To identify each party's interests (needs, concerns, values, objectives), and to search for resolutions that address both party's interests.
- To incorporate neutral non-legal experts such as psychologists and Financial Specialists to increase the effectiveness of the proceedings and maximize the potential for healthy and optimum outcomes.

These shared commitments create a very different atmosphere in Collaborative Law Proceedings than is typical in the more adversarial and combative attorney negotiations associated with positional negotiations and court proceedings.

### **The Advantages of Collaborative Law Proceedings**

In North Carolina, the statute that creates the option of proceeding with a divorce through Collaborative Law Proceedings was enacted in recognition of the terrible emotional and financial toll that divorce proceedings in court often take on couples and families. In particular, studies have documented that the children of divorced parents who have been exposed to the high levels of conflict associated with court proceedings are more likely to exhibit unhealthy

behaviors and struggle to have healthy relationships of their own. Collaborative Law Proceedings, and the shared commitments of the attorneys in Collaborative Law Proceedings, have a tendency to substantially reduce conflict and create a safer and healthier environment in which to reach a marital settlement agreement.

In addition to the reduced levels of conflict encouraged and typically experienced by Collaborative Law Proceedings, there are other advantages:

- The lawyers and professionals are focused on reaching solutions and getting to a resolution that meets the needs of both spouses and all the family members, rather than focusing on what a court would do—which is often one-size-fits-all and less than optimal.
- The lawyers and professionals have particular experience and training in a model of conflict resolution called interest-based negotiation that is different and less adversarial than the positional-based negotiation model employed by attorneys in court proceedings.
- The emotional trauma and grief associated with divorce can be addressed more effectively by mental health



professionals specially trained to participate in Collaborative Law Proceedings, enhancing wise decision-making during the proceedings.

- Children's needs and interests can be effectively determined and addressed through the use of a neutral Child Specialist who serves as the voice of the children.
- A neutral Financial Specialist trained to participate in Collaborative Law Proceedings can address financial questions and uncertainty about the future.
- A positive, ongoing relationship after the divorce is more likely when couples resolve their marital issues in a process that reduces conflict rather than exacerbates it. This is especially important for parents who must continue to co-parent after divorce.
- The divorcing spouses retain control over the ultimate outcome of their Collaborative Law Proceeding, whereas in court proceedings, a third-party judge has control over the ultimate outcome.
- Solutions can be significantly more creative and customized than in a court proceeding.
- Collaborative Divorce Proceedings are completely private, whereas court proceedings are part of the public record.
- Court proceedings typically result in a lengthier process than Collaborative Divorce Proceedings.
- Court proceedings are typically more expensive.

## **Cautions to Consider Prior to Engaging in Collaborative Law Proceedings**

Collaborative Law Proceedings are voluntary. Both spouses must agree to use this alternative to court before either can use it. Since both spouses must agree to use the North Carolina specialized Collaborative Law Proceedings, it is often advisable to determine whether there will be agreement to use Collaborative Law Proceedings before attorneys are hired. If there is agreement to use Collaborative Law, then spouses can retain attorneys who focus their practices on this method. If there is not agreement, then spouses can retain attorneys who focus their practices on court proceedings.

Other requirements to understand before undertaking Collaborative Law Proceedings include:

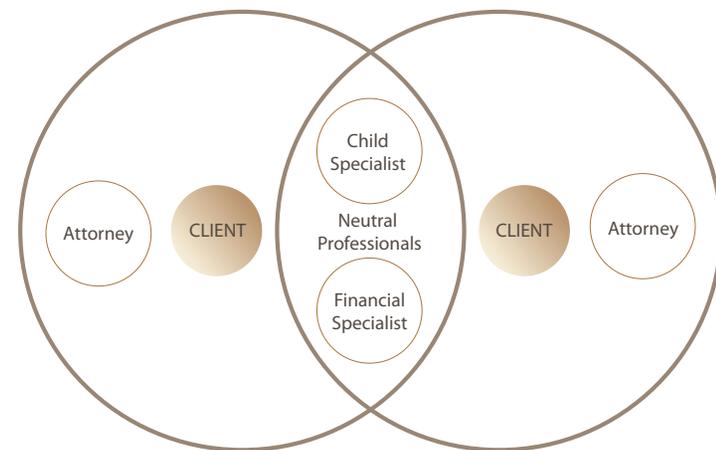
- The need for both attorneys to have demonstrated the shared commitments required in Collaborative Law Proceedings. There is the potential for Collaborative Law Proceedings to be abused by the participants in order to cause delay or deplete resources, and it is important that the attorneys will be operating in good faith to prevent such misuse of the proceedings.
- The need for both spouses to be able to participate in the process with one another in face-to-face conferences with the assistance of their attorneys and other professionals helping them to communicate safely and negotiate directly.

- The need to have appropriate professional help in the Collaborative Law Proceedings in addition to attorneys when there is a history of mental illness, domestic violence, uncontrolled spending, substance abuse, addictions, or other emotional or psychological challenges.
- The need to understand that a resolution in Collaborative Law Proceedings cannot be compelled. In a small fraction of cases, a Collaborative Law Settlement Agreement is not reached, and the couple must go to court with different attorneys to obtain a resolution. The costs of the Collaborative Law Proceedings generally cannot be recovered.

### Participating Professionals in Collaborative Law Proceedings

In the traditional family court proceedings, psychologists and Financial Specialists are routinely part of each spouse’s litigation “team” to help prepare for and participate in court hearings that determine child custody, support arrangements, and the division of marital property. In Collaborative Law Proceedings, psychologists and Financial Specialists are also routinely part of a team. The difference is that they are part of a professional team all working together collaboratively with the attorneys to help individuals and their families make an emotionally and financially healthy transition through the divorce process and into separate homes.

### Collaborative Divorce Interdisciplinary Team



Clients, Collaborative Divorce Attorneys,  
and Optional Collaborative Divorce Professionals

### Financial Specialists

One of the unique aspects of Collaborative Divorce Proceedings that separates the process from other methods of divorce is the presence of a *neutral* Financial Specialist. This financial professional is usually a financial planner, advisor or accountant with specialized training in the Collaborative Divorce process and an understanding of the financial implications of divorce. Because the Financial Specialist is jointly retained by both spouses, and because under the Collaborative Participation agreement the Financial Specialist cannot be called as a witness for either party in court, the presence of a Financial Specialist in Collaborative Law

Proceedings creates a sense of neutrality and helps increase trust among parties.

The functions of a Financial Specialist in Collaborative Divorce Proceedings include the following:

- Helps to assemble the marital property balance sheet and cash flow statement and helps to identify missing items.
- May work with one or the other spouse to ensure that both spouses can negotiate with adequate knowledge of the current and future financial situations. Often, one spouse needs to be made aware of the entire financial picture.
- Identifies positive and negative tax consequences, explains North Carolina insurance regulations, helps analyze and project mortgage costs, and prepares cash flow statements to assist the spouses in understanding how differing items may affect their ability to live post divorce.
- May discuss and counsel the spouses concerning their retirement picture and help project education costs for children if more understanding is requested or needed.
- Answers financial questions at collaborative conferences allowing both spouses to hear the same information, which in turn, helps avoid confusion and miscommunication between the spouses.
- May provide business valuations and pension valuations and may assist with property tracing issues (determining values of property that may be deemed “separate,” “marital,” or “mixed” under the law).

Experienced Collaborative Divorce Financial Specialists are effective communicators and help provide an efficient and easily understood pathway for information to flow among the spouses and their attorneys. They educate and create balance between the spouses with respect to financial issues and work well with a team. They seek to understand the concerns of both spouses and help facilitate problem-solving negotiation aimed at reaching an optimal financial plan for the couple post-divorce.

Financial Specialists are a powerful addition to Collaborative Divorce Proceedings in North Carolina and can be a vital resource in both the legal process of reaching a resolution and the emotional aspects of reducing anxiety over financial matters.

### **Child Specialists**

The Child Specialist has an extremely important role in Collaborative Divorce Proceedings. One of the goals of Collaborative Divorce is to help parents learn and use skills necessary to shield children from the anger and stress of their parents during this turbulent time. It is the Child Specialist’s role to bring the *voice* of each child to the parents during the appropriate meetings, so that the parents can explore what the children are needing while the children themselves are safely protected from the conflict of divorce proceedings.

In high-conflict Court Proceedings, child psychologists are engaged to perform custody evaluations. These

reports are provided to the court and contain the recommendations of the psychologist regarding the custodial arrangements for the children. When each parent voluntarily engages a psychologist to perform a custody evaluation, the recommendations are inherently non-neutral. Judges will typically adopt one or a combination of the two sets of recommendations provided by the psychologists rather than giving weight to the parents' concerns.

Child Specialists in the collaborative process serve an entirely different function. Rather than coming in as "experts" to testify in court for one parent or the other about how they believe the court should structure a custody arrangement, Collaborative Divorce psychologists provide expertise by joining the conversations between the parents as the voice of the children. They do not work for or advocate for either parent, and they are dedicated to the concerns and needs of the children. They spend the time necessary to understand each parent's concerns and needs and explore those with the children in a comfortable, determined manner.

Children are typically hesitant to be open with parents during separation and divorce because they have a strong need for autonomy, and they do not want to alienate a parent or feel as if they must choose sides. Collaborative Divorce psychologists are trained in getting children and adolescents to feel comfortable talking about separation and divorce. They are also able to elicit more information

than parents or court-appointed custody evaluators regarding the child's true thoughts and feelings, and they are able to assess for the parents the potential developmental needs unique to the particular child. Child Specialists also provide the important function of reassuring the children that their parents are working to address their concerns in the collaborative process.



This does not mean that the children or the Child Specialist will determine the parenting arrangement. The Child Specialist presents the parents with the needs, wants, developmental status, and transitional adjustment of the children. After receiving such information, parents can use it to help them agree upon a parenting arrangement. Using a Child Specialist in Collaborative Divorce Proceedings helps both parents place their respective needs around parenting into the context of the needs of the children. Parents

are able to incorporate the genuine needs of the children into their search for the optimal parenting strategy.

If parents have difficulty agreeing upon which strategies are in the best interest of the children or what the best communication plans are for co-parenting, the use of a collaborative psychologist trained as a Child Specialist is strongly indicated. When parents are struggling with how they will share time with the children or how they will coordinate differing parenting styles, a Child Specialist can provide a neutral, research-based opinion about how best to handle the separation and how to make sure that the children's mental health needs are best addressed going forward.

### **Divorce Coaches**

For couples who choose to take the path of Collaborative Divorce, Divorce Coaches fill a critical role as a part of an interdisciplinary team. The Divorce Coaches focus on helping people navigating the traumatic life change created by divorce by helping them communicate effectively and identify the barriers to peaceful and healthy conflict resolution. Divorce Coaches teach the communication and listening skills that enable families to successfully make the transition to living in two homes.

When there are children, Divorce Coaches help guide parents toward a healthy, well-functioning co-parenting relationship even as the intimacy of the marital relationship is dissolved.

Each spouse works with his or her own Divorce Coach in the process. Divorce Coaches improve the efficiency of the process by helping to mitigate poor communication between the spouses and thus more effectively problem-solve, thus reducing the need for increased legal and financial involvement. The benefit of working with Divorce Coaches is evidenced through more peaceful and efficient negotiations between the spouses.

### **The Steps in Collaborative Law Proceedings**

Unlike court proceedings, which have extensive procedural rules governing all aspects of the proceedings, Collaborative Law Proceedings do not have written procedural rules. Collaborative Law Proceedings are relatively informal and can be adapted to meet the needs of the divorcing couple. Collaborative Law Proceedings do have a structure, however, which involves seven steps:

1. Screening for appropriateness
2. The written commitment
3. Engaging the non-attorney collaborative professionals
4. Information gathering
5. Developing the interests of each spouse and the children, when appropriate
6. Creating and evaluating possible resolutions in light of interests
7. Reaching and memorializing the agreement

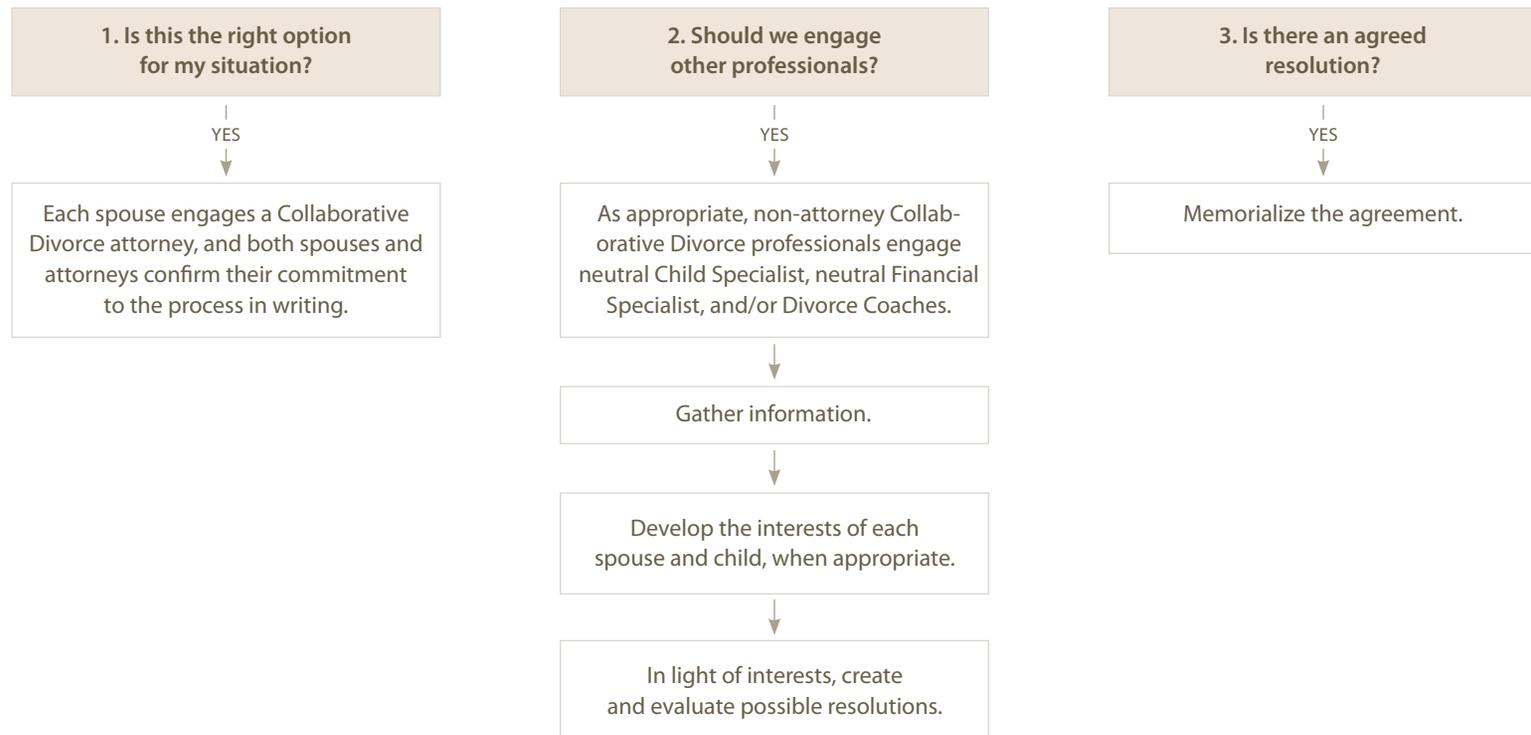
The proceedings take place in a series of conferences. Each conference is no more than two hours in length, and is attended by the two spouses, their respective attorneys, and other professionals on the team as appropriate. There are also one-on-one meetings throughout the proceedings between the spouses and their attorneys, the Financial Specialist, or the Child Specialist when there are children.

### Step One: Screening for Appropriateness

Collaborative Divorce is one option among several options for couples considering how to legally divorce. Not every

divorcing couple will require Collaborative Law Proceedings. Some couples may have no children of the marriage, an uncomplicated marital estate, and may only require attorneys to draft a legal separation agreement. Collaborative Law Proceedings include more services than would be necessary for these couples. Other couples may want a neutral third person, such as a judge or arbitrator, to make decisions for them, and Collaborative Law Proceedings would not meet their needs.

Initial consultations offered by collaborative law attorneys focus on providing information about all the divorce process options available to divorcing couples in North



Carolina. Collaborative Law Proceedings are always one of several options, and ultimately couples should select Collaborative Law Proceedings only when it is the right option for them. This decision is generally made in consultation with an experienced collaborative attorney.

### **Step Two: The Written Commitment**

After the decision to use Collaborative Law Proceedings has been made, and each spouse has hired and met independently with a Collaborative Divorce attorney, the couple and their respective attorneys all meet together at what is called a four-way conference. At this first four-way conference, the attorneys review the Collaborative Law Agreement with the couple, and everyone signs this commitment to proceed pursuant to collaborative law procedures. An example of a Collaborative Law Agreement is available on the Springfield Collaborative Divorce web site.

### **Step Three: Engaging the Non-Attorney Collaborative Professionals**

At the first meeting with both spouses and their attorneys, after the Collaborative Law Agreement is signed, final decisions are made about engaging any non-attorney professionals. Typically, a Financial Specialist is engaged as a neutral professional who will help to gather financial information, inventory the marital estate, and summarize the

projected income needs of two households. The Financial Specialist also helps with tax, investment, insurance, and other financial questions and issues. If there are children, a Child Specialist is engaged who will meet with the children and provide information about their needs and interests. Depending on the level of conflict and other factors, Divorce Coaches may be engaged to help manage emotions, manage grief, and facilitate effective communication if such things are likely to hinder efficient negotiations or wise decision making.



#### Step Four: Information Gathering

Collaborative Law Proceedings are largely “transparent” in that relevant information is freely shared in the conferences in which both spouses and the professional team are present. Spouses *do* meet individually with their own attorneys, and attorneys *do* keep client confidences. Nonetheless, Collaborative Law Proceedings anticipate that all relevant information will be shared. Documents are reviewed together and financial information is summarized in conferences in which everyone is present, including the Financial Specialist. For efficiency, spouses might meet individually with the Financial Specialist to develop expense projections. These projections often form the foundation for the discussion about spousal support or child support, and they are reviewed and further developed in four or five-way conferences.

Information is also gathered about how the children are coping and what their specific needs and interests may be. The parents and the children meet individually with the Child Specialist so he or she can identify both the concerns the parents may have and hear first-hand from the children about their concerns, what they are experiencing, and what they might want their parents to know.

#### Step Five: Developing the Interests of Each Spouse and Children, when Appropriate

From the first meeting that each spouse has with his or her collaborative attorney and throughout the Collaborative

Law Proceedings, the attorneys and professional team are working with each spouse to clarify and to articulate needs and interests. As discussed below, the negotiation model used to resolve differences when they arise in Collaborative Law Proceedings is a problem-solving method, rather than the more competitive style of negotiating commonly used by attorneys. The competitive style of negotiation, often called positional-based bargaining, is a contest of



wills where there are frequently misleading statements of negotiation positions, bluffing, threatening, and the use of psychological pressure to force concessions. In the problem-solving negotiation model, understanding and articulating the needs and interests of the parties in conflict is at the heart of finding win-win solutions.

### **Step Six: Developing and Evaluating Possible Resolutions in Light of Interests**

After the relevant information has been gathered, shared, and synthesized, and after each spouse's needs and interests have been clarified, the agenda for the collaborative conferences, at which the professional team supports the couple, turns to developing strategies and options for addressing the needs of each spouse and the children. These strategies are evaluated, revised, and augmented as necessary. Discussion and evaluation of the options may extend over more than one collaborative conference as the parties attempt to find and settle on strategies to incorporate into their Collaborative Law Settlement Agreement.

### **Step Seven: Reaching and Memorializing the Agreement**

When the couple has settled on a financial plan that they believe is optimal given their family's needs and interests, and when they have developed a parenting plan that they believe will best meet the needs of the children, the attorneys convert these agreements into a binding legal document called a Collaborative Law Settlement Agreement. This binding agreement establishes as a legal matter the division of marital and separate property, any ongoing payment of monetary support for either a spouse's expenses or the expenses of the children, and the custodial arrangement with regard to minor children. Once both spouses

sign the Collaborative Law Settlement Agreement before a notary, the Agreement replaces the need to have court orders with respect to these matters.

### **The Interest-Based Negotiation Model at the Heart of Collaborative Divorce Proceedings**

A critical component of Collaborative Divorce Proceedings is the intentional adoption by the collaborative attorneys of the interest-based negotiation model to handle conflicts and differences of opinion. Interest-based negotiation is a model for negotiating developed by the Harvard Negotiation Project in the late 1970's, and it was first introduced in a book called *Getting to Yes—Negotiating Agreements Without Giving In*, by Roger Fisher and William Ury. Negotiating based on interests (or needs) means avoiding taking positions. For example, in discussing parenting arrangements after separation, instead of saying "I think the children should stay with me during the week," (the "position"), the parent could say, "I have a need to make sure I maintain a close, loving, and parental relationship with the children." The first statement is what is called a strategy or position. It is one of many ways a parent could meet his or her underlying interest. The underlying interest in this example is embodied in the second statement.

In Collaborative Divorce Proceedings, the professionals work with the spouses to focus on the interests or needs

underlying their initial positions. What interests are the spouses trying to protect by taking the positions they take? The importance of shifting to interests lies in the fact that there will inevitably be multiple options for getting one's interests or needs met. When people recognize the underlying interests and needs, it is possible to generate multiple options for protecting those interests or for getting the needs met. The negotiation becomes a joint problem-solving exercise as the parties seek to find options and strategies that will work for both of them. So, if both parents state they "need" to have the children during the week, the Collaborative Divorce professionals turn the conversation to exploring what need would be met by having the children during the week, and many potential options and strategies can be developed for meeting those needs. Then, they explore finding the strategy that will work for both parties.

The second important aspect of interest-based negotiation, especially in a divorce negotiation, is showing respect for the other person's genuine interests, even as there is disagreement over how to protect those interests. Negotiators involved in positional-based negotiations will often criticize, belittle, and threaten the other party in an effort to win the "contest of wills." They will suggest that the other person's interests are not worthy of consideration. Collaborative Divorce professionals, on the other hand, never forget that they are dealing with human beings who have

emotions, strongly held values, and different viewpoints. Negotiations in Collaborative Law Proceedings are often more effective because the participants are treated as fellow human beings, even where there is deep disagreement.

### **Terminating Collaborative Divorce Proceedings Without an Agreement**

Collaborative Divorce Proceedings typically end with the signing of a Collaborative Law Settlement Agreement. However, in a small fraction of cases, Collaborative Divorce Proceedings end without reaching an Agreement. When this happens, the attorneys who have been involved in the Collaborative Divorce Proceedings will help to transfer their respective case files to the new attorneys retained by each spouse to handle the case in court. Everything that has been said by either spouse in collaborative law conferences is considered privileged and confidential and may not be used in the litigation proceedings against either party. In addition the communications and work of collaborative attorneys and the non-attorney members of the collaborative professional team are also privileged and not admissible in court. These statutory rules allow parties in Collaborative Law Proceedings to know that they can speak freely and will not be prejudiced if the proceedings end without an agreement.

## **Collaborative Practice Organizations in North Carolina**

The North Carolina Bar Association has established guidelines for attorneys who wish to promote the use of Collaborative Law Proceedings. In a Formal Ethics Opinion, 2002 FEO 1, the State Bar ruled that lawyers from different law firms may create non-profit organizations called Collaborative Family Law Organizations “CFL Organizations” or, as they are often called, “Collaborative Practice Groups”. The attorneys in these Collaborative Practice Groups may then recommend

that both spouses hire attorneys from the Group without creating a conflict of interest or other ethical violation.

As a result, attorneys who offer Collaborative Law services are usually associated with a Collaborative Practice Group. In North Carolina, a number of such Collaborative Practice Groups have formed around the State. In recent years, several Collaborative Practice Groups have added psychologists and financial planners as participating members. Collaborative Practice Groups in a particular geographic region can generally be researched online.

## Appendix A

### Sample Collaborative Law Agreement

#### Pledge to Participate in the Collaborative Law Process

This Pledge represents the agreement of each of the undersigned to participate in the Collaborative Law Process and to act in good faith to comply with the principles and guidelines stated herein.

#### IV. Goals

1. We acknowledge that in family-law matters, such as separation, support, child custody, property division, and divorce, it is in the best interests of parties and their families, whenever possible, to resolve conflicts and disputes through a non-adversarial, non-court process.
2. We have elected to use Collaborative Law Procedures pursuant to North Carolina General Statute § 50-70 as an alternative to judicial disposition of our family law matters and intend that this agreement shall satisfy the requirements of a Collaborative Law Agreement as set forth in North Carolina General Statute § 50-72.
3. In an atmosphere of honesty, cooperation, integrity, and professionalism, we will focus on the well being of both of the parties and their families in reaching a settlement.

#### IV. Full, Voluntary Disclosure

1. We agree to give complete, full, honest, and open disclosure of all information, whether requested or not, and to engage in informal discussions and conferences for the purpose of reaching a settlement of all issues.
2. We wish to avoid the negative economic, social, and emotional consequences of protracted litigation and associated court processes for obtaining information such as interrogatories, requests for production, and depositions. Any existing court action shall be suspended pursuant to N.C. Gen. Stat. § 50-74(b).
3. We commit to honestly express needs and desires, and to seek to hear and recognize the needs and desires of the other party and family members.

#### IV. Experts and Consultants

1. If consulting experts are needed, such as accountants, therapists, appraisers and other consultants, we will retain them jointly unless all parties and their attorneys agree otherwise.
2. We agree to direct all consulting experts to work in a cooperative effort to resolve issues without resort to litigation or any other external decision making process except as agreed upon.
3. Whenever possible, expert consultants will be directed to confer and render joint statements on the issues in dispute.

#### **IV. Children's Issues**

1. In resolving issues about sharing the enjoyment and responsibility of the parties' minor children, the parties, attorneys and therapists will make every reasonable effort to reach amicable solutions that promote the best interests of the children.
2. We agree to act quickly to resolve differences, using mediation if necessary, in a manner that will promote a caring, loving, and involved relationship between the children and both parents.
3. We agree not to seek a custody evaluation while the matter is a Collaborative Law case unless agreed upon by both parties.
4. We agree to insulate our children from involvement in our disputes.

#### **IV. Limitations of the Collaborative Law Process**

1. We understand that the Collaborative Law Process is a voluntary process, and there can be no guarantee that the process will be successful in resolving our case.
2. We understand that, while the Collaborative Law Process can promote emotional healing and personal growth, the process will not necessarily resolve strong feelings and concerns that may exist about the disharmony, distrust and irreconcilable differences that led to the current conflict.

3. We understand that we may assert our respective interests; that we have retained separate attorneys that will help us to do so; and that, while our attorneys share a commitment to the Collaborative Law Process, they each have a professional duty to represent his or her client diligently and are not the attorney for the other party.
4. If the parties attended a joint orientation meeting at which the collaborative process was explained, the parties agree to waive any conflict of interest that may arise from their joint participation in the orientation meeting. If one party has chosen to be represented by the attorney participating in the orientation meeting, the other party consents to the representation, and the participating attorney confirms that he or she can exercise independent professional judgment on behalf of his or her client in the Collaborative Law Process.

#### **IV. Good Faith, Interest-Based Negotiation**

1. Negotiations will be carried on in good faith, under an interest-based negotiation model, and the parties will not conceal information, bluff, mislead the other party about their intentions or interests, or make threats.
2. We will work to protect the privacy, respect, and dignity of all involved.

3. We will maintain a high standard of integrity and specifically will not take advantage of known mistakes or miscalculations, but will disclose them and seek to have them corrected.
4. We will avoid taking unilateral actions without discussion that will affect the other party, such as transferring funds from bank or investment accounts, drawing on lines of credit, or changing temporary parenting schedules.
5. We may use the law as a reference point in the negotiations if we so choose. The attorneys, upon request, can and will provide information as to relevant law, including rights, entitlements, and obligations pertaining to matters relevant to the separation and divorce process. Such legal information will be provided in the collaborative conferences with all parties present. If legal information or opinions are provided to a party individually outside of a collaborative conference, then the information and opinions will be shared at the next collaborative conference with both spouses and their attorneys. It is understood and agreed that the collaborative process is designed to use interest-based and problem-solving negotiation to establish financial plans and parenting strategies that are acceptable to both parties going forward, and that a party may determine whether or not to reach an agreement

in the collaborative process that is different from the rights, entitlements and obligations created by North Carolina statutes and case law.

#### **IV. Withdrawal of Attorney**

1. We understand that an attorney who has signed this agreement may and will withdraw from a case if he or she believes, whether rightly or wrongly, that his or her client has intentionally withheld or misrepresented information or is otherwise undermining the Collaborative Law Process, and in such instance the Collaborative Law Process shall be terminated. Examples of such conduct would include: the secret disposition of marital or separate property, failure to fully disclose assets and obligations, on-going emotional or physical abuse of either a spouse or children, or a secret plan to leave the jurisdiction with the children.
2. If an attorney withdraws for reasons that do not require the termination of the Collaborative Law Process, then the party losing his or her attorney may retain a new attorney so long as the new attorney will agree in writing to be bound by this Pledge.

#### **IV. Attorney Representation Limited to the Collaborative Process**

1. We understand that our attorneys' representation is limited to the Collaborative Law Process and

that neither of our attorneys or their firms can ever represent us in an adversarial proceeding against the other, such as court or arbitration, except by agreement of all parties.

2. We agree that the undersigned attorneys may not and will not be called as witnesses in any court proceeding to resolve a family-law matter and that all attorney work product is inadmissible as evidence.
3. All non-attorney consultants and experts retained prior to termination of the Collaborative Law Process are disqualified as witnesses and their work product is inadmissible as evidence unless the parties agree otherwise in writing.

**IV. Election to Terminate the Collaborative Law Process**

1. If either party decides that the Collaborative Law Process is no longer appropriate, the Process may be terminated by written notice to the attorneys.
2. Termination will also occur automatically if either party files an action or motion in court such as a request for an emergency or temporary order.
3. Upon termination, the attorneys shall withdraw from any court proceeding already filed pursuant

to N.C. Gen. Stat. § 50-76(c) and will cooperate in the transfer of the case to litigation attorneys.

4. We understand that in retaining new attorneys, the parties will incur the fees required by the new attorney.

**IV. Pledge**

WE, THE UNDERSIGNED, PLEDGE TO COMPLY WITH AND TO PROMOTE THE SPIRIT AND WRITTEN WORD OF THIS DOCUMENT.

\_\_\_\_\_  
CLIENT DATE

\_\_\_\_\_  
ATTORNEY DATE

\_\_\_\_\_  
CLIENT DATE

\_\_\_\_\_  
ATTORNEY DATE

## Appendix B

[www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_50/Article\\_4.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_50/Article_4.pdf)

NC GENERAL STATUTES—CHAPTER 50 ARTICLE 4 I

Article 4.

Collaborative Law Proceedings.

### § 50-70. Collaborative law.

As an alternative to judicial disposition of issues arising in a civil action under this Article, except for a claim for absolute divorce, on a written agreement of the parties and their attorneys, a civil action may be conducted under collaborative law procedures as set forth in this Article. (2003-371, s. 1.)

### § 50-71. Definitions.

As used in this article, the following terms mean:

(1) Collaborative law. A procedure in which a husband and wife who are separated and are seeking a divorce, or are contemplating separation and divorce, and their attorneys agree to use their best efforts and make a good faith attempt to resolve their disputes arising from the marital relationship on an agreed basis. The procedure shall include an agreement by the parties to attempt to resolve their disputes without having to resort to judicial intervention, except to have the court approve the settlement agreement and sign the orders required by law to effectuate the agree-

ment of the parties as the court deems appropriate. The procedure shall also include an agreement where the parties' attorneys agree not to serve as litigation counsel, except to ask the court to approve the settlement agreement.

(2) Collaborative law agreement. A written agreement, signed by a husband and wife and their attorneys, that contains an acknowledgment by the parties to attempt to resolve the disputes arising from their marriage in accordance with collaborative law procedures.

(3) Collaborative law procedures. The process for attempting to resolve disputes arising from a marriage as set forth in this Article.

(4) Collaborative law settlement agreement. An agreement entered into between a husband and wife as a result of collaborative law procedures that resolves the disputes arising from the marriage of the husband and wife.

(5) Third-party expert. A person, other than the parties to a collaborative law agreement, hired pursuant to a collaborative law agreement to assist the parties in the resolution of their disputes. (2003-371, s. 1.)

### § 50-72. Agreement requirements.

A collaborative law agreement must be in writing, signed by all the parties to the agreement and their attorneys, and must include provisions for the withdrawal of all attorneys involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute. (2003-371, s. 1.)

**§ 50-73. Tolling of time periods.**

A validly executed collaborative law agreement shall toll all legal time periods applicable to legal rights and issues under law between the parties for the amount of time the collaborative law agreement remains in effect. This section applies to any applicable statutes of limitations, filing deadlines, or other time limitations imposed by law or court rule, including setting a hearing or trial in the case, imposing discovery deadlines, and requiring compliance with scheduling orders. (2003-371, s. 1.)

**§ 50-74. Notice of collaborative law agreement.**

(a) No notice shall be given to the court of any collaborative law agreement entered into prior to the filing of a civil action under this Article.

(b) If a civil action is pending, a notice of a collaborative law agreement, signed by the parties and their attorneys, shall be filed with the court. After the filing of a notice of a collaborative law agreement, the court shall take no action in the case, including dismissal, unless the court is notified in writing that the parties have done one of the following:

- (1) Failed to reach a collaborative law settlement agreement.
- (2) Both voluntarily dismissed the action.
- (3) Asked the court to enter a judgment or order to make the collaborative law settlement agreement an act of the court in accordance with G.S. 50-75. (2003-371, s. 1.)

**§ 50-75. Judgment on collaborative law settlement agreement.**

A party is entitled to an entry of judgment or order to effectuate the terms of a collaborative law settlement agreement if the agreement is signed by each party to the agreement. (2003-371, s. 1.)

**§ 50-76. Failure to reach settlement; disposition by court; duty of attorney to withdraw.**

(a) If the parties fail to reach a settlement and no civil action has been filed, either party may file a civil action, unless the collaborative law agreement first provides for the use of arbitration or alternative dispute resolution.

(b) If a civil action is pending and the collaborative law procedures do not result in a collaborative law settlement agreement, upon notice to the court, the court may enter orders as appropriate, free of the restrictions of G.S. 50-74(b).

(c) If a civil action is filed or set for trial pursuant to subsection (a) or (b) of this section, the attorneys representing the parties in the collaborative law proceedings may not represent either party in any further civil proceedings and shall withdraw as attorney for either party. (2003-371, s. 1.)

**§ 50-77. Privileged and inadmissible evidence.**

(a) All statements, communications, and work product made or arising from a collaborative law procedure are

confidential and are inadmissible in any court proceeding. Work product includes any written or verbal communications or analysis of any third-party experts used in the collaborative law procedure.

(b) All communications and work product of any attorney or third-party expert hired for purposes of participating in a collaborative law procedure shall be privileged and inadmissible in any court proceeding, except by agreement of the parties. (2003-371, s. 1.)

**§ 50-78. Alternate dispute resolution permitted.**

Nothing in this Article shall be construed to prohibit the parties from using, by mutual agreement, other forms of alternate dispute resolution, including mediation or binding arbitration, to reach a settlement on any of the issues included in the collaborative law agreement. The parties' attorneys for the collaborative law proceeding may also serve as counsel for any form of alternate dispute resolution pursued as part of the collaborative law agreement. (2003-371, s. 1.)

**§ 50-79. Collaborative law procedures surviving death.**

Consistent with G.S. 50-20(1), the personal representative of the estate of a deceased spouse may continue a collaborative law procedure with respect to equitable distribution that has been initiated by a collaborative law agreement prior to death, notwithstanding the death of one of the spouses. The provisions of G.S. 50-73 shall apply to time limits applicable under G.S. 50-20(1) for collaborative law procedures continued pursuant to this section. (2003-371, s. 1.)

**§ 50-80: Reserved for future codification purposes.**

**§ 50-81: Reserved for future codification purposes.**

**§ 50-82: Reserved for future codification purposes.**

**§ 50-83: Reserved for future codification purposes.**

**§ 50-84: Reserved for future codification purposes.**

**§ 50-85: Reserved for future codification purposes.**

**§ 50-86: Reserved for future codification purposes.**

**§ 50-87: Reserved for future codification purposes.**

**§ 50-88: Reserved for future codification purposes.**

**§ 50-89: Reserved for future codification purposes.**

